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Meinungsfreiheit und die Medien: Normsetzung des Europarates

(I) Ministerkomitee

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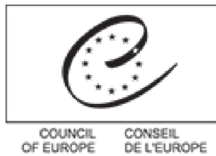

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IRIS Themen

Meinungsfreiheit und die Medien: Normsetzung des Europarates (I) Ministerkomitee

Dieses eBook gibt wertvolle Einblicke in die Arbeit des Ministerkomitees des Europarates auf dem Gebiet „Meinungsfreiheit und die Medien“. Es fasst die zahlreichen Prinzipien und normativen Maßgaben des Europarates zusammen, die seit November 1994 vom Europarat in nicht weniger als 57 offiziellen Dokumenten als Leitlinien für die Mitgliedsstaaten des Europarates erlassen wurden. Außerdem bietet das eBook einen direkten Zugang zu jedem dieser offiziellen Dokumente.

Im Einzelnen beinhaltet diese Publikation:

1. Einen Überblick über alle Beiträge, einschließlich der Links zu den einzelnen Beiträgen und offiziellen Texten.
2. Eine Liste der Autoren der Beiträge.
3. Eine allgemeine Beschreibung der Rolle und der Funktionsweise des Ministerkomitees des Europarates im Zusammenhang mit der Normsetzung zu - jedoch nicht notwendigerweise basierend auf - Art. 10 der Europäischen Menschenrechtskonvention.
4. Eine Zusammenstellung von Kurzbeiträgen aus unserer juristischen Datenbank, IRIS Merlin, die die wesentlichen Bestandteile der einschlägigen Erklärungen, Empfehlungen, Entschließungen und anderer vom Ministerkomitee erlassener Dokumente zusammenfasst. Jeder Beitrag stellt einen Link zu den offiziellen Dokumenten im Volltext zur Verfügung, die er behandelt.
5. Eine Zusammenstellung aller vom Ministerkomitee erlassenen Erklärungen, Empfehlungen, Entschließungen, etc. im Volltext (im Zeitraum vom 12. September 1952 bis zum 13. Januar 2010), von den Herausgebern ergänzt um die zwischen 13. Januar 2010 und 21. September 2011 erlassenen einschlägigen Dokumente.

Dieses eBook ist das geistige Werk von Tarlach McGonagle, der die Einleitung verfasst, zahlreiche IRIS Merlin Beiträge zum Thema „Meinungsfreiheit und die Medien“ ausgewählt sowie eine Liste der einschlägigen Texte und der Autoren der Beiträge zusammengestellt hat. Mein besonderer Dank gilt Tarlach McGonagle für sein Engagement und dafür, dass er den Anstoß zu diesem Projekt gegeben hat. Ich möchte außerdem den Autoren der IRIS Merlin Beiträge danken, die den Kern dieses eBooks darstellen. Außerdem gilt mein Dank Kim de Beer für ihre Geduld und Ausdauer bei der Bewältigung der zahlreichen Herausforderungen der Textformatierung. Schließlich geht mein Dank an die Kollegen der Abteilung „Medien, Informationsgesellschaft und Datenschutz“ des Europarates, die uns ihre Zusammenstellung der vom Ministerkomitee verabschiedeten Originaltexte zur Verfügung gestellt haben.

Eine weitere Publikation, die sich mit den zahlreichen Prinzipien und normativen Maßgaben befasst, die die Parlamentarische Versammlung des Europarates erlassen hat, ist als **Meinungsfreiheit und die Medien: Normsetzung des Europarates, (II) Parlamentarische Versammlung** verfügbar.

Straßburg im Dezember 2011
Susanne Nikoltchev

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in absteigender chronologischer Reihenfolge

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Meinungsfreiheit und die Medien: Normsetzung des Europarates (I) Ministerkomitee

Von Tarlach McGonagle

Einleitung

Der Europarat ist eine zwischenstaatliche Organisation, die sich für die Wahrung der Menschenrechte, der Demokratie und des Rechtsstaats in ganz Europa einsetzt. Er umfasst derzeit 47 Mitgliedstaaten. Sein vorrangiges Ziel ist es, wie in seiner Satzung festgelegt, „einen engeren Zusammenschluss unter seinen Mitgliedern zu verwirklichen, um die Ideale und Grundsätze, die ihr gemeinsames Erbe sind, zu schützen und zu fördern und um ihren wirtschaftlichen und sozialen Fortschritt zu begünstigen".[1] Er verfolgt dieses Ziel „mithilfe der Organe des Rates durch die Prüfung von Fragen gemeinsamen Interesses, durch den Abschluss von Abkommen und durch gemeinsames Handeln auf den Gebieten der Wirtschaft, des sozialen Lebens, der Kultur, der Wissenschaft, der Rechtspflege und der Verwaltung sowie durch Schutz und Weiterentwicklung der Menschenrechte und Grundfreiheiten".[2]

I. Das Ministerkomitee

Das Ministerkomitee ist das Exekutiv- oder Entscheidungsorgan des Europarates, während die Parlamentarische Versammlung das Beratungsorgan darstellt.[3] Das Ministerkomitee setzt sich aus den Außenministern aller Mitgliedstaaten bzw. (in der Praxis) deren Ständigen diplomatischen Vertretern beim Europarat zusammen.

Das Ministerkomitee ist „das Organ, das im Auftrag des Europarates handelt".[4] Zu seinen Hauptaufgaben zählen: Einladung an Staaten zum Beitritt zum Europarat;[5] Abschluss von Konventionen und Abkommen;[6] Erteilung von Empfehlungen an Mitgliedstaaten[7] Überwachung der Einhaltung der von den Mitgliedstaaten eingegangenen (Menschenrechts-)Verpflichtungen;[8] Überwachung des Vollzugs der Urteile des Europäischen Gerichtshofs für Menschenrechte;[9] Organisation der internen Angelegenheiten des

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[1] Artikel 1 Buchstabe a, Satzung des Europarates, SEV Nr. 1 (in der geänderten Fassung), London, verabschiedet am 5. Mai 1949; Inkrafttreten: 3. August 1949.
[2] Artikel 1 Buchstabe b, *ibd.*
[3] Für einen allgemeinen Überblick über das Ministerkomitee, siehe: http://www.coe.int/t/cm/aboutCM_en.asp; Florence Benoît-Rohmer & Heinrich Klebes, *Council of Europe law: Towards a pan-European legal area* (Straßburg, Council of Europe Publishing, 2005), S. 48-56; C. Ravaud, "The Committee of Ministers", in R. St. J. Macdonald *et al*., Eds., *The European System for the Protection of Human Rights* (Dordrecht/Boston/London, Martinus Nijhoff Publishers, 1993), S. 645-655. Für einen konkreten Überblick über die Rolle des Ministerkomitees beim Vollzug der Urteile des Europäischen Gerichtshofs für Menschenrechte, siehe: D.J. Harris, M. O'Boyle, E.P. Bates & C.M. Buckley, *Harris, O'Boyle & Warbrick Law of the European Convention on Human Rights* (Second Edition) (Oxford, Oxford University Press, 2009), S. 871 *et seq*.; Pieter van Dijk, Fried van Hoof, Arjen van Rijn, & Leo Zwaak, Eds., *Theory and Practice of the European Convention on Human Rights* (Fourth Edition) (Antwerpen/Oxford, Intersentia, 2006), S. 44-46; 291 *et seq*.
[4] Artikel 13, Satzung des Europarates.
[5] Artikel 4-6, Satzung des Europarates. Gemäß Artikel 8 der Satzung kann das Ministerkomitee einem Staat die Mitgliedschaft im Europarat ebenfalls vorläufig absprechen oder beenden.
[6] Artikel 15 Buchstabe a, Satzung des Europarates.
[7] Artikel 15 Buchstabe b, Satzung des Europarates.
[8] Florence Benoît-Rohmer & Heinrich Klebes, *Council of Europe law*, *op. cit.*, auf S. 54 und 118.
[9] Artikel 46, Europäische Menschenrechtskonvention, *infra*.

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Europarates und Beschluss des Jahreshaushalts;[1]Beschluss und Überwachung des Arbeitsprogramms „Intergovernmental Programme of Activities“.[2]

II. Normsetzung durch das Ministerkomitee

Wie bereitsdargelegt, ist das Ministerkomitee befugt, Empfehlungen an Mitgliedstaaten zu erlassen. Empfehlungen[3] sind für die Staaten nicht rechtsverbindlich, doch sie haben „moralische Autorität“ und politische Überzeugungskraft.[4] Dies lässt sich weitgehend durch die Tatsache erklären, dass Empfehlungen gewöhnlich einstimmig[5] verabschiedet werden und folglich einen gemeinsamen europäischen Standpunkt hinsichtlich des zugrunde liegenden Gegenstandsvermitteln.[6]

Empfehlungen haben üblicherweise „ein spezielles (Menschenrechts)Thema, das umfassend beleuchtet wird“, zum Schwerpunkt und „beziehen sich auf bestehende rechtsverbindliche Grundsätze“.[7] Sie sind zuweilen mit erläuternden Memoranda verbunden, die unter anderem die Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte und/oder Grundsätze des Europarates in Bezug auf den ihnen zugrunde liegenden Gegenstand festlegen. Derartige Memoranda erweisen sich als sinnvoll für den Entwurf eines gesetzlichen Rahmens, innerhalb dessen eine bestimmte Empfehlung zum Tragen kommt. Wie der Name andeutet, befürwortet eine Empfehlung gewöhnlich spezielle Maßnahmen, die Mitgliedstaaten ergreifen sollten.

Neben Empfehlungen verabschiedet das Ministerkomitee zudem Richtlinien, die „im Grunde den gleichen Zweck erfüllen wie Empfehlungen”,[8] sowie Erklärungen, die etwa dazu dienen, „für die Handlung der Organisation in einem bestimmten Bereich Grundsätze festzulegen, strategische Ziele zu formulieren und einen Überblick über zukünftige Perspektiven zu geben”.[9]

Obwohl Empfehlungen, Richtlinien und Erklärungen keine Rechtsverbindlichkeit haben, sind sie doch eindeutig von rechtlicher Relevanz.

Zunächst können diese Texte zur Normsetzung bestehende Vertragsbestimmungen ergänzen, da ihr Schwerpunkt tendenziell auf bestimmten (Menschenrechts)Fragen oder (sich neu entwickelnden) sich auf die Demokratie oder die Menschenrechte auswirkenden Sachverhalten liegt. Sie erweitern diese, indem sie detailliert darlegen, was in den Vertragsbestimmungen nicht im Einzelnen geklärt ist, oder indem sie neue Aspekte

[1] Artikel 16 und 38, Satzung des Europarates.
[2] Siehe: http://www.coe.int/t/cm/aboutCM_en.asp.
[3] Vor 1979 wurden Empfehlungen an Mitgliedstaaten als Entschließungen bezeichnet.
[4] Florence Benoît-Rohmer & Heinrich Klebes, *Council of Europe law*, *op. cit*., S. 108-109.
[5] Förmlich sind gemäß Artikel 20 der Satzung des Europarates für Empfehlungen an die Regierungen von Mitgliedstaaten „die Einstimmigkeit der abgegebenen Stimmen und die Mehrheit der Vertreter, die Anspruch auf einen Sitz im Ministerkomitee haben, erforderlich”. Ein „Gentleman's Agreement“ aus dem Jahr 1944 lässt jedoch eine Zweidrittelmehrheit zu. Weitere Einzelheiten siehe: Florence Benoît-Rohmer & Heinrich Klebes, *Council of Europe law*, *op. cit*., S. 54-55.
[6] *Ibd*., S. 109; Jan Kleijssen, “Council of Europe Standard-setting in the Human Rights Field”, in J.P. Loof & R.A. Lawson, Eds., *60 jaar Europees Verdrag voor de Rechten van de Mens – Een lichtend voorbeeld?* – Sonderausgabe der *Nederlands Tijdschrift voor de Mensenrechten*, Vol. 35 [2010], No. 7, S. 897-904, auf S. 899.
[7] Jan Kleijssen, “Council of Europe Standard-setting in the Human Rights Field”, *op. cit*., S. 898.
[8] *Ibd*.
[9] *Ibd*.

vorwegnehmen, die in den Vertragsbestimmungen oder der Rechtsprechung noch nicht behandelt wurden. Es ist erwähnenswert, dass Urteile des Europäischen Gerichtshofs für Menschenrechte sich in zunehmend systematischer und strukturierter Weise auf die Texte zur Normsetzung des Ministerkomitees beziehen – typischerweise in einer als ‚Einschlägige internationale Rechtsakte' [1] bezeichneten Gruppe von Urteilen. In diesem Zusammenhang können die Texte zur Normsetzung die Interpretation bestehender Verträge erleichtern, indem allgemeine Grundsätze auf konkrete Situationen angewandt oder Prinzipien in Einklang mit der Zeit interpretiert werden.

Des Weiteren können diese Texte zur Normsetzung als Anregung für neue Verträge dienen. Ein gutes Beispiel hierfür stellt die Empfehlung (2002)2 über den Zugang zu amtlichen Dokumenten[2] dar, die „den Hauptimpuls" für das Übereinkommen des Europarates über den Zugang zu amtlichen Dokumenten (2009)[3] gab.

Ferner können sie Vertrags- und andere Überwachungsprozesse vereinfachen, indem sie die Identifizierung bewährter Verfahren und die Einführung angemessener Bewertungen unterstützen. Dies kann beispielsweise durch formelle Bestimmung in einer Empfehlung für die Berichterstattung oder andere Folgemaßnahmen durch Mitgliedstaaten erreicht werden.

Im Vergleich zu Verträgen weisen Empfehlungen zahlreiche praktische Vorteile auf. [4] Empfehlungen sind sofort nach Annahme durch das Ministerkomitee in allen Mitgliedstaaten gültig. Es sind keine formellen Ratifizierungsverfahren auf nationaler Ebene erforderlich, auch wenn die Behörden der Mitgliedstaaten die Einzelheiten ihrer tatsächlichen Umsetzung festlegen müssen. Was Aktualisierungen oder Abänderungen vor dem Hintergrund gesellschaftlicher oder technologischer Entwicklungen betrifft, bieten Empfehlungen mehr Flexibilität als Verträge. So war es etwa im Rahmen der Empfehlung (2004) 16 über das Recht auf Gegendarstellung im neuen Medienumfeld relativ einfach, die wesentlichen Grundsätze und Bestimmungen der Entschließung (74) 26 über das Recht auf Gegendarstellung – Stellung der Einzelperson gegenüber der Presse für das digitale Zeitalter zu ändern und umzugestalten.

III. Normsetzung durch das Ministerkomitee zur Meinungsfreiheit und den Medien

Der Europarat hat eine Reihe internationaler Verträge und anderer normativer Vorgaben verabschiedet, bei denen Meinungsfreiheit und die Medien den Schwerpunkt bilden oder indirekt thematisiert werden. Während alle diese Vorgaben im Hinblick auf ihre allgemeinen Zielsetzungen und Ansätze weitgehend übereinstimmen, zeichnet sich jeder einzelne Text durch eigene besondere Ziele, Schwerpunkte, (Rechts)Status und verfahrensrechtliche

[1] Zum Beispiel wird die Empfehlung Nr. R (97)20 des Ministerkomitees an die Mitgliedstaaten über ‚Hassreden', 30. Oktober 1997, in den Urteilen des Europäischen Gerichtshofs für Menschenrechte in den Rechtssachen *Gündüz* gegen *Türkei* vom 4. Dezember 2003 (Punkt 22) und *Féret* gegen *Belgien* vom 16. Juli 2009 (Punkte 44 und 72) zitiert.

[2] Empfehlung Rec (2002)2 des Ministerkomitees an die Mitgliedstaaten über den Zugang zu amtlichen Dokumenten, 21. Februar 2002.

[3] Abs. (ii), Einleitung, Erläuternder Bericht zum Übereinkommen des Europarates über den Zugang zu amtlichen Dokumenten, STCE Nr. 205, 18. Juni 2009.

[4] Dieser Abschnitt übernimmt großzügigerweise von anderen Autoren aufgelistete Vorteile und fasst diese zusammen, insbesondere: Florence Benoît-Rohmer & Heinrich Klebes, *Council of Europe* law, *op. cit*., S. 107-110 und Jan Kleijssen, "Council of Europe Standard-setting in the Human Rights Field", *op. cit*., S. 899.

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Möglichkeiten aus. Dies führt zu einer beträchtlichen Vielfalt auf dem Gebiet der seitens des Europarates entwickelten Methoden zur Förderung der Meinungsfreiheit und der Medien.

Zu den wichtigsten Verträgen des Europarates, die Bestimmungen betreffend Meinungsfreiheit und die Medien enthalten, zählen: die Europäische Menschenrechtskonvention,[1] das Europäische Übereinkommen über grenzüberschreitendes Fernsehen,[2] die Europäische Charta der Regional- oder Minderheitensprachen,[3] das Rahmenübereinkommen zum Schutz nationaler Minderheiten,[4] das Übereinkommen über Computerkriminalität[5] und sein Zusatzprotokoll betreffend die Kriminalisierung mittels Computersystemen begangener Handlungen rassistischer oder fremdenfeindlicher Art[6] sowie das Übereinkommen über den Zugang zu amtlichen Dokumenten.[7]

Der Europarat übt eine Vielzahl normsetzender Tätigkeiten im Hinblick auf die Meinungsfreiheit und die Medien aus, die nicht unmittelbar auf speziellen Verträgen beruhen. Maßgebliche Texte zur Normsetzung werden regelmäßig von unterschiedlichen Organen des Europarates wie zum Beispiel dem Ministerkomitee, der Parlamentarischen Versammlung,[8] und der Europäischen Kommission gegen Rassismus und Intoleranz (EKRI) verabschiedet. Da diese Texte für die Mitgliedstaaten nicht rechtsverbindlich sind, informieren sie entweder über den gegenwärtigen normativen Zustand in Bezug auf den zugrunde liegenden Gegenstand oder die Richtung, welche die Instanz, die diese Texte verabschiedet, der zukünftigen Entwicklung von Gesetz und Politik geben möchte. Die Kenntnis dieser normsetzenden Texte und mithin auch ihr Einfluss nehmen kontinuierlich zu.

Eine Reihe zentraler Themen kehrt in den maßgeblichen Texten zur Normsetzung des Ministerkomitees, wie in diesem Band zusammengefasst, wieder. Hierzu zählen:

- *Meinungsfreiheit*
- *Zugang zu Information*
- *Journalistische Freiheit*
- *Gesellschaftlicher Pluralismus, Toleranz und Dialog*
- *Neue Medien und die Informationsgesellschaft*
- *Öffentlicher Auftrag von Medien*
- *Öffentliche/politische Debatte*
- *Medienpluralismus und -vielfalt*
- *Wahrung der Menschenrechte in einem digitalen Umfeld*
- *Jugendschutz, insbesondere in einer Online-Umgebung*
- *Schutz der Privatsphäre und Datenschutz*

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[1] Die Konvention zum Schutze der Menschenrechte und Grundfreiheiten, SVE Nr. 5, verabschiedet am 4. November 1950; Inkrafttreten: 3. September 1953.
[2] SVE Nr. 132 (verabschiedet am 5. Mai 1989; Inkrafttreten: 1. Mai 1993), geändert durch ein Zusatzprotokoll, SVE Nr. 171, verabschiedet am 1. Oktober 1998; Inkrafttreten: 1. März 2002.
[3] SVE Nr. 148, verabschiedet am 5. November 1992; Inkrafttreten: 1. März 1998.
[4] SVE Nr 157, verabschiedet am 1. Februar 1995; Inkrafttreten: 1. Februar 1998.
[5] SVE Nr. 185, verabschiedet am 23. November 2001; Inkrafttreten: 1. Juli 2004.
[6] SVE Nr. 189, verabschiedet am 28. Januar 2003; Inkrafttreten: 1. März 2006.
[7] STCE Nr. 205, verabschiedet am 18. Juni 2009.
[8] Siehe: *Meinungsfreiheit und die Medien: Normsetzung durch die Parlamentarische Versammlung des Europarates - IRIS Themenreihe* (Bd. 2).

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ZUSAMMENSTELLUNG DER IRIS ARTIKEL
welche die wesentlichen Eckpunkte aller Erklärungen, Empfehlungen, Entschließungen sowie anderer Dokumente beschreiben

Anordnung in umgekehrter chronologischer Reihenfolge

2011

Ministerkomitee: Meinungs- und Informationsfreiheit, Versammlungs- und Vereinigungsfreiheit im Hinblick auf Internet-Domänennamen

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Am 21. September 2011 hat das Ministerkomitee des Europarates (MK) eine Erklärung zum Schutz der Meinungs- und Informationsfreiheit und der Versammlungs- und Vereinigungsfreiheit im Hinblick auf Internet-Domänennamen und Namensstrings verabschiedet.

Die Erklärung hat ihre Wurzeln in den Artikeln 10 (Freiheit der Meinungsäußerung) und 11 (Versammlungs- und Vereinigungsfreiheit) der Europäischen Menschenrechtskonvention (EMRK). Sie stützt sich zudem auf die frühere normative Arbeit des MK, z. B. die Empfehlung CM/Rec(2007)16 über Maßnahmen zur Förderung der Internet-Grundversorgung (siehe IRIS 2008-2/2), die MK-Erklärung zur Kommunikationsfreiheit im Internet (siehe IRIS 2003-7/3), die MK-Erklärung über Menschenrechte und Rechtsstaatlichkeit in der Informationsgesellschaft (siehe IRIS 2005-6/2) und die Empfehlung CM/Rec(2008)6 über Maßnahmen zur Wahrung der Meinungs- und Informationsfreiheit im Hinblick auf Internetfilter (siehe IRIS 2008-5/101).

Die Erklärung unterstreicht die Notwendigkeit, die Freiheit der Meinungsäußerung auch für die Benennung von Websites im Internet sicherzustellen, da „Einzelpersonen oder Betreiber von Websites einen bestimmten Domänennamen oder Namensstring wählen können, um die Inhalte auf ihrer Website zu identifizieren oder zu beschreiben, um insbesondere eine bestimmte Meinung zu verbreiten oder um Kommunikations-, Interaktions-, Versammlungs- und Vereinigungsräume für verschiedene gesellschaftliche Gruppen oder Gemeinschaften zu schaffen“. Weiter heißt es in der Erklärung: „Beispiele von Maßnahmen, die in [einigen] Mitgliedstaaten des Europarats vorgeschlagen werden, die die Verwendung bestimmter Begriffe oder Zeichen in den Domänennamen oder Namensstrings verbieten, sind besorgniserregend“. Auch wird die Bedeutung des Schutzes der Meinungs- und Informationsfreiheit und der Versammlungs- und Vereinigungsfreiheit für „den politischen Entwicklungsprozess hervorgehoben, der in der Internet Corporation for Assigned Names and Numbers (ICANN) stattfindet, um den Rahmen für die Domänennamen zu erweitern, um neue Erweiterungen der Top-Level-Domänen zuzulassen, die allgemeine Begriffe enthalten“.

Das MK ermutigt die Mitgliedstaaten des Europarates, den Schutz der Grundrechte auf die Verwaltung von Domänennamen anzuwenden. Es weist darauf hin, dass eine

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„Überregulierung“ von Domänennamen und Namensstrings in Konflikt mit der Ausübung der Meinungs- und Informationsfreiheit und der Versammlungs- und Vereinigungsfreiheit stehen könnte. Artikel 10 und 11 der EMRK sollten die Regulierung in diesem Bereich leiten. Das MK werde selbst für weitergehende einschlägige Normen sorgen. Schließlich äußert das MK in Bezug auf die Entschließung „Gouvernance des Internets und seiner empfindlichen Ressourcen“, die bei der ersten Ministerkonferenz für Medien und neue Kommunikationsdienste des Europarates 2009 (siehe IRIS 2009-8/2) verabschiedet wurde, den Wunsch, dass der Ansatz für die Verwaltung des Bereichs für Domänennamen, der die verschiedenen Akteure einbindet, die internationalen Menschenrechtsbestimmungen in „vollem Umfang” berücksichtigt.

- Erklärung des Ministerkomitees zum Schutz der Meinungs- und Informationsfreiheit und der Versammlungs- und Vereinigungsfreiheit im Hinblick auf Internet-Domänennamen und Namensstrings, 21. September 2011
  http://merlin.obs.coe.int/redirect.php?id=15484

IRIS 2011-10/6

Ministerkomitee: Erklärung zu den Prinzipien der Internet Governance

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Mit der Verabschiedung einer Erklärung zu den Prinzipien der Internet Governance am 21. September 2011 erklärt das Ministerkomitee ausdrücklich die Unterstützung und Förderung eines „nachhaltigen, am Menschen ausgerichteten und rechtsbezogenen Ansatzes für das Internet“ (Artikel 5). Die Erklärung soll die Mitgliedstaaten ermutigen, bei ihrer nationalen und internationalen Netzpolitik zehn Prinzipien zu beachten.

Im Wesentlichen sind die Prinzipien als allgemeine Verpflichtungen zu zehn großen Bereichen zu betrachten: 1) Schutz von Menschenrechten, Demokratie und Rechtsstaatlichkeit; 2) Mitwirkung aller Beteiligten; 3) Verantwortung der Staaten; 4) Emanzipation der Internetnutzer; 5) Universalität; 6) Integrität; 7) dezentrale Verwaltung; 8) Prägung des Internets durch offene Standards, Interoperabilität und durchgehende Struktur; 9) offenes Netz und 10) kulturelle und sprachliche Vielfalt.

Das Ministerkomitee stellt diese Verpflichtungen in den Kontext dessen, was nun mit Sicherheit als Tradition der Internet Governance bezeichnet werden kann, da als erste Inspirationsquelle die Genfer Phase und die Tunis-Agenda genannt werden, die mit den Weltgipfeln über die Informationsgesellschaft von 2003 und 2005 verbunden sind (Artikel 2). Tatsächlich unterstreichen viele der Prinzipien den normativen Status quo der Diskussion über Internet Governance, etwa die Beachtung der Grundrechte und die Mitwirkung aller Beteiligten. Interessanter ist jedoch, dass der Wortlaut einiger der weniger bekannten Prinzipien in unerwarteter Weise mit den verschiedenen netzpolitischen Diskussionen der letzten Zeit zusammenspielen könnte.

So würde etwa der Vorschlag der Erklärung, dass Staaten „von jeder Aktion absehen sollten, die Personen oder Einrichtungen außerhalb ihrer territorialen Rechtshoheit direkt oder indirekt schädigen würde,“ (Artikel 3 über die Verantwortung der Staaten), Probleme für die Verhandlungen zwischen der EU und den USA über den grenzüberschreitenden Entzug von Domänennamen und IP-Adressen auslösen, die dem Rat für allgemeine Angelegenheiten des Rates der Europäischen Union unter der spanischem Präsidentschaft im April 2010 folgen und vor kurzem in einem LIBE-Ausschuss bei einer Anhörung zum Entwurf einer

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Richtlinie über Cyber-Angriffe gegen Computersysteme im Europäischen Parlament erörtert wurden.

Mit diesen zehn Prinzipien gibt das Ministerkomitee der Diskussion über die Internet Governance einen wichtigen Anstoß. Erklärungen des Komitees sind für die Mitgliedstaaten rechtlich nicht verbindlich, allerdings besitzen sie eine gewisse moralische und politische Bedeutung. Angesichts dieses neuen Kontexts einer gemeinsamen Vision und einer allgemeinen Verpflichtung zu einem nachhaltigen, am Menschen ausgerichteten und rechtsbezogenen Ansatz, wie ihn die Erklärung fordert, wird es interessant sein zu untersuchen, welche Relevanz sie in spezifischen Fällen der Politikgestaltung sowohl auf nationaler als auch auf internationaler Ebene haben werden.

- Erklärung des Ministerkomitees zu den Prinzipien der Internet Governance, 21. September 2011
  http://merlin.obs.coe.int/redirect.php?id=15486
- Rat der Europäischen Union, „Schlussfolgerungen des Rates zu einem Aktionsplan für die Umsetzung der konzertierten Strategie zur Bekämpfung der Cyberkriminalität", 3010. Sitzung des Rates für allgemeine Angelegenheiten, Luxemburg, 26. April 2010
  http://merlin.obs.coe.int/redirect.php?id=15488

IRIS 2011-10/7

Ministerkomitee: Empfehlung zu Schutz und Förderung von Universalität, Integrität und Offenheit des Internets

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Am 21. September 2011 hat das Ministerkomitee Empfehlung CM/Rec(2011)8 „zu Schutz und Förderung von Universalität, Integrität und Offenheit des Internets" verabschiedet. In der Empfehlung verbinden die Minister ausdrücklich die Belastbarkeit und Stabilität des Internets mit Meinungsfreiheit und Informationszugang (Abs. 2-6). Darüber hinaus erkennt die Empfehlung an, dass die Mitgliedstaaten bei Maßnahmen und Rechtssystemen für ein einwandfreies Funktionieren des Internets und seiner Infrastruktur voneinander abhängig sind. Daher ruft sie Staaten nachhaltig dazu auf, bei der Vermeidung grenzüberschreitender Auswirkungen auf den Zugang und die Nutzung des Internets „in gutem Glauben" (Art. 1.2 und 2.2.4) zusammenzuarbeiten und sich gegenseitig zu unterstützen. Diese einstimmige politische Zielsetzung ist sinnvoll und könnte, wenngleich Empfehlungen rechtlich nicht bindend sind, maßgebend für zukünftige Entscheidungen im Bereich der Netzsicherheit und -belastbarkeit werden.

Die ausdrückliche Verknüpfung von Art. 10 der Europäischen Konvention zum Schutz der Menschenrechte und Grundfreiheiten (EMRK) mit dem Zugang und der Nutzung des Internets und insbesondere mit seiner Stabilität und Belastbarkeit (Abs. 4-5) entspricht der gängigen Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte. In seinem Urteil in der Rechtssache Autronic AG gegen die Schweiz und jüngst in der Rechtssache Saygili gegen die Türkei hatte der Gerichtshof den Schutz von Art. 10 EMRK bereits auf „die Übertragungs- und Empfangsmittel [ausgedehnt], da jede Einschränkung der Mittel unweigerlich in das Recht auf Empfang und Verbreitung von Informationen eingreift." Da Mitgliedstaaten nun empfohlen wird, Stabilität und Belastbarkeit im Netz aktiv sicherzustellen und das allgemeine öffentliche Interesse an Meinungsfreiheit bei politischen Internet-Entscheidungen (Abs. 9) zu beachten, wird es interessant zu verfolgen, ob der Gerichtshof den Weg zu rechtsverbindlichen positiven Verpflichtungen in Bezug auf Netzsicherheit nach

Art. 10 EMRK in zukünftigen Urteilen weitergehen wird. Tatsächlich beachtet der Gerichtshof in zunehmendem Maße Empfehlungen im Abschnitt „Maßgebliche internationale Rechtsinstrumente“ seiner Urteile.

Gegenwärtig formuliert die Empfehlung allgemeine Prinzipien, die Staaten bei ihren Aktivitäten im Bereich politischer Internet-Entscheidungen berücksichtigen sollten. Dazu gehören i) keine Nachteile, ii) Kooperation, iii) sorgfältige Prüfung bei der Verhinderung und Steuerung grenzübergreifender Unterbrechungen und Eingriffe und der Reaktionen darauf, iv) Bereitschaft, v) Notifikation, vi) Informationsweitergabe und vii) gegenseitige Unterstützung. Den Mitgliedstaaten wird empfohlen, sich neben diesen Prinzipien auch von einer Erklärung des Europarats vom selben Tag zu 10 Prinzipien der Internet-Governance (Abs. 12) leiten zu lassen (siehe IRIS 2011-10/7).

- Empfehlung CM/Rec(2011)8 des Ministerkomitees an die Mitgliedstaaten zu Schutz und Förderung von Universalität, Integrität und Offenheit des Internets, 21. September 2011 http://merlin.obs.coe.int/redirect.php?id=15491

IRIS 2011-10/5

Ministerkomitee: Empfehlung für ein neues Medienkonzept

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Am 21. September 2011 hat das Ministerkomitee des Europarats eine Empfehlung für ein neues Medienkonzept verabschiedet. Der Europarat nimmt sich seit mehr als zehn Jahren Fragen neuer Medien eher unsystematisch an. Die vorliegende Empfehlung ist der bislang engagierteste Versuch, relevante Fragen kohärent und umfassend zu behandeln. Der direkte Impuls zur Ausarbeitung der Empfehlung ging von der ersten Konferenz der Minister für Medien und neue Kommunikationsdienste des Europarats 2009 aus (siehe IRIS 2009-8/2).

Die Gliederung der Empfehlung benennt auch die Themen, die sie behandelt: „Der Zweck von Medien“, „Medien und Demokratie“, „Medienstandards und -regulierung“, „Entwicklungen im Medienökosystem“ und „Ein neues Medienkonzept, das einen abgestuften und differenzierten Ansatz erfordert“. Die Empfehlung wird ergänzt durch einen Anhang mit dem Titel „Kriterien für die Identifizierung von Medien und Anleitung für eine abgestufte und differenzierte Reaktion“.

Die Empfehlung beschreibt die Rolle, die die Medien traditionsgemäß in der Gesellschaft spielen, und legt eine Reihe bekannter Gründe für Medienregulierung dar. Im Weiteren dokumentiert sie unterschiedliche technologisch begründete Veränderungen im Mediensektor und deren weitere Folgen, darunter „bislang nicht da gewesene Ausmaße an Interaktion und Beteiligung von Nutzern, die neue Möglichkeiten für bürgerschaftliche Demokratie bieten“, und die Förderung von „Nutzerbeteiligung an der Schaffung und Verbreitung von Informationen und Inhalt, wodurch die Grenzen zwischen öffentlicher und privater Kommunikation verwischt werden“. Auch wird die sich entwickelnde Beziehung zwischen traditionellen und neuen Medien berücksichtigt.

Diese Entwicklungen verlangen nach einer Überprüfung der bestehenden Medienpolitik. Die Empfehlung erklärt, dass „allen Akteuren, seien es neue oder traditionelle, die im Rahmen des Medienökosystems tätig sind, ein politischer Rahmen geboten werden sollte, der einen angemessenen Umfang an Schutz garantiert und ihre Rechte und Pflichten in Übereinstimmung mit den Standards des Europarats eindeutig aufzeigt“. Weiter heißt es, „die Reaktion sollte entsprechend der Rolle, die die Mediendienste bei Inhalteproduktion und

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Verbreitungsprozessen spielen, abgestuft und differenziert sein“. Zu diesem Zweck wird empfohlen, dass Mitgliedstaaten:

- „ein neues, breites Medienkonzept verabschieden“, das alle maßgeblichen Akteure umfasst,

- „die Regulierungserfordernisse in Bezug auf alle Akteure überprüfen“,

- „die [in der Anlage] dargelegten Kriterien anwenden“, „wenn sie eine abgestufte und differenzierte Reaktion für Akteure erwägen [...], wobei sie deren spezielle Funktionen im Medienprozess und ihre mögliche Wirkung auf und Bedeutung für die Gewährleistung oder Verbesserung guter Regierungsführung in einer demokratischen Gesellschaft berücksichtigen“,

- „in einen Dialog mit allen Akteuren im Medienökosystem eintreten, damit diese ordnungsgemäß über den anzuwendenden Rechtsrahmen informiert sind [...]“,

- „Strategien verabschieden, um eine angemessene Bereitstellung öffentlich-rechtlicher Dienste zu fördern, zu entwickeln oder sicherzustellen“, damit unter anderem „ein befriedigendes Maß an Pluralismus und Vielfalt an Inhalten und Auswahl für die Verbraucher“ gewährleistet ist,

- „nach wie vor Fälle starker Konzentrationen im Medienökosystem aufmerksam behandeln [...]“,

- „individuell oder gemeinsam Maßnahmen ergreifen, um diese Ansätze in entsprechenden internationalen Foren voranzubringen“.

Der Anhang zur Empfehlung umfasst zwei inhaltliche Teile und ein ausführliche Auflistung relevanter Standards des Europarats. Der erste inhaltliche Teil, „Medienkriterien und -indikatoren“, legt eine Reihe von Schlüsselkriterien und Begleitindikatoren fest. Die Kriterien umfassen „Absicht zur Medientätigkeit“, „Zweck und zugrunde liegende Ziele von Medien“, „Redaktionelle Kontrolle“, „Fachliche Standards“, „Reichweite und Verbreitung“ sowie „Öffentliche Erwartungshaltung“. Der zweite inhaltliche Teil „Standards, die auf Medien im neuen Ökosystem angewendet werden“ ist in folgende Abschnitte untergliedert: „Rechte, Vorzüge und Vorrechte“, „Medienpluralismus und Inhaltsvielfalt“ sowie „Medienverantwortlichkeiten“. Für jeden dieser Abschnitte wird eine Reihe von Indikatoren vorgeschlagen.

- Empfehlung CM/Rec(2011)7 des Ministerkomitees an die Mitgliedstaaten für ein neues Medienkonzept, 21. September 2011
  http://merlin.obs.coe.int/redirect.php?id=15494

IRIS 2011-10/4

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2010

Ministerkomitee: Erklärung zur Netzneutralität

Emre Yildirim

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Am 29. September 2010 hat das Ministerkomitee des Europarats eine Erklärung zur Netzneutralität verabschiedet. Die Erklärung betrifft den Schutz und die Förderung der Menschenrechte im Internet und deren mögliche Störung aufgrund von fehlender Netzneutralität.

Die Erklärung verweist auf das erhebliche Vertrauen der Menschen in das Internet als Werkzeug für ihre alltäglichen Aktivitäten. Es dient als Werkzeug für Kommunikation, Information, Wissen und wirtschaftliche Transaktionen und hilft unter anderem, die freie Meinungsäußerung, den Zugang zu Informationen sowie Pluralismus und Vielfalt sicherzustellen. Diese Rechte könnten jedoch durch undurchsichtiges Datenverkehrsmanagement, die Diskriminierung von Inhalten und Diensten oder die Verhinderung der Anschlussmöglichkeit von Geräten negativ betroffen sein.

Die Erklärung unterstreicht, dass der Zugang zur Infrastruktur, unabhängig davon, welches Gerät der Endanwender benutzt, eine Voraussetzung für den größtmöglichen Zugang zu internetbasierten Inhalten, Anwendungen und Diensten ist. Wegen des exponentiellen Wachstums des Internetdatenverkehrs und der Bandbreitennutzung müssen Betreiber elektronischer Kommunikationsnetze den Datenverkehr managen. Dies könnte möglicherweise die Qualität der Dienste, die Entwicklung neuer Dienste, die Netzstabilität und -belastbarkeit oder die Bekämpfung der Internetkriminalität beeinträchtigen.

Soweit Datenverkehrsmanagement in diesem Zusammenhang notwendig ist, so heißt es in der Erklärung, sei dies nicht als Abkehr vom Prinzip der Netzneutralität zu sehen. Jede Ausnahme von diesem Prinzip müsse mit äußerster Umsicht betrachtet werden und durch überwiegende öffentliche Interessen gerechtfertigt sein. Das Ministerkomitee ruft dazu auf, den Bestimmungen von Art. 10 der Europäischen Menschenrechtskonvention und der einschlägigen Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte Beachtung zu schenken. Es bezieht sich damit auch auf den Rechtsrahmen der Europäischen Union für die elektronische Kommunikation.

Der Erklärung zufolge sollten Nutzer und Anbieter von Diensten, Anwendungen oder Inhalten in der Lage sein, die Auswirkungen von Netzmanagementmaßnahmen auf ihre Grundrechte und Freiheiten zu beurteilen, und über deren Bestehen informiert werden. Solche Maßnahmen müssen verhältnismäßig und angemessen sein sowie ungerechtfertigte Diskriminierung vermeiden; sie müssen regelmäßigen Überprüfungen unterworfen und dürfen nicht länger aufrechterhalten werden als unbedingt erforderlich. Es sollte Verfahrensgarantien in Form angemessener Möglichkeiten zur Anfechtung von Netzmanagemententscheidungen geben.

Das Komitee schließt die Erklärung mit einem Bekenntnis zum Prinzip der Netzneutralität und unterstreicht, dass alle Maßnahmen, die gegen dieses Prinzip verstoßen, die vorgenannten Anforderungen erfüllen müssen.

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- Erklärung des Ministerkomitees zur Netzneutralität, verabschiedet am 29. September 2010
  http://merlin.obs.coe.int/redirect.php?id=12789

IRIS 2010-10/3

Ministerkomitee: Empfehlung zur Bekämpfung der Diskriminierung aufgrund der sexuellen Orientierung oder der geschlechtlichen Identität

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Das Ministerkomitee des Europarats hat am 31. März 2010 die Mitgliedstaaten in einer Empfehlung zur Bekämpfung der Diskriminierung aufgrund der sexuellen Orientierung oder der geschlechtlichen Identität aufgerufen. Diese Empfehlung enthält eine Reihe von Regeln zur freien Meinungsäußerung, zu „Hetzreden“ und zu den Medien.

Das Dokument CM/Rec(2010)5 richtet sich an alle Mitgliedstaaten des Europarats. Es besteht aus einem Hauptteil mit fünf Empfehlungen und einem Anhang, in dem eine Reihe von „Grundsätzen und Maßnahmen“ definiert werden. Die Empfehlungen beziehen sich sowohl auf direkte als auch auf indirekte Diskriminierung aufgrund der sexuellen Orientierung oder der geschlechtlichen Identität. Sie betonen, dass bestehende rechtliche und andere Maßnahmen ständig überprüft werden müssen. Sie fordern auch die Annahme und Durchsetzung rechtlicher und anderer Maßnahmen zur Bekämpfung solcher Diskriminierungen und um sicherzustellen, „dass die Rechte von Lesben, Homosexuellen, Bi- und Transsexuellen respektiert werden und die Toleranz gegenüber diesen Menschen gefördert wird“. Ein weiterer Schwerpunkt ist die Forderung, dass die gesetzlichen und (sonstigen) Maßnahmen wirksame Rechtsmittel umfassen sollen, die Forderung nach besserem Zugang zu diesen Rechtsmitteln und die Forderung nach angemessenen Sanktionen und Schadensersatz.

Die Grundsätze und Maßnahmen, die im Anhang aufgeführt werden, sind als eine Art Richtschnur für die Mitgliedstaaten „bei ihrer Gesetzgebung, ihren politischen Maßnahmen und der politischen Praxis“ gedacht. Was den Begriff der „Hetzreden“ anbelangt, so empfiehlt der Anhang, dass die Mitgliedstaaten geeignete Maßnahmen treffen sollen, um alle Formen des Ausdrucks - gerade in den Medien und im Internet - zu bekämpfen, die so verstanden werden können, dass sie Hass gegen Lesben, Homosexuelle, Bi- oder Transsexuelle schüren oder zu deren Diskriminierung aufrufen. Diese Maßnahmen sollten mit Art. 10 der Europäischen Menschenrechtskonvention und der Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte (EGMR) vereinbar sein. Staatliche Behörden und Einrichtungen „auf allen Ebenen“ werden an ihre Verantwortung erinnert, sich jeder Art solcher Äußerungen zu enthalten und Toleranz gegenüber Lesben, Homosexuellen, Bi- oder Transsexuellen zu fördern. Der Anhang fordert die Mitgliedstaaten auf, die Einhaltung des Rechts auf freie Meinungsäußerung zu garantieren, „auch mit Bezug auf die Freiheit, Informationen über Themen zu erhalten oder zu verbreiten, die sich mit sexueller Orientierung oder mit der geschlechtlichen Identität befassen.“

Die Palette der „Grundsätze und Maßnahmen“ im Anhang ist sehr breit gefasst. Ersichtlich wird dies aus den Kategorien, in die die Grundsätze aufgeteilt sind: das Recht auf Leben, auf Sicherheit und auf Schutz vor Gewalt („Verbrechen aus Hass“ und andere Vorfälle, „Hetzreden“); Vereinsfreiheit, Meinungsfreiheit und das Recht auf friedliche Versammlung, Schutz der Privatsphäre und des Familienlebens; Gleichstellung in den Bereichen Arbeit,

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Bildung, Gesundheit, Wohnung, Sport; das Recht auf Asyl, Schutz von Menschenrechtsaktivisten; Diskriminierung aus einer Vielzahl von Gründen.

Die Ausdehnung des Begriffs „Hetzreden" auf die sexuelle Orientierung und die geschlechtliche Identität in der Empfehlung und im Anhang stellt eine Erweiterung des traditionellen Ansatzes des Europarats zur Bekämpfung der „Hetzreden" dar, der sich bisher auf Rassismus, Fremdenfeindlichkeit, Antisemitismus und damit verbundene Formen der Intoleranz beschränkt hat. Seltsamerweise werden zwei wichtige Referenzdokumente für diesen traditionellen Ansatz - die beiden Empfehlungen Nr. R (97)20 zu „Hetzreden" und Nr. R (97)21 zu den Medien und zur Förderung einer Kultur der Toleranz (siehe IRIS 1997-10: 4/4) - in dieser Empfehlung nicht ausdrücklich erwähnt.

- Empfehlung CM/Rec(2010/5/ des Ministerkomitees an die Mitgliedstaaten zu Maßnahmen zur Bekämpfung der Diskriminierung aufgrund der sexuellen Orientierung oder der geschlechtlichen Identität, 31. März 2010 http://merlin.obs.coe.int/redirect.php?id=12646

IRIS 2010-8/3

Ministerkomitee: Erklärung zu Maßnahmen zur Förderung der Beachtung von Art. 10 EMRK

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Ausgelöst durch Bedenken hinsichtlich der Effizienz der Umsetzung von Art. 10 der Europäischen Konvention zum Schutz der Menschenrechte (EMRK) verabschiedete das Ministerkomitee des Europarats am 13. Januar 2010 eine Erklärung zu Maßnahmen zur Förderung der Beachtung von Art. 10 EMRK.

Die Erklärung stellt fest, dass der Europäische Gerichtshof für Menschenrechte (EGMR) der Durchsetzungsmechanismus für die (bzw. für Art. 10 der) Konvention ist und dieser Mechanismus durch (i) das Verfahren für die Ausführung der Urteile des EGMR, welches vom Ministerkomitee überwacht wird, und (ii) durch allgemeine Normsetzungsverfahren des Europarats in diesem Bereich ergänzt wird. Sie erkennt die Bedeutung einer Stärkung der Umsetzung maßgeblicher Normen in „Recht und Praxis" auf nationaler Ebene an, ein Anliegen, das „die aktive Unterstützung, Beteiligung und Kooperation" aller Mitgliedstaaten verlangt.

Sie würdigt und begrüßt die „Maßnahmen anderer Institutionen wie des Beauftragten für Medienfreiheit der Organisation für Sicherheit und Zusammenarbeit in Europa (OSZE) sowie von Organisationen der Zivilgesellschaft".

Das Ministerkomitee „begrüßt die Vorschläge" des Lenkungsausschusses für Medien und neue Kommunikationsdienste (CDMC) zur Verbesserung der Förderung der Beachtung von Art. 10 in den Mitgliedstaaten durch verschiedene Organe des Europarats. Die Erklärung enthält jedoch lediglich zusammenfassende Einzelheiten der Vorschläge des CDMC und weist nicht darauf hin, dass die Vorschläge in größerer Ausführlichkeit in Anhang IV zum 11. CDMC-Sitzungsbericht beschrieben werden. Die zentralen Vorschläge im Sitzungsbericht lauten wie folgt: verbesserte Informationsbeschaffung, verbesserte Koordination, verbesserte technische Folgemaßnahmen (Fachunterstützung), verbesserte politische Folgemaßnahmen und Auswertung (durch den Generalsekretär des Europarats).

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Dem Aufruf der Erklärung zu „verbesserter Informationsbeschaffung und -verteilung sowie verbesserter Koordination“ im gesamten Europarat geht ein Appell der unterschiedlichen „Organe und Institutionen“ voraus, die „in ihren jeweiligen Zuständigkeiten in der Lage sind, zum Schutz und zur Förderung der Meinungs- und Informationsfreiheit sowie der Medienfreiheit beizutragen“. Sie benennt hier das Ministerkomitee, die Parlamentarische Versammlung, den Generalsekretär, den Menschenrechtskommissar und „andere Organe“ als insgesamt „in diesem Bereich aktiv“. Die wesentliche und maßgebliche Arbeit, die im Kontext (zum Beispiel) des Rahmenübereinkommens zum Schutz nationaler Minderheiten, der Europäischen Charta der Regional- und Minderheitensprachen oder der Aktivitäten der Europäischen Kommission gegen Rassismus und Intoleranz (ECRI) durchgeführt wird, wird vermutlich durch den Verweis auf „andere Organe“ abgedeckt.

- Erklärung des Ministerkomitees zu Maßnahmen zur Förderung der Beachtung von Art. 10 der Europäischen Konvention zum Schutz der Menschenrechte, 13. Januar 2010 http://merlin.obs.coe.int/redirect.php?id=12266
- Lenkungsausschuss für Medien und neue Kommunikationsdienste, 11. Sitzungsbericht (20. - 23. Oktober 2009), 16. November 2009, Dok. Nr. CDMC(2009)025 http://merlin.obs.coe.int/redirect.php?id=12242

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2009

Ministerkomitee: Rechtsinstrument verlangt umfassende Filmpolitik für die gesamte Wertschöpfungskette

Irina Guidikova

Europarat, GD4 – Kultur und Erbe

Am 23. September verabschiedete das Ministerkomitee des Europarats die Empfehlung CM/Rec(2009)7 zu Filmpolitik und Vielfalt der kulturellen Ausdrucksformen. Diese Empfehlung, die ein nicht bindendes internationales Rechtsinstrument darstellt, ermutigt filmpolitische Gremien in den 47 Mitgliedstaaten des Europarats, ihre Modelle an die technologischen und kulturellen Veränderungen anzupassen und die Nutzung von Ressourcen zu optimieren, um die Verbreitung zu steigern und den Publikumszugang zu Filmen zu verbessern. Die europäische Filmindustrie ist zerbrechlich. Globalisierung und Digitaltechnologien können eine Chance oder eine Bedrohung sein, abhängig davon, ob die staatlichen Behörden schnell reagieren und dazu beitragen, neue Geschäftsmodelle für den europäischen Film zu entwickeln. Diese Geschäftsmodelle sollen den Filmsektor in die Lage versetzen, sein Potenzial als Träger kultureller Ausdrucksvielfalt durch die Förderung von Kreativität und durch die Steigerung seiner Marktreichweite umzusetzen.

Die Empfehlung stellt fest, dass nationale und regionale Entscheidungsträger und Filmgremien dafür verantwortlich sind, politische Strategien zu entwerfen, die nicht nur die Produktion, sondern alle Aspekte in der Filmwertschöpfungskette (Entwicklung, Produktion, Vertrieb und Marketing, Vorführung, Medienkompetenz und Training, Publikumszugang und Filmerbe) betreffen, und dass diese nicht nur finanzielle Unterstützung, sondern auch Regulierung, Forschung und Datenerhebung umfassen.

Die Empfehlung konzentriert sich auf sechs Anliegen: Entwicklung eines umfassenden filmpolitischen Ansatzes, Betrachtung von Filmentwicklung und -produktion, Verbesserung des Regulierungsrahmens für Koproduktion und Kovertrieb, Unterstützung des Vertriebs und der Verbreitung von europäischen Filmen, europäisches Kino und junge Menschen, Umsetzung des gesamten Potenzials digitaler Technologien sowie Transparenz und Verantwortlichkeit.

Die Empfehlung ist das Ergebnis weit reichender Konsultationen mit Fachleuten aus allen Stufen der Filmwertschöpfungskette. Der *ThinkTank on European Film and Film Policy* , nationale Filmbehörden, die Europäische Audiovisuelle Informationsstelle, EURIMAGES und der Lenkungsausschuss für Kultur des Europarats (CDCULT) haben während des Prozesses wesentliches Fachwissen und Unterstützung beigetragen. Das polnische Filminstitut war der führende politische Verfechter und finanzielle Unterstützer der Initiative.

- Empfehlung des Ministerkomitees CM/Rec(2009)7 zu Filmpolitik und Vielfalt der kulturellen Ausdrucksformen
  http://merlin.obs.coe.int/redirect.php?id=11894

IRIS 2009-9/2

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Ministerkomitee: Maßnahmen zum Schutz von Kindern vor schädlichen Inhalten

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Am 8. Juli 2009 hat das Ministerkomitee des Europarats die Empfehlung 5 (2009) über Maßnahmen zum Schutz von Kindern vor schädlichen Inhalten und Verhaltensweisen und zur Förderung ihrer aktiven Teilnahme an der neuen Informations- und Kommunikationsumgebung verabschiedet.

In der Empfehlung erklärt das Komitee zunächst, dass der Schutz der freien Meinungsäußerung in der Informations- und Kommunikationsumgebung durch Sicherstellung eines einheitlichen Schutzes Minderjähriger vor schädlichen Inhalten ein vorrangiges Thema des Europarats ist. Inhalte wie Onlinepornografie, Gewaltverherrlichung und diskriminierende oder rassistische Äußerungen könnten negative Auswirkungen auf das Wohlergehen von Kindern haben. Das Komitee unterstreicht, dass es notwendig sei, Kindern das notwendige Wissen und Können zu vermitteln, um aktiv am gesellschaftlichen und öffentlichen Leben teilzunehmen, verantwortungsvoll zu handeln und die Rechte anderer zu achten. Das Komitee erkennt ferner die Notwendigkeit an, das Vertrauen im Internet zu fördern. Daher empfiehlt das Komitee den Mitgliedstaaten drei Strategien zum Schutz von Kindern vor Inhalten und Verhaltensweisen, die möglicherweise schädlich sind. Die geplanten Kategorien sind: Bereitstellung sicherer Räume für Kinder im Internet, Förderung der Entwicklung eines gesamteuropäischen Vertrauenssiegels und von Kennzeichnungssystemen sowie Förderung der Internetfähigkeiten und -kompetenzen von Kindern, Eltern und Pädagogen.

Das Komitee räumt ein, dass Unterschiede zwischen dem Schutz vor Inhalten innerhalb und außerhalb des Internets bestehen. Der Schutz im Internet sei viel schwieriger herzustellen, da Zugangsbeschränkungen insbesondere einen Konflikt mit dem Recht auf Meinungs- und Informationsfreiheit darstellen können. Das Komitee erklärt, dass die elterliche Verantwortung und die Medienerziehung für den Schutz von Kindern eine wichtige Rolle spielen. Es gebe aber Werkzeuge und Methoden, die Eltern und Pädagogen dabei unterstützen können, Kinder vor schädlichen Inhalten zu schützen. Daher ermutigt das Komitee die Mitgliedstaaten, im Internet sichere Räume für Kinder zu schaffen. Ein Beispiel hierfür wäre die Schaffung sicherer Internetseiten für Kinder durch die Entwicklung altersgemäßer Onlineportale.

Die zweite Strategie ist die Entwicklung eines gesamteuropäischen Vertrauenssiegels und von Kennzeichnungssystemen. Die Kennzeichnung von Inhalten trägt zur Entwicklung sicherer Räume für Kinder im Internet bei. Das Komitee hat eine Liste mit Kriterien erstellt, die ein gesamteuropäisches Sicherheitssiegel erfüllen soll. Das Siegel muss zum Beispiel mit menschenrechtlichen Prinzipien und Standards in Einklang stehen, Kennzeichnungssysteme müssen auf freiwilliger Basis bereitgestellt und genutzt werden, und jede Form von inhaltlicher Zensur muss unzulässig sein.

Das Komitee räumt ein, dass auch durch die Schaffung sicherer Räume im Internet und durch die Kennzeichnung von Online-Inhalten nicht vollständig ausgeschlossen werden kann, dass Kinder mit schädlichen Inhalten konfrontiert werden. Daher empfiehlt das Komitee, die Medienkompetenz von Kindern, Eltern und Pädagogen zu fördern, damit sie auf mögliche Begegnungen mit schädlichen Inhalten vorbereitet sind. Die Mitgliedstaaten sollen das Bewusstsein dafür schärfen, welche Vorteile und Risiken mit der freien Nutzung des Internets durch Kinder verbunden sind. Zudem sollen Kinder, Eltern und Pädagogen über sichere Räume im Internet und vertrauenswürdige Kennzeichnungen für Online-Inhalte informiert werden.

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- Empfehlung CM/Rec(2009)5 des Ministerkomitees an die Mitgliedstaaten über Maßnahmen zum Schutz von Kindern vor schädlichen Inhalten und Verhaltensweisen und zur Förderung ihrer aktiven Teilnahme an der neuen Informations- und Kommunikationsumgebung, 8. Juli 2009
  http://merlin.obs.coe.int/redirect.php?id=11861

IRIS 2009-9/3

Ministerkomitee: Erklärung zu Community-Medien und der Förderung sozialer Kohäsion und interkulturellen Dialogs

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Das Ministerkomitee des Europarates verabschiedete am 11. Februar 2009 eine Erklärung zur Rolle von Community-Medien bei der Förderung sozialer Kohäsion und interkulturellen Dialogs.

In der Präambel der Erklärung ist eine Reihe von internationalen Instrumenten aufgelistet, die sich thematisch auf verschiedene Aspekte des Schwerpunkts der Erklärung beziehen. Dazu gehören normsetzende Texte, die vom Europarat, von der UNESCO, der Europäischen Union und den Sondermandaten der zwischenstaatlichen Organisationen (IGO) für die freie Meinungsäußerung erarbeitet wurden. Die Präambel erläutert darüber hinaus im Detail die Charakteristika von Community-Medien und ihre funktionale Bedeutung für die Gesellschaft.

Sie bezeichnet „Community-Medien als einen gesonderten Mediensektor neben öffentlich-rechtlichen und privaten kommerziellen Medien" und betont die Notwendigkeit zu prüfen, wie Rechtsrahmen angepasst werden können, um die Entwicklung und optimale Funktionsweise von Community-Medien zu erleichtern. Sie favorisiert die Zuweisung einer ausreichenden Zahl von (analogen und digitalen) Frequenzen für Community-Medien und eine Gewährleistung, dass Community-Medien durch die Digitalumstellung nicht benachteiligt werden. In der Präambel werden Bildungs- und Ausbildungsmaßnahmen befürwortet, die auf eine Maximierung der Nutzung verfügbarer technologischer Plattformen durch alle Communities ausgerichtet sind.

Die Erklärung „unterstreicht [des Weiteren], dass es wünschenswert ist":

- verschiedene Finanzierungsmöglichkeiten für den Community-Medien-Sektor zu erkunden;

- gute Praxis in Community-Medien unter anderem durch die Durchführung von Studien, durch Informationsaustausch, Entwicklung von Austauschprogrammen und sonstigen gemeinschaftlichen Projekten zu fördern;

- angemessene Kompetenzentwicklung und Schulung der Mitarbeiter von Community-Medien zu erleichtern;

- „den Beitrag der Medien zum interkulturellen Dialog zu fördern", etwa durch den Aufbau von Netzwerken für Informationsaustausch.

Schließlich lädt sie Community-Medien im Kontext ihrer Rolle bei der Förderung sozialer Kohäsion und interkulturellen Dialogs dazu ein, berufsethische Kodexe und interne Leitlinien zu erarbeiten, zu übernehmen oder zu überprüfen und sich auf jeden Fall daran zu halten.

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- Erklärung des Ministerkomitees zur Rolle von Community-Medien bei der Förderung sozialer Kohäsion und interkulturellen Dialogs, 11. Februar 2009
http://merlin.obs.coe.int/redirect.php?id=11675

IRIS 2009-5/2

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2008

Ministerkomitee: Weißbuch zum interkulturellen Dialog

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In diesem „Jahr des interkulturellen Dialogs" verabschiedeten die Außenminister der Mitgliedstaaten des Europarates das „Weißbuch zum interkulturellen Dialog". Vorgestellt wurde das Weißbuch als paneuropäischer Beitrag für die zunehmend weltweit geführte Diskussion über die kulturelle Vielfalt. Dementsprechend soll das Weißbuch politischen Entscheidungsträgern und Experten als konzeptueller Rahmen und Leitfaden dienen. Auch den Medien soll in diesem interkulturellen Ansatz eine Rolle zukommen.

Zum weiteren Vorantreiben des interkulturellen Ansatzes konzentrieren sich die Mitgliedstaaten auf fünf Politikfelder. Als erstes soll die kulturelle Vielfalt eine angemessene demokratische Führung bekommen. Dies bedeutet, dass die gemeinsamen Werte der Demokratie, der Menschenrechte und Grundfreiheiten, der Rechtsstaatlichkeit, des Pluralismus, der Toleranz, der Nichtdiskriminierung und der gegenseitigen Achtung vom Staat garantiert werden müssen. Zweitens sollten demokratische Bildung und Bürgerbeteiligung gefördert werden. Die Beteiligung eingewanderter Bürger an lokalen und regionalen Wahlen, die zu deren Wohlstand beiträgt und ihre Integration fördert, sollte leichter gemacht werden. Drittens sollten die erforderlichen Kompetenzen für den interkulturellen Dialog unterrichtet und erlernt werden. Die drei Schlüsselkompetenzen, die in diesem Zusammenhang vermittelt werden sollten, sind: demokratische Bildung, Sprachen und Geschichte. Die Entwicklung dieser Kompetenzen sollte nicht nur über den Unterricht in der Primar- und Sekundärstufe erfolgen. Im Gegenteil: Das Lernen außerhalb der Schule spiele ebenfalls eine herausragende Rolle. Viertens sollte dem interkulturellen Dialog mehr Raum eingeräumt werden. Städte sollten dementsprechend offen geplant werden, mit zugänglichen Parks, belebten Straßen und Märkten. Es ist wichtig, dass Bürger mit Migrationshintergrund sich nicht vom städtischen Leben ausgegrenzt fühlen, was häufig der Fall ist. Auch virtuelle, von den Medien geschaffene Räume können einen Beitrag zu einer offeneren Gesellschaft leisten. Schließlich sollte der interkulturelle Dialog auf eine internationale Ebene gebracht werden. Damit sollen ein steriles Nebeneinander und Stereotypen überwunden werden, die sich eventuell von dem generellen Standpunkt ableiten, dass die Welt aus sich gegenseitig ausschließenden Kulturkreisen besteht, die stets auf Kosten der anderen um wirtschaftliche und politische Vorteile wetteifern. Der internationale Dialog betont, dass kulturelle Identitäten zunehmend komplex gestaltet sind, Überschneidungen aufweisen und Bausteine aus vielen verschiedenen Quellen enthalten. Dies soll letztlich zur Konfliktprävention und –lösung beitragen, Versöhnung und den Wiederaufbau des sozialen Vertrauens herbeiführen.

Der Europarat berücksichtigt diese Gegebenheiten in der politischen Weichenstellung für seine zukünftigen Maßnahmenpläne. Seine richtungsweisenden Maßnahmen beziehen auch die Medien ein. Zusammen mit Vertretern der Medienbranche und Journalistenschulen wird der Europarat eine Kampagne gegen Diskriminierung starten. Außerdem bietet er Journalisten eine Schulung in interkultureller Kompetenz an, um über die Medien das Lernen außerhalb der Schule zu bewerben. Die Medienorganisationen werden zudem aufgefordert, unter Voraussetzung der erforderlichen beruflichen Kompetenzen die Einbeziehung von Minderheiten auf allen Ebenen der Herstellung und des Managements zu fördern. Der Europarat hält dies für eine wichtige Umsetzung der Meinungsfreiheit, für die nicht nur die öffentlich-rechtlichen Rundfunkveranstalter zuständig sind.

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Zusätzlich dazu werden die Medien aufgefordert, gemeinsam Material herzustellen bzw. zu nutzen, das sich darin bewährt hat, die öffentliche Meinung gegen Intoleranz und für die Verbesserung der innergemeindlichen Beziehungen zu mobilisieren. Der Europarat beschloss zuletzt, einen jährlich vergebenen Medienpreis an diejenigen Medien zu verleihen, die einen herausragenden Beitrag zur Verhütung oder Lösung von Konflikten, zur Förderung von Verständnis und Dialog geleistet haben.

- White Paper on Intercultural Dialogue 'Living Together as Equals in Dignity', 2 May 2008, CM (2008) 30 (*Living Together as Equals in Dignity* , Weißbuch über den interkulturellen Dialog, 2. Mai 2008, CM (2008) 30) http://merlin.obs.coe.int/redirect.php?id=11294

IRIS 2008-7/2

Ministerkomitee: Neue Erklärung zu Rundfunkregulierungsbehörden

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Am 26. März 2008 verabschiedete das Ministerkomitee des Europarats eine neue Erklärung zur Unabhängigkeit und zu den Funktionen von Regulierungsbehörden für den Rundfunksektor. Die Verabschiedung der Erklärung erfolgte im Zusammenhang mit der allgemeinen Besorgnis hinsichtlich der Effizienz, mit der die nicht bindenden Texte des Europarats zur Meinungsfreiheit und zu den (neuen) Medien von staatlichen Behörden umgesetzt werden. Ausdrücklich wird in diesem Zusammenhang die Umsetzung der Empfehlung Rec(2000) 23 zur Unabhängigkeit und zu den Funktionen von Regulierungsbehörden für den Rundfunksektor (siehe IRIS 2001-1: 2) genannt.

In der Präambel zur Erklärung heißt es, dass aus unterschiedlichen Gründen die Leitlinien der Rec(2000) 23 und die zugrunde liegenden Prinzipien nicht in allen Mitgliedstaaten des Europarats „in vollem Umfang in gesetzgeberischer und/oder praktischer Hinsicht beachtet werden". Es solle daher eine „Kultur der Unabhängigkeit" gefördert werden, die für eine unabhängige Regulierung des Rundfunksektors „unverzichtbar" sei. Als Schlüsselelemente für die zu erreichende „Kultur der Unabhängigkeit" werden „Transparenz, Verantwortlichkeit, klare Kompetenzverteilung und gebührende Beachtung des geltenden Rechtsrahmens" ausgemacht. Es wird darüber hinaus anerkannt, dass der Rundfunksektor aufgrund der Eigentumskonzentration und der technologischen Entwicklungen insbesondere im Hinblick auf den Digitalrundfunk vor neuen regulatorischen Herausforderungen stehe.

Die Erklärung ruft die Mitgliedstaaten auf, unter anderem Rec(2000) 23 und insbesondere die Leitlinien aus dem dazugehörigen Anhang umzusetzen. Auch wird die Bereitstellung „der rechtlichen, politischen, finanziellen, technischen und sonstigen Mittel [gefordert], die notwendig sind, um ein unabhängiges Funktionieren von Rundfunkregulierungsbehörden zu gewährleisten und dadurch die Gefahr politischer oder wirtschaftlicher Einmischung abzuwenden".

Die Erklärung lenkt die Aufmerksamkeit der Rundfunkregulierungsbehörden auf die Bedeutung ihres möglichen Beitrags zur Wahrung von Pluralismus und Vielfalt im Rundfunksektor. Ganz konkret fordert sie sie auf, „eine unabhängige und transparente Vergabe von Rundfunklizenzen und Überwachung von Rundfunkveranstaltern im öffentlichen Interesse sicherzustellen".

Schließlich sieht die Erklärung einen aktiven Beitrag der Zivilgesellschaft und der Medienverantwortlichen zur „Kultur der Unabhängigkeit" durch eine „genaue Überwachung

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der Unabhängigkeit dieser Behörden“ vor. So sollen „gute Beispiele für unabhängige Rundfunkregulierung wie auch Verstöße gegen die Unabhängigkeit von Regulierern in die Aufmerksamkeit der Öffentlichkeit“ gerückt werden.

- *Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector, 26 March 2008* (Erklärung des Ministerkomitees zur Unabhängigkeit und zu den Funktionen von Regulierungsbehörden für den Rundfunksektor, 26. März 2008) http://merlin.obs.coe.int/redirect.php?id=11222

IRIS 2008-5/1

Ministerkomitee: Europarat erteilt Empfehlungen zur Meinungsfreiheit und zu Internetfiltern

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Am 26. März 2008 verabschiedete das Ministerkomitee des Europarats eine Empfehlung (CM/Rec(2008) 6) über Maßnahmen, um die Meinungs- und Informationsfreiheit im Hinblick auf Internetfilter zu wahren. Die Empfehlung und der zugrunde liegende Bericht anerkennen die Art und Weise, in der Internetfilter die Meinungs- und Informationsfreiheit beeinflussen können, und fordern in diesem Zusammenhang die Beachtung der Anforderungen aus Art. 10 der Europäischen Menschenrechtskonvention. Die Empfehlung ruft die Mitgliedsstaaten auf, in Bezug auf Internetfilter Maßnahmen zu ergreifen, und zwar in Übereinstimmung mit Leitlinien zur Förderung der Unterrichtung und des Bewusstseins der Nutzer und der Kontrolle von Internetfiltern sowie zur Verantwortlichkeit von Betroffenen aus dem privaten und öffentlichen Bereich.

Der Bericht geht auf die unterschiedlichen Formen von Internetfiltern ein, auf die Zusammenhänge, in denen sie angewandt werden, und die verantwortlichen privaten und öffentlichen Beteiligten, die Internetfilter einsetzen, sowie auf die Produzenten von Internetfiltern. Internetfilterung kann beispielsweise aufgrund der URL, der IP-Adresse oder des Protokolls, durch die Blockierung von Schlüsselbegriffen oder aber aufgrund einer Kennzeichnung oder eines Ratings seitens des Inhalteerstellers oder eines Dritten erfolgen. Internetfilter können am Arbeitsplatz, in öffentlichen Bibliotheken und Schulen oder auf ISP-Ebene eingesetzt werden.

Die Leitlinien machen deutlich, dass „das Bewusstsein und das Verständnis der Nutzer sowie deren Fähigkeit zum effizienten Einsatz von Internetfiltern Schlüsselfaktoren sind, die sie in die Lage versetzen, ihre Menschenrechte und Grundfreiheiten, insbesondere das Recht auf Meinungs- und Informationsfreiheit, umfassend wahrzunehmen und aktiv am demokratischen Prozess teilzunehmen“. In Bezug auf die Unterrichtung der Nutzer über Internetfilter schreiben die Leitlinien vor, dass „Nutzer darüber informiert werden müssen, dass ein Filter aktiv ist, und gegebenenfalls in der Lage sein müssen, den Filterungsgrad, dem der von ihnen aufgerufene Inhalt unterliegt, festzustellen und zu regeln“. Darüber hinaus „sollten Nutzer die Möglichkeit haben, gegen die Blockierung oder Filterung von Inhalten anzugehen und Klarstellung und Abhilfe zu verlangen“. In Abschnitt III der Leitlinien ist hinzugefügt, dass Mitgliedstaaten „für effiziente und leicht zugängliche Regress- und Abhilfemaßnahmen sorgen müssen, etwa die Abschaltung von Filtern in Fällen, in denen Nutzer und/oder Urheber von Inhalten klagen, dass Inhalte unbegründet blockiert werden“.

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In einem gesonderten Abschnitt über angemessene Filterung für Kinder und Jugendliche heißt es in den Empfehlungen, der „wohldosierte Einsatz von Filtern“ könne „ein angemessenes Mittel sein, um den Zugang zum Internet und dessen vertrauensvolle Nutzung zu befördern, und weitere Strategien ergänzen, wie mit schädlichen Inhalten umzugehen ist, etwa durch die Entwicklung und Bereitstellung von Informationskompetenz“.

- Empfehlung CM/Rec(2008) 6 des Ministerkomitees an die Mitgliedstaaten zu Maßnahmen zur Wahrung der Meinungs- und Informationsfreiheit in Bezug auf Internetfilter
  http://merlin.obs.coe.int/redirect.php?id=11215

- Bericht der Fachgruppe Menschenrechte in der Informationsgesellschaft (MC-S-IS) zur Nutzung und zu Auswirkungen von technischen Filtermaßnahmen für verschiedene Arten von Inhalten im Online-Umfeld, Dokument CM(2008) 37 add
  http://merlin.obs.coe.int/redirect.php?id=11217

IRIS 2008-5/101

Ministerkomitee: Erklärung über digitale Dividende und öffentliches Interesse

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Am 20. Februar 2008 hat das Ministerkomitee des Europarats eine Erklärung über die Verteilung und Verwaltung der digitalen Dividende und das Allgemeininteresse verabschiedet. Die digitale Dividende wird als „Gewinn an Übertragungskapazität durch den Umstieg von analoger auf digitale Technik“ beschrieben.

Die Präambel der Erklärung weist auf die Notwendigkeit hin, wesentliche Ziele des Allgemeininteresses in der digitalen Umgebung zu gewährleisten und sicherzustellen, dass die Strategien für die digitale Umstellung und die Zuteilung und Verwaltung des Frequenzspektrums einen Ausgleich zwischen wirtschaftlichen Zielen und Zielen des Allgemeininteresses (beispielsweise Förderung des Pluralismus, kulturelle und sprachliche Vielfalt sowie öffentlicher Zugang zu audiovisuellen Angeboten) schaffen. Die Präambel erkennt an, dass die digitale Dividende eine Möglichkeit für Sender darstellt, „ihre Angebote bedeutend zu entwickeln und auszuweiten“. Sie würdigt zudem „die Bedeutung erhöhter Anstrengungen für einen wirksamen und gerechten Zugang aller Personen zu neuen Kommunikationsdiensten, Bildung und Wissen, insbesondere zur Verhinderung einer digitalen Ausgrenzung und zur Verringerung oder, im Idealfall, Überbrückung der digitalen Kluft“.

Die Erklärung basiert auf der Empfehlung des Ministerkomitees Rec (2003) 9 über Maßnahmen zur Förderung des Beitrags des digitalen Rundfunks zu Demokratie und Gesellschaft und der Empfehlung Rec (2007) 3 zum Auftrag der öffentlich-rechtlichen Medien in der Informationsgesellschaft (siehe IRIS 2007-3: 5). Sie berücksichtigt, dass einzelne Staaten unterschiedliche Strategien für die digitale Umstellung haben, was auch ihr Recht ist, und dass sich Anstrengungen auf internationaler Ebene zur Harmonisierung der Ansätze für die digitale Dividende daher in der Praxis als schwierig erweisen können.

Der inhaltliche Teil der Erklärung befasst sich in erster Linie mit der Notwendigkeit, die öffentliche Natur der digitalen Dividende anzuerkennen und sie im Sinne des Allgemeininteresses zu handhaben. Zudem behandelt sie die Förderung von „Innovation, Pluralismus, kultureller und sprachlicher Vielfalt und des Zugangs der Öffentlichkeit zu audiovisuellen Angeboten bei der Verteilung und Verwaltung der digitalen Dividende“, wobei

sie die Bedürfnisse der verschiedenen Arten von Sendern und anderen Medien (etwa öffentlich-rechtliche und private) ebenso berücksichtigt wie die Erfordernisse anderer bestehender oder neuer Nutzer des Frequenzspektrums. Der dritte und letzte inhaltliche Schwerpunkt der Erklärung betrifft den gesellschaftlichen Nutzen, der sich aus der digitalen Dividende ergeben kann: „eine höhere Anzahl verschiedener audiovisueller, auch mobiler Dienste mit potenziell verbesserter geografischer Abdeckung und interaktiven Möglichkeiten sowie Dienste, die hochauflösende Technologie, mobilen Empfang oder einen einfacheren und günstigeren Zugang anbieten".

- *Declaration of the Committee of Ministers on the allocation and management of the digital dividend and the public interest, 20 February 2008* (Erklärung des Ministerkomitees über die Verteilung und Verwaltung der digitalen Dividende und das öffentliche Interesse, 20. Februar 2008) http://merlin.obs.coe.int/redirect.php?id=11184

IRIS 2008-4/4

Ministerkomitee: Erklärung zum Schutz der Würde, Sicherheit und Privatsphäre von Kindern im Internet

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Am 20. Februar 2008 verabschiedete das Ministerkomitee des Europarats eine Erklärung zum Schutz der Würde, Sicherheit und Privatsphäre von Kindern im Internet. Die Erklärung betrifft Inhalte, die Kinder im Internet über sich selbst hinterlegen können, einschließlich aller Spuren, die sie online hinterlassen können (Protokolle, Aufzeichnungen und Verarbeitung). „Wir sind entschlossen sicherzustellen, dass unsere Kinder das Internet gefahrlos nutzen können und das Internet nicht gegen sie verwendet werden kann", sagte Maud de Boer-Buquicchio, Stellvertretende Generalsekretärin des Europarats.

Das Komitee weiß, dass Kinder das Internet als wichtiges Medium im Alltag nutzen. Es gibt immer mehr Möglichkeiten, wie Kinder relevante personenbezogene Daten im Internet hinterlassen können (zum Beispiel auf den vor Kurzem entstandenen sogenannten Networking-Websites), und oft sind den Kindern die Folgen nicht klar. Durch die Rückverfolgbarkeit ihrer Aktivitäten sind die Kinder kriminellen Aktivitäten anderer ausgesetzt, etwa der Anwerbung für sexuelle Zwecke, aber auch anderen rechtswidrigen oder schädlichen Aktivitäten wie Diskriminierung, Mobbing, Stalking und sonstigen Formen der Belästigung. Darüber hinaus weiß das Komitee um die Tendenz von verschiedenen Institutionen wie Bildungseinrichtungen und potenziellen Arbeitgebern, bei Entscheidungen über wichtige Fragen im Leben von Kindern und Jugendlichen nach Informationen über diese zu suchen. Daher müssen Kinder vor der Möglichkeit geschützt werden, dass ihre privaten Informationen für andere im Internet dauerhaft auffindbar sind.

Das Komitee hat deshalb die Vertragsstaaten eingeladen, die Möglichkeit zu prüfen, solche Inhalte – einschließlich ihrer Spuren – innerhalb einer angemessen kurzen Frist zu entfernen oder zu löschen. Das Komitee erklärte ferner, es dürfe keine dauerhaften oder permanent zugänglichen Aufzeichnungen über von Kindern angelegte Inhalte im Internet geben, die ihre Würde, Sicherheit und Privatsphäre beeinträchtigen. Das Komitee weiß, dass Inhalte manchmal erst dann nachteilige Folgen haben, wenn die betreffende Person bereits erwachsen ist. Deshalb hat das Komitee erklärt, es dürfe keine zugänglichen Aufzeichnungen geben, die gegenwärtig oder künftig zur Gefahr werden können. Die

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Erklärung schließt jedoch das Vorhandensein für Strafverfolgungszwecke zugänglicher Aufzeichnungen nicht aus.

Die Erklärung nimmt Bezug auf zwei Weltgipfel zur Informationsgesellschaft (Genf 2003 und Tunis 2005), die das Engagement für wirksame Grundsätze und Rahmenwerke zum Schutz von Kindern und Jugendlichen vor Missbrauch und Ausbeutung durch Informations- und Kommunikationstechnologien bekräftigten. Außerdem bezieht sie sich insbesondere auf den Auftrag des *Internet Governance Forum* der Vereinten Nationen, neu aufkommende Fragen zur Entwicklung und Sicherheit des Internets zu identifizieren und an der Suche nach Lösungen für Probleme mitzuwirken, die sich aus dem Gebrauch und Missbrauch des Internets ergeben und für tägliche Benutzer von Belang sind.

Die Erklärung verweist ferner auf die Notwendigkeit, Kinder darüber zu informieren und aufzuklären, dass die von ihnen geschaffenen Online-Inhalte dauerhaft präsent und welche Risiken damit verbunden sind. Dieses Thema behandelt speziell die Empfehlung Rec (2006) 12 des Ministerkomitees zum Fitmachen von Kindern für die neue Informations- und Kommunikationsumgebung. Diese Empfehlung fordert die Vertragsstaaten auf, die Fähigkeiten, das Wohlergehen und die entsprechende Informationskompetenz von Kindern zu fördern. Überdies hat der Europarat das interaktive Aufklärungsspiel „Wild Web Woods“ konzipiert, bei dem Kinder lernen können, virtuelle Bedrohungen zu erkennen, ihnen zu widerstehen und sicher im Internet zu surfen.

- *Declaration of the Committee of Ministers on protecting the dignity, security and privacy of children on the Internet, adoptedon 20 February 2008* (*Declaration of the Committee of Ministers on protecting the dignity, security and privacy of children on the Internet* (Erklärung des Ministerkomitees zum Schutz der Würde, Sicherheit und Privatsphäre von Kindern im Internet), verabschiedet am 20. Februar 2008)
  http://merlin.obs.coe.int/redirect.php?id=11173
- *Recommendation Rec(2006)12 of the Committee of Ministers on empowering children in the new information and communications environment, adopted on 27 September 2006* (Empfehlung Rec (2006) 12 des Ministerkomitees zum Fitmachen von Kindern für die neue Informations- und Kommunikationsumgebung, verabschiedet am 27. September 2006)
  http://merlin.obs.coe.int/redirect.php?id=11175

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2007

Ministerkomitee: Empfehlung zur Förderung öffentlicher Werte im Internet

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Das Ministerkomitee des Europarates (MK) hat unlängst eine Empfehlung über Maßnahmen zur Förderung der Internet-Grundversorgung verabschiedet. Hauptziel der Empfehlungen ist es, die zuständigen Behörden der Staaten dazu zu bewegen, alle notwendigen Maßnahmen zur Förderung der Grundversorgung im und mit dem Internet zu ergreifen, gegebenenfalls in Zusammenarbeit mit allen beteiligten Seiten. Dazu gehören unter anderem:

- „die Wahrung der Menschenrechte, der Demokratie und der Rechtsstaatlichkeit […] sowie die Förderung des sozialen Zusammenhalts, der Achtung der kulturellen Vielfalt und des Vertrauens" in Verbindung mit dem Internet und anderer Informations- und Kommunikationstechnologien (IKT);

- die Festlegung von Vorgaben hinsichtlich der Rollen und Zuständigkeiten aller wesentlichen Interessengruppen innerhalb eines klaren Rechts- oder Regulierungsrahmens;

- die Förderung der Bewusstseinsbildung im Privatsektor bezüglich der ethischen Dimension der notwendigen Maßnahmen sowie die Anpassung der Praktiken im Internet unter dem Aspekt der Menschenrechte;

- sofern sinnvoll und umfassend durchführbar, die Ermutigung zu „neuen Formen einer offenen und transparenten Selbst- und Koregulierung" für mehr Verantwortlichkeit der Schlüsselakteure.

Die vorgeschlagenen Maßnahmen zur Erreichung der zentralen Ziele der Empfehlung sind in Verbindung mit den Leitlinien im detaillierten und umfassenden Anhang der Empfehlung zu betrachten. Die Leitlinien konzentrieren sich in erster Linie auf Menschenrechte und Demokratie. Um die Menschenrechte im Umfeld des Internets und der Informations- und Kommunikationstechnologien zu wahren, sollten das Recht auf freie Meinungsäußerung sowie die Vereinigungs- und Versammlungsfreiheit nicht über die Vorgaben der Europäischen Menschenrechtskonvention hinaus eingeschränkt werden. In ähnlicher Weise wird auch die Notwendigkeit der Wahrung des Rechts auf Privatleben und des Schutzes der Korrespondenz im Internet, der geistigen und anderen Eigentumsrechte sowie der Bildungsrechte (einschließlich „Medien- und Informationskompetenz") hervorgehoben. Betont wird des Weiteren die Bedeutung anderer Werte und Interessen, darunter „Pluralismus, kulturelle und sprachliche Vielfalt sowie der nichtdiskriminierende Zugang zu verschiedenen Kommunikationsmitteln über das Internet und andere Technologien". Unter der Rubrik „Demokratie" wird für das zivile Engagement für E-Demokratie, E-Beteiligung und E-Regierung sowie die Entwicklung verschiedener Kommunikationsmöglichkeiten durch öffentliche Verwaltungen plädiert.

Der zweite Schwerpunkt der Leitlinien betrifft das Thema „Zugang". Gefordert werden: Strategien zur Förderung eines erschwinglichen Zugangs zu IKT-Infrastruktur, auch dem Internet; technische Interoperabilität, offene Standards and kulturelle Vielfalt in der IKT-Politik für die Bereiche Telekommunikation, Rundfunk und Internet; Diversifizierung der Softwaremodelle, einschließlich proprietärer, freier und Open-Source-Software; ein erschwinglicher Zugang zum Internet für jedermann, insbesondere für jene mit

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situationsbedingten Sonderbedürfnissen; öffentliche Zugangspunkte zum Internet und anderen IKT-Diensten; Integration der IKT in die Bildung; Medien- und Informationskompetenz und entsprechende Schulung.

Danach befassen sich die Leitlinien mit dem Thema „Offenheit". Hier besteht das zentrale Anliegen darin, das Recht auf freie Meinungsäußerung und Informationsverbreitung im Internet zu schützen. Zu diesem Zweck fördern die Leitlinien: die aktive öffentliche Beteiligung an der Schaffung von Inhalten im Internet und anderen Informations- und Kommunikationstechnologien (konkret: durch den Verzicht auf Lizenzvorschriften für Einzelpersonen und den Verzicht auf allgemeine Maßnahmen zum Blocken oder Filtern von Inhalten; durch das Erleichtern der Wiederverwendung bestehender digitaler Inhalte im Einklang mit Rechten am geistigen Eigentum und der Wiederverwendung öffentlicher Daten); „die Zugänglichkeit gemeinfreier Informationen über das Internet"; die Anpassung und Ausdehnung des Auftrags öffentlich-rechtlicher Medien speziell in Verbindung mit dem Internet und anderer Technologien.

Unter dem vierten Schwerpunkt der Leitlinien - „Vielfalt" - wird eine gerechte und universelle Beteiligung an der Entwicklung von Internet- und IKT-Inhalten angestrebt. Folgendes wird zu diesem Zweck angeregt: die Entwicklung einer kulturellen Dimension in der Schaffung digitaler Inhalte, auch durch öffentlich-rechtliche Medien; die Wahrung des digitalen Kulturerbes; die Beteiligung an der „Schaffung, Veränderung und Neuzusammensetzung interaktiver Inhalte"; Maßnahmen für die Produktion und Verbreitung von individuell und gemeinschaftlich generierten Inhalten; der Aufbau von Kapazitäten für lokale und heimatliche Inhalte im Internet; Mehrsprachigkeit im Internet.

Letzter Schwerpunkt der Leitlinien ist die „Sicherheit" - eine Kategorie, die einen breiteren Charakter hat, als der Titel vermuten lässt. Die Bedeutung folgender Punkte wird besonders unterstrichen: das Cybercrime-Abkommen und sein Zusatzprotokoll; Netzwerk- und Informationssicherheit; gesetzliche Maßnahmen zur Bekämpfung von Spam und entsprechende Stellen für ihre Durchsetzung; verbesserte Zusammenarbeit zwischen Internetprovidern; Schutz von persönlichen Daten und Privatsphäre; Bekämpfung der Piraterie im Bereich Urheberrecht und verwandte Schutzrechte; Verbesserung eines transparenten und wirksamen Verbraucherschutzes; Förderung einer sichereren Nutzung von Internet und IKT, insbesondere für Kinder.

- Recommendation CM/Rec(2007)16 of the Committee of Ministers to member states on measures to promote the public service value of the Internet, 7 November 2007 (Empfehlung CM/Rec(2007)16 des Ministerkomitees an die Mitgliedstaaten über Maßnahmen zur Förderung der Internet-Grundversorgung, 7. November 2007) http://merlin.obs.coe.int/redirect.php?id=11077

IRIS 2008-2/2

Ministerkomitee: Empfehlung für Maßnahmen zur Wahlberichterstattung in den Medien

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Das Ministerkomitee des Europarates verabschiedete am 7. November 2007 die Empfehlung Rec (2007) 15 mit dem Titel „Maßnahmen zur Wahlberichterstattung in den Medien" und änderte damit die gleichnamige Empfehlung Nr. R (99) 15 (siehe IRIS 1999-9/7) ab. Grund

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für die Änderung war die rasante Entwicklung der Informations- und Kommunikationstechnologien und die Weiterentwicklung der Medienlandschaft.

Im Sinne der Empfehlung umfasst der Begriff „Medien" „diejenigen, die für die periodische Informations- und Inhaltserstellung sowie deren Verbreitung zuständig sind, wofür ungeachtet der für die Übertragung eingesetzten Mittel und Technik redaktionelle Verantwortung besteht, und die für den Empfang durch einen beträchtlichen Teil der Öffentlichkeit bestimmt sind, auf die sie deutlichen Einfluss ausüben könnten". In der Praxis sind darunter Print- und Rundfunkmedien sowie „Online-Nachrichtendienste (wie Online-Ausgaben von Zeitungen und Newsletter) und nichtlineare audiovisuelle Mediendienste (wie Fernsehen auf Abruf)" zu verstehen. Die Empfehlung gilt für „alle Arten von in den Mitgliedstaaten stattfindenden politischen Wahlen, darunter Präsidentschafts-, Parlaments- und Regionalwahlen sowie, wo dies möglich ist, Kommunalwahlen und Referenden".

Die Empfehlung beinhaltet zwei Arten von Grundsätzen: allgemeine Vorschriften und Rundfunkmedien betreffende Maßnahmen. Die allgemeinen Vorschriften sind wie folgt aufgeführt: (1) „Nichteinmischung durch Behörden", (2) „Schutz gegen Angriffe, Einschüchterung oder andere Formen rechtswidriger Ausübung von Druck auf die Medien", (3) „Redaktionelle Unabhängigkeit", (4) „Besitz durch Behörden", (5) „professionelle und ethische Grundsätze der Medien", (6) „Transparenz der Medien und Zugang zu selbigen", (7) „Recht auf Gegendarstellung oder gleichwertige Maßnahmen", (8) „Meinungsumfragen" und (9) „Tag zum Überdenken".

Zunächst sollten die Behörden davon absehen, sich mit dem Ziel in die Medienberichterstattung einzuschalten, die Wahlen zu beeinflussen. Zugleich obliegt den Behörden der wirksame Schutz von Journalisten und Medien gegenüber etwaigen Angriffen, Einschüchterung oder anderen Formen rechtswidriger Ausübung von Druck. Die redaktionelle Unabhängigkeit der Medien sollte voll geachtet werden. Selbst wenn Medien sich im Besitz von Behörden befinden, muss die Berichterstattung gerecht, ausgewogen und objektiv sowie frei jeglicher Benachteiligung oder Unterstützung einer bestimmten Partei oder eines bestimmten Kandidaten sein.

Des Weiteren sind die Medien dazu aufgefordert, selbstregulierende Rahmenbedingungen zu entwickeln und professionelle sowie ethische Grundsätze hinsichtlich ihrer Wahlberichterstattung zu berücksichtigen. In dieser Hinsicht spielt Transparenz eine Schlüsselrolle, insbesondere im Falle bezahlter politischer Werbung. Derartige Werbung muss als solche erkennbar sein. Das Recht auf Gegendarstellung sollte, sofern dies nach einzelstaatlichem Recht möglich ist, während der Wahlkampagne geachtet werden und unverzüglich ausgeübt werden können. Im Falle von Meinungsumfragen obliegt es den Medien, die Öffentlichkeit ausreichend zu informieren, damit diese die Umfragen richtig einschätzen können.

Im Hinblick auf die die Rundfunkmedien betreffenden Maßnahmen unterstützt das Ministerkomitee den Einsatz regulierender Rahmenbedingungen, um so die pluralistische Meinungsäußerung über Rundfunkmedien zu erleichtern. Dies ist insbesondere im Fall von Nachrichten und Sendungen zum aktuellen Zeitgeschehen während eines Wahlkampfes von Bedeutung. Obige Grundsätze gelten ebenfalls für nichtlineare audiovisuelle Dienste von öffentlich-rechtlichen Medien. Freie Redezeit und Auftritte in öffentlich-rechtlichen Medien sollten den Parteien und Kandidaten auf gerechte und nichtdiskriminierende Weise sowie auf Basis transparenter und objektiver Kriterien zur Verfügung gestellt werden. Das Ministerkomitee hebt hervor, dass bezahlte politische Werbung zu gleichen Bedingungen und Vergütungssätzen gewährt werden sollte.

Dem Ministerkomitee zufolge können Mitgliedstaaten „die Einführung einer Regelung in ihre regulierenden Rahmenbedingungen in Erwägung ziehen, um die Werbefläche und die Werbezeit, die eine Partei oder ein Kandidat erwerben können, zu begrenzen". Es ist zudem

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der Auffassung, dass „Moderatoren, die normalerweise Nachrichten und Sendungen zum aktuellen Zeitgeschehen präsentieren, nicht in bezahlter politischer Werbung auftreten sollten".

- „Maßnahmen zur Wahlberichterstattung in den Medien", Empfehlung Rec(2007)15 des Ministerkomitees des Europarates, verabschiedet am 7. November 2007 http://merlin.obs.coe.int/redirect.php?id=13038

IRIS 2007-10/103

Ministerkomitee: Meinungs- und Informationsfreiheit in neuem Umfeld

Tarlach McGonagle

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Das Ministerkomitee des Europarates verabschiedete am 26. September 2007 die Empfehlung Rec (2007) 11 über die Förderung der Meinungs- und Informationsfreiheit im neuen Informations- und Kommunikationsumfeld.

Im Mittelpunkt der Empfehlung steht eine Reihe von Richtlinien, über die die Behörden alle maßgeblichen Interessenvertreter in Kenntnis setzen sollen. Die Richtlinien sind thematisch folgendermaßen gegliedert: Stärkung einzelner Nutzer, gemeinsame Standards und Vorgehensweisen für verlässliche Informationen, flexible Inhaltserstellung und Transparenz bei der Verarbeitung von Informationen, kostengünstiger Zugang zur IKT-Infrastruktur, Zugang zu Informationen als öffentlicher Dienst sowie Zusammenarbeit zwischen Interessenvertretern.

Die Empfehlung unterstreicht die Bedeutung folgender Aspekte: Förderung von Transparenz, Information und Unterstützung hinsichtlich der E-Mail- und Internetnutzung, Online-Anonymität, persönliche Sicherheit, Verwendung von Nutzerinformationen zur Profilerstellung und Speicherung personenbezogener Daten durchSuchmaschinen, Auflistung und Priorisierung von Informationen durch Suchmaschinen, Sperr- und Filtermethoden, Entfernung illegaler Inhalte, Konfrontation Minderjähriger mit schädlichen Inhalten und Erzeugung nutzergenerierter Inhalte. Sie fördert ferner die Entwicklung gemeinsamer Standards und Vorgehensweisen zur Bewertung und Kennzeichnung (potenziell) schädlicher Inhalte und Dienste sowie Filtermechanismen, insbesondere im Zusammenhang mit Kindern, Rechte des geistigen Eigentums in interaktiven Inhalten sowie Kennzeichnung und Standards für die Verarbeitung personenbezogener Daten.

Der Zugang zur IKT-Infrastruktur und der Zugang zu Informationen als öffentlicher Dienst sind insofern sehr ähnlich, als beide zunehmend zur Förderung der Teilnahme am öffentlichen Leben und an demokratischen Prozessen beitragen. Die Empfehlung ermutigt Behörden, Internetzugänge in ihren Räumlichkeiten einzurichten. Besonderen sprachlichen sowie sonstigen Anforderungen der Nutzer würde durch die Art des bereitgestellten Zugangs Rechnung getragen.

Die Empfehlung fördert die Entwicklung „unterschiedlicher Formen der Zusammenarbeit und Partnerschaften zwischen zahlreichen Interessenvertretern, unter Berücksichtigung ihrer jeweiligen Funktionen und Verantwortungsbereiche" durch den privaten Sektor und die Zivilgesellschaft. Ferner werden spezielle Funktionen auch für die Privat- und die Zivilgesellschaft in Betracht gezogen.

- Empfehlung Rec (2007) 11 des Ministerkomitees an die Mitgliedstaaten über die Förderung der Meinungs- und Informationsfreiheit im neuen Informations- und

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Kommunikationsumfeld, 26. September 2007
http://merlin.obs.coe.int/redirect.php?id=13034

IRIS 2007-9/104

Ministerkomitee: Erklärung zum Schutz und zur Förderung des investigativen Journalismus

Ivan Nikoltchev

Europarat, Directorate of Human Rights

In einer am 26. September 2007 verabschiedeten Erklärung rief das Ministerkomitee die Mitgliedstaaten dazu auf, den investigativen Journalismus zu schützen und zu fördern. Hinter dieser Erklärung steht die Überzeugung des Komitees, dass echter investigativer Journalismus dazu beiträgt, juristisches oder ethisches Unrecht aufzudecken, das vorsätzlich verschleiert wird. Diese Art der journalistischen Arbeit leistet daher einen wesentlichen Beitrag zur Kontrollfunktion der Medien in einer Demokratie.

Die Erklärung fordert die Mitgliedstaaten auf, die persönliche Sicherheit von Medienschaffenden, ihre Bewegungsfreiheit, ihren Informationszugang und ihr Recht auf Quellenschutz zu garantieren. Sie unterstreicht auch, dass Freiheitsentzug, unverhältnismäßige Geldstrafen, Berufsverbote, Beschlagnahmen von Material oder Hausdurchsuchungen nicht dazu missbraucht werden dürfen, Medienschaffende und insbesondere investigativ arbeitende Journalisten einzuschüchtern.

Die Erklärung verweist speziell auf das neue Urteil des Europäischen Gerichtshofs für Menschenrechte (Rechtssache Dammann gegen die Schweiz, Antrag Nr. 77551/01, siehe IRIS 2006-6: 4), das Art. 10 der Europäischen Konvention für Menschenrechte dahingehend interpretierte, dass nicht nur die Publikationsfreiheit geschützt sei, sondern auch die - besonders für den investigativen Journalismus wichtige - Recherche. Das Ministerkomitee fordert die Mitgliedstaaten auf, diese Entwicklung zu berücksichtigen, gegebenenfalls auch in ihrer innerstaatlichen Gesetzgebung.

Das Komitee äußert sich ferner besorgt über die zunehmenden Einschränkungen der Meinungs- und Informationsfreiheit im Namen der öffentlichen Sicherheit und der Terrorbekämpfung, über Prozesse gegen Medienschaffende wegen Beschaffung oder Veröffentlichung von Informationen von öffentlichem Interesse, über die ungerechtfertigte Überwachung von Journalisten und über gesetzgeberische Maßnahmen zur Einschränkung des Schutzes von Informanten.

Die Minister rufen auch die Medien, die Journalisten und deren Verbände auf, den investigativen Journalismus zu fördern und zu unterstützen und dabei die Menschenrechte zu achten und hohe ethische Maßstäbe anzulegen.

- *Declaration by the Committee of Ministers on the protection and promotion of investigative journalism (Adopted by the Committee of Ministers on 26 September 2007 at the 1005th meeting of the Ministers' Deputies)* (Erklärung des Ministerkomitees zum Schutz und zur Förderung des investigativen Journalismus, verabschiedet vom Ministerkomitee am 26. September 2007 bei der 1005. Sitzung der Ministerdelegierten)
  http://merlin.obs.coe.int/redirect.php?id=10980

IRIS 2007-10/2

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Ministerkomitee: Leitlinien zum Schutz der Meinungs- und Informationsfreiheit in Krisenzeiten

Ivan Nikoltchev

Europarat, Directorate of Human Rights

Auf seiner 1005. Sitzung (26. September 2007) verabschiedete das Ministerkomitee des Europarats Leitlinien zum Schutz der Meinungs- und Informationsfreiheit in Krisenzeiten. Die Leitlinien spiegeln die Besorgnis des Komitees wider, dass Krisensituationen wie Kriege und terroristische Anschläge Regierungen dazu verleiten könnten, dieses Recht über Gebühr einzuschränken. Der Text ist eine Erweiterung und Ergänzung der Leitlinien zu den Menschenrechten und zum Kampf gegen den Terrorismus, die vom Ministerkomitee am 11. Juli 2002 verabschiedet wurden.

Die Leitlinien sind das Ergebnis der Arbeit einer Expertengruppe zur Meinungs- und Informationsfreiheit in Krisenzeiten (MC-S-IC), die vom Lenkungsausschuss für Medien und neue Kommunikationsdienste (CDMC) eingesetzt wurde. Nach der Politischen Erklärung und der Entschließung über Meinungs- und Informationsfreiheit in Krisenzeiten, die auf der 7. Ministerkonferenz über Massenmedienpolitik (Kiew, März 2005) verabschiedet wurden, wurde die MC-S-IC gebeten zu untersuchen, ob zusätzliche europäische Standards vonnöten seien, um diese Freiheit zu gewährleisten.

Die Experten kamen zu dem Schluss, dass im Allgemeinen Art. 10 der Europäischen Menschenrechtskonvention (EMRK), die dazugehörige Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte (EGMR) sowie weitere Dokumente des Europarats, die darauf basieren, ausreichend seien, die Meinungs- und Informationsfreiheit in Krisenzeiten zu schützen. Es bestehe keine offensichtliche und dringende Notwendigkeit, diese Standards wesentlich zu ändern oder weitreichende neue zu erarbeiten. Der Schwerpunkt sei auf die praktischen Probleme im Zusammenhang mit ihrer Umsetzung zu legen. Die Leitlinien enthalten konkrete Vorschläge in dieser Richtung.

Der Begriff „Krise", wie er in den Leitlinien verwendet wird, umfasst (beschränkt sich jedoch nicht allein auf) Kriege, terroristische Anschläge oder Natur- und zivilisationsbedingte Katastrophen, also Situationen, in denen die Meinungs- und Informationsfreiheit in Gefahr ist (beispielsweise durch ihre Einschränkung aus Sicherheitsgründen). Der Begriff „Krisenzeiten" ist jedoch nicht mit Krieg oder einem anderen öffentlichen Notstand, der das Leben der Nation bedroht, wie es in Art. 15 EMRK heißt, gleichzusetzen. Während ein erklärter nationaler Notstand gewisse vorübergehende Einschränkungen bestimmter Rechte und Freiheiten rechtfertigen kann, darf eine Krisensituation nicht als Entschuldigung dienen, Einschränkungen der Meinungs- und Informationsfreiheit zu verhängen, die über die in Art. 10 Abs. 2 EMRK genannten hinausgehen.

In den Leitlinien werden die Mitgliedstaaten aufgefordert, ein höchstmögliches Maß an Sicherheit für Berufsjournalisten zu gewährleisten. Andererseits darf die Notwendigkeit, die Sicherheit zu garantieren, von Staaten nicht dazu genutzt werden, die Rechte von Berufsjournalisten, ihre Bewegungsfreiheit oder ihren Informationszugang unnötig einzuschränken. Die Leitlinien empfehlen darüber hinaus eine unverzügliche und gründliche behördliche Untersuchung bei der Tötung von oder Angriffen auf Journalisten, die Täter sind zur gerichtlichen Verantwortung zu ziehen.

Die Leitlinien weisen erneut darauf hin, dass die Mitgliedstaaten das Recht der Journalisten, ihre Informationsquellen nicht offenzulegen, schützen müssen - in der Praxis sowie durch die Umsetzung in nationales Recht - und Berufsjournalisten nicht zwingen dürfen, Informationen oder Material, etwa Aufzeichnungen, Fotos und Filmaufnahmen, auszuhändigen.

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Zwei weitere Bestimmungen sind ebenfalls erwähnenswert. Die eine fordert Mitgliedstaaten auf, keine ungenauen Begriffe zu verwenden, wenn sie in Krisenzeiten Beschränkungen der Meinungs- und Informationsfreiheit verhängen. Anstachelung zu Gewalt und öffentlichem Aufruhr muss angemessen und eindeutig definiert sein. Die andere verlangt, dass die Staaten eine straf- oder verwaltungsrechtliche Haftung für Staatsbedienstete vorsehen, die etwa über die Medien die öffentliche Meinung zu beeinflussen versuchen, wobei sie die besondere Anfälligkeit in Krisenzeiten ausnutzen.

Die Leitlinien richten sich auch an Berufsjournalisten und rufen sie auf, sich höchsten beruflichen und ethischen Standards zu verpflichten und sich ihrer Verantwortung in Krisenzeiten bewusst zu sein, der Öffentlichkeit zeitnahe, genaue, sachliche und umfassende Informationen zu liefern. Das Ministerkomitee unterstützt Selbstkontrolle als den angemessensten und wirksamsten Mechanismus, um zu gewährleisten, dass die Medien in Krisenzeiten verantwortlich handeln.

- *Guidelines of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis (Adopted by the Committee of Ministers on 26 September 2007 at the 1005th meeting of the Ministers' Deputies)* (Leitlinien des Ministerkomitees zum Schutz der Meinungs- und Informationsfreiheit in Krisenzeiten (verabschiedet vom Ministerkomitee auf der 1005. Sitzung der Ministerdelegierten am 26. September 2007))
  http://merlin.obs.coe.int/redirect.php?id=10968

IRIS 2007-10/1

Ministerkomitee: Erklärung und Empfehlungen im Medienbereich

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Am 31. Januar 2007 hat das Ministerkomitee eine Reihe wichtiger Texte zum Medienbereich verabschiedet: eine Erklärung zum Schutz der Rolle der Medien in der Demokratie vor dem Hintergrund der Medienkonzentration, eine Empfehlung zum Pluralismus der Medien und zur Vielfalt der Medieninhalte sowie eine Empfehlung zum Auftrag der öffentlich-rechtlichen Medien in der Informationsgesellschaft.

Die Erklärung wiederholt eingangs die hohe Bedeutung der Freiheit und Vielfalt der Medien für die Demokratie. Durch Globalisierung und Konzentration befinde sich die Medienlandschaft im Wandel. Dieses Phänomen habe zwar durchaus positive Folgen wie Markteffizienz, verbraucherorientierte Inhalte und die Entstehung von Arbeitsplätzen, stelle aber auch eine Herausforderung dar, da es die Vielfalt der Medienprodukte in kleinen Märkten, die Vielfalt von Kanälen und das Bestehen von Foren für öffentliche Debatten gefährden könne. Insbesondere aufgrund der Bedenken, dass die Medienkonzentration eine Handvoll Medieneigentümer oder -gruppen in die Lage versetzen könne, die Themen der öffentlichen Diskussion zu kontrollieren, warnt die Erklärung die Mitgliedstaaten vor dem Risiko des Missbrauchs von Medienmacht in den Bereichen, in denen eine starke Konzentration besteht, und vor den möglichen Folgen für demokratische Prozesse.

Daher werden folgende Faktoren besonders unterstrichen: der Wunsch nach einer Trennung zwischen der Medienkontrolle und der Ausübung politischer Macht; die Notwendigkeit, die vollständige Transparenz der Eigentumsverhältnisse bei den Medien über entsprechende Regulierungsmaßnahmen zu garantieren; die Nützlichkeit von Regulierungs- und/oder

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Koregulierungsmechanismen zur Überwachung der Medienmärkte und der Medienkonzentration; die Funktion eines angemessen ausgestatteten und finanzierten öffentlichen-rechtlichen Rundfunks als Gegengewicht zu den negativen Folgen einer starken Medienkonzentration sowie der Umstand, dass Maßnahmen zur Förderung der Entwicklung nicht gewinnorientierter Medien eine weitere Möglichkeit darstellen könnten, eine Vielfalt an autonomen Kanälen für die Verbreitung von Informationen zu fördern.

Die beiden anderen Texte sind Empfehlungen, von denen die erste den Pluralismus der Medien und die Vielfalt der Medieninhalte betrifft. Dieser Text bekräftigt, dass Medien wesentlich für das Funktionieren einer demokratischen Gesellschaft sind, da sie die öffentliche Diskussion, den politischen Pluralismus und das Bewusstsein für unterschiedliche Meinungen fördern. Er empfiehlt den Mitgliedstaaten, eine Reihe konkret benannter Maßnahmen in die nationale Gesetzgebung aufzunehmen. Diese Maßnahmen reichen von Regeln zur Eigentümerregulierung oder zur Vergabe von Rundfunklizenzen bis hin zu *Must-Carry-* oder *Must-Offer-* Verpflichtungen. Es wird weiterhin empfohlen, dass die Mitgliedstaaten regelmäßig auf nationaler Ebene die Wirksamkeit der bestehenden Maßnahmen zur Förderung der Medienvielfalt und der Vielfalt der Inhalte überwachen und dabei vor dem Hintergrund der wirtschaftlichen, technischen und sozialen Entwicklungen die eventuelle Notwendigkeit einer Änderung prüfen. Abschließend wird empfohlen, dass die Mitgliedstaaten Informationen über die Struktur des Mediensystems, die nationalen Gesetze und die Studien zur Medienkonzentration und -vielfalt austauschen.

Die zweite Empfehlung über die Aufgaben der öffentlich-rechtlichen Medien in der Informationsgesellschaft bezieht sich in erster Linie auf die Folgen der neuen digitalen Umgebung und die spezifische Rolle der öffentlich-rechtlichen Sender in der Informationsgesellschaft. Die jüngeren Generationen zögen die neuen Kommunikationsdienste den traditionellen vor, und der öffentlich-rechtliche Auftrag sei im digitalen Zeitalter umso bedeutender und könne über verschiede Plattformen angeboten werden, sodass öffentlich-rechtliche Medien entstehen (zu denen für die Zwecke der Empfehlung keine Printmedien gehören). Der Text empfiehlt den Mitgliedstaaten Folgendes: Garantie der wichtigen Rolle der öffentlich-rechtlichen Medien in der neuen digitalen Umgebung; Aufnahme spezifischer Regelungen zum Auftrag öffentlich-rechtlicher Medien in das nationale Recht, insbesondere zu den neuen Kommunikationsdiensten; Garantie der finanziellen und organisatorischen Bedingungen für die öffentlich-rechtlichen Medien, die für die Erfüllung ihrer Aufgaben in der neuen digitalen Umgebung nötig sind; Schaffung von Bedingungen, welche die öffentlich-rechtlichen Medien in die Lage versetzen, den Herausforderungen der Informationsgesellschaft wirksam zu begegnen und dabei die duale öffentlich-rechtlich/private Struktur der elektronischen Medienlandschaft in Europa zu beachten und die Fragen des Marktes und des Wettbewerbs nicht aus den Augen zu verlieren; Sicherung des allgemeinen Zugangs zu den öffentlich-rechtlichen Medien für alle Personen und gesellschaftlichen Gruppen. Die Mitgliedstaaten müssen außerdem die Empfehlung und die wichtigsten im Text enthaltenen Leitprinzipien für deren Umsetzung bekannt machen.

- *Declaration of the Committee of Ministers on protecting the role of the media in democracy in the context of media concentration, 31 January 2007* (Erklärung des Ministerkomitees zum Schutz der Rolle der Medien in der Demokratie im Zusammenhang mit der Medienkonzentration, 31. Januar 2007)
  http://merlin.obs.coe.int/redirect.php?id=10627
- *Recommendation Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content, 31 January 2007* (Empfehlung Rec(2007)2 des Ministerkomitees an die Mitgliedstaaten über den Pluralismus der Medien und die Vielfalt von Medieninhalten, 31. Januar 2007)
  http://merlin.obs.coe.int/redirect.php?id=10629

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- *Recommendation Rec(2007)3 of the Committee of Ministers to member states on the remit of public service media in the information society, 31 January 2007* (Empfehlung Rec(2007)3 des Ministerkomitees an die Mitgliedstaaten über den Auftrag der öffentlich-rechtlichen Medien in der Informationsgesellschaft, 31. Januar 2007) http://merlin.obs.coe.int/redirect.php?id=10631

IRIS 2007-3/5

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2006

Ministerkomitee: Erklärung zur Unabhängigkeit des öffentlichen Rundfunks in den Mitgliedstaaten

Eugen Cibotaru

Europarat, Directorate of Human Rights

Am 27. September 2006 hat das Ministerkomitee eine Erklärung zur Gewährleistung der Unabhängigkeit des öffentlichen Rundfunks in den Mitgliedstaaten verabschiedet. Das vom Lenkungsausschuss für Medien und neue Kommunikationsdienste (CDMC) vorbereitete Dokument steht in logischer Folge zum Aktionsplan, der auf der 7. europäischen Ministerkonferenz über die Politik der Massenmedien verabschiedet worden war (Kiew, März 2005). Darin ist vorgesehen, die Umsetzung der Empfehlung R(96) 10 des Ministerkomitees über die Unabhängigkeit des öffentlichen Rundfunks in den Mitgliedstaaten zu überwachen, um gegebenenfalls zusätzliche Leitlinien für die Mitgliedstaaten darüber, wie diese Unabhängigkeit zu gewährleisten ist, vorzugeben.

Das Ministerkomitee stellt fest, dass die Situation in einigen Ländern zwar zufriedenstellend ist, gemäß dem Anhang zur Erklärung, der einen Überblick über die Situation in den Ländern gibt, in anderen Mitgliedstaaten jedoch durchaus zu wünschen übrig lässt. Die Delegierten zeigen sich besorgt darüber, wie langsam bzw. wie unzureichend die Fortschritte in mehreren anderen Mitgliedstaaten sind, die die Unabhängigkeit des öffentlichen Rundfunks gewährleisten sollen; dies liege am Fehlen eines angemessenen Rechtsrahmens bzw. an der Unfähigkeit, die geltenden Regelungen und Gesetze anzuwenden.

Vor diesem Hintergrund appelliert das Ministerkomitee an die Mitgliedstaaten, für eine Gewährleistung der Unabhängigkeit des öffentlichen Rundfunks zu sorgen und dabei die Vorteile und Herausforderungen, die die Informationsgesellschaft bringt, sowie die politischen, wirtschaftlichen und technologischen Veränderungen in Europa zu berücksichtigen. Die Delegierten fordern die Mitgliedstaaten dazu auf, den Organen des öffentlich-rechtlichen Rundfunks die für die Gewährleistung einer echten redaktionellen Autonomie und Unabhängigkeit notwendigen rechtlichen, politischen, finanziellen, technischen und sonstigen Mittel an die Hand zu geben, mit denen eine politische oder wirtschaftliche Einmischung verhindert werden kann.

- *Declaration by the Committee of Ministers on guaranteeing the independence of public service broadcasting in the Member States (adopted by the Committee of Ministers on 27 September 2006 at the 974th meeting of the Ministers' Delegates)* (Erklärung des Ministerkomitees zur Gewährleistung der Unabhängigkeit des öffentlichen Rundfunks in den Mitgliedstaaten (am 27. September 2006 im Rahmen der 974. Versammlung der Ministerdelegierten vom Ministerkomitee verabschiedet)) http://merlin.obs.coe.int/redirect.php?id=10423

IRIS 2006-10/5

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Ministerkomitee: Empfehlung über die Stärkung von Kindern im neuen Informations- und Kommunikationsumfeld

Lee Hibbard

Europarat, Directorate of Human Rights

Das Leben von Kindern und Jugendlichen verändert sich. Demographische Trends, variierende Familienstrukturen, flexible Arbeitsbedingungen und vieles mehr zeigen deutlich, dass sich die heutige Kindheit in Europa in einem Umwälzungsprozess befindet. Angesichts der Tatsache, dass Kinder durchschnittlich mehr Stunden vor einem Bildschirm verbringen als mit ihren Erziehern oder Eltern, wird offensichtlich, dass sich Kinder und Jugendliche vom Konsum traditioneller Medienformen ab- und stattdessen einer kreativeren und individuelleren Kommunikationsform (*Peer-to-Peer*) zuwenden, um sich zu äußern und zu informieren.

In diesem Zusammenhang und als Antwort auf den Aufruf der 46 Staats- und Regierungschefs des Europarats während ihres dritten Gipfeltreffens in Warschau im Mai 2005, die Maßnahmen zur Medienkompetenz von Kindern - insbesondere ihren aktiven und kritischen Umgang mit allen Medien sowie ihren Schutz gegen schädliche Inhalte - zu verstärken, bereitete der Europarat eine Empfehlung über die Stärkung von Kindern im neuen Informations- und Kommunikationsumfeld vor (verabschiedet vom Ministerkomitee am 27. September 2006).

Eines der grundlegenden Merkmale dieser Empfehlung ist, dass sie Internettechnologien und -dienste als positive Tools betrachtet, die nicht gefürchtet werden müssen (besonders von Erziehern wie Lehrern und Eltern), sondern im Gegenteil zu begrüßen sind. Aus diesem Grund betont die Empfehlung, wie wichtig es sei, dass Kinder mit diesen Technologien und Diensten möglichst früh im Rahmen ihrer schulischen Ausbildung vertraut werden und lernen, sie zu nutzen.

Die Empfehlung hebt hervor, dass die Kinder nicht nur lernen müssen, die Technologien und Dienste aktiv, kritisch und anspruchsvoll zu nutzen, sondern gleichzeitig lernen sollen, wie sie ihre Rechte und Freiheiten im Internet ausüben (und ausleben) können. Die Menschenrechte stehen in engem Zusammenhang mit diesem Lern- und Qualifizierungsprozess, sie spielen eine Schlüsselrolle dabei, wie Kinder lernen, mit anderen verantwortungsbewusst und respektvoll zu kommunizieren.

Durch den Erwerb derartiger Kenntnisse und Fähigkeiten sind Kinder der Empfehlung zufolge besser in der Lage, Inhalte (wie Gewalt und Selbstzerstörung, Pornografie, Diskriminierung und Rassismus) und Verhaltensweisen (z. B. Anbaggern, Mobbing, Belästigung oder Auflauern), die schädlich sein können, einzuordnen und mit ihnen umzugehen, wodurch sich wiederum das Gefühl des Vertrauens und Wohlbefindens steigert.

Die Mitgliedstaaten werden ermutigt, bei der Entwicklung und Vereinfachung von Strategien für den Erwerb von Informations-/Medienkenntnissen und -kompetenz durch Kinder werden mit anderen maßgeblichen, nichtstaatlichen Akteuren zusammenzuarbeiten - insbesondere aus der Zivilgesellschaft, dem Privatsektor und den Medien -, um die Motivationen und das Verhalten von Kindern im Internet besser zu verstehen und ihren Erziehern (Eltern und Lehrern) dabei zu helfen, schädliche Inhalte und Verhaltensweisen zu erkennen und verantwortungsbewusst zu reagieren.

- *Recommendation Rec(2006)12 of the Committee of Ministers to member states on empowering children in the new information and communications environment (Adopted by the Committee of Ministers on 27 September 2006 at the 974th meeting of the Ministers' Deputies)* (Empfehlung Nr. R (2006)12 des Ministerkomitees an die

Mitgliedstaaten über die Stärkung von Kindern im neuen Informations- und Kommunikationsumfeld (Verabschiedet vom Ministerkomitee am 27. September 2006 beim Treffen 974 der Ständigen Vertreter))
http://merlin.obs.coe.int/redirect.php?id=10466

IRIS 2006-10/4

Empfehlung zum UNESCO-Übereinkommen zum Schutz der Kulturvielfalt

Mara Rossini

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Das Ministerkomitee hat am 1. Februar 2006 eine Empfehlung verabschiedet, in der die Mitgliedstaaten des Europarates aufgefordert werden, das Übereinkommen der UNESCO zum "Schutz und zur Förderung der Vielfalt kultureller Ausdrucksformen" zu ratifizieren, es anzunehmen, es zu genehmigen oder ihm beizutreten (siehe IRIS 2005-10: 2).

Dieses Übereinkommen, das auf der 33. Generalkonferenz der UNESCO verabschiedet wurde, bekräftigt das uneingeschränkte Recht von Staaten, ihre Kulturpolitik zu formulieren und umzusetzen sowie Maßnahmen zum Schutz und zur Förderung der kulturellen Vielfalt zu ergreifen. Es unterstreicht die Bedeutung von internationaler und regionaler Zusammenarbeit sowie den Beitrag der zivilen Gesellschaft. Das Ziel besteht im Wesentlichen darin, die Schaffung von Voraussetzungen zu fördern, die dem Schutz und der Förderung der kulturellen Ausdrucksformen zuträglich sind, sowie den kulturpolitischen Dialog zu erleichtern. Dazu könnten Regulierungsmaßnahmen, finanzielle Hilfen, die Einrichtung und Unterstützung von öffentlichen Institutionen sowie Maßnahmen zur Verbesserung der Medienvielfalt (zum Beispiel durch den öffentlich-rechtlichen Rundfunk) gehören.

Das Ministerkomitee hebt die Tatsache hervor, dass die Ziele und Leitprinzipien dieses UNESCO-Übereinkommens mit denen übereinstimmen, die der Europarat in diversen Instrumenten zum Thema Kultur und Medien vorgegeben hat.

Die Empfehlung schließt mit der Erklärung, dass das Ministerkomitee dieses Übereinkommen nicht nur als Ergänzung bereits bestehender Instrumente zur Förderung der Meinungsfreiheit begrüßt, sondern auch seine Umsetzung unterstützen wird.

Das Übereinkommen der UNESCO zum Schutz und zur Förderung der Vielfalt kultureller Ausdrucksformen tritt nach Ratifizierung, Annahme, Genehmigung oder Beitritt durch dreißig Staaten oder Organisationen für regionale wirtschaftliche Integration in Kraft.

- *Recommendation Rec(2006)3 of the Committee of Ministers to member states on the UNESCO Convention on the protection and promotion of the diversity of cultural expressions adopted by the Committee of Ministers on 1 February 2006* (Empfehlung Rec(2006)3 des Ministerkomitees an die Mitgliedstaaten zum UNESCO-Übereinkommen zum Schutz und zur Förderung der Vielfalt kultureller Ausdrucksformen, verabschiedet vom Ministerkomitee am 1. Februar 2006)
  http://merlin.obs.coe.int/redirect.php?id=10044

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2005

Ministerkomitee: Erklärung über Menschenrechte in der Informationsgesellschaft

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Am 13. Mai verabschiedete das Ministerkomitee des Europarats eine Erklärung über die Achtung von Menschenrechten und Rechtsstaatlichkeit in der Informationsgesellschaft. Die Erklärung wird als Beitrag des Europarats anlässlich der zweiten Phase des Weltgipfels zur Informationsgesellschaft (WSIS, siehe IRIS 2004-2: 2) im November 2005 in Tunis vorgelegt werden.

Der erste Abschnitt der Erklärung trägt den Titel „Menschenrechte in der Informationsgesellschaft". Betreffend „das Recht auf Meinungs-, Informations- und Kommunikationsfreiheit" stellt der Artikel die Behauptung auf, dass bestehende Schutzstandards in digitalen und nicht digitalen Umfeldern gleichermaßen Anwendung finden sollten, und dass eventuelle Einschränkungen dieses Rechts nicht über die in Artikel 10 der Europäischen Menschenrechtskonvention (EMRK) verankerten Schranken hinausgehen sollten. Der Artikel fordert die Verhinderung staatlicher und privater Formen der Zensur sowie die Ausweitung nationaler Maßnahmen zur Bekämpfung rechtswidriger Inhalte (z. B. Rassismus, rassistisch motivierte Diskriminierung und Kinderpornographie) auf strafbare Handlungen, die unter Nutzung der Informations- und Kommunikationstechnologien (IKTs) begangen werden. In diesem Zusammenhang wird auch auf eine größere Einhaltung des Zusatzprotokolls zur Cybercrime-Konvention (siehe IRIS 2003-1: 3) gedrängt.

Desgleichen kann, ungeachtet eventueller relevanter Folgen der IKT-Nutzung, das Recht auf Privatsphäre und Privatkorrespondenz nicht Einschränkungen unterstellt werden, die über die in Artikel 8 der EMRK erlaubten Einschränkungen hinausgehen. Dies bezieht sich auch auf den Inhalt und die Verkehrsdaten von elektronischer Kommunikation; gemäß der Erklärung wird beides von Artikel 8 abgedeckt. Für die automatische Erfassung personenbezogener Daten gelten jedoch die Bestimmungen der Konvention zur automatischen Erfassung personenbezogener Daten.

Des Weiteren betont der erste Abschnitt der Erklärung die Bedeutung des Rechts auf Bildung und Ausbildung und der Förderung nicht-diskriminierenden Zugangs zu neuen Informationstechnologien; des Verbots der Sklaverei, der Zwangsarbeit und des Menschenhandels; des Rechts auf eine faire Gerichtsverhandlung und auf das Prinzip „keine Strafe ohne Gesetz"; des Schutzes von Eigentum; des Rechts auf freie Wahlen und Versammlungsfreiheit. Der besondere Stellenwert der IKTs wird bezüglich obenstehender Grundsätze speziell berücksichtigt.

Der zweite Abschnitt der Erklärung betrifft die Herausbildung einer „ inclusive information society", d. h. einer Informationsgesellschaft, die allen demographischen Gruppen zugänglich ist und eine aktive Teilhabe ermöglicht. Einzeln aufgeführt werden diesbezüglich die verschiedenen Rollen und Verantwortlichkeiten der wichtigsten Akteure, die in einer „multi-stakeholder governance approach", d. h. einem Ansatz der Einbeziehung aller Beteiligten, eingebunden werden. Als Parteien, die mit der Entwicklung von Reformprogrammen und sowohl regulatorischen als auch nicht regulatorischen Modellen zur Reaktion auf die aus der rasanten Entwicklung der Informationsgesellschaft entstehenden Herausforderungen und Probleme beauftragt werden, wurden genannt: Mitgliedstaaten des

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Europarates, die Zivilgesellschaft, Akteure aus dem privaten Sektors und der Europarat. Betreffend letzteren, wurde u. a. ausdrücklich auf den Aktionsplan hingewiesen, der von der 7. Europäischen Ministerkonferenz über Massenmedienpolitik (Kiew, März 2005) verabschiedet wurde.

Die Erklärung wurde vom Multidisziplinaren Ad-Hoc-Expertenkomitee zur Informationsgesellschaft (CAHSI) des Europarates verfasst (siehe IRIS 2005-5: 17).

- *Declaration of the Committee of Ministers on human rights and the rule of law in the Information Society, 13 May 2005, CM(2005)56 final* (Erklärung des Ministerkomitees über die Achtung der Menschenrechte und der Rechtsstaatlichkeit in der Informationsgesellschaft, 13. Mai 2005, MK(2005)56 endg.) http://merlin.obs.coe.int/redirect.php?id=9663

IRIS 2005-6/2

Ministerkomitee: Erklärung zur Meinungs- und Informationsfreiheit in den Medien im Kontext der Terrorismusbekämpfung

Francisco Javier Cabrera Blázquez

Europäische Audiovisuelle Informationsstelle

Am 2. März 2005 hat das Ministerkomitee des Europarats eine Erklärung zur Meinungs- und Informationsfreiheit in den Medien im Kontext der Terrorismusbekämpfung verabschiedet.

Das Ministerkomitee verurteilt darin einstimmig alle Terrorakte unabhängig davon, wo und von wem sie begangen werden, als kriminell und nicht zu rechtfertigen, und unterstreicht die dramatischen Auswirkungen des Terrorismus auf den uneingeschränkten Genuss der Menschenrechte. Gleichzeitig stellt es fest, dass jeder Staat die Pflicht habe, die Menschenrechte und Grundfreiheiten aller Menschen zu schützen. Die Prinzipien der Meinungs- und Informationsfreiheit seien grundlegende Elemente einer demokratischen und pluralistischen Gesellschaft und eine Voraussetzung für den Fortschritt der Gesellschaft und für die Entwicklung von Menschen.

Das Ministerkomitee vertritt die Ansicht, dass die freie und ungehinderte Verbreitung von Informationen und Ideen eines der wirksamsten Mittel zur Förderung von Verständnis und Toleranz sei. Es könne dazu beitragen, dem Terrorismus vorzubeugen oder ihn zu bekämpfen. Staaten seien bei Einschränkungen der Meinungs- und Informationsfreiheit an Artikel 10 der Europäischen Menschenrechtskonvention gebunden. Darüber hinaus gehenden Maßnahmen seien nur unter den strengen Bedingungen des Artikels 15 der Konvention (Abweichen im Notstandsfall) möglich. Daher müssten die Staaten in ihrem Kampf gegen den Terrorismus darauf achten, keine Maßnahmen zu ergreifen, die den Menschenrechten und Grundfreiheiten, einschließlich des Rechts auf freie Meinungsäußerung, entgegenstehen. Das Ministerkomitee weist insbesondere darauf hin, wie wertvoll Selbstregulierungsmaßnahmen der Medien im besonderen Kontext der Terrorismusbekämpfung sein können.

Die Erklärung fordert die Behörden der Mitgliedstaaten auf:

- keine neuen Einschränkungen der Meinungs- und Informationsfreiheit in den Medien einzuführen, sofern dies in einer demokratischen Gesellschaft nicht absolut notwendig und angemessen ist, und nur nach gründlicher Prüfung, ob bestehende Gesetze oder andere Maßnahmen nicht bereits ausreichend sind;

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- von Maßnahmen abzusehen, die die Medienberichterstattung über Terrorismus mit Unterstützung des Terrorismus gleichsetzen;

- im Einklang mit der nationalen Gesetzgebung den Zugang der Journalisten zu regelmäßig aktualisierten Informationen sicherzustellen, insbesondere durch die Ernennung von Sprechern und die Veranstaltung von Pressekonferenzen;

- den Medien unter Wahrung des Prinzips der Unschuldsvermutung und des Rechts auf Achtung der Privatsphäre angemessene Informationen zur Verfügung zu stellen;

- Medienschaffenden den Zugang zu Schauplätzen terroristischer Handlungen nicht zu verwehren, es sei denn, dass die Wahrung der Sicherheit von Terrorismusopfern oder der Vollstreckungskräfte in einer laufenden Antiterror-Aktion, die Untersuchung oder die Wirksamkeit von Sicherheitsmaßnahmen dies erfordert; in allen Fällen, in denen die Behörden entscheiden, den Zugang zu beschränken, sollten sie die Gründe für die Beschränkung erklären, und deren Dauer sollte den Umständen angemessen sein; außerdem sollte eine von den Behörden autorisierte Person die Journalisten bis zur Aufhebung der Beschränkungen mit Informationen versorgen;

- das Recht der Medien zu garantieren, von den Anschuldigungen der Justizbehörden gegen Angeklagte in Antiterrorprozessen Kenntnis zu erlangen und diese Prozesse zu verfolgen und im Einklang mit der nationalen Gesetzgebung und unter Beachtung der Unschuldsvermutung und der Privatsphäre über sie zu berichten; unbeschadet der in Artikel 6 Absatz 1 der Europäischen Menschenrechtskonvention genannten Ausnahmen dürfen diese Rechte nur aufgrund gesetzlicher Vorschriften eingeschränkt werden, wenn ihre Ausübung geeignet ist, die Geheimhaltung von Untersuchungen und polizeilichen Ermittlungen zu gefährden oder den Abschluss des Prozesses zu verzögern oder zu behindern;

- den Medien unbeschadet des Rechts auf Privatsphäre das Recht auf Berichterstattung über den Strafvollzug zu garantieren;

- im Einklang mit Artikel 10 der Europäischen Menschenrechtskonvention und der Empfehlung Nr. R (2000) 7 das Recht der Journalisten auf Geheimhaltung ihrer Informationsquellen zu respektieren; die Terrorbekämpfung gestattet den Behörden nicht, dieses Recht durch Überschreitung des aufgrund dieser Texte zulässigen Rahmens zu umgehen;

- die redaktionelle Unabhängigkeit der Medien strikt zu respektieren und ihnen gegenüber daher auf jegliche Druckausübung zu verzichten;

- die Ausbildung von Journalisten und anderen Medienschaffenden im Hinblick auf ihren Schutz und ihre Sicherheit zu fördern und, wo dies angemessen ist und, sofern die Umstände es zulassen, mit ihrem Einverständnis Maßnahmen zum Schutz von Journalisten oder anderen Medienschaffenden, die von Terroristen bedroht werden, zu ergreifen;

Die Empfehlung fordert Medien und Journalisten auf, über folgende Anregungen nachzudenken:

- Sie sollten ihre besondere Verantwortung im Zusammenhang mit dem Terrorismus nicht aus den Augen verlieren, um nicht die Ziele des Terrorismus zu unterstützen; insbesondere sollten sie darauf achten, nicht das Angstgefühl zu verstärken, das Terrorakte auslösen können, und sie sollten den Terroristen nicht dadurch eine Plattform bieten, dass sie ihnen unverhältnismäßige Aufmerksamkeit schenken.

- Sie sollten Selbstregulierungsmaßnahmen ergreifen, sofern sie nicht schon bestehen, oder bestehende Maßnahmen so anpassen, dass sie wirksam auf die ethischen Fragen, die durch

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die Medienberichterstattung über den Terrorismus aufgeworfen werden, angewandt werden können und diese Maßnahmen auch umsetzen.

- Sie sollten auf jegliche Selbstzensur verzichten, deren Wirkung darin bestünde, der Öffentlichkeit Informationen vorzuenthalten, die zur Meinungsbildung wichtig wären.

- Sie sollten daran denken, welche bedeutende Rolle sie bei der Verhinderung von Hassäußerungen und Aufhetzung zu Gewalt sowie bei der Förderung des gegenseitigen Verständnisses spielen können.

- Sie sollten sich des Risikos bewusst sein, dass Medien und Journalisten unbeabsichtigt als Sprachrohr für Gefühlsäußerungen von Rassismus, Fremdenfeindlichkeit oder Hass dienen können.

- Sie dürfen mit den von ihnen verbreiteten Informationen nicht die Sicherheit von Personen, die Durchführung von Terrorbekämpfungs-Operationen oder die Terrorermittlungen der Justiz aufs Spiel setzen.

- Sie sollten die Würde, die Sicherheit und die Anonymität der Opfer von Terrorakten und ihren Familien sowie deren in Artikel 8 der Europäischen Menschenrechtskonvention garantiertes Recht auf Achtung des Privatlebens wahren.

- Sie sollten bei Personen, die im Zusammenhang mit der Terrorbekämpfung strafrechtlich verfolgt werden, das Recht auf die Unschuldsvermutung respektieren.

- Sie dürfen nicht vergessen, wie wichtig es ist, zwischen mutmaßlichen und verurteilten Terroristen und der (nationalen, ethischen, religiösen oder ideologischen) Gruppe zu der sie gehören oder zu der sie sich zählen, zu unterscheiden,.

- Sie sollten die Art und Weise abwägen, in der sie die Öffentlichkeit über Fragen des Terrorismus informieren, insbesondere durch Konsultation der Öffentlichkeit, durch analytische Sendungen, Artikel und Diskussionen, und sie sollten die Öffentlichkeit über die Ergebnisse dieser Abwägungen informieren.

- Sie sollten in Zusammenarbeit mit ihren Berufsverbänden Fortbildungen für Journalisten und andere Medienschaffende, die über Terrorismus berichten, einrichten und diese zur Teilnahme auffordern; in diesen Kursen sollte es um ihre Sicherheit gehen und um den geschichtlichen, kulturellen, religiösen und weltpolitischen Kontext der Szenen, über die sie berichten.

Das Ministerkomitee stimmt abschließend zu, die Initiativen der Regierungen der Mitgliedstaaten, die der Intensivierung insbesondere rechtlicher Maßnahmen zur Terrorismusbekämpfung dienen, zu überwachen, soweit diese die Freiheit der Medien beeinträchtigen könnten, und fordert die Parlamentarische Versammlung auf, dies ebenfalls zu tun.

- *Declaration on freedom of expression and information in the media in the context of the fight against terrorism (Adopted by the Committee of Ministers on 2 March 2005 at the 917th meeting of the Ministers' Deputies)* (Erklärung zur Meinungs- und Informationsfreiheit in den Medien im Kontext der Terrorismusbekämpfung, verabschiedet vom Ministerkomitee bei der 917. Sitzung der Ministerdelegierten am 2. März 2005))
  http://merlin.obs.coe.int/redirect.php?id=9561

IRIS 2005-3/1

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2004

Ministerkomitee: Recht auf Gegendarstellung in neuem Medienumfeld

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Das Ministerkomitee des Europarates verabschiedete am 15. Dezember 2004 die Empfehlung Rec (2004) 16 über das Recht auf Gegendarstellung im neuen Medienumfeld. Die Empfehlung ändert die Entschließung (74) 26 des Ministerkomitees über das Recht auf Gegendarstellung - Stellung der Einzelperson gegenüber der Presse, indem sie die darin dargelegten wesentlichen Grundsätze und Bestimmungen für das digitale Zeitalter umgestaltet.

In ihrem einleitenden Abschnitt erkennt die Empfehlung an, dass das Recht auf Gegendarstellung „nicht nur durch Gesetzgebung, sondern auch durch Ko- oder Selbstregulierungsmaßnahmen" gewährleistet werden kann. Sie betont darüber hinaus, dass dieses Recht „unbeschadet anderer Rechte für Personen gilt, deren Recht auf Würde, Ehre, Ansehen oder Schutz der Privatsphäre in den Medien verletzt wurde".

Die Empfehlung führt eine Reihe grundlegender Prinzipien auf, deren Ausübung vom Ministerkomitee als „an die Besonderheiten jeder Medienform" anpassbar eingestuft wird. Zunächst gilt das Recht auf Gegendarstellung für alle natürlichen oder juristischen Personen. Zweitens sollte ein Antrag auf Gegendarstellung innerhalb „relativ kurzer Zeit nach Veröffentlichung der angefochtenen Information“ gestellt werden. Das betroffene Medium sollte daraufhin „die Gegendarstellung unverzüglich veröffentlichen“. Drittens sollte der Gegendarstellung (nach Möglichkeit) die gleiche Bedeutung beigemessen werden wie der angefochtenen Information“. Viertens sollte die Gegendarstellung „für die betroffene Person gebührenfrei“ veröffentlicht werden.

Ausnahmen wie etwa Möglichkeiten für ein Medium, einen Antrag auf Gegendarstellung abzulehnen, könnten im Recht oder in der Verfahrenspraxis der einzelnen Staaten für die folgenden Fälle vorgesehen werden: Wenn die Gegendarstellung übermäßig lang ist, um die angefochtene Information zu berichtigen; „wenn sich die Gegendarstellung nicht auf eine Richtigstellung der angefochtenen Tatsachen beschränkt“; „wenn die Veröffentlichung eine strafbare Handlung beinhalten würde, der Inhaltsanbieter zivilrechtlich haftbar würde oder gegen die guten Sitten verstieße“; wenn sie mit den gesetzlich geschützten Interessen Dritter unvereinbar ist; mangels Beweises eines berechtigten Interesses; wenn die Gegendarstellung in einer anderen Sprache verfasst ist als die angefochtene Information, oder wenn die angefochtene Information Teil eines wahrheitsgetreuen Berichts über „öffentliche Sitzungen der Behörden oder der Gerichte darstellt“.

Das Ministerkomitee zieht Verfahrensgarantien und andere Schutzmaßnahmen für die tatsächliche Ausübung des Rechts auf Gegendarstellung in Betracht. Die Medien sollten gewährleisten, dass ihre Anlaufstellen für die Entgegennahme von Anträgen auf Gegendarstellung der Öffentlichkeit zugänglich sind. Das Ministerkomitee fordert, dass „das Recht oder die Verfahrenspraxis der einzelnen Staaten bestimmen sollten, in welchem Maße die Medien verpflichtet sind, eine Kopie von öffentlich zugänglichen Informationen oder Programmen für eine angemessenen Zeitdauer aufzubewahren". Die Bestimmung hinsichtlich elektronischer Archive ist (jedenfalls gegenüber der vorherigen Fassung) ein Novum der Empfehlung. Das Ministerkomitee bringt vor, dass, „wenn die angefochtene

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Information in elektronischen Archiven öffentlich zugänglich ist und ein Recht auf Gegendarstellung gewährt wurde, möglichst eine Verbindung zwischen den beiden hergestellt werden sollte, um den Nutzer darauf aufmerksam zu machen, dass zur ursprünglichen Information ein Kommentar erfolgt ist".

Die Empfehlung schließt mit einer Regelung zur Beilegung von Streitigkeiten, die die Möglichkeit einräumt, bei „einem Gericht oder einer anderen zur Anordnung der Veröffentlichung der Gegendarstellung ermächtigten Instanz" den Rechtsweg einzuleiten.

- Empfehlung Rec (2004) 16 des Ministerkomitees an die Mitgliedstaaten über das Recht auf Gegendarstellung im neuen Medienumfeld, 15. Dezember 2004 http://merlin.obs.coe.int/redirect.php?id=15508

IRIS 2005-1/108

Ministerkomitee: Erklärung zur politischen Redefreiheit in den Medien

Christophe Poirel

Europarat, Directorate of Human Rights

Das Ministerkomitee des Europarates hat am 12. Februar 2004 eine Erklärung zur politischen Redefreiheit in den Medien verabschiedet. Bei diesem Text handelt es sich in erster Linie um eine politische Botschaft, um eine Stellungnahme des Ministerkomitees mit Blick auf die zu zahlreichen Restriktionen im Bereich der Meinungsäußerung und der Informationsverbreitung im Hinblick auf politische Verantwortungsträger und Beamte.

Ohne ausführlich auf den Inhalt der Erklärung eingehen zu wollen, sei darauf hingewiesen, dass sich der Text insbesondere auf Artikel 10 der Europäischen Menschenrechtskonvention sowie auf die Rechtsprechung des Straßburger Gerichtshofes beruft.

In der Erklärung wird das Recht der Medien bekräftigt, negative Informationen und kritische Meinungen über politische Persönlichkeiten und Institutionen Staat, Regierung oder jedwedes andere Organ der exekutiven, gesetzgebenden oder richterlichen Gewalt sowie über Beamte zu verbreiten. Es wird festgehalten, dass humoristische und satirische Elemente einen höheren Grad an Übertreibung und Provokation erlauben, vorausgesetzt, der Zuschauer wird, was die Informationen betrifft, nicht in die Irre geführt.

In der Erklärung wird daran erinnert, dass Informationen über das Privatleben von Politikern und Beamten verbreitet werden dürfen, wenn es sich um ein Thema von öffentlichem Interesse handelt, das unmittelbar mit der Art der Ausübung der Funktion verbunden ist.

Politiker und Beamte sollten nicht über eine größeren Schutz ihres Ansehens und ihrer anderen Rechte verfügen als Privatpersonen im Falle einer Verletzung ihrer Rechte in den Medien. Eventuelle Sanktionen, die den Medien aufzuerlegen wären, müssten im Verhältnis zur nachgewiesenen Verletzung stehen, eine Haftstrafe dürfe nur in Ausnahmefällen verhängt werden.

Die Erklärung stieß auf großes Interesse. Hiervon zeugt die Schnelligkeit, mit der sie von den Regierungs- bzw. Nichtregierungsorganisationen übersetzt wurde, insbesondere in folgenden Ländern: Armenien, Bosnien-Herzegowina, Polen, Russland, Serbien-Montenegro, Slowakei, Türkei und Ukraine.

Manch einer mag bedauern, dass der Text nicht mutiger formuliert ist und insbesondere nicht definitiv und eindeutig Stellung gegen Gefängnisstrafen wegen Verleumdung bezieht. Die Anwendung von Gefängnisstrafen wird im Text zwar nicht uneingeschränkt untersagt, doch

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sollten derartige Strafen nur angewendet werden, wenn sie im Hinblick auf eine Verletzung der Grundrechte Dritter unabdingbar sind, etwa wenn ein strittiger Ausspruch zum Rassenhass anstiftet.

- Erklärung zur politischen Redefreiheit in den Medien (verabschiedet vom Ministerkomitee am 12. Februar 2004, anlässlich der 872. Versammlung der Ministervertreter)

IRIS 2004-3/2

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2003

Ministerkomitee: zwei Empfehlungen über Medien und Strafverfahren verabschiedet

Christophe Poirel

Europarat, Directorate of Human Rights

Die Frage nach der Medien-Berichterstattung über Strafverfahren ist weltweit ein steter Diskussionsgegenstand zwischen Verfechtern einer absoluten Informations- und Meinungsäußerungsfreiheit hinsichtlich der Strafverfahren und solchen, die im Namen des Rechts auf Unschuldsvermutung, auf ein faires Gerichtsverfahren oder auf Schutz der Privatsphäre zur Einschränkung dieser Freiheit aufrufen. In den vergangenen Jahren wurden in verschiedenen europäischen Staaten zahlreiche Fehler begangen, was teilweise verheerende Folgen für die an den Verfahren beteiligten Personen und deren Familien hatte. Die Frage ist also äußerst heikel, komplex und von allgemeinem Interesse.

Das Ministerkomitee des Europarats hat am 10. Juli 2003 eine Empfehlung über die Beschaffung von Informationen durch die Medien in Zusammenhang mit Strafverfahren verabschiedet. Sie richtet sich an die Regierungen der Mitgliedstaaten und soll auf all die Fragen und Unklarheiten eine Antwort geben. Die Empfehlung ist das Ergebnis einer zweijährigen Arbeit des Lenkungsausschusses für Massenkommunikationsmittel des Europarats (*Comité directeur sur les moyens de communication de masse* - CDMM) und bestimmt einige der von den an Strafverfahren beteiligten Behörden (Polizei und Justiz) anzuwendenden Grundsätze. So sollen beispielsweise die Grundsätze hinsichtlich des Zugangs zu Verhandlungs- bzw. Gerichtssälen den Medien ermöglichen, die Öffentlichkeit über die Strafverfahren zu informieren und gleichzeitig die Rechte der beteiligten Parteien zu gewährleisten.

Die Empfehlung wurde auf der Grundlage der Rechtssprechung des Europäischen Gerichtshofs für Menschenrechte ausgearbeitet und beruht auf Artikel 6 (Recht auf ein faires Verfahren), Artikel 8 (Recht auf Achtung des Privat- und Familienlebens) und Artikel 10 (Freiheit der Meinungsäußerung) der Europäischen Menschenrechtskonvention. Sie wird durch eine Erklärung ergänzt, die den Medien und journalistischen Berufsorganisationen in Bezug auf Ermittlungen und Reportagen über Strafverfahren eine Hilfe darstellen soll, was beispielsweise das Recht auf Würde, persönliche Sicherheit sowie Privatsphäre von Verdächtigten und Angeklagten anbelangt.

- *Declaration on the provision of information through the media in relation to criminal proceedings (adopted by the Committee of Ministers on 10 July 2003 at the 848th meeting of the Ministers' Deputies)* (Erklärung zur Verbreitung von Informationen und Meinungen seitens der Medien im Zusammenhang mit Strafverfahren (am 10. Juli 2003 vom Ministerkomitee an der 848. Abgeordnetenversammlung verabschiedet)) http://merlin.obs.coe.int/redirect.php?id=8670

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- *Recommendation Rec(2003)13 of the Committee of Ministers to the member states on the provision of information through the media in relation to criminal proceedings (adopted by the Committee of Ministers on 10 July 2003 at the 848th meeting of the Ministers' Deputies)* (Empfehlung R(2003)13 des Ministerkomitees der Mitgliedstaaten zur Verbreitung von Informationen und Meinungen seitens der Medien im Zusammenhang mit Strafverfahren (am 10. Juli 2003 vom Ministerkomitee auf der 848. Abgeordnetenversammlung verabschiedet)) http://merlin.obs.coe.int/redirect.php?id=8672

IRIS 2003-8/4

Ministerkomitee: Erklärung zur Kommunikationsfreiheit im Internet

Páll Thórhallsson

Europarat, Directorate of Human Rights

Am 28. Mai 2003 verabschiedete das Ministerkomitee des Europarats eine Erklärung zur Kommunikationsfreiheit im Internet. Das Ziel der Erklärung besteht darin, die Bedeutung der Meinungsfreiheit und des freien Informationsflusses im Internet zu bekräftigen. Wie schon in der Präambel formuliert, ist das Ministerkomitee besorgt angesichts der Versuche, den öffentlichen Zugang zu Kommunikation über das Internet aus politischen Gründen oder sonstigen, den demokratischen Grundsätzen widersprechenden Erwägungen zu beschränken.

In der Erklärung wird dargelegt, dass Internet-Inhalte keinen Beschränkungen unterliegen sollten, die über solche hinausgehen, die auf andere Mittel zur Inhalteübertragung angewendet werden. Wenn auch die Frage unbeantwortet bleibt, ob Rundfunkstandards, Standards für Druckerzeugnisse oder andere Standards auf Inhalte im Internet anzuwenden sind, so stellt diese Erklärung doch ein eindeutiges Signal an die Staaten dar, keine neuen Beschränkungen für diese neue Plattform der Inhalteübertragung einzuführen. Es wird darüber hinaus unterstrichen, dass die Mitgliedsstaaten Selbst oder Koregulierung in Bezug auf Internet-Inhalte fördern sollten, da dies die am besten geeigneten Regulierungsformen für die neuen Dienste seien. Die Erklärung unterstreicht die einzigartigen Möglichkeiten, die das Internet für interaktive Kommunikation bietet und betont, dass Hürden für die Beteiligung von Einzelnen an der Informationsgesellschaft abgebaut werden und das Erstellen und Betreiben von persönlichen Webseiten keiner Genehmigung oder sonstigen Anforderungen ähnlicher Wirkung unterliegen sollten. Wenn auch kein Recht auf Anonymität gefordert wird, so besagt die Erklärung doch, dass der Wunsch der Internet-Benutzer, ihre Identität nicht preiszugeben, geachtet werden sollte, mit Einschränkungen, die es den Strafverfolgungsbehörden ermöglichen, kriminelle Aktivitäten zu verfolgen.

Der interessanteste Teil der Erklärung dürfte in Grundsatz 3 zu finden sein, der sich damit befasst, wann und unter welchen Umständen öffentliche Behörden berechtigt sind, den Zugang zu Internet-Inhalten zu blockieren. Obwohl Zensur im Sinne einer administrativen Vorabkontrolle von Publikationen in allen Mitgliedsstaaten abgeschafft wurde, ermöglichen neue technologische Möglichkeiten neue Formen von präventiven Einschränkungen. Es gibt Beispiele, hauptsächlich außerhalb Europas, bei denen staatliche Behörden grobe Filtermethoden anwenden, um das Internet zu zensieren.

Die Erklärung stellt an erster Stelle fest, dass staatliche Behörden keine „generellen Blockier- oder Filtermaßnahmen" einsetzen sollten, um den öffentlichen Zugang zu Informationen und sonstiger Kommunikation im Internet ungeachtet von Grenzen zu verwehren. Unter „generellen Maßnahmen" sind nach der Erklärung grobe Filtermethoden zu verstehen, die

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keinen Unterschied zwischen illegalen und legalen Inhalten machen. Dieser Grundsatz, der sehr weit gefasst ist, hindert Mitgliedsstaaten nicht daran zu verlangen, dass an Orten, die für Minderjährige zugänglich sind, wie Bibliotheken und Schulen, Filtersoftware installiert wird.

Gemäß der Erklärung haben die Mitgliedsstaaten nach wie vor die Möglichkeit, den Zugang zu Internet-Inhalten zu blockieren oder eine solche Blockierung zu verlangen. Dazu muss jedoch eine Reihe von Bedingungen erfüllt sein: a) der Inhalt muss eindeutig zu identifizieren sein, b) ein Beschluss zur Illegalität des Inhalts muss von der zuständigen nationalen Behörde ergangen sein und c) die Schutzmaßnahmen aus Artikel 10, Absatz 2 der Europäischen Menschenrechtskonvention müssen beachtet werden, d. h. eine Beschränkung muss gesetzlich vorgesehen sein, einem rechtmäßigen Zweck dienen und in einer demokratischen Gesellschaft unentbehrlich sein.

In der Erläuterung zur Erklärung ist dargelegt, dass der Grundsatz 3 insbesondere auf Situationen ausgerichtet ist, in denen staatliche Behörden den Zugang von Personen zu bestimmten ausländischen (oder inländischen) Webseiten aus politischen Gründen blockieren. Gleichzeitig umreißt er die Umstände, unter denen im Allgemeinen die Blockierung von Inhalten als hinnehmbar betrachtet werden kann, eine Frage, die für alle Mitgliedsstaaten von Relevanz ist oder sein wird.

Grundsatz 6 zur beschränkten Haftung von Service-Providern verdient ebenso besondere Beachtung. Entsprechend der Richtlinie 2000/31/EG über den elektronischen Geschäftsverkehr wird festgestellt, dass Service-Provider keiner generellen Verpflichtung zur Überwachung der Internet-Inhalte, die sie zugänglich machen, übertragen oder speichern, unterliegen sollten. Sie können jedoch gesamtschuldnerisch für Inhalte, die sie auf ihren Servern speichern, haftbar gemacht werden, wenn sie von deren illegalem Charakter erfahren und nicht umgehend Maßnahmen ergreifen, um den Zugang dazu zu unterbinden. Dies entspricht voll und ganz der Richtlinie über den elektronischen Geschäftsverkehr. Die Erklärung geht allerdings einen Schritt weiter, indem sie bei der Festlegung der Pflichten von Service-Providern, die Inhalte vorhalten, nach nationalem Recht betont, dass „eine gebührende Achtung vor der Meinungsfreiheit derer, die die Informationen ursprünglich zugänglich gemacht haben sowie vor den entsprechenden Rechten der Nutzer auf diese Informationen gewährleistet werden muss." Die hier angesprochenen Fragen werden derzeit ausführlich debattiert, zum Beispiel im Zusammenhang mit herabsetzenden Äußerungen im Internet. Die Erläuterung unterstreicht, dass Fragen „nach der Illegalität bestimmter Materialien oftmals kompliziert sind und am besten von den Gerichten entschieden werden. Wenn Service-Provider Inhalte zu schnell entfernen, nachdem eine Beschwerde eingegangen ist, kann dies im Hinblick auf die Meinungs- und Informationsfreiheit gefährlich sein. Absolut legitime Inhalte könnten somit aus Angst vor gesetzlicher Haftung unterdrückt werden."

- *Declaration on freedom of communication on the Internet, adopted by the Committee of Ministers on 28 May 2003 at the 840th meeting of the Ministers' Deputies* (Erklärung zur Kommunikationsfreiheit im Internet, verabschiedet vom Ministerkomitee am 28. Mai 2003 auf der 840. Sitzung der Ministerdelegierten) http://merlin.obs.coe.int/redirect.php?id=8492

IRIS 2003-7/3

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Ministerkomitee: Empfehlung über Maßnahmen zur Förderung des Beitrags des digitalen Rundfunks zu Demokratie und Gesellschaft

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Am 28. Mai 2003 legte das Ministerkomitee des Europarates den Mitgliedsstaaten Empfehlung Rec(2003)9 über Maßnahmen zur Förderung des Beitrags des digitalen Rundfunks zu Demokratie und Gesellschaft vor. Im Anhang zur Empfehlung werden eine Reihe von Grundsätzen für den digitalen Rundfunk und wichtige Punkte dargelegt, die aus Sicht des Publikums auf der einen und der Rundfunkveranstalter (insbesondere des öffentlichen Rundfunks) auf der anderen Seite im Kontext des Übergangs zum digitalen Umfeld zu berücksichtigen sind.

Im Einleitungsteil der Empfehlung wird erneut auf die Notwendigkeit, die wesentlichen Ziele von öffentlichem Interesse im digitalen Umfeld zu bewahren, einschließlich der Meinungsäußerungsfreiheit und des Informationszugangs, der Medienvielfalt, der kulturellen Vielfalt, des Schutzes von Minderjährigen und der menschlichen Würde sowie des Schutzes von Verbraucherinnen und Verbrauchern und der Privatsphäre" hingewiesen. Zudem wird nochmals bestätigt, dass „die besondere Rolle des öffentlichen Rundfunks als vereinender Faktor, der allen Bevölkerungsschichten eine breite Palette von Programmen und Diensten anbieten kann, im neuen digitalen Umfeld beibehalten werden sollte".

Der Hauptteil der Empfehlung beginnt mit einem Aufruf an die Regierungen der Mitgliedsstaaten, „für die Entwicklung des digitalen Rundfunks angemessene rechtliche und wirtschaftliche Voraussetzungen zu schaffen, welche die Vielfalt der Rundfunkdienste und den Zugang des Publikums zu einem erweiterten Angebot von vielfältigen Qualitätsprogrammen gewährleisten, einschließlich der Erhaltung und wenn möglich der Erweiterung des grenzüberschreitenden Dienstangebots". Er empfiehlt den Schutz bzw. die Ergreifung „von Maßnahmen zum Schutz der Medienvielfalt und deren Förderung, um ein Gegengewicht zur zunehmenden Konzentration in diesem Bereich zu schaffen". Der Schutz von Minderjährigen und der Menschenwürde und die Verhinderung von Aufrufen zu Gewalt und Hass werden als Prioritäten für das digitale Umfeld betrachtet. Die Notwendigkeit der Einführung von Systemen zur Information und zur Ausbildung bei der Verwendung der digitalen Geräte und der neuen Dienste wird ebenfalls hervorgehoben.

Die Empfehlung greift das in der Einleitung formulierte Bekenntnis zum öffentlichen Rundfunk auf und entwickelt es weiter. Die Mitgliedsstaaten werden aufgerufen, im neuen digitalen Umfeld den universellen Zugang zu Programmen der öffentlichen Rundfunkanstalten sicherzustellen und dem öffentlichen Rundfunk eine zentrale Rolle beim Übergang zum terrestrischen digitalen Rundfunk zukommen zu lassen.

Gemäß den im Anhang genannten Grundsätzen für den digitalen Rundfunk sollten die Mitgliedsstaaten für den Übergang zum digitalen Umfeld Strategien entwickeln, die „die Zusammenarbeit zwischen Betreibern, die Komplementarität zwischen den Plattformen, die Interoperabilität der Decoder, die Verfügbarkeit einer breiten Palette von Inhalten, einschließlich eines kostenlosen Radio- und Fernsehangebots, sowie die möglichst breite Nutzung der einzigartigen Möglichkeiten fördern, die die digitale Technologie nach der notwendigen Neuzuteilung der Frequenzen bietet. Ferner wird empfohlen, dass die zuständigen Behörden bei der Vergabe von Lizenzen für digitale Rundfunkdienste die Einrichtung regionaler/lokaler Dienste fördern.

Darüber hinaus wird auf eine Reihe spezieller Ziele von öffentlichem Interesse eingegangen, darunter der Zugang von Hör- und Sehbehinderten zu digitalen Rundfunkdiensten und deren

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Inhalten und die funktionellen Eigenschaften von elektronischen Programmführern (EPGs) (d. h. Komplementarität; Verfügbarkeit von Platz auf EPGs für alle Dienstanbieter „zu fairen, vernünftigen und nicht diskriminierenden“ Bedingungen; prominente Anzeige und leichte Zugänglichkeit von öffentlich-rechtlichen Programmen; Benutzerfreundlichkeit für Verbraucherinnen und Verbraucher).

Im Anhang wird zunächst eine Reihe von allgemeinen Grundsätzen aus der Perspektive der Rundfunkveranstalter aufgezählt. Dann werden einige Grundsätze und Merkmale genannt, die speziell für den öffentlichen Rundfunk gelten: die Notwendigkeit der Erfüllung seines Auftrags unter Anpassung an das neue digitale Umfeld; die nach wie vor vorhandene Bedeutung des universellen Zugangs zum öffentlichen Rundfunk; die wünschenswerte Maximierung des Potenzials von Must-carry-Regeln, um den Zugang zu Diensten und Programmen des öffentlichen Rundfunks über digitale Plattformen sicherzustellen; die Notwendigkeit „eines sicheren und geeigneten Finanzierungsrahmens”, damit sich die öffentlichen Rundfunkanstalten im neuen digitalen Umfeld behaupten können.

- *Recommendation Rec(2003)9 of the Committee of Ministers to member states on measures to promote the democratic and social contribution of digital broadcasting, adopted on 28 May 2003* (Empfehlung Rec(2003)9 des Ministerkomitees an die Mitgliedsstaaten über Maßnahmen zur Förderung des Beitrags des digitalen Rundfunks zu Demokratie und Gesellschaft, vorgelegt am 28. Mai 2003)
  http://merlin.obs.coe.int/redirect.php?id=11119

IRIS 2003-5/110

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2002

Ministerkomitee: Erhöhter Schutzumfang für verwandte Schutzrechte von Rundfunkorganisationen

Nynke Hendriks

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Am 11. September verabschiedete das Ministerkomitee des Europarats die Empfehlung Rec(2002)7 zur Verbesserung des Schutzumfangs für verwandte Schutzrechte von Rundfunkorganisationen, insbesondere gegen Piraterie. In den vergangenen Jahrzehnten fielen Rundfunkprogramme im Gefolge technologischer Entwicklungen verstärkt der Piraterie zum Opfer.

Die Empfehlung favorisiert daher die Lösung den Rundfunkorganisationen mehrere ausschließliche Rechte einzuräumen, um dem entgegenzuwirken. Dazu gehören das Weiterverbreitungsrecht, das Aufzeichnungsrecht, das Vervielfältigungsrecht, das Recht der Zugänglichmachung, das Verbreitungsrecht und das Recht der öffentlichen Wiedergabe. Darüber hinaus stellt sie die Bedeutung der Ausübung solcher ausschließlichen Rechte mit Blick auf programmtragende Signale im Vorfeld der Ausstrahlung fest. Sie empfiehlt des Weiteren, dass Mitgliedstaaten angemessenen Rechtsschutz und Rechtsbehelfe für den Fall der Umgehung effizienter technologischer Maßnahmen oder der Beseitigung bzw. Veränderung von Informationen zur Verwaltung elektronischer Rechte bereitstellen.

Diese Schutzmaßnahmen bauen auf früheren Abkommen über verwandte Schutzrechte auf, beispielsweise dem Internationalen Abkommen zum Schutz der ausübenden Künstler, der Hersteller von Tonträgern und der Rundfunkorganisationen (Rom-Abkommen) aus dem Jahr 1961 oder dem Europäischen Übereinkommen zum Schutz von Fernsehsendungen aus dem Jahr 1960. Die von der Empfehlung geforderten Schutzmaßnahmen gehen jedoch über die in den genannten Abkommen geforderten Maßnahmen hinaus und lehnen stark am Wortlaut des WIPO-Vertrags über Darbietungen und Tonträger (WIPO Performances

and Phonograms Treaty - WPPT) aus dem Jahr 1996 an. Beispielsweise plädiert die Empfehlung dafür, dass Rundfunkorganisationen mehr ausschließliche Rechte eingeräumt werden; z.B. sollen das Recht der Zugänglichmachung und das Verbreitungsrecht hinzu genommen werden, in Übereinstimmung mit den Bestimmungen des WPPT, der diese Rechte ausübenden Künstlern und Herstellern von Tonträgern einräumt. Dasselbe gilt für die Bestimmungen über technologische Schutzmaßnahmen, die Informationen für die Wahrnehmung der Rechte und die Schutzdauer.

Die Tatsache, dass die Empfehlung sich stark an den WPPT anlehnt wird ausführlich im erläuternden Kurzbericht dargelegt. Der erläuternde Kurzbericht hebt außerdem hervor, dass ein spezifisches WIPO-Abkommen für Rundfunkorganisationen in Vorbereitung ist. Da das Inkrafttreten eines solchen Abkommens voraussichtlich einige Jahre dauern wird, wird es als dringend notwendig empfunden, dass den RundInstitut für Informationsrecht (IViR) Universität Amsterdam funkorganisationen in der Zwischenzeit gewisse Schutzmaßnahmen gewährt werden.

Frankreich bat darum, dass dem Protokoll der Sitzung des Ministerkomitees eine erklärende Stellungnahme beigefügt werde, die Frankreichs Standpunkt widerspiegeln soll. Nach Dafürhalten Frankreichs bildet die Empfehlung den Ausgangspunkt einer Debatte mit Blick

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auf die Vorbereitung eines WIPO-Abkommens für Rundfunkorganisationen. Des Weiteren bekräftigt Frankreich, dass der Schwerpunkt der Empfehlung auf den Schutz gegen Piraterie gelegt werden solle und die Rechte anderer betroffener Rechtsinhaber nicht beeinträchtigt werden dürften.

- *Council of Europe Recommendation Rec(2002)7 of the Committee of Ministers to member states on measures to enhance the protection of the neighbouring rights of broadcasting organisations (and Explanatory Memorandum), adopted by the Committee of Ministers on 11 September 2002 at the 807th meeting of the Ministers' Deputies)* (Empfehlung des Europarats Rec(2002)7 vom Ministerkomitee an die Mitgliedstaaten bezüglich Maßnahmen zur Verbesserung des Schutzumfangs verwandter Schutzrechte von Rundfunkorganisationen (und erläuternder Kurzbericht), verabschiedet vom Ministerkomitee am 11. September 2002 auf der 807. Sitzung der Ministerstellvertreter)) http://merlin.obs.coe.int/redirect.php?id=15874
  - *Interpretative statement by France on the Council of Europe recommendation to enhance the protection of the neighbouring rights of broadcasting organisations (appended to the minutes of the 807th meeting of the Ministers' Deputies of 11 September 2002)* (Erklärende Stellungnahme Frankreichs zur Empfehlung des Europarats zur Verbesserung des Schutzumfangs verwandter Schutzrechte von Rundfunkorganisationen (im Anhang an das Protokoll der 807. Sitzung der Ministerstellvertreter vom 11. September 2002))

IRIS 2002-9/5

Ministerkomitee: Empfehlung über Maßnahmen in den Medien zum Schutz der Frauen vor Gewalt

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Am 30. April 2002 verabschiedete das Ministerkomitee des Europarates eine Empfehlung über den Schutz von Frauen vor Gewalt. Die Empfehlung enthält einen Katalog allgemeiner Maßnahmen im Bereich Gewalt gegen Frauen sowie spezifischere Maßnahmen: Interventionsprogramme für Gewalttäter; sexuelle Gewalt; Gewalt in der Familie; sexuelle Belästigung; Genitalverstümmelung; Gewalt in Kriegs- und Nachkriegssituationen; Gewalt im institutionellen Umfeld; (IViR) Mißachtung der Entscheidungsfreiheit in Fortpflanzungsfragen; Tötung aus Gründen der Ehre und Frühheiraten. Der die allgemeinen Maßnahmen beschreibende Abschnitt enthält mehrere Schwerpunkte zu einer Reihe von Themen, darunter auch den Medien. In diesem Zusammenhang werden die Mitgliedstaaten zur Verfolgung von vier Zielen nachdrücklich aufgefordert. Erstens sollten sie „die Medien dazu ermutigen, ein klischeefreies Bild von Frauen und Männern zu verbreiten, das auf der Achtung der menschlichen Person und der Menschenwürde beruht, sowie Sendungen zu vermeiden, in denen Gewalt und Sex miteinander in Verbindung stehen". Diese Kriterien sollten auf die traditionellen Medien ebenso angewandt werden, wie auf die neuen Informationstechnologien (Ziffer 17).

Die Mitgliedstaaten sollten die Medien dazu anregen, das Bewusstsein für Gewalt gegen Frauen zu stärken (Ziffer 18). Ferner sollten sie sich darum bemühen, Medienfachleuten innerhalb ihrer Ausbildung zu erklären und ihr Bewusstsein dafür zu schärfen, welche Wirkung Sendungen, bei denen Gewalt und Sex assoziiert sind, auf bestimmte Zielgruppen haben können (Ziffer 19).

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Schließlich werden die Mitgliedstaaten dazu aufgerufen, „die Ausarbeitung von Verhaltenskodizes für Medienfachleute zu fördern, bei denen die Frage der Gewalt an Frauen berücksichtigt wird, sowie in bestehenden oder künftigen Mandatsbeschreibungen von Medienbeobachtungsorganisationen darauf zu achten, dass Themen wie Gewalt an Frauen und Sexismus in diese Eingang finden" (Ziffer 20).

- *Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence, 30 April 2002* (Empfehlung (2002)5 des Ministerkomitees an die Mitgliedstaaten über den Schutz von Frauen vor Gewalt, 30. April 2002)
  http://merlin.obs.coe.int/redirect.php?id=501

IRIS 2002-6/2

Ministerkomitee: Zugang zu offiziellen Dokumenten

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Das Ministerkomitee des Europarates verabschiedete am 21. Februar 2002 die Empfehlung Rec (2002) 2 über den Zugang zu offiziellen Dokumenten. Die Empfehlung geht davon aus, dass ein breiter Zugang zu offiziellen Dokumenten einen Beitrag dazu leistet, (i) eine informierte, kritische und aktive Öffentlichkeit zu schaffen, (ii) die „Effizienz und Wirksamkeit von Behörden zu fördern“ sowie die Korruptionsgefahr zu verringern, und (iii) die Legitimität von Behörden zu bekräftigen sowie das Vertrauen der Öffentlichkeit in sie zu stärken.

Der Geltungsbereich der Empfehlung beschränkt sich auf offizielle Dokumente, die sich im Besitz von Behörden befinden. Der Begriff „offizielle Dokumente“ bezieht sich auf „sämtliche in irgendeiner Form von Behörden aufgezeichneten Informationen, die entweder von diesen verfasst oder empfangen und verwahrt wurden, und die an eine öffentliche oder administrative Funktion gebunden sind, mit Ausnahme von sich in Vorbereitung befindlichen Dokumenten“. Der Begriff „Behörden“ umfasst sämtliche Regierungs- und Verwaltungsebenen sowie natürliche und juristische Personen, die nach Maßgabe der gesetzlichen Bestimmungen eine öffentliche Funktion ausüben oder offizielle Amtshandlungen durchführen.

Allgemeiner Grundsatz der Empfehlung ist, dass alle Mitgliedstaaten des Europarates „jedem Einzelnen auf Antrag das Recht auf Zugang zu im Besitz von Behörden befindlichen offiziellen Dokumenten garantieren sollten“, und dies frei von jeglicher Diskriminierung. Dieses Recht wird durch mögliche Einschränkungen und Verfahrensbestimmungen geprägt. Die möglichen Einschränkungen umfassen die nationale und öffentliche Sicherheit, Verbrechensverhütung, Datenschutz, geschäftliche und andere Wirtschaftsinteressen, Gleichbehandlung bei Gerichtsverfahren, usw.

Verfahrensrechtlich sollten Personen, die Informationen anfordern, nicht zur Begründung ihres Antrags verpflichtet sein. Die formellen Anforderungen für Anträge sollten also minimal sein. Anträge sollten umgehend bearbeitet werden. Für den Fall, dass eine Behörde nicht im Besitz des beantragten Dokuments ist, sollte sie den Antragsteller an die zuständige Stelle verweisen. Es wird empfohlen, dass die Behörden bei der Identifizierung von Dokumenten behilflich sind. Anträge können abgelehnt werden, wenn ein Dokument nicht identifiziert werden kann oder wenn ein Antrag „offenkundig unangemessen“ ist. Die Verweigerung des Zugangs zu offiziellen Dokumenten sollte durch die jeweilige Behörde begründet werden.

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Je nach Situation wird der Zugang zu offiziellen Dokumenten in unterschiedlicher Weise gewährt: vollständiger oder teilweiser Zugang, Ansicht eines Originaldokuments oder Aushändigung einer Kopie. Grundsätzlich sollte die Ansicht von Originaldokumenten vor Ort bei der Behörde, in deren Besitz sie sich befinden, kostenfrei sein. Wird eine Gebühr für eine Kopie eines offiziellen Dokuments erhoben, sollte sie angemessen sein und die für die Behörde angefallenen Kosten nicht übersteigen. Laut der Empfehlung sollte ein Antragsteller „stets Zugang zu einem schnellen und kostengünstigen Überprüfungsverfahren haben, was entweder eine erneute Prüfung durch eine Behörde oder eine Überprüfung“ durch ein Gericht oder eine andere unabhängige und neutrale Instanz bedeutet.

Letztlich umfassen die in Erwägung gezogenen ergänzenden Maßnahmen die Schulung von Beamten hinsichtlich des Zugangs zu offiziellen Dokumenten sowie selbst entwickelte Öffentlichkeitskampagnen zu den in Behörden geltenden Zugangsregelungen.

- Empfehlung Rec (2002) 2 des Ministerkomitees des Europarates an die Mitgliedstaaten über den Zugang zu offiziellen Dokumenten & Erläuterndes Memorandum, 21. Februar 2001
  http://merlin.obs.coe.int/redirect.php?id=13018

IRIS 2002-3/102

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2001

Neue Empfehlung zur Selbstregulierung bei Cyber-Inhalten

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Am 5. September 2001 hat das Ministerkomitee des Europarats eine Empfehlung zur Selbstregulierung und zum Schutz der Benutzer vor rechtswidrigen oder schädlichen Inhalten in neuen Kommunikations- und Informationsdiensten verabschiedet. Die Empfehlung unterstreicht die Bedeutung der europaweiten und internationalen Zusammenarbeit bei der Institut für Informationsrecht Universität Amsterdam Regulierung von Inhalten im Internet.

Die Empfehlung Rec(2001)8 betont die Bedeutung von Selbstregulierungsinitiativen der Informationswirtschaft in Zusammenarbeit mit den Regierungen der Mitgliedstaaten. Sie stellt bestimmte Prinzipien und Mechanismen für den Umgang mit rechtswidrigen oder schädlichen Inhalten im Internet vor, die von den betreffenden Parteien übernommen (IViR) werden könnten.

Die Empfehlung ruft die Mitgliedstaaten auf, die Gründung von Organisationen zu fördern, die Internet-Akteure repräsentieren und sich an einschlägigen Gesetzgebungsverfahren beteiligen sollen. Eine solche Beteiligung könnte unter anderem in Konsultationen, Anhörungen und Gutachten sowie bei der Umsetzung einschlägiger Normen bestehen. Bei der Zusammenarbeit mit diesen Organisationen sollen die Mitgliedstaaten die neutrale Kennzeichnung beispielsweise pornografischer und gewalttätiger Inhalte vorsehen, damit die Benutzer sich diesbezüglich ein eigenes Urteil bilden können. Neben dieser Definition verschiedener Inhaltskennzeichnungen sollen Suchwerkzeuge und Filterprofile entwickelt werden, die die Benutzer auf freiwilliger Basis anwenden können. Der Einsatz von elektronischer Zugangskontrolle zum Schutz Minderjähriger vor schädlichen Inhalten soll gefördert werden. Beispiele für solche technischen Maßnahmen sind Altersüberprüfungssysteme, persönliche Identifikationscodes, Kennwörter, Verschlüsselung und Decodierungssysteme.

Internetnutzer sollen Zugang zu Beschwerdesystemen wie etwa Hotlines haben, die sowohl von privaten Institutionen als auch von öffentlichen Stellen angeboten werden. Zur Behandlung inhaltsbezogener Beschwerden sollen außergerichtliche Mediations- und Schiedsverfahren eingerichtet werden.

Die Mitgliedstaaten werden zudem aufgefordert, das Bewusstsein und die Aufklärung der Öffentlichkeit über all diese verschiedenen Maßnahmen zu fördern.

- *Recommendation Rec(2001)8 of the Committee of Ministers to member states on selfregulation concerning cyber content (self-regulation and user protection against illegal or harmful content on new communications and information services), adopted by the Committee of Ministers on 5 September 2001 at the 762nd meeting of the Ministers' Deputies* (Empfehlung Rec[2001]8 des Ministerkomitees an die Mitgliedstaaten zur Selbstregulierung im Hinblick auf CyberInhalte (Selbstregulierung und Schutz der Benutzer vor rechtswidrigen und schädlichen Inhalten in neuen Kommunikations- und Informationsdiensten) vom 5. September 2001)
  http://merlin.obs.coe.int/redirect.php?id=159

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Empfehlung zu Maßnahmen zum Schutz des Urheberrechts und zur Bekämpfung der Piraterie

Páll Thórhallsson

Europarat, Directorate of Human Rights

Am 5. September 2001 hat das Ministerkomitee des Europarats eine Empfehlung (Rec (2001) 7) zu Maßnahmen zum Schutz des Urheberrechts und verwandter Schutzrechte und zur Bekämpfung der Piraterie, speziell im digitalen Umfeld, verabschiedet.

Bei den Vorarbeiten zu dieser neuen Empfehlung ging es darum, den Mitgliedstaaten im Kampf gegen die digitale Piraterie ein aktuelles rechtliches Arsenal an die Hand zu geben. Die Empfehlung basiert auf einem älteren Text, der Empfehlung Nr. R (88) 2 zu Maßnahmen zur Bekämpfung der Piraterie im Bereich des Urheberrechts und verwandter SchutzEuroparat rechte, berücksichtigt aber den technologischen Fortschritt und die jüngsten internationalen Normen, vor allem das TRIPS-Übereinkommen von 1994 und die beiden 1996 verabschiedeten WIPO-Verträge.

Die Empfehlung fordert die Mitgliedstaaten des Europarats auf, die WIPO-Verträge so bald wie möglich zu ratifizieren, da ein wirksamer Schutz der Rechteinhaber zunehmend von der Harmonisierung dieses Schutzes auf internationaler Ebene abhänge. Da diese Verträge nur bestimmte Kategorien von Rechteinhabern schützten, sieht die Empfehlung vor, dass andere Kategorien von Rechteinhabern, also Rundfunkveranstalter, Hersteller von Datenbanken und audiovisuelle ausübende Künstler hinsichtlich ihrer festgelegten Darbietungen, ebenfalls einen Schutz erhalten, der an die digitale Realität angepasst ist.

Es werden verschiedene Möglichkeiten zur Bekämpfung der Piraterie empfohlen. Zunächst müsse die Piraterie nach nationalem Recht strafbar sein. Zusätzlich zu den Maßnahmen, die sich auf Klagen der Opfer stützen, sollten die Mitgliedstaaten den Behörden die Möglichkeit geben, auch von Amts wegen tätig zu werden. Im Zivilrecht sollten die Gerichte die Möglichkeit haben, einstweilige Maßnahmen zu verhängen, die zur Verhinderung eines Verstoßes oder zur Beweissicherung erforderlich sind. Bei Bedarf sollten diese Maßnahmen auch ohne Anhörung des Betroffenen möglich sein.

Abschließend bringt die Empfehlung ein mögliches Mittel gegen die rechtswidrige Herstellung optischer Datenträger (CD, DVD usw.) ins Spiel. Den Mitgliedstaaten wird empfohlen, die Möglichkeit der Einführung einer rechtlichen Verpflichtung zur Verwendung eines eindeutigen Identifikationscodes bei der Herstellung solcher Datenträger zu prüfen. Dies würde die Herkunftsbestimmung eines verdächtigen Produkts erleichtern.

- *Recommendation Rec(2001)7 of the Committee of Ministers to member states on measures to protect copyright and neighbouring rights and combat piracy, especially in the digital environment, adopted by the Committee of Ministers on 5 September 2001 at the 762 meeting of the Ministers' Deputies* (Empfehlung Rec(2001)7 des Ministerkomitees an die Mitgliedstaaten zu Maßnahmen zum Schutz des Urheberrechts und verwandter Schutzrechte und zur Bekämpfung der Piraterie, speziell im digitalen Umfeld, vom Ministerkomitee am 5. September 2001 bei der 762. Sitzung der Ministerstellvertreter verabschiedet)
  http://merlin.obs.coe.int/redirect.php?id=163

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2000

Ministerkomitee: Empfehlung über die Unabhängigkeit und die Funktionen von Regulierungsbehörden des Rundfunksektors

Eugen Cibotaru

Europarat, Directorate of Human Rights

Am 20. Dezember 2000 verabschiedete das Ministerkomitee des Europarats eine Empfehlung über die Unabhängigkeit und die Funktionen von Regulierungsbehörden des Rundfunksektors (Rec(2000)23) und billigte die Veröffentlichung des diesbezüglichen erläuternden Kurzberichts (Exposé des Motifs).

Die Rechtsurkunde, die vom Lenkungsausschuss über die Massenkommunikationsmittel (CDMM) vorbereitet wurde, baute auf der Tatsache auf, dass die Frage nach der Unabhängigkeit von Regulierungsbehörden des Hörfunksektors gegenüber den politischen Machthabern und den Kompetenzen, die den Regulierungsbehörden übertragen werden sollen, in zahlreichen europäischen Ländern noch offen war. Im Rahmen von Prüfungen von Gesetzesentwürfen aus dem Bereich Hörfunk und Fernsehen wurde der Europarat häufig dazu angehalten, die Grundsätze zu erläutern, denenzufolge Regulierungsbehörden in diesem Sektor funktionieren sollten. Vor diesem Hintergrund ging man davon aus, dass eine Empfehlung über die Unabhängigkeit und die Funktionen von Regulierungsbehörden des Rundfunksektors hilfreich sei, insbesondere für einige neue Mitgliedsstaaten, bei denen ein Erfahrungs- und Informationsmangel in diesem Bereich festgestellt werden konnte.

Ohne näher auf die detaillierten Bestimmungen der Empfehlung einzugehen, erscheint es sinnvoll, einige der darin enthaltenen Grundsätze hervorzuheben.

Auf einer allgemeinen Ebene empfiehlt das Dokument den Regierungen der Mitgliedstaaten

- die Einrichtung unabhängiger Regulierungsbehörden für den Rundfunksektor, wo dies nicht bereits geschehen ist;

- die Aufnahme von Bestimmungen in die nationalen Gesetze und das Ergreifen von politischen Maßnahmen, die den Regulierungsbehörden des Rundfunksektors Kompetenzen übertragen, denenzufolge sie ihre Aufgabe mit der dreifachen Zielsetzung der Effizienz, Unabhängigkeit und Transparenz erfüllen können.

In dieser Perspektive sollten die Richtlinien für Regulierungsbehörden des Rundfunksektors derart definiert werden, dass sie vor jeglicher Einmischung geschützt werden, insbesondere von Seiten der Politik oder wirtschaftlicher Interessengemeinschaften.

Um die Risiken des Drucks von außen zu verringern ist es besonders notwendig, dass das Ernennungsverfahren der Mitglieder dieser Organe transparent gehalten wird.

Außerdem sollten eindeutige Regeln festgelegt werden:

- in Bezug auf Ämterunvereinbarkeit soll vermieden werden, dass die Regulierungsbehörden dem Einfluss der politischen Machthaber ausgesetzt sind, oder dass Mitglieder der Regulierungsbehörden in Unternehmen oder anderen Organen des Mediensektors bzw. anhängiger Sektoren Funktionen ausüben oder daran beteiligt sind;

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- in Bezug auf die Absetzung von Mitgliedern der Regulierungsbehörden soll vermieden werden, dass das Absetzen Medienabteilung Generaldirektorat für Mencheneines Miglieds als politisches Druckmittel eingesetzt werden kann; rechte

- in Bezug auf die Finanzierung soll den RegulierungsEuroparat behörden die Möglichkeit eingeräumt werden, ihre Aufgabe vollständig und unabhängig zu erfüllen und vermieden werden, dass die öffentliche Hand ihre Finanzentscheidungsbefugnis ausnutzt, um die Unabhängigkeit der Regulierungsbehörden zu beeinträchtigen. Über diese grundsätzlichen Bestimmungen hinaus legt die Empfehlung ebenfalls einige Leitlinien bzgl. der Befugnisse und Kompetenzen der Regulierungsbehörden fest, wie beispielsweise Regulierungsbefugnisse, Vergabe von Lizenzen, Überwachen der Einhaltung der Versprechen und Verpflichtungen der Rundfunkbetreiber. Gleichzeitig formuliert das Dokument einige Grundsätze hinsichtlich der Rechenschaftspflicht der Regulierungsbehörden gegenüber der breiten Öffentlichkeit.

Mit der Definition dieser Leitlinien stellt die Empfehlung einen „Bezugspunkt" für die Mitgliedstaaten hinsichtlich der Regulierung des Rundfunksektors dar.

- *Recommendation Rec (2000) 23 of the Committee of Ministers to Member States on the independence and functions of regulatory authorities for the broadcasting sector (adopted by the Committee of Ministers on 20 December 2000 at the 735 meeting of the Ministers' Deputies).* (Empfehlung Rec (2000) 23 des Ministerkomitees an die Mitgliedstaaten über die Unabhängigkeit und die Funktionen von Regulierungsbehörden im Rundfunksektor (verabschiedet vom Ministerkomitee am 20. Dezember 2000, anlässlich der 735. Sitzung der Ministervertreter)) http://merlin.obs.coe.int/redirect.php?id=214

IRIS 2001-1/1

Ministerkomitee anerkennt das Recht der Journalisten, ihre Informationsquellen nicht preiszugeben

Rüdiger Dossow

Europarat, Directorate of Human Rights

Am 8. März 2000 hat das Ministerkomitee des Europarats die Empfehlung R (2000) 7 verabschiedet, die sich mit dem Recht der Journalisten beschäftigt, ihre Informationsquellen nicht preiszugeben. Die Empfehlung folgt der Argumentation des Urteils des Europäischen Gerichtshofs für Menschenrechte in Sachen Goodwin gegen das Vereinigte Königreich (27. März 1996), in dem der Gerichtshof entschied, dass Artikel 10 der Europäischen Menschenrechtskonvention journalistische Quellen als eine der Grundvoraussetzungen der Pressefreiheit schützt und „Quellen ohne einen solchen Schutz davor zurückschrecken könnten, die Presse bei der Information der Öffentlichkeit über Angelegenheiten von öffentlichem Interesse zu unterstützen". Angesichts der Bedeutung des Schutzes journalistischer Quellen war unter dem Lenkungsausschuss Massenmedien ein zwischenstaatlicher Ausschuss für Medienrecht und Menschenrechte eingesetzt worden, der sich für die Stärkung und Ergänzung dieses Schutzes einsetzen soll, indem er den Mitgliedstaaten gemeinsame rechtliche Prinzipien empfiehlt.

Die Empfehlung R (2000) 7 erweitert beispielsweise den Schutz über die bloße Identität einer Quelle hinaus auf faktische Umstände, unveröffentlichte Inhalte und relevante Daten von Journalisten und ihren Arbeitgebern. Auch andere, die aufgrund ihrer beruflichen Beziehungen zu Journalisten Kenntnis von Informationen über eine Quelle erlangen, sollen das Recht haben, die Quelle nicht preiszugeben. Das Ministerkomitee empfahl, dass

angemessene Alternativmaßnahmen - einschließlich der Beweise, die einem Gericht aus anderen Verfahren, zur Verfügung stehen - ausgeschöpft sein müssen, bevor die Preisgabe einer Quelle angeordnet werden kann. Außerdem sollen Journalisten über dieses Recht informiert werden, bevor eine Preisgabe angeordnet wird. SankMedien der Menschenrechte Abteilung tionen für die Nichtbefolgung einer solchen Anordnung sollen ausschließlich von den Justizbehörden verhängt werden Direktion und vor Gericht angefochten werden können. Gegen die weitere Verbreitung oder die spätere Nutzung der preisgegeEuroparat benen Informationen sollen prozedurale Sicherungen eingeführt werden. Letzteres beträfe insbesondere das Abfangen von Mitteilungen sowie Überwachungs-, Durchsuchungs- und Beschlagnahmungsaktionen. Allerdings ist das Recht der Journalisten, ihre Quellen nicht preiszugeben, kein absolutes Recht, und die Empfehlung R (2000) 7 unterstreicht dies mit dem Rat, die nationalen Behörden sollten möglicherweise divergierende Rechte und Interessen sorgfältig und offen abwägen und das bedeutende öffentliche Interesse am Schutz der Vertraulichkeit von Quellen anerkennen.

Die Empfehlung zielt darauf ab, sowohl für Journalisten und deren Quellen als auch für Justiz- und Polizeibehörden mehr Rechtssicherheit zu schaffen. Die Prinzipien der Empfehlung R (2000) 7 sollen dem Ministerkomitee auch als Bezugspunkt dienen, wenn sie die Einhaltung der Zusagen durch die Mitgliedstaaten überwachen.

- *Recommendation No. R (2000) 7 on the right of journalists not to disclose their sources of information.* (Empfehlung R (2000), die sich mit dem Recht der Journalisten beschäftigt, ihre Informationsquellen nicht preiszugeben) http://merlin.obs.coe.int/redirect.php?id=39

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1999

Europarat: Empfehlungen für Maßnahmen zur Wahlberichterstattung in den Medien

Ramón Prieto Suárez

Europarat, Directorate of Human Rights

Am 9. September 1999 verabschiedete der Europarat eine Empfehlung, in der die Mitgliedsstaaten aufgefordert werden, die freie und faire Wahlberichterstattung in den Medien zu gewährleisten. Die Empfehlung enthält einen Katalog von Maßnahmen, die als sinnvoll für die Wahrung demokratischer Normen bei Wahlen und für die Erhaltung der Meinungsfreiheit während der Wahlkampagnen eingeschätzt werden. Gleichzeitig wird die Bedeutung der Selbstregulierung der Medien in diesem Bereich anerkannt.

Die Empfehlung fordert generell, daß die (öffentlich-rechtlichen und privaten) Rundfunkveranstalter eine faire, ausgewogene und unparteiische Wahlberichterstattung durchführen und dabei gewährleisten, daß alle maßgeblichen Standpunkte und politischen Parteien im Rundfunk zu Wort kommen.

Die Empfehlung befaßt sich außerdem mit der Frage der Bereitstellung kostenloser Sendezeit für politische Parteien/Kandidaten in öffentlich-rechtlichen Medien, wobei verschiedene wichtige Faktoren berücksichtigt werden, darunter die Notwendigkeit, sicherzustellen, daß eine solche Auflage nicht zu Lasten des finanziellen Gleichgewichts des betreffenden öffentlich-rechtlichen Rundfunkveranstalters gehen darf.

Im Hinblick auf bezahlte politische Werbung unterstreicht die Empfehlung, daß in den Ländern, wo derartige Praktiken zulässig sind, Mindeststandards gelten sollten: Gleiche Bedingungen/Tarife für alle Parteien; Aufklärung der Zuschauer/Zuhörer darüber, daß die Botschaft gegen Entgelt gesendet wurde.

Um eine unbotmäßige Beeinflussung der Wählerschaft zu vermeiden, befaßt sich die Empfehlung außerdem mit der Art der Bekanntgabe von Umfragen durch die Medien. Vorgeschlagen wird beispielsweise, daß die Medien die Partei, die die Umfrage in Auftrag gegeben und finanziert hat, das beauftragte Meinungsforschungsinstitut und die bei der Umfrage verwendete Methode nennen sollten.

Die nicht rechtsverbindliche Empfehlung deckt die wichtigsten Themen im Zusammenhang mit der Wahlberichterstattung ab und kann daher Journalisten, Politikern, Gerichten und anderen an Wahlkampagnen Beteiligten als Leitfaden dienen.

- *Recommendation (99)15 on Measures Concerning Media Coverage of Election Campaigns (Adopted by the Committee of Ministers on 9 September 1999 at the 678th meeting of the Ministers' Deputies).* (Empfehlung (99)15 über Maßnahmen hinsichtlich der Wahlberichterstattung in den Medien; verabschiedet vom Ministerkomitee auf der 678. Stellvertretersitzung am 9. September 1999.)

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Europarat: Erklärung zur Verwertung geschützter Hörfunk- und Fernsehproduktionen in den Archiven von Rundfunkanstalten

Francisco Javier Cabrera Blázquez

Europäische Audiovisuelle Informationsstelle

Am 9. September 1999 verabschiedete das Ministerkomitee eine Erklärung zur Verwertung von Ton- und audiovisuellem Material, das sich in den Archiven der Rundfunkanstalten befindet.

Das Ministerkomitee weist in seiner Erklärung darauf hin, daß viele Sender über Hörfunk- und Fernsehproduktionen verfügen, die Teil des nationalen und europäischen Kulturerbes sind und einen hohen kulturellen, didaktischen und informativen Wert haben. Oft verfügen weder die Sender selbst noch die Verwertungsgesellschaften über alle relevanten Rechte der einzelnen Mitwirkenden, die für eine Nutzung der Programme in neuen Formaten erforderlich wären. Andererseits erkennt das Ministerkomitee an, daß die Entscheidung über die Nutzung bei den Rechteinhabern liegt und diese einen Anspruch auf Vergütung haben. Wegen der möglichen Zahl der beteiligten Rechteinhaber ist es für die Sender jedoch manchmal praktisch unmöglich, alle Mitwirkenden oder deren Rechtsnachfolger zu ermitteln und ausfindig zu machen, um mit ihnen über die Nutzung ihrer Rechte zu verhandeln. Dadurch können diese Produktionen der Öffentlichkeit unter Umständen nicht in den neuen digitalen Formaten angeboten werden. Das Ministerkomitee betont in der Erklärung die Notwendigkeit eines Ausgleichs zwischen der rechtlichen Stellung der Rechteinhaber und den legitimen Interessen der Öffentlichkeit und ruft alle Beteiligten auf, über eine geeignete Lösung zu verhandeln. Außerdem lädt es die Mitgliedstaaten ein, diese Frage zu prüfen und Initiativen zur Aufhebung dieser Situation zu ergreifen, ohne ihre Verpflichtungen im Rahmen von internationalen Verträgen, Konventionen und sonstigen völkerrechtlichen Übereinkünften im Bereich des Urheberrechts und verwandter Schutzrechte zu mißachten. Dies gilt insbesondere für Fälle, in denen sich die Unmöglichkeit einer vertraglichen Lösung bereits erwiesen hat. Das Ministerkomitee erklärt zudem, daß es die Situation zu gegebener Zeit prüfen und dann entscheiden wird, ob im Rahmen des Europarats Maßnahmen ergriffen werden sollen.

- *Declaration on the exploitation of protected radio and television productions held in the archives of broadcasting organisations.* (Erklärung zur Verwertung geschützter Hörfunk- und Fernsehproduktionen in den Archiven von Rundfunkanstalten)

IRIS 1999-9/5

Europarat: Empfehlung zur flächendeckenden Bereitstellung neuer Kommunikations- und Informationsdienste

Francisco Javier Cabrera Blázquez

Europäische Audiovisuelle Informationsstelle

Am 9. September 1999 verabschiedete das Ministerkomitee des Europarats eine Empfehlung an die Mitgliedstaaten zur flächendeckenden Bereitstellung neuer Kommunikations- und Informationsdienste.

Die Empfehlung verweist auf die Bedeutung einer Nutzungsmöglichkeit dieser Dienste für die breite Öffentlichkeit und schlägt verschiedene Maßnahmen vor, zu deren Umsetzung die Mitgliedstaaten aufgerufen werden. Außerdem werden die Mitgliedstaaten zur Verbreitung der Empfehlung samt Anhang, insbesondere bei Behörden sowie bei Anbietern und Nutzern

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der neuen Kommunikations- und Informationsdienste, aufgefordert. Die Empfehlung hält die Mitgliedstaaten dazu an, die Schaffung und Erhaltung öffentlicher Zugangspunkte zu fördern, so daß dank eines flächendeckenden Angebots jedem Bürger ein Mindestmaß an Kommunikations- und Informationsdiensten zur Verfügung steht. Der grundlegende Inhalt und die Dienste in bezug auf Informationen von öffentlichem Belang und allgemeine Informationen, die für den demokratischen Prozeß notwendig sind, werden definiert. So befaßt sich die Empfehlung unter anderem mit der Möglichkeit, Verwaltungsvorgänge zwischen Bürger und Behörde, wie etwa die Bearbeitung von Anträgen und die Erteilung von Bescheiden, über solche neuen Dienste abzuwickeln (sofern das nationale Recht nicht die physische Anwesenheit der betreffenden Person erfordert). Information und Ausbildung, die Finanzierung der flächendeckenden Bereitstellung von Diensten sowie Maßnahmen zum Schutz des Wettbewerbs sind weitere Themen, die in der Empfehlung behandelt werden.

- *Recommendation No. R (99) 14 on universal community service concerning new communications and information services.* (Empfehlung Nr. R (99) 14 zur flächendeckenden Bereitstellung neuer Kommunikations- und Informationsdienste)

IRIS 1999-9/1

Europarat: Richtlinien zum Datenschutz im Internet

Spyros Tsovilis

Europarat, Data Protection Unit of the Legal Affairs Directorate

Das Ministerkomitee des Europarats hat am 23. Februar 1999 eine Empfehlung verabschiedet, deren Ziel es im wesentlichen ist, das öffentliche Bewußtsein dafür zu schärfen, was im Hinblick auf das Internet auf dem Spiel steht und welche Risiken ein Mißbrauch der Infobahnen für den Datenschutz heraufbeschwören kann. Die Empfehlung enthält Richtlinien, die an die Rechte und Pflichten von Internetbenutzern und Anbietern erinnern und praktische Ratschläge zur Umsetzung von Datensicherheitsstandards geben.

Der Text richtet sich an Regierungen mit dem Ziel einer weiten Verbreitung der vom Europarat befürworteten Verhaltensgrundsätze, die insbesondere durch nationale Datenschutzbehörden an Internetbenutzer und Anbieter erfolgen soll. Die Richtlinien raten den Benutzern zu Vorsichtsmaßnahmen und Schutzvorkehrungen wie dem rechtmäßigen Einsatz der Anonymität (durch Verwendung öffentlicher Internet-Kiosks oder Zugangskarten mit Gebührenguthaben) oder der Verschlüsselung. Außerdem weisen sie nochmals darauf hin, daß Benutzer Auskunft darüber verlangen können, welche persönlichen Informationen zu welchem Zweck über sie erfaßt, verarbeitet und gespeichert sind, und daß sie bei Bedarf deren Änderung oder Löschung fordern können. Abschließend appellieren die Richtlinien an das Verantwortungsbewußtsein der Benutzer bei der Verarbeitung oder Übertragung von Informationen über andere. Die Richtlinien erinnern die Anbieter an ihre Pflicht, Informationen rechtmäßig und fair zu nutzen und insbesondere die Benutzer über das Risiko von Datenschutzverletzungen und über die rechtlich zulässigen Schutzmöglichkeiten aufzuklären, Diskretion walten zu lassen, den Inhalt der Kommunikation nicht zu manipulieren und keine Daten an Dritte weiterzugeben oder über Grenzen hinweg zu übertragen.

Die Richtlinien wurden im Gefolge des Übereinkommens des Europarats zum Schutz des Menschen bei der automatischen Verarbeitung personenbezogener Daten (ETS 108) in enger Zusammenarbeit mit der Europäischen Union erstellt. Sie bilden einen gemeinsamen europäischen Ansatz für die Frage des Datenschutzes im Internet und einen ersten Schritt zur Vorbereitung eines internationalen Vertrages.

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Die Richtlinien wurden im Mai 1998 veröffentlicht, um eine breite öffentliche Beratung in den Mitgliedstaaten zu ermöglichen. Viele Kommentare von Aufsichtsbehörden, Anbietern, anderen Wirtschaftsvertretern und einfachen Benutzern sind in dem verabschiedeten Text berücksichtigt.

- *Guidelines for the protection of individuals with regard to the collection and processing of personal data on information highways (adopted by the Committee of Ministers on 23 February 1999 at the 660th meeting of the Ministers' Deputies).* (Empfehlung no. R (99) 5 des Ministerkomitee, am 23. Februar 1999 verabschiedet) http://merlin.obs.coe.int/redirect.php?id=1162

IRIS 1999-5/2

Europarat: Empfehlung zum Medienpluralismus

Ramón Prieto Suárez

Europarat, Directorate of Human Rights

Am 19. Januar 1999 hat das Ministerkomitee des Europarats eine Empfehlung über Maßnahmen zur Förderung des Medienpluralismus verabschiedet, die unverbindlich einige Grundsätze und politische Maßnahmen aufzeigen, die für den Schutz des Pluralismus und zur Gewährleistung eines Mindestmaßes an Vielfalt im europaweiten Medienangebot als nützlich erachtet werden.

Die Empfehlung stellt Maßnahmen vor, die die Mitgliedstaaten in sechs Bereichen ergreifen können: Regulierung der Eigentumsverhältnisse, neue Kommunikationstechnologien und -dienste (d.h. digitaler Rundfunk), Inhalte, redaktionelle Verantwortung, öffentlich-rechtlicher Rundfunk und Medienförderung.

Im Hinblick auf die Regulierung von Höchstgrenzen für Eigentumsanteile fordert die Empfehlung die Mitgliedstaaten zur Festlegung von Schwellenwerten auf, die vor allem auf den Publikumsanteil eines Unternehmens oder einer Gruppe abstellen, unter Umständen in Verbindung mit anderen Kriterien wie Obergrenzen für den Kapitalanteil oder den Umsatz. Allerdings gibt die Empfehlung nicht genau an, wo die Obergrenzen zu ziehen sind, sondern überläßt diese Entscheidung den Mitgliedstaaten.

Fur die neuen Kommunikationstechnologien und -diensten zielen die in der Empfehlung niedergelegten Grundsätze inter alia auf eine Verhinderung von wettbewerbsfeindlichen Praktiken und Gatekeeper-Problemen bei der Einführung des digitalen Rundfunks. Die Empfehlung hebt hervor, welche Vorteile die Gewährleistung eines offenen, transparenten und diskriminierungsfreien Zugangs zu Systemen und Diensten im Zusammenhang mit dem digitalen Rundfunk bietet. Sie fordert die Mitgliedstaaten auf, die Möglichkeit einer Einführung gemeinsamer technischer Normen für diesen Typ des Rundfunks zu prüfen, sofern dies durchführbar und wünschenswert ist. Weitere Maßnahmen betreffen Regelungen zur gemeinsamen Nutzung von Frequenzen, die den Zugang kleinerer und unabhängiger Sender zu terrestrischen Frequenzen erleichtern sollen, Quoten für Originalprogramme wie Nachrichten und Magazine, die Förderung des öffentlich-rechtlichen Rundfunks, da dieser einen Beitrag zum Pluralismus leistet, sowie Förderprogramme für die Medien.

Die Empfehlung soll als „Menü" betrachtet werden, aus dem die Mitgliedstaaten - je nach ihrer rechtlichen und faktischen Situation - eine Auswahl treffen können, wenn sie ihren innenpolitischen Rahmen in diesem Bereich abstecken. Es steht den Mitgliedstaaten daher frei zu entscheiden, welche der in den Empfehlungen genannten Maßnahmen sie für besonders geeignet halten.

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- *Recommendation No. R (99) 1 of the Committee of Ministers to Member States on Measures to Promote Media Pluralism, adopted on 19 January 1999. Explanatory Memorandum to Recommendation No. R (99) 1 on Measures to Promote Media Pluralism.* (Empfehlungen Nr. R (99) 1 des Ministerkomitees der Mitgliedstaaten über Maßnahmen zur Förderung des Medienpluralismus, verabschiedet am 19. Januar 1999. Erläuterndes Memorandum zur Empfehlung Nr. R (99) 1 über Maßnahmen zur Förderung des Medienpluralismus.)
  http://merlin.obs.coe.int/redirect.php?id=11105

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1997

Europarat: Drei neue Empfehlungen im Bereich Medien

Frédéric Pinard

Europäische Audiovisuelle Informationsstelle

In seiner Sitzung vom 30. Oktober 1997 hat das Ministerkomitee des Europarates drei Empfehlungen zu den Medien verabschiedet.

Die erste dieser Empfehlungen will die Darstellung sinnloser Gewalt bekämpfen, d. h. „die Verbreitung von Botschaften, Worten und Bildern, deren Inhalt oder aufdringliche Darstellung eine herausragende Rolle spielt, die im Kontext nicht gerechtfertigt ist". Der Geltungsbereich dieser Empfehlung ist sehr groß, da sie alle elektronischen Medien betrifft, d. h. die Hörfunk- und Fernsehprogrammdienste, video on demand, das Internet, das interaktive Fernsehen und Produkte wie Videospiele oder CD-ROM. Wenn das Ministerkomitee daran erinnert, daß es an den Grundsätzen der Meinungsäußerungsfreiheit und der Unabhängigkeit der Medien festhält und darin das Recht einschließt, Informationen brutaler Natur mitzuteilen und zu empfangen, so sind darin jedoch auch Pflichten und Verantwortlichkeiten enthalten. Die Empfehlung stellt auf die sinnlose Gewalt ab. Diese muß Gegenstand einer kollektiven Bewußtseinsbildung sein, an der sowohl die nichtstaatlichen Akteure als auch die Mitgliedstaaten beteiligt sind. Die Leitlinien sind vorgegeben.

Der Text betont, daß die Regelung dieser Frage zunächst Aufgabe der Berufsfachleute der elektronischen Medien ist. An erster Stelle sind die für den Inhalt Verantwortlichen angesprochen. Sie sind verpflichtet, im Rahmen des Möglichen einen sektorbezogenen Verhaltenskodex und interne Richtlinien aufzustellen, die geeigneten Beratungs- und Aufsichtsinstanzen einzurichten oder die Verantwortung für Selbstregelungsbestimmungen in Verträgen mit anderen Sektoren zu übernehmen. Eltern und Lehrer werden ebenfalls an ihre Aufgabe, über Gewalt zu informieren und ihr gegenüber wachsam zu sein, sowie an ihren Erziehungsauftrag erinnert. Und schließlich haben die Mitgliedstaaten eine zwar ergänzende, aber echte Verantwortung, die im Zusammenhang mit folgenden Aspekten stehen kann: unabhängige Selbstregelungsbehörden einrichten, Verpflichtungen, die mit Strafe belegt werden können, in die Lastenhefte aufnehmen, eine Kennzeichnung einführen (mit der die Verantwortung zwischen Fachleuten und Öffentlichkeit aufgeteilt werden kann) und sicherstellen, daß Beschwerden Folgen haben können.

Die zweite Empfehlung bezieht sich auf die „Haßreden", deren Auswirkung sowohl größer als auch schädlicher ist, wenn diese über die Medien verbreitet werden. Der Text betont die Notwendigkeit, wirksame rechtliche Rahmenbestimmungen zu schaffen, zu denen insbesondere eine Stärkung der zivilrechtlichen Reaktionen gehört, etwa die Bewilligung von Schadensersatz und die Gewährleistung, daß ein Recht auf Gegendarstellung ausgeübt oder ein Widerruf erreicht werden kann. Das Ministerkomitee erinnert jedoch auch hier daran, daß es an dem Grundsatz der Meinungsäußerungsfreiheit festhält, und wünscht, daß jede Einmischung der staatlichen Behörden streng auf der Grundlage objektiver Kriterien beschränkt und Gegenstand einer unabhängigen gerichtlichen Überprüfung sein sollte.

Die dritte Empfehlung schließlich legt das Schwergewicht auf die Förderung einer Kultur der Toleranz in den Medien. Diese Förderung muß sowohl im Rahmen der Ausbildung der Berufsfachleute als auch des Inhalts und der Programmverbreitung erfolgen.

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- *Recommendation n° R (97) 20 of the Committee of Ministers to the Member States on "hate speech" of 30 October 1997* (Empfehlung Nr. (97) 20 der Ministerkommittee zu den Mitgliedstaaten über "hate speech" vom 30. Oktober 1997)
- *Recommendation n° R (97) 21 of the Committee of Ministers to the Member States on the media and the promotion of a culture of tolerance, 30 October 1997* (Empfehlung Nr. R (97) 21 der Ministerkommittee zu den Mitgliedstaaten über Medien und eine Kultur der Toleranz, 30. Oktober 1997)
- *Recommendation n° R (97) 19 of the Committee of Ministers to the Member States on the portrayal of violence in the electronic media, 30 October 1997* (Empfehlung Nr. R (97)19 der Ministerkommittee zu den Mitgliedstaaten über Gewaltdarstellung in den Medien, 30. Oktober 1997)

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1996

Empfehlung betreffend die Garantie der Unabhängigkeit des öffentlich-rechtlichen Rundfunks

Ad van Loon

Europäische Audiovisuelle Informationsstelle

Am 11. September 1996 verabschiedete das Ministerkomitee eine Empfehlung an die Mitgliedstaaten des Europarates betreffend die Garantie der Unabhängigkeit des öffentlich-rechtlichen Rundfunks. Die Mitgliedstaaten werden aufgefordert, ihre nationalen Gesetze oder Verträge über öffentlich-rechtliche Rundfunkanstalten um Bestimmungen zu ergänzen, die deren Unabhängigkeit garantieren. In einem Anhang zu der Empfehlung werden entsprechende Leitlinien formuliert. Die Mitgliedstaaten werden gebeten, diese Leitlinien den für die Aufsicht über die Tätigkeiten der öffentlichen Rundfunkanstalten zuständigen Behörden zur Kenntnis zu bringen.

Die Leitlinien betreffen Maßnahmen, die die redaktionelle Unabhängigkeit und institutionelle Autonomie der öffentlich-rechtlichen Rundfunkanstalten gewährleisten, sowie die Kompetenzen, die Rechtsstellung und Verantwortlichkeiten ihrer Manager, außerdem die Kompetenzen und die Rechtsstellung der Aufsichtsorgane, die Einstellung, Beförderung und Versetzung von Mitarbeitern, die Mittelbeschaffung, die Programmpolitik ("...Fakten und Ereignisse fair darzustellen und die freie Meinungsbildung zu fördern") und den Zugang öffentlich-rechtlicher Rundfunkanstalten zu neuen Kommunikationstechnologien.

- *Recommendation No. R (96) 10 of the Committee of Ministers to member States on the Guarantee of the Independence of Public Service Broadcasting, 11 September 1996.* (Empfehlung Nr. R(96)10 des Ministerkomitees an die Mitgliedstaaten betreffend die Garantie der Unabhängigkeit des öffentlich-rechtlichen Rundfunks vom 11. September 1996)

IRIS 1996-10/4

Erklärung und Empfehlung zum Schutz von Journalisten in Konflikt- und Spannungssituationen

Jeroen Schokkenbroek

Europarat, Directorate of Human Rights

Am 3. Mai 1996 hat das Ministerkomitee des Europarats aus Anlaß des Welttages der Pressefreiheit eine Erklärung zum Schutz von Journalisten in Konflikt- und Spannungssituationen sowie eine Empfehlung an die Mitgliedstaaten zum selben Thema verabschiedet (Empfehlung Nr. R (96) 4).

Diese Texte sind das Ergebnis der zwischenstaatlichen Arbeit, die nach der 4. Europäischen Ministerkonferenz zur Massenmedienpolitik (Prag, 7.-8. Dezember 1994) unter der Leitung des Lenkungsausschusses Massenmedien (CDMM) geleistet wurde. Fachorganisationen und interessierte NGOs waren an ihrer Ausarbeitung eng beteiligt.

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Die Erklärung enthält die feierliche politische Bekräftigung, daß alle Journalisten, die in Konflikt- und Spannungssituationen tätig sind, ohne Einschränkung Anspruch auf den vollen Schutz des internationalen humanitären Rechts und der internationalen Menschenrechtsverträge wie z.B. der Europäischen Menschenrechtskonvention haben. Sie verurteilt die wachsende Zahl von Fällen, in denen Journalisten getötet wurden, verschwunden sind oder auf andere Weise angegriffen wurden, und bezeichnet diese Vorkommnisse als Angriffe auf die freie Ausübung des Journalismus. Darüber hinaus äußert das Ministerkomitee die Auffassung, daß in dringenden Fällen der Generalsekretär des Europarats schnell alle geeigneten Maßnahmen ergreifen kann, wenn er Berichte über Verletzungen der Rechte und Freiheiten von Journalisten in Konflikt- und Spannungssituationen erhält, und das Ministerkomitee fordert die Mitgliedstaaten auf, diesbezüglich mit dem Generalsekretär zusammenzuarbeiten.

In der Empfehlung spricht sich das Ministerkomitee dafür aus, daß die Regierungen der Mitgliedstaaten sich in ihren Maßnahmen und ihrer Politik von einer Reihe von Grundprinzipien zum Schutz von Journalisten in Konflikt- und Spannungssituationen leiten lassen. Diese Grundprinzipien, die unterschiedslos und ohne jedwede Diskriminierung auf ausländische Korrespondenten und einheimische Journalisten anzuwenden sind, werden im Anschluß an die Empfehlung genannt. Außerdem wird empfohlen, daß die Regierungen den Text der Empfehlung allgemein verbreiten, z.B. an Medienorganisationen, Journalisten und Fachorganisationen sowie militärische und zivile Stellen und deren Führungspersonal.

Die Grundprinzipien betreffen verschiedene Aspekte des Schutzes von Journalisten, insbesondere im Hinblick auf ihre Rechte und ihre Arbeitsbedingungen: das Recht, Informationen und Ideen ohne Rücksicht auf Grenzen zu suchen, mitzuteilen und zu empfangen, die Freiheit der Bewegung und der Korrespondenz, die Vertraulichkeit der Quellen, Kommunikationsmittel, Schutz und Unterstützung von Journalisten, die darum bitten, durch Polizei und Streitkräfte, diskriminierungs- und willkürfreie Maßnahmen öffentlicher Stellen gegenüber Journalisten, Zugang zum Gebiet eines Staates sowie Prinzipien zur fairen Handhabung von Akkreditierungssystemen und zur Vermeidung jeglichen Mißbrauchs solcher Systeme. Ein gesondertes Prinzip betrifft die Untersuchungen, die Staaten bei Angriffen auf die körperliche Sicherheit von Journalisten durchführen müssen, um die für solche Angriffe Verantwortlichen vor Gericht zu bringen. Der Text stellt ferner fest, daß Medienorganisationen, Fachorganisationen und Journalisten selbst Maßnahmen ergreifen können, die zum Schutz der körperlichen Sicherheit von Journalisten beitragen: angemessene Information und Ausbildung vor dem Aufbruch zu einer gefährlichen Mission, ausreichender Versicherungsschutz und die Nutzung von Notfall-Rufnummern, wie sie das Internationale Komitee des Roten Kreuzes unterhält.

- *Declaration on the protection of journalists in sitiuations of conflict and tension and Recommendation No. (96) 4 of the Committee of Ministers to member States on the protection of journalists in situations of conflict and tension, both adopted on 3 May 1996 by the Committee of Ministers at its 98th Session.* (Erklärung zum Schutz von Journalisten in Konflikt- und Spannungssituationen und Empfehlung Nr. (96) 4 des Ministerkomitees an die Mitgliedstaaten zum Schutz von Journalisten in Konflikt- und Spannungssituationen, beide vom Ministerkomitee bei seiner 98. Sitzung am 3. Mai 1996 verabschiedet)

IRIS 1996-5/4

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1995

Europarat: Empfehlung zum Thema Strafprozeßrecht und Informationstechnologie

Ad van Loon

Europäische Audiovisuelle Informationsstelle

Am 3. November 1995 hat das Ministerkomitee des Europarats den Regierungen der Mitgliedstaaten eine Reihe von Leitprinzipien empfohlen, die sie bei Strafverfahren im Zusammenhang mit der Informationstechnologie befolgen sollen. Diese Prinzipien können z.B. in Fällen wie dem der Newsgruppen bei CompuServe (siehe unter "Deutschland: Deutsche Justiz sieht juristische Verantwortung von Online-Diensten und Unternehmen, die Zugang zum Internet anbieten") oder bei dem Scientology-Fall in den Niederlanden (siehe: IRIS 1995-9: 4) relevant sein.

Die empfohlenen Prinzipien betreffen die Durchsuchung von Computersystemen, die Beschlagnahme von Daten, die technische Überwachung (Abfangen der Datenkommunikation), die Verpflichtung zur Zusammenarbeit mit den Ermittlungsbehörden, kompatible Verfahren und technische Methoden zur Behandlung elektronischer Beweise, die Linderung der negativen Auswirkungen der Nutzung der Verschlüsselung und der Austausch von Informationen zwischen den Mitgliedstaaten über Straftaten im Zusammenhang mit der Informationstechnologie (einschließlich eines Modus operandi und technischer Aspekte).

- *Recommendation No. R (95) 13 Concerning Problems of Criminal Procedural Law Connected with Information Technology and Explanatory Memorandum (Adopted by the Committee of Ministers on 11 September 1995 at the 543rd meeting of the Ministers' Deputies)* (Empfehlung Nr. R (95) 13 des Ministerkomitees des Europarats an die Regierungen der Mitgliedstaaten zu Problemen des Strafprozeßrechts in Verbindung mit der Informationstechnologie und Erläuterndes Memorandum)

IRIS 1996-1/1

Ministerkomitee: Entschließung zu EURIMAGES

Ad van Loon

Europäische Audiovisuelle Informationsstelle

Am 7. Juni 1995 hat das Ministerkomitee eine Entschließung verabschiedet, wonach die verschiedenen Programme von EURIMAGES, dem Europäischen Unterstützungsfonds für die Koproduktion und den Vertrieb kreativer Film- und audiovisueller Arbeiten, schrittweise europäischen Nichtmitgliedstaaten zugänglich gemacht werden sollen.

Die Entschließung sieht die Möglichkeit vor, Koproduktionen, an denen Koproduzenten aus Mitgliedstaaten einerseits und assoziierte Mitglied- oder Nichtmitgliedstaaten des Fonds andererseits beteiligt sind, finanziell zu unterstützen, vorausgesetzt, daß der Beitrag der letztgenannten Staaten 30% der Kosten für die Herstellung der Koproduktion nicht übersteigt. Im übrigen können Vertriebsgesellschaften und Aussteller aus einem assoziierten

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Mitgliedstaat von jetzt an die Unterstützung des Programms für den Vertrieb und Kinos erhalten.

- *Resolution (95) 4 of 7 June 1995 amending Resolution (88) 15 setting up a European support fund for the co-production and distribution of creative cinematographic and audiovisual works ("EURIMAGES").* (Entschließung (95) 4 vom 7. Juni 1995 zur Änderung der Entschließung (88) 15 zur Errichtung eines Europäischen Unterstützungsfonds für die Koproduktion und den Vertrieb kreativer Film- und audiovisueller Arbeiten („EURIMAGES"))

IRIS 1995-8/7

Ministerkomitee: Empfehlung zum Schutz persönlicher Daten im Bereich der Telekommunikationsdienste

Ad van Loon

Europäische Audiovisuelle Informationsstelle

Am 7. Februar 1995 verabschiedete das Ministerkomitee des Europarats eine Empfehlung zum Schutz persönlicher Daten im Bereich der Telekommunikationsdienste unter besonderer Berücksichtigung der Telefondienste.

In ihrer Empfehlung raten die Minister den 34 Mitgliedstaaten des Europarats, bei Netzbetreibern und Diensteanbietern, die zur Erfüllung Ihrer Funktionen persönliche Daten erfassen und automatisch verarbeiten, die in einem Anhang zu der Empfehlung dargelegten Grundsätze anzuwenden. Die im Anhang angeführten Grundsätze beziehen sich auf die Achtung der Privatsphäre, die Erfassung und Verarbeitung von Daten, die Weitergabe von Daten, Zugangs- und Korrekturrechte sowie Sicherheitsmaßnahmen zur Verhinderung des unbefugten Störens oder Abfangens der Kommunikation. Bei der Weitergabe von Daten an Dritte folgen die Grundsätze dem Zustimmungsprinzip: Die Weitergabe persönlicher Daten darf nicht stattfinden, wenn der Teilnehmer eines Netzes oder Dienstes keine ausdrückliche und bewußte schriftliche Einwilligung gegeben hat und die weitergegebenen Informationen nicht die Identifizierung der Angerufenen ermöglichen.

Teilnehmerlisten mit persönlichen Daten dürfen jedoch von Netzbetreibern und Diensteanbietern an Dritte auch weitergegeben werden, wenn der Teilnehmer von der beabsichtigten Weitergabe informiert wurde und nicht widersprochen hat oder die Datenschutzbehörde die Weitergabe genehmigt hat oder die Weitergabe nach inländischem Recht vorgesehen ist.

- *Recommendation No R (95)4 of the Committee of Ministers to the member States on the protection of personal data in the area of telecommunication services, with particular reference to telephone services, 7 February 1995 together with Explanatory Memorandum.* (Empfehlung Nr. R (95)4 des Ministerkomitees an die Mitgliedstaaten zum Schutz persönlicher Daten im Bereich der Telekommunikationsdienste unter besonderer Berücksichtigung der Telefondienste, 7. Februar 1995)

IRIS 1995-3/8

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Europarat: Aufforderung an Mitgliedstaaten ihre Maßnahmen gegen die Piraterie bei akustischen und audiovisuellen Werken zu verstärken

Ad van Loon

Europäische Audiovisuelle Informationsstelle

In Europa ist heute eine Zunahme der sogenannten « audiovisuellen Piraterie » zu verzeichnen, wie die kommerzielle Zwecke verfolgende massive Vervielfältigung und illegale Weiterverbreitung von Audiokassetten und Cds, Videokassetten, Programm-Dekodern für das Fernsehen, Multimedia-Software und Videospielen und nicht zuletzt der gesetzwidrigen Weiterverbreitung von Fernsehprogrammen oder der öffentlichen Vorführung von Kinofilmen ohne entsprechende Genehmigung u.v.a.m. Der wirtschaftliche und ideelle Schaden, der daraus für die künstlerische Schöpfung und die Ton- bzw. audiovisuelle Industrie entsteht, ist beträchtlich.

Besorgt über das Ausmaß und die Internationalisierung dieses Phänomens hat das Ministerkomitee des Europarates am 13. Januar 1995 eine Empfehlung verabschiedet, in der seine Mitgliedstaaten dazu aufgefordert werden, ihre Maßnahmen gegen diese Form der Piraterie zu verstärken.

Die Empfehlung und ihr Anhang schlagen eine Reihe praktischer Schritte für die nationale Ebene sowie die internationale Zusammenarbeit vor. Sie unterstreichen ebenfalls die Notwendigkeit einer wirksamen Anwendung der vom Europarat in diesem Bereich bereits verabschiedeten Instrumente vor, insbesondere der Empfehlungen: Nr. R (88) 2 über die Maßnahmen der Bekämpfung der Piraterie im Bereich der Urheber- und verwandten Rechte; Nr. R (91) 14 über den rechtlichen Schutz der Dienste verschlüsselter Fernsehprogrammausstrahlungen und Nr. R (94) 3 über die Förderung der Aufklärung und Bewußtseinsbildung im Bereich der die künstlerische Schöpfung betreffenden Urheber- und verwandten Rechte.

- *Recommendation No. R(95) 1 of the Committee of Ministers to member States on measures against sound and audio-visual piracy, 13 January 1995.* (Empfehlung Nr. R(95) 1 des Ministerkommittees an die Mitgliedstaaten über Maßnahmen gegen die Piraterie bei akustischen und audiovisuellen Werken, 13. Januar 1995)

IRIS 1995-1/4

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1994

Europaparat: Empfehlung zur Medientransparenz

Ad van Loon

Europäische Audiovisuelle Informationsstelle

Das Ministerkomitee des Europarats hat am 22. November 1994 eine Empfehlung zur Förderung der Medientransparenz verabschiedet. Die Minister empfehlen den Mitgliedstaaten des Europarats, die Aufnahme von Bestimmungen in ihre jeweilige Gesetzgebung zu prüfen, um die Medientransparenz zu gewährleisten oder zu fördern sowie unter Berücksichtigung der Leitlinien, die der Empfehlung beigefügt sind, den Informationsaustausch zwischen den Mitgliedstaaten zu diesem Thema erleichtern.

- *Recommendation No. R(94)13 of the Committee of Ministers to member states on measures to promote media transparency, Council of Europe, 22 November 1994.* (Empfehlung Nr. R(94)13 des Ministerkomitees an die Mitgliedstaaten zu Maßnahmen zur Förderung der Medientransparenz, Europarat, 22. November 1994)

IRIS 1995-1/3

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DH-MC(2010)001

Recommendations and Declarations of the Committee of Ministers of the Council of Europe in the field of media and new communication services

Media and Information Society Division
Directorate General of Human Rights and Legal Affairs

Strasbourg, August 2010

Res(52)45

Recommendations and Declarations of the Committee of Ministers in the field of media and new communication services[1]

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COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Resolution (52) 45

Restricted seminar of distinguished writers, publicists, editors and leading journalists

(Adopted by the Committee of Ministers on 12 September 1952)

The Committee of Ministers,

Considering that a seminar of distinguished writers, publicists, editors and leading journalists may offer valuable suggestions for making the idea of Europe better known to the public,

Approves the principle of holding such a seminar and instructs the Committee of Cultural Experts to submit a detailed plan for consideration by the Committee of Ministers.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Resolution (52) 73

International circulation of books, works of art and all media of public information or education

(Adopted by the the Committee of Ministers on 22 December 1952)

The Committee of Ministers,

Having regard to Recommendation 33 (1952) on the international circulation of books, works of art and all media of public information or education, adopted by the Consultative Assembly during the Second Part of its Fourth Ordinary Session,

Resolves to recommend to the Governments of Member States which have already signed the general Convention on the international circulation of books, works of art and all media of public information and education, drawn up on the initiative of UNESCO, that they should take the necessary steps to obtain its ratification with the minimum of delay.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Resolution (54) 11

Use of television as a medium for securing the support of the general public for the European idea

(Adopted by the Committee of Ministers on on 3 July 1954)

The Committee of Ministers,

Having considered Recommendation 54 of the Consultative Assembly concerning the use of television as a medium for securing the support of the general public for the European idea;

Considering that it is desirable to undertake, with the assistance of the competent organisations, a comprehensive study of certain aspects of this question;

Resolves:

(a) to declare publicly the interest attached by the Council to all questions relating to the use and development of television, and the Council's intention to watch closely all efforts now being made in Europe in this field, which are entirely welcome and to which it is desired to wish as brilliant a success as has just been achieved by Eurovision in the case of the exchange of programmes;

(b) to transmit to Governments, with a request that henceforward they be guided thereby, the suggestions put forward by the Consultative Assembly for the permanent organisation of international relays and for the reduction of their cost; and, further, to ask the European Broadcasting Union and the International Telecommunications Union to continue, in consultation with the Secretariat-General of the Council of Europe, their study of the technical and financial aspects of this problem, with a view to submitting firm proposals to the Committee of Ministers;

(c) to request the Bureau for the Protection of Industrial Property and of Literary and Artistic Works at Berne, in consultation with the Secretariats of UNESCO, the I. L. O and the Council of Europe, and after obtaining the views of the non-governmental organisations concerned, and taking cognisance of the studies made by national broadcasting companies, to investigate the legal obstacles in the way of exchange of television programmes, and to make precise recommendations for the removal of such obstacles, while maintaining full protection of authors' rights and related rights;

(d) to invite Member Governments to encourage, insofar as may be possible, and having regard to the achievements of other international organisations in this respect, both the exchange of programmes and the production by their national television services of programmes designed to promote a more intimate knowledge of the cultural, economic and political life of other European peoples and to foster the European idea;

(e) to authorise the Committee of Cultural Experts to establish, in liaison with the Brussels Treaty Organisation, UNESCO and the European Broadcasting Union, a working party for the examination of the cultural problems posed by the development of television; and to instruct the Secretariat-General to prepare a report setting out the results achieved.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Resolution (61) 23

Exchange of television programmes

(Adopted by the Committee of Ministers on 15 September 1961)

The Committee of Ministers,

Having regard to the Report of the 6th Session of the Committee of Legal Experts on the Exchange of Television Programmes (Doc. CM (61) 63);

Noting;

that the exchange of programmes between television organisations depends largely on the circulation of recordings;

that such circulation must be subordinate to the same legal conditions in each of the countries concerned;

and that this requirement presupposes the existence of a single international body empowered to issue recording licences on behalf of copyright-holders for and within each country,

Recommends that Governments take care that the exercise of the rights of mechanical reproduction by such an international body shall not be hampered.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Resolution (74) 26

on the right of reply - position of the individual in relation to the press

(Adopted by the Committee of Ministers on 2 July 1974, at the 233rd meeting of the Ministers' Deputies)

The Committee of Ministers,

Considering that the right to freedom of expression includes the freedom to receive and to impart information and ideas without interference by public authority and regardless of frontiers, as laid down in Article 10 of the European Convention on Human Rights;

Considering that under this provision the exercise of this freedom carries with it duties and responsibilities, in particular in connection with the protection of the reputation or rights of others;

Considering that it is desirable to provide the individual with adequate means of protection against the publication of information containing inaccurate facts about him, and to give him a remedy against the publication of information, including and opinions, that constitutes an intrusion in his private life or an attack on his dignity, honour or reputation, whether the information was conveyed to the public through the written press, radio, television or any other mass media of a periodical nature;

Considering that it is also in the interest of the public to receive information from different sources, thereby guaranteeing that they receive complete information;

Considering that for these purposes the same principles should apply in respect of all media, although the means available to the individual might vary depending on whether the written press, the radio or television were involved;

Considering that at the present stage only the position of the individual in relation to media of a periodical character, such as newspapers, broadcasting and television should be taken into account and that the protection of the individual against interferences with his privacy or against attacks upon his honour, dignity or reputation should be particularly dealt with,

Recommends to member governments, as a minimum, that the position of the individual in relation to media should be in accordance with the following principles:

1. In relation to information concerning individuals published in any medium, the individual concerned shall have an effective possibility for the correction, without undue delay, of incorrect facts relating to him which he has a justified interest in having corrected, such corrections being given, as far as possible, the same prominence as the original publication.

2. In relation to information concerning individuals published in any medium, the individual concerned shall have an effective remedy against the publication of facts and opinions which constitute:

i. an interference with his privacy except where this is justified by an overriding, legitimate public interest, where the individual has expressly or tacitly consented to the publication or where publication is in the circumstances a generally accepted practice and not inconsistent with law;

ii. an attack upon his dignity, honour or reputation, unless the information is published with the express or tacit consent of the individual concerned or is justified by an overriding, legitimate public interest and is a fair criticism based on accurate facts.

3. Nothing in the above principles should be interpreted to justify censorship.

4. In the above principles:

i. the term "individual" is to include all natural and legal persons as well as other bodies irrespective of nationality or residence, with the exclusion of the state and other public authorities;

ii the term "medium" covers any means of communication for the dissemination to the public of information of a periodical character, such as newspapers, broadcasting or television;

iii. the term "effective possibility for the correction" means any possibility which can be used as a means of redress, whether legal or otherwise, such as a right of correction, or a right of reply, or a complaint to press councils;

iv. the term "remedy" means a form of redress, whether legal or otherwise, such as provided under the law of defamation or a complaint to press councils, which is available to every individual without undue limitation such as unreasonable costs.

5. The above principles shall apply to all media without any distinction. This does not exclude differences in the application of these principles to particular media, such as radio and television, to the extent that this is necessary or justified by their different nature.

Recommends that member governments, when adopting legislation concerning the right of reply, make provision for the right of reply in the press and on radio and television and any other periodical media on the pattern of the minimum rules annexed to this resolution.

Appendix to Resolution (74) 26

Minimum rules regarding the right of reply to the press, the radio and the television and to other periodical media

1. Any natural and legal person, as well as other bodies, irrespective of nationality or residence, mentioned in a newspaper, a periodical, a radio or television broadcast, or in any other medium of a periodical nature, regarding whom or which facts have been made

accessible to the public which he claims to be inaccurate, may exercise the right of reply in order to correct the facts concerning that person or body.

2. At the request of the person concerned, the medium in question shall be obliged to make public the reply which the person concerned has sent in.

3. By way of exception the national law may provide that the publication of the reply may be refused by the medium in the following cases:

i. if the request for publication of the reply is not addressed to the medium within a reasonably short time;

ii. if the length of the reply exceeds what is necessary to correct the information containing the facts claimed to be inaccurate;

iii. if the reply is not limited to a correction of the facts challenged;

iv if it constitutes a punishable offence;

v. if it is considered contrary to the legally protected interests of a third party;

vi. if the individual concerned cannot show the existence of a legitimate interest.

4. Publication of the reply must be without undue delay and must be given, as far as possible, the same prominence as was given to the information containing the facts claimed to be inaccurate.

5. In order to safeguard the effective exercise of the right to reply, the national law shall determine the person who shall represent any publication, publishing house, radio, television or other medium for the purpose of addressing a request to publish the reply. The person who shall be responsible for the publication of the reply shall be similarly determined and this person shall not be protected by any immunity whatsoever.

6. The above rules shall apply to all media without any distinction. This does not exclude differences in the application of these rules to particular media such as radio and television to the extent that this is necessary or justified by their different nature.

7. Any dispute as to the application of the above rules shall be brought before a tribunal which shall have power to order the immediate publication of the reply.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Resolution (74) 43

on press concentrations

(Adopted by the Committee of Ministers on 16 December 1974,
at the 240th meeting of the Ministers' Deputies)

The Committee of Ministers,

1. Considering the need to ensure the implementation of the right to freedom of expression including that of freely receiving and imparting information guaranteed by Article 10 of the European Convention on Human Rights;

2. Believing that the existence of a large diversity of sources of news and views available to the general public is of capital importance in this respect;

3. Conscious of the special role of newspapers in ensuring such diversity of news and views available to the general public;

4. Sharing the concern frequently expressed as to the possible prejudice to the rights guaranteed by Article 10 of the European Convention on Human Rights as a result of a diminution in the total number of newspapers with their own complete editorial units, or of the concentration of the effective control of an increasing number of such newspapers in the same hands;

5. Convinced that such large diversity of news and views depends to no small degree on the existence of properly functioning competition within the press, whilst not denying however that in certain cases a move towards bigger enterprises could consolidate the economic situation of the press and improve its performance;

6. Conscious that a lasting freeze of the existing structure of the press could present a threat to press freedom and public choice;

7. Recognising that there are wide differences between the situations of the press in different member countries inter alia because of factors of geography, history, habits of thought and economic circumstances;

8. Believing however that there exist several possible forms of action open to the public authorities, including the different forms of aid - general, specific, or selective - as defined in Annex I of the report referred to below, which, if suitably adapted, might in certain cases and for a certain time contribute towards some limitation or slowing down of the phenomenon of press concentration;

9. Having regard to the report of the committee of experts accompanying this resolution,

Recommends the governments of member states to examine the following proposals in the light of their applicability, of which they (the governments of member states) remain the sole judge, to the circumstances prevailing in the member state concerned:

1. That certain measures of public aid to the press, if suitably adapted, could ensure within the limits indicated below, the survival of newspapers with their own complete editorial units threatened with disappearance or with being taken over as a result of financial difficulties;

2. That aid given in a selective form should be limited in time and in amount, should be granted on the basis of objective criteria, and should be confined in principle to newspapers whose difficulties can be eliminated by the assistance in question;

3. That, without prejudice to initiatives of which the governments of member states remain the sole judge having regard to the structure and the particular situation of the press in their country, assistance capable of fulfilling the objective referred to above would seem to be possible by means of measures such as:

a. the institution of a press fund enabling less favourably placed newspapers to obtain subsidies or loans on particularly favourable terms with a view to developing their ability to compete on the market;

b. the grant of specific aids, for example those resulting from a modulation of the aids described in Chapter V of the accompanying report, designed to give assistance to certain categories of newspapers finding themselves in underprivileged situations and being forced to adapt themselves to changing structural circumstances;

4. That governments already according economic assistance to the press in one form or another should review the structure of those existing arrangements with a view to avoiding any unintended and unforeseen de facto encouragement given thereby to the process of press concentration, nevertheless bearing in mind that, where already accorded, such assistance has become part of the climate in which the press lives and that any sudden diminution of such assistance might precipate the closure or takeover of newspapers in a weak financial position;

5. That, where governments dispose of statutory powers enabling them to forbid the take-over of a daily newspaper by a press group already controlling several other newspapers, and where it may clearly appear that a take-over of this sort would gravely threaten the liberty of expression and the right to information, the governments in question - if they do not already dispose of powers to give financial assistance to the newspaper whose take-over has been refused in the public interest should take the necessary steps to provide themselves with powers enabling them in appropriate cases to accord such financial assistance;

6. That governments encourage efforts to rationalise the methods of production and distribution of newspapers with a view to diminishing publishing costs subject to the reservation that those newspapers least well placed in the market should equally be able to benefit from such efforts, and that, in the case of particular arrangements or technical co-operation agreements between different newspapers, the independence of each newspaper in question can be guaranteed and respected;

7. That finally, governments stimulate efforts by the industry itself to find appropriate measures of adaptation to meet the difficulties the latter is facing, in particular by making the changes which are called for by the complementarity necessary with audio-visual media.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (81) 19

of the Committee of Ministers to member states on the access to information held by public authorities[1]

(Adopted by the Committee of Ministers on 25 November 1981, at the 340th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members;

Having regard to Assembly Recommendation 854 on access by the public to government records and freedom of information;

Considering the importance for the public in a democratic society of adequate information on public issues;

Considering that access to information by the public is likely to strengthen confidence of the public in the administration;

Considering therefore that the utmost endeavour should be made to ensure the fullest possible availability to the public of information held by public authorities,

Recommends the governments of member states to be guided in their law and practice by the principles appended to this recommendation.

Appendix to Recommendation No. R (81) 19

The following principles apply to natural and legal persons. In the implementation of these principles regard shall duly be had to the requirements of good and efficient administration. Where such requirements make it necessary to modify or exclude one or more of these principles, either in particular cases or in specific areas of public administration, every endeavour should nevertheless be made to achieve the highest possible degree of access to information.

[1] When Recommendation No. R (81) 19 was adopted, and in application of Article 10.2.*c* of the Rules of Procedure for the meetings of the Ministers' Deputies, the Representatives of Italy and Luxembourg reserved the right of their governments to comply with it or not.

I.

Everyone within the jurisdiction of a member state shall have the right to obtain, on request, information held by the public authorities other than legislative bodies and judicial authorities.

II.

Effective and appropriate means shall be provided to ensure access to information.

III.

Access to information shall not be refused on the ground that the requesting person has not a specific interest in the matter.

IV.

Access to information shall be provided on the basis of equality.

V.

The foregoing principles shall apply subject only to such limitations and restrictions as are necessary in a democratic society for the protection of legitimate public interests (such as national security, public safety, public order, the economic well-being of the country, the prevention of crime, or for preventing the disclosure of information received in confidence), and for the protection of privacy and other legitimate private interests, having, however, due regard to the specific interest of an individual in information held by the public authorities which concerns him personally.

VI.

Any request for information shall be decided upon within a reasonable time.

VII.

A public authority refusing access to information shall give the reasons on which the refusal is based, according to law or practice.

VIII.

Any refusal of information shall be subject to review on request.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (85) 8

**of the Committee of Ministers to member states
on the conservation of the European film heritage**

*(Adopted by the Committee of Ministers on 14 May 1985,
at the 385th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, and that this aim is pursued notably by common action in cultural matters;

Considering the importance of cinema as art, its value as a cultural and historical document and its character as an expression of the cultural identity of European peoples;

Considering the role of film as witness to the cultural and social heritage and that it must therefore be protected without qualification;

Considering that a great part of the European film heritage is composed of nitrate material which is irreversibly deteriorating and which therefore must be transferred on to safety material with the greatest urgency;

Considering that the existence of essential parts of the European film heritage is being severely endangered due to the deterioration of colour film;

Considering that, owing to the commercial nature of the film industry, films of great artistic or cultural importance are every year being deliberately destroyed by their rights holders;

Considering that the film heritage is essential to permit the reconstruction of the culture, social life and art of each nation and of Europe as a whole, variously for television and cinema, for mass-media education, for studies in universities and research institutes, and for film redistribution in cinemas, on television and by other techniques;

Having regard to the work of the Council for Cultural Co-operation and to Recommendation 862 (1979) of the Assembly on cinema and the state;

Having regard to Unesco's Recommendation on protection and conservation of moving images,

I. Recommends that the governments of member states should:

a. stress the essential role played by film archives and make available to them the resources necessary for protecting the national film heritage, especially through restoration and conservation of film;

b. promote the establishment of a system of legal deposit for nationally made films in officially recognised archives and, with special regard to film as historical and cultural document, encourage the archiving of films made for television as well as material recorded electronically and distributed on the national market;

c. encourage the establishment of a system of legal deposit or systematic voluntary deposit in national film archives of foreign films including those sub-titled or dubbed in the language of the country;

d. make the European film heritage better known by giving archives the necessary means for acquiring and making available to the public, within the limits of copyright laws, European films of high artistic quality and historical and cultural value; and, in order to promote understanding between different cultures, also make other resources available to archives so as to establish collections of non-European films, with special emphasis on films from the developing countries;

II. Instructs the Secretary General of the Council of Europe to transmit this recommendation to the governments of those states party to the European Cultural Convention which are not members of the Council of Europe.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (86) 3

of the Committee of Ministers to member states on the promotion of audiovisual production in Europe

(Adopted by the Committee of Ministers on 14 February 1986, at the 393rd meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular Article 10 thereof;

Recalling its commitment to freedom of expression and the free circulation of information and ideas, to which it gave expression, in particular, in its Declaration of 29 April 1982;

Bearing in mind the European Cultural Convention;

Bearing in mind the interest expressed in Resolution No. I of the 4th Conference of European Ministers responsible for Cultural Affairs (Berlin, May 1984) in increased co-operation between the European partners to encourage the production, co-production and use of programmes and the emergence of programme industries on a European scale;

Taking account of the fact that, in this same resolution, the conference recommended the Committee of Ministers of the Council of Europe to call on the member states to encourage the production of programmes in European countries to supply material for the broadcasting time offered by the new networks;

Recalling its Resolution (85) 6 of 25 April 1985 on European cultural identity;

Conscious that the large-scale emergence in European countries of new channels for the transmission and distribution of television will lead to intensification of the demand for programmes, increased competition on the programme market and will require as a result new conditions of production;

Anxious therefore to encourage the development in the member states of increased and more competitive audiovisual production;

Considering that such development should both uphold the cultural identity of member states and strengthen the audiovisual industry on the European market, and thereby safeguard a European pluralistic media system;

Desirous therefore, having regard to the importance of these aims, to define appropriate measures bearing in mind the specific situation in the member states;

Considering that the Council of Europe is particularly suited to establish common principles designed to promote audiovisual production;

Recalling its earlier recommendations on the media and particularly Recommendations Nos. R (84) 3 of 23 February 1984 on principles on television advertising, R (84) 22 of 7 December 1984 on the use of satellite capacity for television and sound radio and R (86) 2 of 14 February 1986 on principles relating to copyright law questions in the field of television by satellite and cable,

1. Recommends that the governments of the member states:

   a. take concrete measures to implement the principles set out below, and

   b. ensure, by all appropriate means, that these principles are known and respected by the persons and bodies concerned;

2. Instructs the Secretary General of the Council of Europe to transmit this recommendation to the governments of those states party to the European Cultural Convention which are not members of the Council of Europe.

Principles

Definition and scope

The promotion of audiovisual production in Europe shall include all measures taken to encourage audiovisual creativity, the production of audiovisual works in the member states and the distribution, marketing and scheduling of such works.

For the purpose of this recommendation:

- "audiovisual production in Europe" means the creation and manufacture of audiovisual works of all kinds, the production of which is controlled by natural or legal persons of member states, and which are capable of being used in television programmes whatever the mode of transmission or distribution,

- an "audiovisual work of European origin" is the result of the activity described above.

*
*   *

Nothing in this recommendation shall prejudice the respective competences of the individual governments nor the independence of the persons and bodies concerned with the production, coproduction and distribution of audiovisual works.

1. Co-ordinated development of production

1.1. The member states shall encourage European co-operation for audiovisual production. In the framework of such co-operation, they shall take suitable measures to stimulate production, designed in particular:

a. to encourage and facilitate by all available means the development on the European level of systems of co-production and distribution of audiovisual works, as well as other forms of co-operation;

b. to support the promotion and distribution of audiovisual works of European origin outside the member states;

c. to facilitate on their territory the free movement of persons working in the cultural and audiovisual fields and the establishment of audiovisual production undertakings having the nationality of the other member states;

d. to encourage, by all appropriate measures, the training of creative artists and the expression of their talent in the audiovisual field.

1.2. The member states shall take appropriate measures so that broadcasting organisations and cable distributors include in their programme services a reasonable proportion of audiovisual works of European origin such as to encourage national production and that of other member states. They shall endeavour to co-ordinate their policies in this respect.

2. Support of a financial and fiscal nature

2.1. The member states shall take adequate measures, of a financial and fiscal nature, to encourage audiovisual creation and the development of their programme industries.

2.2. The member states shall endeavour to establish or, as the case may be, improve national schemes for the financial support of audiovisual production. They shall ensure that the audiovisual production of other member states shall have access to their respective schemes and thereby seek to establish between themselves bilateral or multilateral aid schemes for the production, co-production and distribution of audiovisual works of European origin.

2.3. The member states shall endeavour, in co-operation, to eliminate tax obstacles to the co-production of audiovisual works of European origin.

2.4. The member states shall grant to co-productions of audiovisual works of European origin the same tax and financial advantages as national productions.

2.5. The member states shall take steps with a view to developing aids to facilitate the distribution, broadcasting and exchange of their audiovisual works between themselves, as well as the distribution of such works outside member states. In particular, they shall endeavour to institute aids for the dubbing and subtitling of audiovisual works of European origin.

3. Copyright and neighbouring rights

3.1. The member states shall take appropriate steps to ensure that the systems for remunerating authors and other rights holders promote audiovisual creativity. To this end, they shall encourage the pursuit of contractual solutions.

3.2. The member states shall endeavour to co-ordinate the systems for administering rights for works distributed or broadcast on their territory.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (86) 14

of the Committee of Ministers to member states on the drawing up of strategies to combat smoking, alcohol and drug dependence in co-operation with opinion-makers and the media

(Adopted by the Committee of Ministers on 16 October 1986, at the 400th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity among its members and that this aim can be pursued, inter alia, by the adoption of common policies and regulations in the health field;

Considering that dependence on alcohol, tobacco and drugs is a major health problem, involving social, mental and pathological aspects;

Recalling the following recommendations: No. R (82) 4 on the prevention of alcohol-related problems, especially among young people; No. R (82) 5 concerning the prevention of drug dependence and the special role of education for health; and No. R (84) 3 on principles relating to television advertising;

Considering the need for a flexible policy of information and education, together with legislative, regulatory and economic measures, to encourage healthy lifestyles and reduce risk factors, and the key role which the media and other opinion-makers can have in reinforcing public awareness and acceptance of health education policies and other measures,

Recommends governments of member states to take account of the guidelines set out in the appendix to this recommendation, when promoting the development of strategies to combat smoking, excessive consumption of alcohol and drug dependence, in co-operation with opinion-makers and the media and when stressing the responsibility of those bodies in the shaping of public attitudes towards health.

Appendix to Recommendation No. R (86) 14

Guidelines for the development of strategies

Objectives

1. The main objectives of health information and health education strategies should be to encourage healthy lifestyles, to promote a healthy environment and to reduce risk factors.

Policies

2. A policy for health information and education should be carried out within a co-ordinated and integrated health-care system and, together with legislative, economic and other measures, should form part of a broader policy framework giving priority to underprivileged social groups.

3. Such policies should be flexible and capable of implementation at local level in order to increase community and individual responsibility. They should also take into account the differences between social groups and the need to give information which appeals to underprivileged sections of the population.

Co-ordination

4. A co-ordinated strategy should seek to involve various institutions, such as schools, public and private welfare and health institutions, the family, voluntary institutions, sport and recreation associations, as well as the media.

5. Co-ordination should take place:

- horizontally, between institutions, services and individuals at the same level;
- vertically, between institutions, services and individuals operating at local, regional and national level;
- in time, to cover the individual's whole life-span.

Potential role of the media

6. Efforts to collaborate with the media must respect the fundamental principles of independence and freedom of expression common to all member states and take into account the political, commercial and financial environment in which the media operate, which will vary from country to country. The aim should be to involve the media in stimulating the participation of the community and individuals in the promotion of their own health, and in strengthening the impact of educational campaigns aimed at the general public. Collaboration ought to extend to media participation in the definition and development of strategies.

7. As far as possible, it is important to minimise contradictions between information disseminated by the media and the policies of health authorities. In particular, care should be taken to ensure that such information does not have the effect of suggesting that those who consume tobacco, or alcohol, or illicit drugs, are to be admired or copied, rather than those who do not.

8. Public authorities and, in particular, health authorities, ought to provide the media with data needed to fulfil their function as a source of information. The information should be supplied in an appropriate form and reduced to its essentials so that the message is clear and comprehensible to the public.

9. Ways should be considered of ensuring the expertise of individual journalists, for example through seminars or training courses or through the preparation of guidelines and reference material (such as terminology). Encouragement should be given to the setting up of associations of journalists specialising in health.

Specific strategies

Tobacco

10. Strategies for discouraging the consumption of tobacco should essentially seek to:

- dissuade people, particularly young people, from beginning to smoke;
- persuade smokers to stop smoking, or reduce their consumption.

Useful measures include:

- a ban on smoking in public places, schools and hospitals, public transport, etc. ;
- discouraging it in firms, offices, etc. ;
- warnings on tobacco products.

Alcohol

11. Strategies aimed at reducing the consumption of alcohol should take into account the factors, such as economic and commercial interests, which are likely to constitute an obstacle to achieving the desired objectives. These objectives will include:

- promoting a moderate and responsible attitude, in particular in the working, school, military and sporting environments;

- informing the public at large of the risks linked to alcohol abuse, particularly amongst pregnant women and young people;

- alerting the media to the implications of the way in which they portray the consumption of alcohol.

Drug addiction

12. Strategies for combating drug addiction should take account of the complexity of this phenomenon and the profound social isolation and maladjustment of many addicts who are victims in need of protection and not public curiosity. Information is needed at the local level for young people and their families, teachers and medical staff. Other measures may include restrictions on the distribution to young people of audiovisual or other material encouraging the use of drugs.

Evaluation

13. Health education campaigns and information programmes undertaken within the above framework should provide for a process of evaluation, with which the media should be associated, to make sure at least that the contents of the campaign have been accepted by the general public. Such evaluations should also take into account the risks relating to the different ways in which educational messages or information regarding health are perceived by different social groups. The results of the evaluation should be used for the planning of further campaigns.

Mediators

14. The health professions, teaching staff and socio-educational workers play a cardinal role in the dissemination of health information and should, as a matter of priority, be trained and kept informed regarding techniques and the most recent progress in child and adult health education.

15. Adequate means should be available to encourage and facilitate co-operation between those imparting information and consumer associations, trade unions, youth movements and other non-governmental organizations interested in health and environmental problems, and to secure the active participation of all concerned. Co-operation might take the form of joint project teams to plan, execute and evaluate different campaigns. Opinion-leaders and representatives from these groups should be offered appropriate training where necessary.

16. The introduction of a national prize should be considered in order to encourage and reward individuals or institutions which have made a major contribution to the development or implementation of strategies to combat dependence on tobacco, alcohol and drugs in line with the principles embodied in this recommendation.

Regulation of marketing and promotion

17. A responsible policy should be implemented concerning the rules and regulations pertaining to the promotion and commercialisation of tobacco, alcohol and pharmaceutical products; where possible, voluntary co-operation with the producers should form part of this policy.

18. Consideration should be given to policies which strictly limit all forms of promotion of tobacco and alcohol, not excluding the possibility of total prohibition in some cases, and to measures which prevent inappropriate promotion of drugs.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (87) 7

of the Committee of Ministers to member states on film distribution in Europe[1]

(Adopted by the Committee of Ministers on 20 March 1987, at the 405th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, and that this aim is pursued notably by common action in cultural matters;

Considering the essential role of distribution in financing the production of films and in making films available to the public;

Considering that most European distribution companies are economically limited and consequently threatened by those foreign or European companies which dominate the market and are liable to take unfair advantage of their position;

Considering that the pluralism needed in film-making and distribution is thereby imperilled and that quality films, in particular, are likely to find it increasingly difficult to establish themselves in all areas of the film industry;

Considering that, as the rapid development and growth of new technologies is generating a variety of types of film distribution, a need has arisen to harmonise these in order to make films as widely available as possible;

Considering that the cinema, while losing none of its own characteristics, is being affected by the problems raised by the growth of the new communication technologies and that careful thought should accordingly be given to the film-making and distribution opportunities inherent in these new technologies, but also to the danger of uniformity of creation which they may involve and the threat to cinemas which they represent;

Having regard to the work of the Council for Cultural Co-operation and to Recommendation 862 (1979) of the Assembly on cinema and the state;

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[1] When this recommendation was adopted, and in application of Article 10.2.*c* of the Rules of Procedure for the meetings of the Ministers' Deputies:
- the Representative of the Federal Republic of Germany reserved the right of his Government to comply or not with paragraphs 3 and 4 of the recommendation;
- the Representative of Sweden reserved the right of his Government to comply or not with paragraphs 3 and 5 of the recommendation;
- the Representative of the United Kingdom reserved the right of his Government to comply or not with paragraphs 3, 4 and 5 of the recommendation.

Bearing in mind its Recommendation No. R (86) 3 on the promotion of audiovisual production in Europe;

Having regard to the work of the European Communities on the institution of a system of multilateral aids to film and television programme industries;

Wishing to lay down appropriate measures, having regard in particular to the responsibilities and autonomy of broadcasting organisations,

I. Recommends that the governments of member states:

1. Adopt measures designed to support independent distributors and avoid a misuse of power leading to the control over film distribution markets;

2. Give financial backing to distributors of cinematographic works of European origin in the form of subsidies, advances or guarantees to cover the cost of making copies, in order to facilitate, in particular, the distribution of quality films which do not receive adequate support in the regular commercial market;

3. Encourage the conclusion of agreements aimed at taking into account the diversification of types of film distribution and ensure, within the limits of their authority, that priority in film distribution is given to cinemas, which alone are capable of exhibiting films to the best advantage, and respect the following general hierarchy of distribution channels:

- cinema,
- videogram,
- television;

4. Where local conditions permit encourage the conclusion of agreements designed to ensure that broadcasting stations do not schedule cinema films on days and at times when cinemas are most likely to attract large audiences;

5. Take steps to encourage the various distribution channels to support the production of cinematographic works of European origin by ensuring that they not only pay adequate property rights but also make a fair contribution to state measures to assist film production, such as:

- contributions from television companies to production aid funds,

- contributions from companies producing the new audiovisual systems involved in film diffusion (notably cable networks or videograms) to funds for different sectors of the film industry,

- with due regard to the autonomy of television systems, greater co-operation between television and cinema, not only in the co-production of films, but also in their presentation, as well as by increasing the amount of information (publicity for example) relating to the cinema which is conveyed by television and by associating television in the wider distribution of films by means of subtitling;

6. Consider the importance of a network of attractive and well-equipped theatres and, for those countries which do not yet have them, the provision, in addition to production aids, of distribution aid schemes designed to promote investments as well as quality programmes;

7. Reinforce methods of combating audiovisual piracy, including prevention involving the cooperation at national and international level of the relevant administrative authorities and professionals concerned, and punitive action, for example through more severe penalties;

8. Provide facilities, on the one hand, for training specialists in film distribution and, on the other, for informing spectators and enabling them to choose quality programmes;

9. Note, in this connection, the important role of specifically cultural distribution (experimental cinemas, film clubs and other forms of non-commercial distribution) and adopt appropriate policies to support them;

10. Bear in mind the importance of co-production agreements, under which income is shared between the different markets, with a view to a more effective opening up of these markets;

11. Promote different forms of association or co-distribution agreements[1];

12. Encourage arrangements, such as those provided for in certain member states, which will enable each country to support another country's films, with or without reciprocity, or to provide assistance for distribution, part of which could be paid, and used for promotion, as soon as the film is produced, in addition to the joint aid given for the co-production of quality films of European origin;

13. Encourage efforts to rationalise conditions of dissemination and distribution as a means of achieving a fuller knowledge of the different European productions on the part of spectators;

14. Encourage and assist, by different means (for example box office guarantee), a promotional cinema hall the purpose of which would be to present outstanding films from other European countries;

15. Produce efforts to penetrate the dominant markets and promote their films on other foreign markets, especially in the Third World, and, if facilities for this purpose have been created, make them available to the other countries' film industries, under terms to be specified;

16. Adopt measures to encourage dubbing or, preferably, subtitling, so that European films will be accessible to a world audience;

[1] A system of co-distribution might operate as follows: the film producer could entrust distribution to a consortium of distributors from various countries, each providing a minimum guarantee. Each country's initial revenues would cover the guarantee provided by the relevant distributor and the cost of making copies. If a film earned more than this amount in one country, a proportion (to be defined) of the surplus would be paid into a fund out of which payments would be made to distributors in countries in which the film did not earn enough to repay them. Anything left over would be divided between the producer and distributors on a contract basis to be defined.

17. Support all efforts to organise a European film festival at regular intervals, taking care not to compromise the traditional festivals, and consider the possibility of holding the event in the different states party to the European Cultural Convention, either one after the other or simultaneously, endeavouring to define its content with precision;

18. Take action to ensure that the cinematographic professions are represented on the bodies responsible for organising forms of audiovisual communication;

19. Take, in addition to measures to promote national film production, steps to ensure that European and particularly national films are given sufficient consideration in the programmes of audiovisual communication networks;

20. Take action to ensure wider distribution of films from European countries in which film production is less highly developed;

II. Instructs the Secretary General of the Council of Europe to transmit this recommendation to the governments of those states party to the European Cultural Convention which are not members of the Council of Europe.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (88) 1

**of the Committee of Ministers to member states
on sound and audiovisual private copying**

*(Adopted by the Committee of Ministers on 18 January 1988,
at the 414th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress;

Having regard to the need to safeguard properly the interests of the owners of copyright and neighbouring rights faced with the new media technology, in particular the technology used for sound and audiovisual private copying;

Bearing in mind at the same time the need not to hamper the development of this technology, which is of considerable importance for the dissemination of works of the mind;

Taking note of the fact that the copyright obligations between Council of Europe member states are governed by the Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention) and that many of the member states are also party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (the Rome Convention);

Considering that Article 9, paragraph 1, of the Berne Convention (Paris Act, 1971) grants authors an exclusive right of reproduction of their works and that Article 9, paragraph 2, provides that exceptions to that exclusive right are allowed under national law only in certain special cases, and provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author;

Considering also that Article 15 of the Rome Convention allows for exceptions under national law to the protection granted under that convention as regards private use, but that, as the protection granted under the convention must not in any way affect the protection of copyright in literary and artistic works, such exceptions would in practice be possible only under the same conditions as those prevailing in respect of protected works;

Bearing in mind Article 3, sub-paragraph 1.c of the European Agreement on the Protection of Television Broadcasts, which allows for exceptions to the protection under the agreement where the fixation, or the reproduction of the fixation, of such a broadcast is made for private use;

Considering that present-day technology for the reproduction of protected works, contributions and performances allows for such reproduction, in particular as regards musical and cinematographic works and related contributions, on a scale which was not possible when the provisions of the above-mentioned instruments were drawn up;

Recalling its Recommendation No. R (86) 9 on copyright and cultural policy of 22 May 1986;

Concerned to promote the broadest possible harmonisation of the legal approaches of member states to copyright and neighbouring rights in relation to sound and audiovisual private copying;

Considering that the Council of Europe is particularly well suited to elaborate and recommend principles in this field at European level,

Recommends that the governments of member states examine the questions concerning copyright and neighbouring rights which arise in relation to sound and audiovisual private copying and, in so doing, be guided by the following principles:

1. States should, in their legislation on copyright and neighbouring rights, limit exceptions to the exclusive rights of right owners, according to the letter and spirit of the relevant provisions of the Berne Convention;

2. States should, having regard to Article 9 of the Berne Convention, carefully examine whether sound and audiovisual private copying in their respective countries is not done in a way and to an extent that conflict with the normal exploitation of works or otherwise unreasonably prejudice the legitimate interests of right owners, including at least authors, performers and producers of sound and audiovisual recordings. Such a conflict or prejudice should be taken as established if sound and audiovisual private copying occurs on such a scale as to amount to a new form of exploitation of protected works, contributions or performances;

3. In case of such conflict or prejudice, states should seek solutions in accordance with the following paragraphs, with a view to providing appropriate remuneration to right owners:

   a. The situations in which the reproduction of protected works, contributions and performances for private purposes does not require the authorisation of the right owners should be defined as closely as possible;

   b. As regards those copies the making of which does not require the authorisation of the right owners, states should take note of the fact that, in a number of states where sound and audiovisual private copying has been found to be incompatible with the obligations under the international conventions on copyright and neighbouring rights, a royalty-type levy on blank recording media and/or recording equipment has been introduced and that the experience of states in which such systems are already in operation would indicate that they are an effective solution to the problem;

   c. When considering the introduction of a right to remuneration, states should include amongst those entitled to remuneration at least authors, performers and producers of sound and audiovisual recordings. Insofar as these categories of persons do not already possess reproduction rights, such rights should be awarded to them.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (88) 2

of the Committee of Ministers to member states
on measures to combat piracy in the field of copyright and neighbouring rights

(Adopted by the Committee of Ministers on 18 January 1988,
at the 414th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress;

Aware that the phenomenon of piracy in the field of copyright and neighbouring rights, that is, the unauthorised duplication, distribution or communication to the public of protected works, contributions and performances for commercial purposes, has become widespread;

Noting that this phenomenon seriously affects many sectors, in particular those of the production and marketing of phonograms, films, videograms, broadcasts, printed matter and computer software;

Conscious of the considerable harm that piracy causes to the rights and interests of authors, performers, producers and broadcasters, as well as to the cultural professions and related industries as a whole;

Recognising that this phenomenon also has detrimental effects on consumer interests, in particular in that it discourages cultural creativity and thereby prejudices both the diversity and quality of products placed on the market;

Bearing in mind the losses to national budgets suffered as a result of piracy;

Taking into account the adverse effects of piracy on trade;

Noting the links between the trade in pirate material and organised crime;

Recalling its Recommendation No. R (86) 9 on copyright and cultural policy of 22 May 1986;

Taking note of the work in relation to the fight against piracy being undertaken within other organisations, in particular the World Intellectual Property Organisation, the European Communities and the Customs Co-operation Council;

Determined that effective action be taken against piracy through both appropriate measures at national level and co-operation at international level,

Recommends that the governments of the member states take all necessary steps with a view to implementing the following measures to combat piracy in the field of copyright and neighbouring rights:

Recognition of rights

1. States should ensure that authors, performers, producers and broadcasters possess adequate rights in respect of their works, contributions and performances to defend their economic interests against piracy. In particular:

- to the extent that such rights do not already exist, performers should be granted at least the right to authorise or prohibit the fixation of their unfixed performances as well as the reproduction of fixations of their performances, and producers of phonograms and videograms at least the right to authorise or prohibit the reproduction of their phonograms and videograms;

- authors of computer software should benefit from copyright protection.

Remedies and sanctions

2. States should ensure that their national legislation provides remedies which enable prompt and effective action to be taken against persons engaged in piracy in the field of copyright and neighbouring rights, including those implicated in the importation or distribution of pirate material.

3. Under criminal law, provision should be made for powers to search the premises of persons reasonably suspected of engaging in piracy activities and to seize all material found relevant to the investigation, including infringing copies and their means of production. Consideration should also be given to the possibility of introducing powers for the securing of financial gains made from such activities.

In the event of conviction, powers should exist for the destruction or forfeiture of infringing copies and means of production seized in the course of proceedings. The forfeiture of financial gains from the piracy activities should also be made possible. All or a part of forfeited financial gains should be able to be awarded to the injured party as compensation for the loss he has suffered.

Penalties provided for by legislation in respect of piracy offences should be set at an appropriately high level.

4. In the field of civil law, effective means should exist for obtaining evidence in cases concerning piracy.

The plaintiff should, as an alternative to an action for damages in respect of the loss he has suffered, have the right to claim the profits made from the piracy activities.

Provision should be made for the destruction or delivery to the plaintiff of infringing copies and means of production seized in the course of proceedings.

5. Consideration should be given to the need to introduce or reinforce presumptions as to subsistence and ownership of copyright and neighbouring rights.

6. States should give consideration to the possibility of closely involving their customs authorities in the fight against piracy and of empowering such authorities, *inter alia*, to treat as prohibited goods all forms of pirate material presented for import or in transit.

Co-operation between public authorities and between such authorities and right owners

7. States should encourage co-operation at national level between police and customs authorities in relation to the fight against piracy in the field of copyright and neighbouring rights as well as between these authorities and right owners.

8. States should also, in the appropriate forums, encourage co-operation in the fight against piracy between the police and customs authorities of different countries.

Co-operation between member states

9. States should keep each other fully informed of initiatives taken to combat piracy in the field of copyright and neighbouring rights in the world at large.

10. States should offer each other mutual support in relation to such initiatives and envisage, when desirable and through appropriate channels, the taking of action in common.

Ratification of treaties

11. States should re-examine carefully the possibility of becoming parties, where they have not already done so, to:

- the Paris Act (1971) version of the Berne Convention for the Protection of Literary and Artistic Works;

- the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome, 1961);

- the Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of Their Phonograms (Geneva, 1971);

- the European Agreement on the Protection of Television Broadcasts (Strasbourg, 1960) and its protocols.

12. States should ensure that national measures adopted with a view to the ratification of the abovementioned treaties fully take into account relevant new technological developments.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (89) 7

**of the Committee of Ministers to member states
concerning principles on the distribution
of videograms having a violent, brutal or pornographic content**

*(Adopted by the Committee of Ministers on 27 April 1989,
at the 425th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity between its Members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular Articles 8 and 10 thereof;

Recalling its commitment to freedom of expression and the free circulation of information and ideas, to which it gave expression, in particular, in its Declaration of 29 April 1982;

Recalling Resolution No. 5 on the distribution of video-cassettes portraying violence and brutality adopted by the 4th Conference of European Ministers responsible for Cultural Affairs (Berlin, 23-25 May 1984);

Bearing in mind Recommendation 963 (1983) of the Parliamentary Assembly on cultural and educational means of reducing violence;

Recalling Recommendation 996 (1984) of the Parliamentary Assembly on Council of Europe work relating to the media, which stresses the need for action concerning in particular the quality of programme content and measures to regulate the distribution of video-cassettes portraying violence and brutality likely to have a pernicious influence on children and adolescents;

Having regard also to the final text of the 1st Conference of European Ministers responsible for Youth (Strasbourg, 17-19 December 1985), Recommendation 1067 (1987) of the Parliamentary Assembly on the cultural dimension of broadcasting in Europe and the conclusions and Resolutions of the 16th Conference of European Ministers of Justice (Lisbon, 21-22 June 1988);

Being aware of the importance of strengthening action taken in respect of the distribution of videograms having a violent, brutal or pornographic content, as well as those which encourage drug abuse, in particular with a view to protecting minors,

1. Recommends that the Governments of the member states:

 a. take concrete measures to implement the principles set out below;

 b. ensure, by all appropriate means, that these principles are known by the persons and bodies concerned; and

 c. proceed to a periodical evaluation of the effective application of these principles in their internal legal orders;

2. Instructs the Secretary General of the Council of Europe to transmit this Recommendation to the Governments of those States Party to the European Cultural Convention which are not members of the Council of Europe.

Principles

Scope

The following principles are designed to assist member states in strengthening their action against videograms having a violent, brutal or pornographic content - as well as those which encourage drug abuse - in particular for the purpose of protecting minors. They should be envisaged as a complement to other existing Council of Europe legal instruments.

These principles concern in particular the distribution of videograms.

1. Systems for the distribution of videograms

The member states should:

- encourage the creation of systems of self-regulation, or

- create classification and control systems for videograms through the professional sectors concerned or the public authorities, or

- institute systems which combine self-regulatory with classification and control systems, or any other systems compatible with national legislation.

In all cases, member states remain free to make use of criminal law and dissuasive financial and fiscal measures.

2. Self-regulatory systems

The member states should encourage, by appropriate means, the distributors of videograms to draw up codes of professional conduct and voluntary systems of regulation, which could comprise notably classification and control systems inspired by principles 3 and 4 hereafter.

3. Classification and control systems

3.1. The member states should encourage the creation of systems of classification and control of videograms by the professional sectors concerned in the framework of

self-regulatory systems, or through the public authorities. Such systems may be implemented either prior to, or following the distribution of videograms.

3.2. In order to promote the use of classification and control systems by public authorities, the introduction of a system of legal deposits should be considered by national legislators.

3.3. The classification and control systems shall involve either the issue of a free distribution certificate, a limited distribution permit specifying the videogram's distribution conditions, or possibly an outright prohibition.

3.4. Under the classification and control system, the age of the public to whom the videogram can be distributed shall be specified according to national criteria.

3.5. All classified videograms shall be registered and their material mediums (video-cassettes, videodiscs, etc) shall display in a clear and permanent fashion the classification of the videograms and the public for whom they are intended. In the case of material mediums, featuring several videograms, the member states shall take measures so that the most restrictive classification be applied.

3.6. When the video classification procedure is separate from that of cinematographic films, the member states shall look for consistency between the two, in so far as possible, but taking account of the differences between the two media.

3.7. Allowance should be made, within the classification and control system, for simplified procedures or exemption of procedures for certain types of programmes, such as material whose purpose is educational, religious or informative. These exemptions should not apply to programmes having an unduly pornographic or violent content.

3.8. The control of the distribution of videograms shall apply to the distribution of both nationally produced videograms and imported ones.

3.9. The establishment of a system designating which officers of a company should be liable for offences under the videogram classification and control system could be considered by the member states.

4. Limitations on distribution

4.1. Permits for limited distribution referred to in paragraph 3.3. above may include in particular:

- a ban on commercial supplies or offers to supply to minors;
- a ban on commercial supplies or offers to supply except at sales or rental outlets set aside for adults only;
- a ban on advertising;
- a ban on mail order sales.

4.2. The classification of each videogram should be specified on the packaging of the material medium and in video catalogues, advertisements, etc.

5. Measures against offences to the classification and control systems

5.1. The member states which have classification and control systems shall take appropriate measures to punish any infringement of these systems by dissuasive sanctions, for instance heavy fines, imprisonment, confiscation of the videograms and of the receipts gained from the unlawful distribution.

5.2. In member states where licensing exists, the authorities could envisage the suspension or withdrawal of the licence.

6. Application of criminal law

In conjunction with, parallel to, or independently from the application of classification and control systems, or as an alternative to such systems, the member states should consider if the application of their criminal law concerning videograms is effective in dealing with the problem of videograms having a violent, brutal or pornographic content, as well as those which encourage drug abuse.

7. Dissuasive financial and fiscal measures

The member states should consider the possibility of taking measures of a financial and fiscal nature which discourage the production and distribution of videograms with a violent, brutal or pornographic content, as well as those which encourage drug abuse.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (90) 10

of the Committee of Ministers to member states on cinema for children and adolescents

(Adopted by the Committee of Ministers on 19 April 1990, at the 438th meeting of the Ministers' Deputies)

1. The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe, having regard to the European Cultural Convention,

2. Considering that the aim of the Council of Europe is to achieve a greater unity between its members, and that this aim may be achieved through common action in cultural matters;

3. Considering that film, one of the dominant art forms of the 20th century, has a significant and important role in articulating cultural issues and transmitting these to the world at large;

4. Considering that the cinema has always been viewed as the best place to see films and that it serves an essential social purpose as a local pole of attraction;

5. Considering that there is evidence that considerable cinema audiences can be found for films of cultural value;

6. Considering that the specific developmental needs of children and adolescents gives them a distinct status as cinema audiences;

7. Considering that the commercial sector only rarely responds to these needs in its present system of production, distribution and exhibition;

8. Considering that whatever the provision of assistance by public authorities, it remains insufficient;

9. Considering nevertheless that specific public measures are being taken by certain European countries including the provision of production finance for films for and/or by young people, and including the promotion of parallel distribution circuits and indirect measures designed to encourage film exhibition;

10. Considering also the development of policies designed to introduce young people to film in education systems;

11. Considering that cinema and television are substantially interdependent and that current indigenous production levels in Europe are inadequate at present to meet television's needs for films for young people;

12. Considering that generally there are benefits in providing a satisfactory cinema experience for young people, particularly because they comprise the potential adult audience of the future;

13. Considering that further studies could establish whether the creation of pooling arrangements or similar developments within the cinema trade might provide some financial risk cover for commercial producers and distributors;

14. Wishing to lay down appropriate measures, having regard in particular to the specific responsibilities of the Council of Europe for the welfare and development of children and adolescents,

15. Recommends that the governments of member States:

a. encourage the adoption of appropriate arrangements of co-operation between film and television in the coproduction of films for young people;

b. promote close co-operation between the film industry and educational establishments;

c. study and introduce all practical measures to promote the sub-titling and dubbing of films, with special regard to the needs of young people;

d. ensure the adequate provision of auditoriums and programming for the exhibition of films for young people;

e. encourage film shows for young people by providing financial support and/or tax benefits in order to minimise the financial disincentives of this form of exhibition;

f. study and encourage the adoption of the best methods of ensuring the widest media coverage possible in this field;

g. taking into account the established models already existing in certain countries, introduce systematic cinema and media education in schools and other institutions for young people;

h. establish measures to encourage co-operation between film schools, centres for training in the language of image and sound and other educational institutions for young people;

i. encourage research to determine the types of film which would both interest young people and meet their development needs;

j. initiate studies covering all aspects of the cinema, in order to establish effective systems for the production, distribution and financing of films for young people;

k. encourage educational work in specific areas of the cinema for young people, including cinema clubs, video libraries, festivals, colloquies and seminars, and special production projects which involve young people's participation and creative contributions;

l. encourage the creation of a catalogue or data bank - with the help of bodies or organisations specialised in this field - of existing films for young people which would enable them to have a better idea of what is available to them;

16. Instructs the Secretary General of the Council of Europe to transmit this Recommendation to the governments of those states party to the European Cultural Convention which are not members of the Council of Europe.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (90) 11

of the Committee of Ministers to member states on principles relating to copyright law questions in the field of reprography

(Adopted by the Committee of Ministers on 25 April 1990, at the 438th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its Members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress;

Having regard to the need to safeguard properly the interests of copyright owners faced with rapid technological developments, in particular the widespread use of photocopying and analogous reproduction proceduRes(reprography);

Bearing in mind at the same time the need not to restrict unduly the public's use of these new copying techniques;

Taking note of the fact that copyright obligations between the Council of Europe member states are governed by the Bern Convention for the Protection of Literary and Artistic Works (the Bern Convention), Article 9 of which grants authors the exclusive right of authorising the reproduction of their works to which exceptions are allowed only in certain special cases;

Recalling its Recommendation No. R (86) 9 on Copyright and Cultural Policy of 22 May 1986, in particular point V thereof,

Recommends that governments of member states examine questions concerning copyright which arise in relation to reprography and, in so doing, be guided by the following principles.

Principles

1. States should, in their legislation on copyright, limit exceptions to the exclusive rights of copyright owners, according to the letter and spirit of the relevant provisions of the Bern Convention. This should especially be the case where exceptions are made to the exclusive rights of authors but are not accompanied by remuneration.

2. States should, having regard to Article 9 of the Bern Convention, carefully examine whether reprography in their respective countries is carried out in a way and to an extent that conflicts with the normal exploitation of works or otherwise unreasonably prejudices the

legitimate interests of right owners. In case of such conflict or prejudice, States should seek to take appropriate measures.

3. In cases where authors have the exclusive right to authorise the reproduction of their works, States should consider:

- if and how they can assist right holders to enforce their rights;
- if and how they can assist users to obtain permission to copy.

In so doing, they should consider:

- facilitating voluntary licensing schemes. The effects of such schemes could be reinforced, if necessary, by appropriate statutory provisions;
- provision of machinery for voluntary settlement of disputes.

4. a. When considering matters referred to in Principles 2 and 3, States should give particular attention to areas where solutions are especially called for, inter alia:

- educational copying;
- copying in libraries;
- copying in commercial enterprises, state administration or other public institutions.

b. When solutions of a non-voluntary nature are adopted for institutional copying, States should consider the need to remunerate right holders.

5. Where States legislate with regard to distribution of remuneration, they should, in principle and where practicable, aim to secure distribution on an individual basis.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (91) 5

of the Committee of Ministers to member states on the right to short reporting on major events where exclusive rights for their television broadcast have been acquired in a transfrontier context

(Adopted by the Committee of Ministers on 11 April 1991, at the 456th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Noting that the development of transfrontier television services has led the broadcasters operating them to acquire exclusive television rights in major events for countries other than their country of origin;

Recalling that Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms embodies freedom of expression and freedom to receive and impart information;

Recalling also Article 9 of the European Convention on Transfrontier Television, concerning the access of the public to major events, according to which "each Party shall examine the legal measures to avoid the right of the public to information being undermined due to the exercise by a broadcaster of exclusive rights for the transmission or retransmission, within the meaning of Article 3, of an event of high public interest and which has the effect of depriving a large part of the public in one or more other Parties of the opportunity to follow that event on television";

Aware of the importance of the issues raised by the practice of exclusive rights for major events, particularly from the perspective of smaller broadcasters in Europe, notably those in countries with a limited geographical or linguistic area;

Resolved to pursue consideration of those issues with a view to determining the possibility of achieving additional legal solutions in this area,

Recommends the governments of the member states to take into account the principles set out below in the elaboration and adoption of measures to safeguard the public's right of access to information on major events where exclusive rights for their television broadcast have been acquired in a transfrontier context;

Instructs the Secretary General to transmit this Recommendation to the States Parties to the European Convention on Transfrontier Television which are not members of the Council of Europe.

Definitions

For the purposes of this Recommendation:

"Major event" means any event in which a broadcaster holds the exclusive rights for its television broadcast and which is considered by one or more broadcasters from other countries as being of particular interest for its (their) public.

"Exclusive rights" means the rights acquired contractually by a broadcaster from the organiser of a major event and/or from the owner of the premises where the event is taking place, as well as from the authors and other rights holders, with a view to the exclusive television broadcast of the event by that broadcaster for a given geographical zone.

"Primary broadcaster" means the broadcasting organisation which holds the exclusive rights for the television broadcast of a major event.

"Secondary broadcaster" means any broadcasting organisation from a country other than the primary broadcaster wishing to provide information, by means of short reports, on a major event for which the primary broadcaster holds the exclusive rights.

"Short report" means such brief sound and picture sequences about a major event as will enable the public of the secondary broadcaster to have a sufficient overview of the essential aspects of such an event.

Principles

Principle 1 - Conditions for the exercise of the public's right to information

In order to enable the public in a given country to exercise its right to information, the property right of the primary broadcaster should be subject to limitations which are in accordance with the terms and conditions set out hereafter.

Principle 2 - Making of short reports

1. Subject to other contractual agreements between the broadcasters concerned, any secondary broadcaster should be entitled to provide information on a major event by means of a short report:

   a. by recording the signal of the primary broadcaster, for the purpose of producing a short report; and/or

   b. by having access to the site to cover the major event, for the purpose of producing a short report.

2. In the implementation of the foregoing principle, the following aspects should be taken into consideration:

a. if a major organised event is composed of several organisationally self-contained elements, each self-contained element should be deemed to be a major event;

b. if a major organised event takes place over several days, it should give the right to produce at least one short report for each day;

c. the authorised duration of a short report should depend on the time needed to communicate the information content of the major event.

Principle 3 - Use of short reports

When fixing the conditions for the use of short reports by the secondary broadcaster(s), the following should be taken into account:

a. the short report should be used exclusively by the secondary broadcaster and only in regularly scheduled news bulletins;

b. in the case of a major organised event, the short report should not be broadcast before the primary broadcaster has had the opportunity to carry out the main broadcast of the major event;

c. unless otherwise agreed by the broadcasters concerned, the short report should mention the name and/or insert the logo of the primary broadcaster as the source of the material, where the short report has been made from the signal of the primary broadcaster;

d. a short report which has already been broadcast should not be reused, unless there is a direct link between its content and another topical event;

e. all original programme material within the possession of the secondary broadcaster which has been used for the making of the short report should be destroyed after production of the short report, and the primary broadcaster should be informed of its destruction;

f. short reports may be preserved in archives but may not be reused except in the circumstances referred to in paragraph d.

Principle 4 - Financial terms

1. Unless otherwise agreed between them, the primary broadcaster should not be able to charge the secondary broadcaster for the short report. In any event, no financial charge should be required of the secondary broadcaster towards the cost of television rights.

2. If the secondary broadcaster is granted access to the site, the event organiser or site owner should be able to charge for any necessary additional expenses incurred.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (91) 14

**of the Committee of Ministers to member states
on the legal protection of encrypted television services**

*(Adopted by the Committee of Ministers on 27 September 1991,
at the 462nd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress;

Noting the increasing development in Europe of television services, notably pay-TV services, the access to which is protected by means of encryption techniques;

Taking into account that these services contribute to the diversity of television programmes offered to the public and, at the same time, increase the possibilities of exploitation of audio-visual works produced in Europe;

Considering that the development of pay-TV is likely to increase the sources of financing of television services and, as a result, the capacities of audio-visual production in Europe;

Concerned by the increasing degree of illicit access to encrypted television services, namely, access by persons outside the audience for which the services are reserved by the organisation responsible for their transmission;

Noting that this phenomenon is such as to threaten the economic viability of organisations providing television services and, hence, the diversity of programmes offered to the public;

Taking into account the fact that illicit access to encrypted television services also threatens the legal certainty in the relations between, on the one hand, the organisations providing encrypted television services and, on the other hand, holders of rights in works and other contributions transmitted in the framework of such services;

Being aware that illicit access to encrypted television services indirectly prejudices the rights and interests of authors, performers and producers of audio-visual works, as well as of the cultural professions and related industries as a whole;

Noting that the organisations providing encrypted television services have the responsibility to use the best available encryption techniques;

Recognising nevertheless that legislative action is needed to supplement such techniques;

Determined that effective action should be taken against illicit access to encrypted television services;

Believing that this can most effectively be achieved by concentrating on commercial activities enabling such access;

Recognising that the protection of encrypted television services in domestic legislation should not be subject to the requirement of reciprocity,

Recommends the governments of the member states to take all necessary steps with a view to implementing the following measures to combat illicit access to encrypted television services:

Definitions

For the purpose of the implementation of Principles I and II hereafter:

"encrypted service" means any television service transmitted or retransmitted by any technical means, the characteristics of which are modified or altered in order to restrict its access to a specific audience;

"decoding equipment" means any device, apparatus or mechanism designed or specifically adapted, totally or partially, to enable access in clear to an encrypted service, that is to say without the modification or alteration of its characteristics;

"encrypting organisation" means any organisation whose broadcasts, cable transmissions or rebroadcasts are encrypted, whether by that organisation or by any other person or body acting on its behalf;

"distribution" means the sale, rental or commercial installation of decoding equipment, as well as the possession of decoding equipment with a view to carrying out these activities.

States should include in their domestic legislation provisions based on the principles set out hereafter:

Principle I - Unlawful activities

1. The following activities are considered as unlawful:

   a. the manufacture of decoding equipment where manufacture is designed to enable access to an encrypted service by those outside the audience determined by the encrypting organisation;

   b. the importation of decoding equipment where importation is designed to enable access to an encrypted service by those outside the audience determined by the encrypting organisation, subject to the legal obligations of member states regarding the free circulation of goods;

c. the distribution of decoding equipment where distribution is designed to enable access to an encrypted service by those outside the audience determined by the encrypting organisation;

d. the commercial promotion and advertising of the manufacture, importation or distribution of decoding equipment referred to in the above paragraphs;

e. the possession of decoding equipment where possession is designed, for commercial purposes, to enable access to an encrypted service by those outside the audience determined by the encrypting organisation.

2. However, as regards the possession of decoding equipment for private purposes, member states are free to determine that such possession is to be considered as an unlawful activity.

Principle II - Sanctions and remedies

Principle II.1 - Penal and administrative law

1. States should include in their domestic legislation provisions indicating that the following activities are the subject of penal or administrative sanctions:

a. the manufacture of decoding equipment as prohibited by Principle I.1.a;

b. the importation of decoding equipment as prohibited by Principle I.1.b;

c. the distribution of decoding equipment as prohibited by Principle I.1.c;

d. the possession of decoding equipment where possession is designed, for commercial purposes, to enable access to an encrypted service by those outside the audience determined by the encrypting organisation.

2. Sanctions provided for by legislation should be set at an appropriate level. States should provide for enforcement of these sanctions and, in so far as domestic legislation permits:

a. provision should be made for powers to search the premises of persons engaged in the acts mentioned in paragraph 1 above and to seize all material of relevance to the investigation, including the decoding equipment, as well as the means used for its manufacture;

b. provisions should exist for the destruction or forfeiture of the decoding equipment and of the means used for its manufacture seized in the course of a procedure;

c. the forfeiture of financial gains resulting from the manufacture, importation and distribution activities considered as unlawful in accordance with Principle I should also be possible. In accordance with domestic law, courts should be able to award all or part of any financial gains so forfeited to injured persons by way of compensation for the loss which they have suffered.

Principle II.2 - Civil law

1. States should include in their domestic law provisions which provide that the injured encrypting organisation may, apart from the proceedings foreseen under Principle II.1, institute civil proceedings against those engaged in activities considered as unlawful in accordance with Principle I, notably in order to obtain injunctions and damages.

2. In so far as domestic law permits, the injured encrypting organisation should, as an alternative to an action for damages in respect of the loss which it has suffered, have the right to claim the profits made from the prohibited activities.

3. In so far as domestic law permits, provision should be made for the seizure, destruction or delivery to the injured encrypting organisation of decoding equipment and the means used for its manufacture.

4. Effective means should exist for obtaining evidence in cases involving the prohibited activities.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (92) 19

of the Committee of Ministers to member states
on video games with a racist content

(Adopted by the Committee of Ministers on 19 October 1992,
at the 482nd meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, particularly for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Being aware that video games with a racist content, whose existence in member countries is unfortunately beyond doubt, convey a message of aggressive nationalism, ethnocentrism, xenophobia, anti-Semitism or intolerance in general, concealed behind or combined with violence or mockery;

Considering therefore that such games cannot be tolerated in democratic societies, which respect inter alia the right to be different, whether that difference be racial, religious or other;

Convinced that it is all the more necessary to take measures designed to put an end to the production and distribution of these games as they are used mainly by young people;

Recalling the terms of its Resolution (68) 30 relating to measures to be taken against incitement to racial, national and religious hatred and its Resolution (72) 22 on the suppression of and guaranteeing against unjustifiable discrimination;

Bearing in mind the Declaration regarding intolerance – a threat to democracy which it adopted on 14 May 1981;

Having regard to Recommendation No. R (89) 7 concerning principles on the distribution of videograms having a violent, brutal or pornographic content, and the European Convention on Transfrontier Television (European Treaty Series, No. 132),

Recommends that the governments of member states:

a. review the scope of their legislation in the fields of racial discrimination and hatred, violence and the protection of young people, in order to ensure that it applies without restriction to the production and distribution of video games with a racist content;

b. treat video games as mass media for the purposes of the application inter alia of Recommendation No. R (89) 7 concerning principles relating to the distribution of videograms having a violent, brutal or pornographic content, and of the European Convention on Transfrontier Television (European Treaty Series, No. 132).

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (93) 5

of the Committee of Ministers to member states containing principles aimed at promoting the distribution and broadcasting of audiovisual works originating in countries or regions with a low audiovisual output or a limited geographic or linguistic coverage on the European television markets

(Adopted by the Committee of Ministers on 13 April 1993, at the 492nd meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Bearing in mind the European Cultural Convention;

Bearing in mind also the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular Article 10 thereof which entrenches freedom of expression and freedom of information, regardless of frontiers;

Concerned to ensure that these freedoms can be exercised meaningfully by audiovisual producers in countries and regions with a low audiovisual output or a limited geographic or linguistic coverage, by enabling them to have an effective access to the European television markets for the distribution of their works, in particular high-quality works;

Resolved to create equality of opportunity in the building of a European audiovisual area reflecting the diversity of European cultures, by addressing these specific problems, for the benefit of audiovisual producers operating in countries or regions with a low audiovisual output or a limited geographic or linguistic coverage;

Noting, in this regard, the specific problems encountered by these audiovisual producers in having access to the European television markets as a result of factors such as linguistic transfer costs, lack of awareness on the part of television companies on the European television markets of the quality of their productions, technical standards for the production and broadcasting of audiovisual works, as well as the training needs of audiovisual professionals;

Noting, in particular, the urgency of solving the problems encountered by Central and East European countries;

Resolved to follow up the recommendations of the 3rd European Ministerial Conference on Mass Media Policy (Cyprus, 9-10 October 1991) in this regard, and recalling its earlier initiatives, in particular Recommendation No. R (86) 3 on the promotion of audiovisual production in Europe;

Recalling also Article 10, paragraph 3, of the European Convention on Transfrontier Television in accordance with which Contracting Parties undertake to look together for the most appropriate instruments and procedures to support the activity and development of European production, particularly in countries with a low audiovisual production capacity or restricted language area;

Noting that concrete initiatives in this regard require joint and concerted actions to be undertaken by governments and professional circles concerned;

Mindful, however, of the importance of ensuring that measures taken by governments in this area do not interfere with the editorial independence of broadcasters in respect of programming matters;

Bearing in mind the initiatives taken in the framework of other international bodies and with a view to supplementing them,

Recommends that the governments of the member states:

i. be guided in the definition of their national policies and approaches in this area, with due respect to their domestic law and obligations under international law, by the principles set out in this Recommendation; and

ii. ensure, by all appropriate means, that these principles are brought to the attention of broadcasters operating in the European television markets, as well as audiovisual producers in countries or regions with a low audiovisual output or a limited geographic or linguistic coverage.

Principles

Scope and definitions

The purpose of this recommendation is to promote the distribution and broadcasting of audiovisual works originating in the smaller European partners on the European television markets.

For the purposes of this recommendation:

- "smaller European partners" refers to countries or regions in Europe with a low audiovisual output or a limited geographic or linguistic coverage;

- "audiovisual work" refers to any creative work which may be broadcast on television, regardless of its type and its technical production methods.

1. Development of language transfer techniques

Member States should encourage the language transfer of audiovisual works originating in the smaller European partners, so as to facilitate their distribution and broadcasting on the European television markets.

For this purpose, member states should study, in particular, the establishment of fiscal and financial incentives with a view to:

a. reducing, for both broadcaster-purchasers and producer-vendors, the costs relating to language transfer of these works;

b. encouraging professional bodies in the audiovisual sector:

- to develop in a concerted manner, at the European level, research in the area of language transfer;

- to make greater use of the new language transfer techniques which are already available, as well as techniques which may be developed as a result of research in this area;

- to develop training and retraining of staff in the use of new techniques, as well as in script-writing and production techniques for audiovisual works, taking account of the possible future need to guarantee, with a view to their subsequent distribution, the language transfer of such works when they reach the stage of completion;

- to develop information for broadcasters and audiovisual producers in regard to the new techniques which are already available, or which may be developed as a result of research in the area of language transfer.

2. Access to new production and broadcasting technologies

2.1. Member States should take appropriate steps within the competent international bodies so as to create awareness of the problems arising out of the evolution in broadcasting and production techniques and standards for the smaller European partners, as well as awareness of the need to allow them access to these new technologies on an equal footing.

2.2. Member States should, in particular, encourage the adoption of solutions which would enable the smaller European partners:

a. to produce audiovisual works using techniques which are compatible with the new television standards and formats;

b. to continue to exploit their existing audiovisual works to the fullest degree, in particular by means of reformatting or other appropriate techniques, notwithstanding the evolution of broadcasting technologies.

2.3. Member States should also encourage professional circles to develop training and retraining of technical staff in the smaller European partners so as to allow them to adapt to the use of new production and broadcasting technologies.

2.4. Moreover, member states should study the establishment of fiscal and financial incentives so as to encourage and promote the production of audiovisual works using new techniques by producers from the smaller European partners.

3. Development of the distribution of audiovisual works

3.1. Member States should encourage greater co-operation between smaller European partners so as to promote the distribution of their audiovisual works, in particular on the television markets of larger countries.

In this regard, the audiovisual professionals in the smaller European partners should be encouraged to study the creation of systems which would make it possible to bring together the various means necessary for the widest distribution of their works, in particular on the European television markets. Member States should study the establishment of legal structures so as to facilitate such systems.

3.2. In addition, member states should study the establishment, in the framework of their support schemes for the distribution of audiovisual works, of premiums for producers having already successfully distributed audiovisual works in a number of European countries. The grant of such premiums for export could be made subject to their re-investment in a new production.

3.3. Member States should also encourage professional circles to develop training of producers in the smaller European partners in the techniques of marketing, promotion and sales of their audiovisual works.

4. Development of the broadcasting of audiovisual works

4.1. Member States should encourage broadcasters on the larger European television markets to acquire a greater understanding and appreciation of audiovisual works originating in the smaller European partners and invite them to consider the possibility:

a. of reserving programming time, on a regular basis, for quality audiovisual works originating in the smaller European partners;

b. of broadcasting information programmes on audiovisual works so as to create greater awareness of works produced by the smaller European partners;

c. of co-producing audiovisual works with producers and broadcasters in the smaller European partners, so as to promote the broadcasting of audiovisual works reflecting the cultural identity of the latter;

d. of enabling producers and broadcasters from the smaller European partners:

- to benefit from the works co-produced by methods such as the granting of first broadcasting rights on their territory whenever such works are co-produced with

broadcasters from the larger European countries sharing the same language and covering the same territory;

- to exploit by other means and on other markets the works which they co-produced.

4.2. Over and above the provisions of principle 4.1, member states should, in order to promote the co-production of audiovisual works with smaller European partners:

a. examine the appropriateness of developing bilateral or multilateral co-production agreements for the television sector;

b. study the establishment of financial and fiscal incentives so as to encourage producers on the larger European markets to co-produce audiovisual works with producers and broadcasters from the smaller European partners.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (94) 3

of the Committee of Ministers to member states on the promotion of education and awareness in the area of copyright and neighbouring rights concerning creativity

(Adopted by the Committee of Ministers on 5 April 1994, at the 511th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress;

Aware of the inextricable links which exist between human rights, on the one hand, and cultural policy on the other, in particular the freedom which must be guaranteed to authors and other contributors to creation and the dissemination of culture to express themselves freely in different forms and contexts, and to communicate to the public the fruits of their creative endeavours;

Highlighting in this regard the relevance of Articles 9 and 10 of the European Convention on Human Rights which guarantee freedom of thought and expression respectively, as well as Article 27 of the Universal Declaration of Human Rights which specifically addresses the fundamental rights of authors and other contributors to creation and the dissemination of culture;

Reaffirming also the major contribution which authors and other contributors to creation and the dissemination of culture make to the development of the cultural life of a democracy and the economic development of a nation, and the fact that the works which they produce form a valuable cultural and economic asset such that the encouragement and rewarding of their activities is a matter of public interest;

Aware of the need not to restrict access by the public to works and other protected contributions;

Conscious, however, of the need to create greater awareness among the public in general and lawyers in particular (judges, prosecutors, legal practitioners, law professors, law students, etc.) of the fact that access to and use of works and other protected contributions can only be granted on the basis of respect for the rights of the right holders concerned, and that failure to observe this obligation constitutes an illicit act which prejudices the lawful rights and interests of authors and other contributors to creation and the dissemination of culture and, in the long term, literary and artistic creation and the development of society as a whole;

Convinced that one major means for achieving this is through the deployment of efforts at educating and creating awareness among the public at large of the need for the latter to recognise that authors and other contributors to creation and the dissemination of culture have legitimate rights and interests in respect of their works and other protected contributions,

Recommends the governments of member states:

a. promote, having due regard to the principles set out hereafter, education and awareness among the public in general and lawyers in particular (judges, prosecutors, legal practitioners, law professors, law students, etc.) of the need to respect copyright and neighbouring rights granted to authors and other contributors in respect of works and other protected contributions (in particular literary and artistic works, musical works, phonograms, audiovisual works, broadcasts and computer software);

b. encourage the representative bodies of the various categories of right holders as well as collecting societies to participate, wherever feasible, in co-operation with public authorities, in this initiative, in particular through the preparation and dissemination of relevant literature, audiovisual material, etc., designed to increase awareness of the importance of respecting copyright and neighbouring rights concerning creativity and of the economic and cultural consequences stemming from a failure to do so.

Principles

Principle 1

At the level of university education, particular consideration should be given to promoting the teaching of copyright and law on neighbouring rights.

For this purpose, the member states should encourage the development of regular specific courses within law faculties on the principles and practice of copyright and neighbouring rights, particularly in the perspective of educating a new generation of jurists knowledgeable of the need to protect the rights of authors and all other contributors to creation and the dissemination of culture. In addition, consideration should be given to the possibility of referring to the rights of creators and other contributors to creation and the dissemination of culture within the framework of other relevant private law courses as well as courses on constitutional law and civil liberties.

Outside the framework of legal education, encouragement should also be given to the development of education on copyright and neighbouring rights within other appropriate disciplines, in particular economics, computer science, arts and the humanities, and media studies.

Principle 2

In addition to initiatives within the framework of educational curricula, member states should encourage greater awareness among the members of the legal profession, customs authorities, law enforcement authorities, etc., of the need to ensure respect for the lawful rights and interests of authors and other contributors to creation and the dissemination of culture.

For this purpose, use could be made of existing facilities such as the continuing training courses organised for the professional sectors referred to above so as to highlight the serious prejudice which is caused to creators and other contributors to creation and the dissemination of culture, as well as to society in general, by unlawful activities such as piracy (that is, mainly the unauthorised duplication, distribution or communication to the public for commercial purposes of works, contributions and performances protected by copyright and neighbouring rights), in particular sound and audiovisual piracy, computer software piracy as well as unauthorised reprography.

Where such training facilities do not exist, consideration could be given to their possible introduction.

Principle 3

Member states should encourage the relevant professional bodies to develop literature, audiovisual material, etc., which could be used in educational curricula as well as in training courses to highlight the importance of ensuring respect for the rights of creators and other contributors to creation and the dissemination of culture. Material of this nature should also seek to emphasise the character of the harm which accompanies the commission of unlawful activities such as piracy and unauthorised reprography.

Principle 4

Member states should endeavour to create greater awareness among the public of the importance of ensuring respect for the rights and interests of authors and other contributors to creation and the dissemination of culture. For this purpose, consideration should be given to the promotion of information and awareness campaigns highlighting:

- the importance of the rights attaching to creators and other contributors to creation and the dissemination of culture for the cultural and economic development of society, as well as the prejudice which infringement of these rights causes to right holders, to literary and artistic creation and, in the final analysis, to the public itself;

- the unlawful nature of activities which undermine those rights, in particular piracy and unauthorised reprography. Particular attention should be accorded not only to sound and audiovisual piracy but also to computer software piracy.

Principle 5

Member states should endeavour to promote awareness at all relevant stages of the educational process of the importance of respecting the rights of those who are at the origin of creative works, including computer software and other protected contributions.

For this purpose, member states should endeavour to ensure that the learning process is accompanied by efforts at instilling an appreciation on the part of students of the special role performed by authors, composers, audiovisual producers, visual artists and photographers, performers, phonogram producers, broadcasting organisations, etc., in the cultural and economic development of society.

Principle 6

Member states should give consideration to the possibility of introducing, in the framework of educational and professional training programmes, courses which are adapted to the age and interests of those targeted and which would be intended to promote awareness of:

a. the need to regard authors and other contributors to creation and the dissemination of culture as workers dependent on the revenue acquired through the use and public exploitation of their works and other protected contributions;

b. the value of copyright industries within the framework of the domestic economy and the labour market;

c. the legitimacy of those economic and moral rights which are guaranteed to authors and other contributors to creation and the dissemination of culture, in particular against the background of the cultural and economic contribution which they make to society;

d. the illegality of certain types of activity which prejudice the rights and interests of creators and other contributors to creation and the dissemination of culture, in particular sound and audiovisual piracy as well as computer software piracy, and unauthorised reprography.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (94) 13

of the Committee of Ministers to member states on measures to promote media transparency

(Adopted by the Committee of Ministers on 22 November 1994, at the 521st meeting of the Minister's Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Recalling that media pluralism and diversity are essential for the functioning of a democratic society;

Recalling also that media concentrations at the national and international levels can have not only positive but also harmful effects on media pluralism and diversity which may justify action by governments;

Noting that the regulation of media concentrations presupposes that the competent services or authorities have information which enables them to know the reality of media ownership structures and, in addition, to identify third parties who might exercise an influence on their independence;

Stressing also that media transparency is necessary to enable members of the public to form an opinion on the value which they should give to the information, ideas and opinions disseminated by the media;

Recalling the media transparency provisions included in texts already adopted within the Council of Europe, in particular Article 6 of the European Convention on Transfrontier Television;

Believing that further provisions should be considered, in the light of the above-mentioned trends, so as to guarantee media transparency and allow exchanges of information between member states for this purpose;

Noting the need to safeguard the rights and legitimate interests of all parties subject to transparency obligations;

Taking account of work carried out within other fora, especially within the framework of the European Union,

Recommends that the governments of member states consider the inclusion in their domestic legislation of provisions intended to guarantee or promote media transparency as well as to facilitate exchanges of information between member states on this topic, drawing on the guidelines appended to this recommendation.

Appendix to Recommendation No. R (94) 13

I. General provisions on media transparency

Guideline No. 1: Access by the public to information on the media

Members of the public should have access on an equitable and impartial basis to certain basic information on the media so as to enable them to form an opinion on the value to be given to information, ideas and opinions disseminated by the media.

The communication of this information to members of the public by the media or by the services or authorities responsible for ensuring their transparency should be carried out in a way which respects the rights and legitimate interests of the persons or bodies subject to transparency requirements. Particular attention should be given to the need to reconcile the requirement of transparency with the principle of freedom of trade and industry as well as with the requirements of data protection, commercial secrecy, the confidentiality of the sources of information of the media and editorial secrecy.

Guideline No. 2: Exchange of information on media transparency between national authorities

The services or authorities appointed under national legislation to collect data on media transparency should be competent to communicate these data to similar services or authorities in other member states, subject to, and within the limits of, what is permitted under national legislation as well as under international agreements to which each state is party. Where appropriate, the communication of the data should be subject to the express or implied consent of the persons concerned. These possible restrictions should be specified in national legislation and systematically notified to the services or authorities to which the information is addressed.

The likely justifications for the communication of this information should be explicitly mentioned in the legislation and any request for access to it on the part of the services or authorities of other member states should specify the reasons for the request.

The provisions aimed at permitting the communication of information should be drawn up in a way which takes account of any possible regulations concerning the duty of discretion owed by the employees of the services or authorities concerned and the disclosure of information to foreign authorities. If necessary, the provisions should be adapted so as to make these exchanges of information possible.

II. Specific measures which may guarantee media transparency in the broadcasting sector

Guideline No. 3: Disclosure of information when granting broadcasting licences to broadcasting services

Transparency in regard to applications for the exploitation of broadcasting services may be guaranteed by including provisions in national legislation obliging applicants for the operation of a radio or television broadcasting service to provide the service or the authority empowered to authorise the operation of the service with information which is fairly wide-ranging in its scope and quite precise in its content.

The information which may be subject to disclosure may be schematically grouped into three categories:

- first category: information concerning the persons or bodies participating in the structure which is to operate the service and on the nature and the extent of the respective participation of these persons or bodies in the structure concerned;

- second category: information on the nature and the extent of the interests held by the above persons and bodies in other media or in media enterprises, even in other economic sectors;

- third category: information on other persons or bodies likely to exercise a significant influence on the programming policy of this service by the provision of certain kinds of resources, the nature of which should be clearly specified in the licensing procedures, to the service or to the persons or bodies involved in the latter's operations.

Guideline No. 4: Disclosure of information following the grant of broadcasting licences to broadcasting services

Transparency in the running of broadcasting services may be guaranteed by including in national legislation provisions requiring the persons or bodies operating a broadcasting service to provide the service or authority which authorised the operation of the service with information which will vary in its scope and detail.

The information which may be disclosed may be schematically divided into two main categories:

- information aimed at accounting for changes which have occurred in the course of the operation of the service vis-à-vis the three categories of data referred to above;

- information relating to other categories of data linked to the operation of the service, once the latter has started up.

Guideline No. 5: Exercise of the functions of the service or authorities responsible for ensuring transparency in the running of broadcasting services

The missions and powers of the services or authorities responsible for ensuring transparency in the running of broadcasting services should be clearly defined in national legislation. These

services or authorities should have at their command the powers and means necessary to ensure the effective exercise of their tasks, while ensuring respect for the rights and legitimate interests of the persons or authorities required to disclose information. They ought to be able, where appropriate, to call on the assistance of other national authorities or services, as well as possibly the expertise of other persons or bodies.

The services or authorities to which the information communicated by the applicants for the operation of a broadcasting service is addressed, and the bodies managing these services, should have the possibility of submitting part of the information to certain sections of the public, given that consultation of the latter might be necessary for the exercise of their missions.

III. Guideline No. 6: Specific measures which may guarantee media transparency in the press sector

Transparency in the press sector may be guaranteed by including in national legislation provisions which require press undertakings to disclose a set of information which is more or less broad in its scope and precise in its content.

The information which may be subject to disclosure may be divided into five categories:

- first category: information concerning the identity of the persons or bodies participating in the publishing structure of a press undertaking, as well as the nature and the extent of the participation of these persons or bodies in the structure;

- second category: information on the interests held in other media by the publishing structure or the persons or bodies participating in the latter;

- third category: information concerning the persons or bodies, other than those directly involved in the publishing structure, who are likely to exercise a significant influence over the editorial line of the publications which they manage;

- fourth category: information on any statements of either editorial policy or political orientation of newspapers and publications;

- fifth category: information concerning the financial results of the publishing structure and the distribution of its publication(s).

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (95) 1

of the Committee of Ministers to member states on measures against sound and audiovisual piracy

(Adopted by the Committee of Ministers on 11 January, at the 525th meeting of the Minister's Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress;

Concerned by the resurgence in sound and audiovisual piracy in Europe;

Considering that the resurgence of piracy is due, in particular, to:

a. the major political, economic and social changes which have occurred in central and eastern Europe as well as the difficult economic situation in many European countries;

b. technical developments, in particular digitalisation, which facilitate:

- the reproduction, often of excellent quality, of phonograms, audiovisual works, broadcasts and computer software associated with audiovisual productions (in particular, the so-called multimedia and video games);

- the manufacture of decoding equipment and other similar means used for protecting access to works and other protected contributions;

Noting that piracy prejudices the rights and interests of authors, producers of audiovisual works, performers, producers of phonograms and broadcasting organisations as well as the cultural professions and related industries in general and the public at large;

Noting the increasing international character of sound and audiovisual piracy;

Recognising that action at the level of legislation and awareness is necessary for combating effectively all forms of sound and audiovisual piracy;

Resolved to promote effective action in this area;

Convinced that any such action must be based on the adoption of appropriate measures at national level as well as on international co-operation;

Bearing in mind the work carried out or being carried out on the strengthening of the protection of rights within other fora, in particular within the framework of the European Union, Unesco, and the World Intellectual Property Organization;

Bearing in mind also the work carried out or being carried out within other fora with respect to enforcement of rights, in particular the Agreement on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods (TRIPS Agreement) concluded within the framework of GATT and the European Union regulations outlining border measures on the importation of counterfeit products;

Noting in this respect the need for effective implementation of the existing recommendations which it has already adopted in this area:

- Recommendation No. R (88) 2 on measures to combat piracy in the field of copyright and neighbouring rights;

- Recommendation No. R (91) 14 on the legal protection of encrypted television services, and

- Recommendation No. R (94) 3 on the promotion of education and awareness in the area of copyright and neighbouring rights concerning creativity;

Bearing in mind the need to address continuously and in an appropriate manner the issue of sound and audiovisual piracy, in particular the forms of piracy, in a rapidly evolving technological context;

Noting therefore that, in addition to the implementation of the above-mentioned recommendations, a number of considerations should be borne in mind in pursuing effective action against piracy,

Recommends that the governments of member states:

- step up their action against sound and audiovisual piracy;

- to this end, ensure speedy and more effective action at national and international levels against the forms of sound and audiovisual piracy mentioned in the appendix to this recommendation;

- take account of the considerations in the appendix to this recommendation when developing their anti-piracy policies.

Appendix to Recommendation No. R (95) 1

1. There is a resurgence in Europe of various forms of sound and audiovisual piracy, such as:

    a. the unauthorised fixation of live performances for commercial purposes and the unauthorised reproduction and distribution for commercial purposes of such fixations;

    b. the reproduction, distribution and communication to the public of phonograms in violation of the relevant existing rights of right holders and for commercial purposes;

c. the reproduction, distribution and communication to the public of audiovisual works in violation of the exclusive rights of right holders and for commercial purposes;

d. the unlawful retransmission, cable distribution, fixation and reproduction of broadcasts for commercial purposes and the unauthorised distribution for commercial purposes of copies of broadcasts;

e. the unauthorised manufacture and distribution for commercial purposes of decoding equipment and other similar means enabling unlawful access to works and other protected contributions;

f. the unauthorised reproduction and distribution for commercial purposes of computer software associated with audiovisual productions, in particular the so-called multimedia and video games.

2. These new challenges may require a continuing examination of the scope of sound and audiovisual piracy offences.

3. A number of member states have successfully introduced in their fight against sound and audiovisual piracy:

- anti-piracy units, composed of officers specialised in the fight against sound and audiovisual piracy;

- special chambers within criminal courts and tribunals which are competent to deal with issues relating to sound and audiovisual piracy.

4. As a complement to the existing legal framework for dealing with sound and audiovisual piracy offences, the introduction of technical anti-piracy devices may increase the security and protection of works and other contributions against the threat of sound and audiovisual piracy.

5. An awareness campaign directed at judicial and administrative authorities on the need to act decisively against sound and audiovisual piracy may also be useful, as would the promotion of awareness among the public at large of the importance of the seriousness of sound and audiovisual piracy offences and of the need to respect the rights of holders of copyright and neighbouring rights in works and other protected contributions.

6. Co-ordination at international level is important so as to facilitate:

- legal proceedings involving sound and audiovisual piracy offences;
- exchanges of information between bodies in each member state responsible for combating sound and audiovisual piracy.

7. The exchange of information between professional bodies involved in the fight against piracy is also important for effectively combating piracy.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (95) 13

of the Committee of Ministers to member states concerning problems of criminal procedural law connected with information technology

(Adopted by the Committee of Ministers on 11 September 1995, at the 543rd meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Having regard to the unprecedented development of information technology and its application in all sectors of modern society;

Realising that the development of electronic information systems will speed up the transformation of traditional society into an information society by creating a new space for all types of communications and relations;

Aware of the impact of information technology on the manner in which society is organised and on how individuals communicate and interrelate;

Conscious that an increasing part of economic and social relations will take place through or by use of electronic information systems;

Concerned at the risk that electronic information systems and electronic information may also be used for committing criminal offences;

Considering that evidence of criminal offences may be stored and transferred by these systems;

Noting that criminal procedural laws of member states often do not yet provide for appropriate powers to search and collect evidence in these systems in the course of criminal investigations;

Recalling that the lack of appropriate special powers may impair investigating authorities in the proper fulfilment of their tasks in the face of the ongoing development of information technology;

Recognising the need to adapt the legitimate tools which investigating authorities are afforded under criminal procedural laws to the specific nature of investigations in electronic information systems;

Concerned by the potential risk that member states may not be able to render mutual legal assistance in an appropriate way when requested to collect electronic evidence within their territory from electronic information systems;

Convinced of the necessity of strengthening international co-operation and achieving a greater compatibility of criminal procedural laws in this field;

Recalling Recommendation No. R (81) 20 on the harmonisation of laws relating to the requirement of written proof and to the admissibility of reproductions of documents and recordings on computers, Recommendation No. R (85) 10 on letters rogatory for the interception of telecommunications, Recommendation No. R (87) 15 regulating the use of personal data in the police sector and Recommendation No. R (89) 9 on computer-related crime,

Recommends the governments of member states:

i. when reviewing their internal legislation and practice, to be guided by the principles appended to this recommendation; and

ii. to ensure publicity for these principles among those investigating authorities and other professional bodies, in particular in the field of information technology, which may have an interest in their application.

Appendix to Recommendation No. R (95) 13

concerning problems of criminal procedural law connected with information technology

I. Search and seizure

1. The legal distinction between searching computer systems and seizing data stored therein and intercepting data in the course of transmission should be clearly delineated and applied.

2. Criminal procedural laws should permit investigating authorities to search computer systems and seize data under similar conditions as under traditional powers of search and seizure. The person in charge of the system should be informed that the system has been searched and of the kind of data that has been seized. The legal remedies that are provided for in general against search and seizure should be equally applicable in case of search in computer systems and in case of seizure of data therein.

3. During the execution of a search, investigating authorities should have the power, subject to appropriate safeguards, to extend the search to other computer systems within their jurisdiction which are connected by means of a network and to seize the data therein, provided that immediate action is required.

4. Where automatically processed data is functionally equivalent to a traditional document, provisions in the criminal procedural law relating to search and seizure of documents should apply equally to it.

II. Technical surveillance

5. In view of the convergence of information technology and telecommunications, laws pertaining to technical surveillance for the purposes of criminal investigations, such as interception of telecommunications, should be reviewed and amended, where necessary, to ensure their applicability.

6. The law should permit investigating authorities to avail themselves of all necessary technical measures that enable the collection of traffic data in the investigation of crimes.

7. When collected in the course of a criminal investigation and in particular when obtained by means of intercepting telecommunications, data which is the object of legal protection and processed by a computer system should be secured in an appropriate manner.

8. Criminal procedural laws should be reviewed with a view to making possible the interception of telecommunications and the collection of traffic data in the investigation of serious offences against the confidentiality, integrity and availability of telecommunication or computer systems.

III. Obligations to co-operate with the investigating authorities

9. Subject to legal privileges or protection, most legal systems permit investigating authorities to order persons to hand over objects under their control that are required to serve as evidence. In a parallel fashion, provisions should be made for the power to order persons to submit any specified data under their control in a computer system in the form required by the investigating authority.

10. Subject to legal privileges or protection, investigating authorities should have the power to order persons who have data in a computer system under their control to provide all necessary information to enable access to a computer system and the data therein. Criminal procedural law should ensure that a similar order can be given to other persons who have knowledge about the functioning of the computer system or measures applied to secure the data therein.

11. Specific obligations should be imposed on operators of public and private networks that offer telecommunication services to the public to avail themselves of all necessary technical measures that enable the interception of telecommunications by the investigating authorities.

12. Specific obligations should be imposed on service-providers who offer telecommunication services to the public, either through public or private networks, to provide information to identify the user, when so ordered by the competent investigating authority.

IV. Electronic evidence

13. The common need to collect, preserve and present electronic evidence in ways that best ensure and reflect their integrity and irrefutable authenticity, both for the purposes of domestic prosecution and international co-operation, should be recognised. Therefore, procedures and technical methods for handling electronic evidence should be further developed, and particularly in such a way as to ensure their compatibility between states.

Criminal procedural law provisions on evidence relating to traditional documents should similarly apply to data stored in a computer system.

V. Use of encryption

14. Measures should be considered to minimise the negative effects of the use of cryptography on the investigation of criminal offences, without affecting its legitimate use more than is strictly necessary.

VI. Research, statistics and training

15. The risks involved in the development and application of information technology with regard to the commission of criminal offences should be assessed continuously. In order to enable the competent authorities to keep abreast of new phenomena in the field of computer-related offences and to develop appropriate counter-measures, the collection and analysis of data on these offences, including modus operandi and technical aspects, should be furthered.

16. The establishment of specialised units for the investigation of offences, the combating of which requires special expertise in information technology, should be considered. Training programmes enabling criminal justice personnel to avail themselves of expertise in this field should be furthered.

VII. International co-operation

17. The power to extend a search to other computer systems should also be applicable when the system is located in a foreign jurisdiction, provided that immediate action is required. In order to avoid possible violations of state sovereignty or international law, an unambiguous legal basis for such extended search and seizure should be established. Therefore, there is an urgent need for negotiating international agreements as to how, when and to what extent such search and seizure should be permitted.

18. Expedited and adequate procedures as well as a system of liaison should be available according to which the investigating authorities may request the foreign authorities to promptly collect evidence. For that purpose the requested authorities should be authorised to search a computer system and seize data with a view to its subsequent transfer. The requested authorities should also be authorised to provide trafficking data related to a specific telecommunication, intercept a specific telecommunication or identify its source. For that purpose, the existing mutual legal assistance instruments need to be supplemented.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (96) 4

of the Committee of Ministers to member states
on the protection of journalists in situations of conflict and tension

(Adopted by the Committee of Ministers on 3 May 1996,
at its 98th Session)

The Committee of Ministers of the Council of Europe, under the terms of Article 15.b of the Statute of the Council of Europe,

Emphasising that the freedom of the media and the free and unhindered exercise of journalism are essential in a democratic society, in particular for informing the public, for the free formation and expression of opinions and ideas, and for scrutinising the activities of public authorities;

Affirming that the freedom of the media and the free and unhindered exercise of journalism must be respected in situations of conflict and tension, since the right of individuals and the general public to be informed about all matters of public interest and to be able to evaluate the actions of public authorities and other parties involved is especially important in such situations;

Emphasising the importance of the role of journalists and the media in informing the public about violations of national and international law and human suffering in situations of conflict and tension, and the fact that they thereby can help to prevent further violations and suffering;

Noting that, in such situations, the freedom of the media and the free and unhindered exercise of journalism can be seriously threatened, and journalists often find their lives and physical integrity at risk and encounter restrictions on their right to free and independent reporting;

Noting that attacks on the physical safety of journalists and restrictions on reporting may assume a variety of forms, ranging from seizure of their means of communication to harassment, detention and assassination;

Reaffirming the importance of international human rights instruments at both world and European levels for the protection of journalists working in situations of conflict and tension, especially the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the European Convention on Human Rights;

Reaffirming also the importance of Article 79 of the First Additional Protocol to the Geneva Conventions of 12 August 1949, adopted on 8 June 1977, which provides that journalists shall be considered as civilians and shall be protected as such;

Considering that this obligation also applies with respect to non-international armed conflicts;

Convinced that it is necessary to reaffirm these existing guarantees, to make them better known and to ensure that they are fully respected with a view to strengthening the protection of journalists in situations of conflict and tension;

Stressing that any interference with the work of journalists in such situations must be exceptional, be kept to a minimum and be strictly in line with the conditions set out in relevant international human rights instruments;

Noting that media organisations, professional organisations and journalists themselves can also contribute to enhancing the physical safety of journalists, notably by taking and encouraging practical prevention and self-protection measures;

Considering that, for the purposes of this recommendation, the term "journalist" must be understood as covering all representatives of the media, namely all those engaged in the collection, processing and dissemination of news and information including cameramen and photographers, as well as support staff such as drivers and interpreters,

Recommends that the governments of member states:

1. be guided in their actions and policies by the basic principles concerning the protection of journalists working in situations of conflict and tension set out in the appendix to this recommendation, and apply them without distinction to foreign correspondents and local journalists and without discrimination on any ground;

2. disseminate widely this recommendation and in particular bring it to the attention of media organisations, journalists and professional organisations, as well as public authorities and their officials, both civilian and military.

Appendix to Recommendation No. R (96) 4

Basic principles concerning the protection of journalists in situations of conflict and tension

Chapter A: Protection of the physical safety of journalists

Principle 1

Prevention

1. Media organisations, journalists and professional organisations can take important preventive measures contributing to the protection of the physical safety of journalists. Consideration should be given to the following measures with a view to adequate preparation for dangerous missions in situations of conflict and tension:

   a. the provision of practical information and training to all journalists, whether staff or freelance, with the assistance of experienced journalists and competent specialised authorities and organisations such as the police or the armed forces;

   b. wide dissemination among the profession of existing "survival guides";

c. wide dissemination among the profession of information on the availability of appropriate protection equipment.

2. While these measures are first and foremost the responsibility of media organisations, journalists and professional organisations, the authorities and competent specialised organisations of the member states should be co-operative when approached with requests for the provision of information or training.

Principle 2

Insurance

1. Journalists working in situations of conflict and tension should have adequate insurance cover for illness, injury, repatriation and death. Media organisations should ensure that this is the case before sending journalists employed by them on dangerous missions. Self-employed journalists should make their own insurance arrangements.

2. Member states and media organisations should examine ways of promoting the provision of insurance cover for all journalists embarking on dangerous missions as a standard feature of contracts and collective agreements.

3. Media organisations and professional organisations in member states should give consideration to setting up a solidarity fund to indemnify journalists or their families for damage suffered in cases where insurance is insufficient or non-existent.

Principle 3

“Hotlines”

1. The emergency hotline operated by the International Committee of the Red Cross (ICRC) has proved invaluable for tracing missing journalists. Other organisations such as the International Federation of Journalists (IFJ) and the International Freedom of Expression Exchange (IFEX) operate effective hotlines which draw attention to cases of attacks on the physical safety of journalists and their journalistic freedoms. Media organisations and professional organisations are encouraged to take steps to make these hotlines better known among those in the profession. Member states should support such initiatives.

2. Journalists working in situations of conflict and tension should consider the advisability of keeping the local field offices of the ICRC informed, on a confidential basis, of their whereabouts, so enhancing the effectiveness of the hotline in tracing journalists and in taking steps to improve their safety.

Chapter B: Rights and working conditions of journalists working in situations of conflict and tension

Principle 4

Information, movement and correspondence

Member states recognise that journalists are fully entitled to the free exercise of human rights and fundamental freedoms as guaranteed by the European Convention on Human Rights (ECHR), and by protocols thereto and international instruments to which they are a party, including the following rights:

a. the right of everyone to seek, impart and receive information and ideas regardless of frontiers;

b. the right of everyone lawfully within the territory of a state to liberty of movement and freedom to choose their residence within that territory as well as the right of everyone to leave any country;

c. the right of everyone to respect for their correspondence in its various forms.

Principle 5

Confidentiality of sources

Having regard to the importance of the confidentiality of sources used by journalists in situations of conflict and tension, member states shall ensure that this confidentiality is respected.

Principle 6

Means of communication

Member states shall not restrict the use by journalists of means of communication for the international or national transmission of news, opinions, ideas and comments. They shall not delay or otherwise interfere with such transmissions.

Principle 7

Checks on limitations

1. No interference with the exercise of the rights and freedoms covered by Principles 4 to 6 is permitted except in accordance with the conditions laid down in relevant provisions of human rights instruments, as interpreted by their supervisory bodies. Any such interference must therefore:

- be prescribed by law and formulated in clear and precise terms;

- pursue a legitimate aim as indicated in relevant provisions of human rights instruments; in accordance with the case-law of the European Court of Human Rights,

the protection of national security within the meaning of the ECHR, while constituting such a legitimate aim, cannot be understood or used as a blanket ground for restricting fundamental rights and freedoms; and

- be necessary in a democratic society, that is: correspond to a pressing social need, be based on reasons which are relevant and sufficient and be proportionate to the legitimate aim pursued.

2. In situations of war or other public emergency threatening the life of the nation and the existence of which is officially proclaimed, measures derogating from the state's obligation to secure these rights and freedoms are allowed to the extent that these measures are strictly required by the exigencies of the situation, provided that they are not inconsistent with other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

3. Member states should refrain from taking any restrictive measures against journalists such as withdrawal of accreditation or expulsion on account of the exercise of their professional activities or the content of reports and information carried by their media.

Principle 8

Protection and assistance

1. Member states should instruct their military and police forces to give necessary and reasonable protection and assistance to journalists when they so request, and treat them as civilians.

2. Member states shall not use the protection of journalists as a pretext for restricting their rights.

Principle 9

Non-discrimination

Member states shall ensure that, in their dealings with journalists, whether foreign or local, public authorities shall act in a non-discriminatory and non-arbitrary manner.

Principle 10

Access to the territory of a state

1. Member states should facilitate the access of journalists to the territory of destination by promptly issuing visas and other necessary documents.

2. Member states should likewise facilitate the importation and exportation of professional equipment.

Principle 11

Use of accreditation systems

Systems for the accreditation of journalists should be introduced only to the extent necessary in particular situations. When accreditation systems are in place, accreditation should normally be granted. Member states shall ensure that:

a. accreditation operates to facilitate the exercise of journalism in situations of conflict and tension;

b. the exercise of journalism and journalistic freedoms is not made dependent on accreditation;

c. accreditation is not used for the purpose of restricting the journalist's liberty of movement or access to information; to the extent that refusal of accreditation may have the effect of restricting these rights, such restrictions must be strictly in accordance with the conditions set out in Principle 7 above;

d. the granting of accreditation is not made dependent on concessions on the part of journalists which would limit their rights and freedoms to a greater extent than is provided for in Principle 7 above;

e. any refusal of accreditation having the effect of restricting a journalist's liberty of movement or access to information is reasoned.

Chapter C: Investigation

Principle 12

1. In situations of conflict and tension, member states shall investigate instances of attacks on the physical safety of journalists occurring within their jurisdiction. They shall give due consideration to reports of journalists, media organisations and professional organisations which draw attention to such attacks and shall, where necessary, take all appropriate follow-up action.

2. Member states should use all appropriate means to bring to justice those responsible for such attacks, irrespective of whether these are planned, encouraged or committed by persons belonging to terrorist or other organisations, persons working for the government or other public authorities, or persons acting in an individual capacity.

3. Member states shall provide the necessary mutual assistance in criminal matters in accordance with relevant applicable Council of Europe and other European and international instruments.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (96) 10

**of the Committee of Ministers to member states
on the guarantee of the independence of public service broadcasting**

*(Adopted by the Committee of Ministers on 11 September 1996,
at the 573rd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Recalling that the independence of the media, including broadcasting, is essential for the functioning of a democratic society;

Stressing the importance which it attaches to respect for media independence, especially by governments;

Recalling in this respect the principles endorsed by the governments of the member states of the Council of Europe set out in the declaration on the freedom of expression and information of 29 April 1982, especially as regards the need for a wide range of independent and autonomous means of communication allowing for the reflection of a diversity of ideas and opinions;

Reaffirming the vital role of public service broadcasting as an essential factor of pluralistic communication which is accessible to everyone at both national and regional levels, through the provision of a basic comprehensive programme service comprising information, education, culture and entertainment;

Recalling the commitments accepted by the representatives of the states participating in the 4th European Ministerial Conference on Mass Media Policy (Prague, 7-8 December 1994) in the framework of Resolution No. 1 on the future of public service broadcasting, especially respect for the independence of public service broadcasting organisations;

Noting the need to develop further the principles on the independence of public service broadcasting set out in the aforementioned Prague resolution in the light of the challenges raised by political, economic and technological change in Europe;

Considering that, in the light of these challenges, the independence of public service broadcasting should be guaranteed expressly at the national level by means of a body of rules dealing with all aspects of its functioning;

Underlining the importance of ensuring strict respect for these rules by any person or authority external to public service broadcasting organisations,

Recommends the governments of the member states:

a. to include in their domestic law or in instruments governing public service broadcasting organisations provisions guaranteeing their independence in accordance with the guidelines set out in the appendix to this recommendation;

b. to bring these guidelines to the attention of authorities responsible for supervising the activities of public service broadcasting organisations as well as to the attention of the management and staff of such organisations.

Appendix to Recommendation No. R (96) 10

Guidelines on the guarantee of the independence of public service broadcasting

I. General provisions

The legal framework governing public service broadcasting organisations should clearly stipulate their editorial independence and institutional autonomy, especially in areas such as:

- the definition of programme schedules;
- the conception and production of programmes;
- the editing and presentation of news and current affairs programmes;
- the organisation of the activities of the service;
- recruitment, employment and staff management within the service;
- the purchase, hire, sale and use of goods and services;
- the management of financial resources;
- the preparation and execution of the budget;
- the negotiation, preparation and signature of legal acts relating to the operation of the service;
- the representation of the service in legal proceedings as well as with respect to third parties.

The provisions relating to the responsibility and supervision of public service broadcasting organisations and their statutory organs should be clearly defined in the governing legal framework.

The programming activities of public service broadcasting organisations shall not be subject to any form of censorship. No a priori control of the activities of public service broadcasting organisations shall be exercised by external persons or bodies except in exceptional cases provided for by law.

II. Boards of management of public service broadcasting organisations

1. Competences

The legal framework governing public service broadcasting organisations should stipulate that their boards of management are solely responsible for the day-to-day operation of their organisation.

2. Status

The rules governing the status of the boards of management of public service broadcasting organisations, especially their membership, should be defined in a manner which avoids placing the boards at risk of any political or other interference.

These rules should, in particular, stipulate that the members of boards of management or persons assuming such functions in an individual capacity:

- exercise their functions strictly in the interests of the public service broadcasting organisation which they represent and manage;

- may not, directly or indirectly, exercise functions, receive payment or hold interests in enterprises or other organisations in media or media-related sectors where this would lead to a conflict of interest with the management functions which they exercise in their public service broadcasting organisation;

- may not receive any mandate or take instructions from any person or body whatsoever other than the bodies or individuals responsible for the supervision of the public service broadcasting organisation in question, subject to exceptional cases provided for by law.

3. Responsibilities

Subject to their accountability to the courts for the exercise of their competences in cases provided for by law, the boards of management of public service broadcasting organisations, or individuals assuming such functions in an individual capacity, should only be accountable for the exercise of their functions to the supervisory body of their public service broadcasting organisation.

Any decision taken by the aforementioned supervisory bodies against members of the boards of management of public service broadcasting organisations or persons assuming such functions in an individual capacity for breach of their duties and obligations should be duly reasoned and subject to appeal to the competent courts.

III. Supervisory bodies of public service broadcasting organisations

1. Competences

The legal framework governing public service broadcasting organisations should define clearly and precisely the competences of their supervisory bodies.

The supervisory bodies of public service broadcasting organisations should not exercise any a priori control over programming.

2. Status

The rules governing the status of the supervisory bodies of public service broadcasting organisations, especially their membership, should be defined in a way which avoids placing the bodies at risk of political or other interference.

These rules should, in particular, guarantee that the members of the supervisory bodies:

- are appointed in an open and pluralistic manner;

- represent collectively the interests of society in general;

- may not receive any mandate or take any instructions from any person or body other than the one which appointed them, subject to any contrary provisions prescribed by law in exceptional cases;

- may not be dismissed, suspended or replaced during their term of office by any person or body other than the one which appointed them, except where the supervisory body has duly certified that they are incapable of or have been prevented from exercising their functions;

- may not, directly or indirectly, exercise functions, receive payment or hold interests in enterprises or other organisations in media or media-related sectors where this would lead to a conflict of interest with their functions within the supervisory body.

Rules on the payment of members of the supervisory bodies of public service broadcasting organisations should be defined in a clear and open manner by the texts governing these bodies.

IV. Staff of public service broadcasting organisations

The recruitment, promotion and transfer as well as the rights and obligations of the staff of public service broadcasting organisations should not depend on origin, sex, opinions or political, philosophical or religious beliefs or trade union membership.

The staff of public service broadcasting organisations should be guaranteed without discrimination the right to take part in trade union activities and to strike, subject to any restrictions laid down by law to guarantee the continuity of the public service or other legitimate reasons.

The legal framework governing public service broadcasting organisations should clearly stipulate that the staff of these organisations may not take any instructions whatsoever from individuals or bodies outside the organisation employing them without the agreement of the board of management of the organisation, subject to the competences of the supervisory bodies.

V. Funding of public service broadcasting organisations

The rules governing the funding of public service broadcasting organisations should be based on the principle that member states undertake to maintain and, where necessary, establish an appropriate, secure and transparent funding framework which guarantees public service broadcasting organisations the means necessary to accomplish their missions.

The following principles should apply in cases where the funding of a public service broadcasting organisation is based either entirely or in part on a regular or exceptional contribution from the state budget or on a licence fee:

- the decision-making power of authorities external to the public service broadcasting organisation in question regarding its funding should not be used to exert, directly or indirectly, any influence over the editorial independence and institutional autonomy of the organisation;

- the level of the contribution or licence fee should be fixed after consultation with the public service broadcasting organisation concerned, taking account of trends in the costs of its activities, and in a way which allows the organisation to carry out fully its various missions;

- payment of the contribution or licence fee should be made in a way which guarantees the continuity of the activities of the public service broadcasting organisation and which allows it to engage in long-term planning;

- the use of the contribution or licence fee by the public service broadcasting organisation should respect the principle of independence and autonomy mentioned in guideline No. 1;

- where the contribution or licence fee revenue has to be shared among several public service broadcasting organisations, this should be done in a way which satisfies in an equitable manner the needs of each organisation.

The rules on the financial supervision of public service broadcasting organisations should not prejudice their independence in programming matters as stated in guideline No. 1.

VI. The programming policy of public service broadcasting organisations

The legal framework governing public service broadcasting organisations should clearly stipulate that they shall ensure that news programmes fairly present facts and events and encourage the free formation of opinions.

The cases in which public service broadcasting organisations may be compelled to broadcast official messages, declarations or communications, or to report on the acts or decisions of public authorities, or to grant airtime to such authorities, should be confined to exceptional circumstances expressly laid down in laws or regulations.

Any official announcements should be clearly described as such and should be broadcast under the sole responsibility of the commissioning authority.

VII. Access by public service broadcasting organisations to new communications technologies

Public service broadcasting organisations should be able to exploit new communications technologies and, where authorised, to develop new services based on such technologies in order to fulfil in an independent manner their missions as defined by law.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (97) 19

of the Committee of Ministers to member States on the portrayal of violence in the electronic media

(Adopted by the Committee of Ministers on 30 October1997, at the 607th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Recalling its commitment to the fundamental right to freedom of expression as guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and to the principles of the free flow of information and ideas and the independence of media operators as expressed, in particular, in its Declaration on the freedom of expression and information of 29 April 1982;

Bearing in mind the international dimension of the gratuitous portrayal of violence and the relevant provisions of the European Convention on Transfrontier Television (1989);

Recalling that at the 4th European Ministerial Conference on Mass Media Policy (Prague, 7-8 December 1994), the Ministers responsible for media policy addressed to the Committee of Ministers of the Council of Europe an Action plan containing strategies for the promotion of the media in a democratic society, in which they requested the Committee of Ministers to "prepare, in close consultation with media professionals and regulatory authorities, possible guidelines on the portrayal of violence in the media";

Recalling that the exercise of freedom of expression carries with it duties and responsibilities, which media professionals must bear in mind, and that it may legitimately be restricted in order to maintain a balance between the exercise of this right and the respect for other fundamental rights, freedoms and interests protected by the European Convention on Human Rights;

Concerned at the overall increase in the portrayal of violence in the electronic media, which makes it an important social issue;

Recalling that violence cannot be considered a proper means for conflict-resolution of any kind, including inter-personal conflicts;

Noting, nevertheless, that violence is part of the daily reality of society and that the right of the public to be informed also covers the right to be informed about various manifestations of violence;

Noting that there are many ways in which violence may be portrayed by the media, corresponding to different contexts, ranging from information to entertainment and that, especially in the latter case, violence is sometimes trivialised or even glorified so as to attract large audiences;

Noting also that, regardless of the aim invoked, violence is sometimes portrayed in the electronic media in a gratuitous manner, in no way justified by the context, reaching unacceptable inhuman and degrading levels as well as an excessive overall volume;

Aware that this may impair the physical, mental or moral development of the public, particularly young people, by creating, for instance, insensitivity to suffering, feelings of insecurity and mistrust;

Noting that not all persons in charge of the various electronic media perceive the increased portrayal of violence as a problem;

Considering that the economic reasons advanced by certain persons in charge of electronic media cannot justify the gratuitous portrayal of violence;

Convinced that the various sectors of society should assume their responsibilities in regard to the portrayal of violence in the electronic media;

Convinced also that all electronic media professionals must assume their responsibilities and that they are best placed to address the question of gratuitous portrayal of violence; and welcoming efforts already made by certain professionals and sectors,

Recommends that the governments of the member States:

a. draw the attention of the professionals in the electronic media sector, the regulatory bodies for this sector, the educational authorities and the general public, to the overall policy framework represented by the appended guidelines;

b. take concrete measures to implement these;

c. ensure, by all appropriate means, that these guidelines are known by the persons and bodies concerned, and encourage general debate;

d. keep the effective application of them in their internal legal orders under review.

Instructs the Secretary General of the Council of Europe to transmit this recommendation to the governments of those States party to the European Cultural Convention which are not members of the Council of Europe.

Scope

This recommendation concerns the gratuitous portrayal of violence in the various electronic media at national and transfrontier level. The gratuitous nature is to be assessed with reference to the parameters contained in the appendix to this recommendation.

Definitions

For the purposes of this recommendation:

a. "gratuitous portrayal of violence" denotes the dissemination of messages, words and images, the violent content or presentation of which is given a prominence which is not justified in the context;

b. "electronic media" denotes radio and television programme services, services such as video-on-demand, Internet, interactive television, etc., and products such as video games, CD-ROM, etc. with the exception of private communications which are not accessible to the public;

c. "those responsible for the content" denotes natural or legal persons responsible for the content of messages, words and images made available to the public by the various electronic media.

Guidelines

Guideline No. 1 - General framework

Article 10 of the European Convention on Human Rights, as interpreted in the case-law of the European Court of Human Rights, must constitute the general legal framework for addressing questions concerning the portrayal of violence in the electronic media.

Freedom of expression also includes, in principle, the right to impart and receive information and ideas which constitute portrayal of violence. However, certain forms of gratuitous portrayal of violence may lawfully be restricted, taking into account the duties and responsibilities which the exercise of freedom of expression carries with it, provided that such interferences with freedom of expression are prescribed by law and are necessary in a democratic society.

More specifically, measures taken to counter gratuitous portrayal of violence in the electronic media may legitimately aim at upholding respect for human dignity and at the protection of vulnerable groups such as children and adolescents whose physical, mental or moral development may be impaired by exposure to such portrayal.

Guideline No. 2 - Responsibilities and means of action of non-State actors

Those responsible for the content

Member States should recognise and take into account that it is first and foremost for those responsible for the content to assume the duties and responsibilities which the exercise of their freedom of expression entails, since they have primary responsibility for the content of

the messages, words and images they disseminate. In particular, operators of electronic media have certain responsibilities when they decide to disseminate messages, words and images portraying violence, in view of the potentially harmful effects on the public, especially young people, as well as on society as a whole. These responsibilities have been assumed by media professionals in various ways, depending on the kind of electronic media, including by:

i. ensuring, through appropriate means, that the public is made sufficiently aware in advance of messages, words and images of a violent content which they will make available;

ii. the establishment of sectoral codes of conduct which specify the concrete responsibility of the professional sector concerned;

iii. the establishment of internal guidelines, including standards for evaluating the content, in the various electronic media enterprises;

iv. the establishment, at both sectoral level and within individual media enterprises, of appropriate consultation and control mechanisms for monitoring the implementation of self-regulatory standards;

v. taking self-regulatory standards into account in contracts with other sectors, such as audio-visual producers, manufacturers of video games, advertising agencies, etc.;

vi. regular contacts and exchange of information with national regulatory authorities, as well as with self-regulatory authorities, in other countries.

The various sectors of society

Member States should recognise and take into account the various sectors of society have responsibilities in their own field of activity. They may assume their responsibilities in various ways, including by approaching those responsible for the content, in particular by awareness-raising campaigns; by promoting and providing media education; by promoting or undertaking research on the portrayal of violence, etc.

As regards access to and the use of electronic media by children and adolescents at home and at school, as well as with respect to their understanding of violent messages, words and images transmitted by these media, parents and teachers have a special responsibility. They may assume this responsibility in various ways, including by:

i. developing and maintaining a critical attitude towards the gratuitous portrayal of violence;

ii. using the electronic media in a conscious and selective manner, as well as by demanding quality products and services;

iii. stimulating children and adolescents to develop a critical attitude, e.g. through media education within the family and in schools;

iv. examining ways of restricting access of children and adolescents to the violence portrayed in the electronic media where this is likely to impair the latter's physical, mental or moral development.

Guideline No. 3 - Responsibilities and means of action of member States

Member States bear general responsibility for, inter alia, the well-being of their population, for protecting human rights and for upholding respect for human dignity. However, as concerns the gratuitous portrayal of violence in the electronic media, member States only bear subsidiary responsibility, since the primary responsibility lies with those responsible for the content.

National media policy

Member States should adopt a global approach which is not limited to those responsible for the content but addresses the professional and social sectors concerned as a whole. This approach should, where appropriate, aim to:

i. promote the establishment of independent regulatory authorities for the various electronic media. These authorities should be endowed with appropriate competence and means for regulating the portrayal of violence at national level;

ii. enable electronic media consumers, both national and foreign, who criticise the violent content of certain services or products, to lodge a complaint with the regulatory authority or another competent national body;

iii. include among the licensing conditions for broadcasters certain obligations concerning the portrayal of violence, accompanied by dissuasive measures of an administrative nature, such as non-renewal of the licence when these obligations are not respected;

iv. establish methods to facilitate the division of responsibilities between those responsible for the content and the public (warnings, "watershed");

v. raise the electronic media professionals' awareness of the problems connected with the gratuitous portrayal of violence and the public's concern about them;

vi. promote research on the portrayal of violence in the electronic media, in particular on trends in the various media, and studies of the effects of such portrayal on the public.

International co-operation

In addition to their existing international obligations and activities carried out within the framework of the Council of Europe, member States should co-operate bilaterally and multilaterally as well as within the framework of competent international organisations, with a view to developing policies for addressing problems related, in particular, to the international dimension of the gratuitous portrayal of violence in the electronic media.

In this respect, they should facilitate the exchange of information and co-operation between competent regulatory authorities, in particular as concerns content classification and the handling of any complaints lodged from abroad.

Legal measures

Where those responsible for the content engage in the gratuitous portrayal of violence which grossly offends human dignity or which, on account of its inhuman or degrading nature, impairs the physical, mental or moral development of the public, particularly young people, member States should effectively apply relevant civil, criminal or administrative sanctions.

Member States which are not yet Party to the European Convention on Transfrontier Television (1989) are invited to accede to this instrument. All States Parties to the Convention should ensure its effective implementation, in particular as concerns the provisions dealing with the portrayal of violence, and regularly evaluate its effectiveness. Member States are also invited to give an appropriate follow-up to Recommendation No. R (89) 7 of the Committee of Ministers on principles on the distribution of videograms having a violent, brutal or pornographic content.

Promotion of non-violent quality programmes, services and products

Within the framework in particular of the various national and European programmes of support for the production and distribution of audio-visual works, and in close co-operation with European bodies and professional circles concerned, member States should promote the principle of non-violent quality programmes, services and products which reflect the cultural diversity and richness of European countries.

Guideline No. 4 - Shared responsibility for electronic media education

States should consider electronic media education as a responsibility shared between themselves, those responsible for the content and the various sectors of society. Such education constitutes a particularly appropriate way of helping the public, especially the young, to develop a critical attitude in regard to different forms of portrayal of violence in these media and to make informed choices.

Appendix to Recommendation No. R (97) 19

Parameters to be taken into account for determining whether the portrayal of violence in electronic media is justified/unjustified

When assessing specific cases of portrayal of violence in the electronic media, different views may exist as to whether this portrayal is justified/unjustified. This variety of approaches depends in particular on the different responsibilities of the persons or institutions who make the assessment (broadcasters, parents, advertisers, self-regulatory bodies, regulatory authorities, courts, etc.). This diversity will also appear in the application of the parameters set out below.

Without claiming to be exhaustive, this table brings together a number of elements (for example, the type of programme - a documentary/a children's programme - the viewing time, the possibility of free access or conditional access, etc) which should be borne in mind in order to determine whether, in a given case, the portrayal of violence in the electronic media is justified by the context. Thus, the portrayal of true images of a massacre could be justified in the context of a televised information programme but not in the context of an interactive video game, etc.

1. The public and its access to the electronic media	*2. Types of programmes*	*3. Acts of violence portrayed*
Television ***free access (unencrypted)*** ***fee-paying access (encrypted)*** ***"professional" access (medical pay- TV)*** ***interactive television (using for example video games, CD Rom or Internet)*** ***programming time (children's programming time / prime time / programming time after watershed)*** ***Other*** ***Internet*** ***video*** ***- free access*** ***- conditional access (X-rated videos)***	***Television programmes*** ***news*** ***current affairs*** ***documentaries, science programmes*** ***reality shows*** ***light entertainment, music, video- clips*** ***game-shows, contests, etc.*** ***sport*** ***religion*** ***children's programmes*** ***fiction (feature films, drama, etc.)*** ***advertising, teleshopping*** ***trailers*** ***Radio programmes*** ***news*** ***current affairs*** ***light entertainment, music*** ***sport*** ***religion*** ***youth*** ***advertising*** ***Other*** ***video-cassettes, trailers*** ***video games*** ***multimedia***	 ***physical violence*** ***sexual violence*** ***psychological violence*** ***verbal violence*** ***implied violence*** ***threats*** ***act in itself (e.g.: physical aggression)*** ***result only (e.g.: injury or death, material damage)*** ***act and result***

4. Context of portrayal of violence	*5. Form in which violence is portrayed*
information	***realistic***

education	***naturalistic***
awareness-raising (charity)	***hedonistic***
artistic expression	***esthetic***
entertainment	***agressive***
social criticism, irony, humour	***raw material***
audience attraction/sensational	***picture and comment/value judgements***
unintentional	***positive/negative (violent act of the hero/anti-hero)***

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (97) 20

of the Committee of Ministers to member states on "hate speech"

(Adopted by the Committee of Ministers on 30 October 1997 at the 607th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, particularly for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Recalling the Declaration of the Heads of State and Government of the member states of the Council of Europe, adopted in Vienna on 9 October 1993;

Recalling that the Vienna Declaration highlighted grave concern about the present resurgence of racism, xenophobia and antisemitism and the development of a climate of intolerance, and contained an undertaking to combat all ideologies, policies and practices constituting an incitement to racial hatred, violence and discrimination, as well as any action or language likely to strengthen fears and tensions between groups from different racial, ethnic, national, religious or social backgrounds;

Reaffirming its profound attachment to freedom of expression and information as expressed in the Declaration on the Freedom of Expression and Information of 29 April 1982;

Condemning, in line with the Vienna Declaration and the Declaration on Media in a Democratic Society, adopted at the 4th European Ministerial Conference on Mass Media Policy (Prague, 7-8 December 1994), all forms of expression which incite to racial hatred, xenophobia, antisemitism and all forms of intolerance, since they undermine democratic security, cultural cohesion and pluralism;

Noting that such forms of expression may have a greater and more damaging impact when disseminated through the media;

Believing that the need to combat such forms of expression is even more urgent in situations of tension and in times of war and other forms of armed conflict;

Believing that it is necessary to lay down guidelines for the governments of the member states on how to address these forms of expression, while recognising that most media cannot be blamed for such forms of expression;

Bearing in mind Article 7, paragraph 1, of the European Convention on Transfrontier Television and the case-law of the organs of the European Convention on Human Rights under Articles 10 and 17 of the latter Convention;

Having regard to the United Nations Convention on the Elimination of All Forms of Racial Discrimination and Resolution (68) 30 of the Committee of Ministers on Measures to be taken against incitement to racial, national and religious hatred;

Noting that not all member states have signed and ratified this Convention and implemented it by means of national legislation;

Aware of the need to reconcile the fight against racism and intolerance with the need to protect freedom of expression so as to avoid the risk of undermining democracy on the grounds of defending it;

Aware also of the need to respect fully the editorial independence and autonomy of the media,

Recommends that the governments of member states:

1. take appropriate steps to combat hate speech on the basis of the principles laid down in this recommendation;

2. ensure that such steps form part of a comprehensive approach to the phenomenon, which also targets its social, economic, political, cultural and other root causes;

3. where they have not done so, sign, ratify and effectively implement in national law the United Nations Convention on the Elimination of All Forms of Racial Discrimination, in accordance with Resolution (68) 30 of the Committee of Ministers on Measures to be taken against incitement to racial, national and religious hatred;

4. review their domestic legislation and practice in order to ensure that they comply with the principles set out in the appendix to this recommendation.

Appendix to Recommendation No. R (97) 20

Scope

The principles set out hereafter apply to hate speech, in particular hate speech disseminated through the media.

For the purposes of the application of these principles, the term "hate speech" shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.

Principle 1

The governments of the member states, public authorities and public institutions at the national, regional and local levels, as well as officials, have a special responsibility to refrain from statements, in particular to the media, which may reasonably be understood as hate speech, or as speech likely to produce the effect of legitimising, spreading or promoting racial hatred, xenophobia, antisemitism or other forms of discrimination or hatred based on intolerance. Such statements should be prohibited and publicly disavowed whenever they occur.

Principle 2

The governments of the member states should establish or maintain a sound legal framework consisting of civil, criminal and administrative law provisions on hate speech which enable administrative and judicial authorities to reconcile in each case respect for freedom of expression with respect for human dignity and the protection of the reputation or the rights of others.

To this end, governments of member states should examine ways and means to:

- stimulate and co-ordinate research on the effectiveness of existing legislation and legal practice;

- review the existing legal framework in order to ensure that it applies in an adequate manner to the various new media and communications services and networks;

- develop a co-ordinated prosecution policy based on national guidelines respecting the principles set out in this recommendation;

- add community service orders to the range of possible penal sanctions;

- enhance the possibilities to combat hate speech through civil law, for example by allowing interested non-governmental organisations to bring civil law actions, providing for compensation for victims of hate speech and providing for the possibility of court orders allowing victims a right of reply or ordering retraction;

- provide the public and media professionals with information on legal provisions which apply to hate speech.

Principle 3

The governments of the member states should ensure that in the legal framework referred to in Principle 2 interferences with freedom of expression are narrowly circumscribed and applied in a lawful and non-arbitrary manner on the basis of objective criteria. Moreover, in accordance with the fundamental requirement of the rule of law, any limitation of or interference with freedom of expression must be subject to independent judicial control. This requirement is particularly important in cases where freedom of expression must be reconciled with respect for human dignity and the protection of the reputation or the rights of others.

Principle 4

National law and practice should allow the courts to bear in mind that specific instances of hate speech may be so insulting to individuals or groups as not to enjoy the level of protection afforded by Article 10 of the European Convention on Human Rights to other forms of expression. This is the case where hate speech is aimed at the destruction of the rights and freedoms laid down in the Convention or at their limitation to a greater extent than provided therein.

Principle 5

National law and practice should allow the competent prosecution authorities to give special attention, as far as their discretion permits, to cases involving hate speech. In this regard, these authorities should, in particular, give careful consideration to the suspect's right to freedom of expression given that the imposition of criminal sanctions generally constitutes a serious interference with that freedom. The competent courts should, when imposing criminal sanctions on persons convicted of hate speech offences, ensure strict respect for the principle of proportionality.

Principle 6

National law and practice in the area of hate speech should take due account of the role of the media in communicating information and ideas which expose, analyse and explain specific instances of hate speech and the underlying phenomenon in general as well as the right of the public to receive such information and ideas.

To this end, national law and practice should distinguish clearly between the responsibility of the author of expressions of hate speech on the one hand and any responsibility of the media and media professionals contributing to their dissemination as part of their mission to communicate information and ideas on matters of public interest on the other hand.

Principle 7

In furtherance of principle 6, national law and practice should take account of the fact that:

- reporting on racism, xenophobia, antisemitism or other forms of intolerance is fully protected by Article 10, paragraph 1, of the European Convention on Human Rights and may only be interfered with under the conditions set out in paragraph 2 of that provision;

- the standards applied by national authorities for assessing the necessity of restricting freedom of expression must be in conformity with the principles embodied in Article 10 as established in the case law of the Convention's organs, having regard, inter alia, to the manner, contents, context and purpose of the reporting;

- respect for journalistic freedoms also implies that it is not for the courts or the public authorities to impose their views on the media as to the types of reporting techniques to be adopted by journalists.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (97) 21

of the Committee of Ministers to member states on the media and the promotion of a culture of tolerance

(Adopted by the Committee of Ministers on 30 October 1997, at the 607th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress;

Stressing its commitment to guarantee the equal dignity of all individuals and the enjoyment of rights and freedoms without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status;

Recalling that the Heads of State and Government of the member states of the Council of Europe expressed their conviction, at the Vienna Summit Conference (October 1993), that the principle of tolerance is the guarantee of the maintenance in Europe of an open society respecting cultural diversity;

Resolved to intensify action against intolerance, taking as a basis the Plan of Action adopted at the Vienna Summit Conference;

Welcoming the initiatives of international organisations, governments and various sectors of society to promote a culture of tolerance, and especially those taken by media professionals, and noting that the latter are in a particularly good position to promote these initiatives and ensure their general acceptance in all media sectors;

Noting that the media can make a positive contribution to the fight against intolerance, especially where they foster a culture of understanding between different ethnic, cultural and religious groups in society;

Stressing in line with Article 10 of the European Convention on Human Rights the independence and the autonomy of media professionals and media organisations, and the need to avoid measures which interfere with these principles;

Considering that media professionals might usefully be invited to reflect further on the problem of intolerance in the increasingly multicultural and multi-ethnic composition of the

member states and on the measures which they might take to promote tolerance and understanding;

Believing that such measures might be implemented at a number of levels, including schools of journalism, media organisations as well as in the context of the exercise of the media professions;

Believing also that the success of such measures depends to a large extent on the degree of involvement of the different categories of professional in the media sectors, in particular media proprietors, managers, editors, writers, programme makers, journalists and advertisers;

Having regard to Parliamentary Assembly Recommendation 1277 (1995) on migrants, ethnic minorities and media;

Recommends that the governments of the member states:

1. make the following target groups aware of the means of action set out in the appendix to this recommendation:

- press, radio and television enterprises, as well as the new communications and advertising sectors;
- the representative bodies of media professionals in these sectors;
- regulatory and self-regulatory bodies in these sectors;
- schools of journalism and media training institutes.

2. examine in a positive spirit any requests for support for initiatives undertaken in pursuance of the objectives of this recommendation.

Appendix to Recommendation No. R (97) 21

Scope

The means of action set out hereafter aim to highlight non-exhaustive examples of professional practices conducive to the promotion of a culture of tolerance which merit more general application in the various media sectors mentioned above.

Professional practices conducive to the promotion of a culture of tolerance

1. Training

Initial training

Schools of journalism and media training institutes, in so far as they have not yet done so, might usefully introduce specialist courses in their core curricula with a view to developing a sense of professionalism which is attentive to:

- the involvement of the media in multi-ethnic and multicultural societies;
- the contribution which the media can make to a better understanding between different ethnic, cultural and religious communities.

Further training

- Media enterprises might usefully provide in-house training or opportunities for outside training for their media professionals at all levels, on professional standards on tolerance and intolerance.

2. Media enterprises

The problem of intolerance calls for reflection by both the public and within the media enterprises. Experience in professional media circles has shown that media enterprises might usefully reflect on the following:

- reporting factually and accurately on acts of racism and intolerance;

- reporting in a sensitive manner on situations of tension between communities;

- avoiding derogatory stereotypical depiction of members of cultural, ethnic or religious communities in publications and programme services;

- treating individual behaviour without linking it to a person's membership of such communities where this is irrelevant;

- depicting cultural, ethnic and religious communities in a balanced and objective manner and in a way which also reflects these communities' own perspectives and outlook;

- alerting public opinion to the evils of intolerance;

- deepening public understanding and appreciation of difference;

- challenging the assumptions underlying intolerant remarks made by speakers in the course of interviews, reports, discussion programmes, etc;

- considering the influence of the source of information on reporting;

- the diversity of the workforce in the media enterprises and the extent to which it corresponds to the multi-ethnic, multicultural character of its readers, listeners or viewers.

3. Representative bodies of media professionals

Representative bodies of the various categories of media professionals might usefully undertake action programmes or practical initiatives for the promotion of a culture of tolerance.

4. Codes of conduct

Such initiatives and actions could go hand in hand with professional codes of conduct drawn up within the different media sectors, which address the problems of discrimination and intolerance by encouraging media professionals to make a positive contribution towards the development of tolerance and mutual understanding between the different religious, ethnic and cultural groups in society.

5. Broadcasting

While public service broadcasters have a special commitment to promote a culture of tolerance and understanding, the broadcasting media as a whole are a potent force for creating an atmosphere in which intolerance can be challenged. They might find inspiration from broadcasters who, for example:

- make adequate provision for programme services, also at popular viewing times, which help promote the integration of all individuals, groups and communities as well as proportionate amounts of airtime for the various ethnic, religious and other communities;

- develop a multicultural approach to programme content so as to avoid programmes which present society in mono-cultural and mono-linguistic terms;

- promote a multicultural approach in programmes which are specifically geared to children and young people so as to enable them to grow up with the understanding that cultural, religious and ethnic difference is a natural and positive element of society;

- develop arrangements for sharing at the regional, national or European level, programme material which has proven its value in mobilising public opinion against the evils of intolerance or in contributing towards promoting community relations in multi-ethnic and multicultural societies.

6. Advertising

Although the multi-ethnic and multicultural character of consumer society is already reflected in certain commercial advertisements and although certain advertisers make an effort to prepare advertising in a way which reflects a positive image of cultural, religious and ethnic diversity, practices such as those set out hereafter could be developed by the professional circles concerned.

In certain countries, codes of conduct have been drawn up within the advertising sector which prohibit discrimination on grounds such as race, colour, national origin, etc.

There are media enterprises which refuse to carry advertising messages which portray cultural, religious or ethnic difference in a negative manner, for example by reinforcing stereotypes.

Certain public and private organisations develop advertising campaigns designed to promote tolerance. The media could be invited to co-operate actively in the dissemination of such advertisements.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (99) 1

of the Committee of Ministers to member states on measures to promote media pluralism

(Adopted by the Committee of Ministers on 19 January 1999 at the 656th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Stressing the importance for individuals to have access to pluralistic media content, in particular as regards information;

Stressing also that the media, and in particular the public service broadcasting sector, should enable different groups and interests in society - including linguistic, social, economic, cultural or political minorities - to express themselves;

Noting that the existence of a multiplicity of autonomous and independent media outlets at the national, regional and local levels generally enhances pluralism and democracy;

Recalling that the political and cultural diversity of media types and contents is central to media pluralism;

Stressing that states should promote political and cultural pluralism by developing their media policy in line with Article 10 of the European Convention on Human Rights, which guarantees freedom of expression and information, and with due respect for the principle of independence of the media;

Recognising that efforts by all member states and, where appropriate, at the European level, to promote media pluralism are desirable;

Acknowledging at the same time that a potential shortcoming of existing media pluralism regulatory frameworks in Europe is their tendency to focus exclusively on the traditional media;

Noting that there are already some cases of bottlenecks in the area of the new communications technologies and services, such as control over conditional access systems for digital television services;

Noting also that the establishment of dominant positions and the development of media concentrations might be furthered by the technological convergence between the broadcasting, telecommunications and computer sectors;

Aware that an active monitoring of the development of new delivery platforms, such as the Internet, and new services is necessary to assess the impact which new business strategies in this area could have on pluralism;

Convinced that transparency as regards the control of media enterprises, including content and service providers of the new communications services, can contribute to the existence of a pluralistic media landscape;

Recalling the importance of the editorial independence of newsrooms;

Noting that whilst it is necessary for European media undertakings to develop, account must also be taken of their impact on cultural and social values;

Recalling the orientations already provided in the past by the Council of Europe to the member states in order to guarantee pluralism in the media, in particular the principles contained in the declarations and resolutions adopted at the 3rd, 4th and 5th Ministerial Conferences on Mass Media Policy (Cyprus, October 1991, Prague, December 1994, and Thessaloniki, December 1997) and Recommendation No. R (94) 13 of the Committee of Ministers on measures to promote media transparency;

Recalling also the provisions on media pluralism contained in the Amending Protocol to the European Convention on Transfrontier Television;

Bearing in mind the work conducted within the framework of the European Union and other international organisations in the area of media concentrations and pluralism,

Recommends that the governments of the member states:

i. examine the measures contained in the appendix to this recommendation and consider the inclusion of these in their domestic law or practice where appropriate, with a view to promoting media pluralism;

ii. evaluate on a regular basis the effectiveness of their existing measures to promote pluralism and/or anti-concentration mechanisms and examine the possible need to revise them in the light of economic and technological developments in the media field.

Appendix to Recommendation No. R (99) 1

I. Regulation of ownership: broadcasting and the press

Member states should consider the introduction of legislation designed to prevent or counteract concentrations that might endanger media pluralism at the national, regional or local levels.

Member states should examine the possibility of defining thresholds - in their law or authorisation, licensing or similar procedures - to limit the influence which a single commercial company or group may have in one or more media sectors. Such thresholds may for example take the form of a maximum audience share or be based on the revenue/turnover

of commercial media companies. Capital share limits in commercial media enterprises may also be considered. If thresholds are introduced, member states should take into consideration the size of the media market and the level of resources available in it. Companies which have reached the permissible thresholds in a relevant market should not be awarded additional broadcasting licences for that market.

Over and above these measures, national bodies responsible for awarding licences to private broadcasters should pay particular attention to the promotion of media pluralism in the discharge of their mission.

Member states may consider the possibility of creating specific media authorities invested with powers to act against mergers or other concentration operations that threaten media pluralism or investing existing regulatory bodies for the broadcasting sector with such powers. In the event member states would not consider this appropriate, the general competition authorities should pay particular attention to media pluralism when reviewing mergers or other concentration operations in the media sector.

Member states should consider the adoption of specific measures where vertical integration - that is, the control of key elements of production, broadcasting, distribution and related activities by a single company or group - may be detrimental to pluralism.

II. New communications technologies and services

1. General principle

Member states should monitor the development of the new media with a view to taking any measures which might be necessary in order to preserve media pluralism and ensure fair access by service and content providers to the networks and of the public to the new communications services.

2. Principles concerning digital broadcasting

In view of the expansion of the telecommunications sector, member states should take sufficient account of the interests of the broadcasting sector, given its contribution to political and cultural pluralism, when redistributing the frequency spectrum or allocating other communication resources as a result of digitisation.

Member states should consider introducing rules on fair, transparent and non-discriminatory access to systems and services that are essential for digital broadcasting, providing for impartiality for basic navigation systems and empowering regulatory authorities to prevent abuses.

Over and above these measures, member states should also examine the feasibility and desirability of introducing common technical standards for digital broadcasting services. Furthermore, given that the interoperability of technical systems can help to extend viewers' choice and enhance ease of access at a reasonable price, member states should seek to achieve the largest possible compatibility between digital decoders.

III. Media content

1. General principle

Member states should consider possible measures to ensure that a variety of media content reflecting different political and cultural views is made available to the public, bearing in mind the importance of guaranteeing the editorial independence of the media and the value which measures adopted on a voluntary basis by the media themselves may also have.

2. Broadcasting sector

Member states should consider, where appropriate and practicable, introducing measures to promote the production and broadcasting of diverse content by broadcasting organisations. Such measures could for instance be to require in broadcasting licences that a certain volume of original programmes, in particular as regards news and current affairs, is produced or commissioned by broadcasters.

Furthermore, under certain circumstances, such as the exercise of a dominant position by a broadcaster in a particular area, member states could foresee “frequency sharing” arrangements so as to provide access to the airwaves for other broadcasters.

Member states should examine the introduction of rules aimed at preserving a pluralistic local radio and television landscape, ensuring in particular that networking, understood as the centralised provision of programmes and related services, does not endanger pluralism.

3. Press sector

Member states should seek to ensure that a sufficient variety of sources of information are available for a pluralistic sourcing of the content of press entities.

IV. Ownership and editorial responsibility

Member states should encourage media organisations to strengthen editorial and journalistic independence voluntarily through editorial statutes or other self-regulatory means.

V. Public service broadcasting

Member states should maintain public service broadcasting and allow it to develop in order to make use of the possibilities offered by the new communication technologies and services.

Member states should examine ways of developing forms of consultation of the public by public service broadcasting organisations, which may include the creation of advisory programme committees, so as to reflect in their programming policy the needs and requirements of the different groups in society.

Member states should define ways of ensuring appropriate and secure funding of public service broadcasters, which may include public funding and commercial revenues.

With the prospect of digitisation, member states should consider maintaining "must carry" rules for cable networks. Similar rules could be envisaged, where necessary, for other distribution means and delivery platforms.

VI. Support measures for the media

Member states could consider the possibility of introducing, with a view to enhancing media pluralism and diversity, direct or indirect financial support schemes for both the print and broadcast media, in particular at the regional and local levels. Subsidies for media entities printing or broadcasting in a minority language could also be considered.

Over and above support measures for the creation, production and distribution of audio-visual and other content which make a valuable contribution to media pluralism, support measures could also be considered by member states to promote the creation of new media undertakings or to assist media entities which are faced with difficulties or are obliged to adapt to structural or technological changes.

Without neglecting competition considerations, any of the above support measures should be granted on the basis of objective and non-partisan criteria, within the framework of transparent procedures and subject to independent control. The conditions for granting support should be reconsidered periodically to avoid accidental encouragement for any media concentration process or the undue enrichment of enterprises benefiting from support.

VII. Scientific research

Member states should support scientific research and study in the field of media concentrations and pluralism, in particular on the impact of new communication technologies and services in that respect.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (99) 5

of the Committee of Ministers to member states
for the protection of privacy on the internet

(Adopted by the Committee of Ministers on 23 February 1999
at the 660th meeting of the Ministers' Deputies)

Guidelines for the protection
of individuals with regard to the collection and processing of personal data
on information highways

Preamble

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity among its members;

Noting the developments in new technologies and new communications and on-line information services;

Aware that these developments will influence the functioning of society in general and relations between individuals, in particular in offering increased possibilities for communication and exchange of information at national and international levels;

Aware of the advantages which users of new technologies can gain from these developments;

Considering, nevertheless, that technological development and the generalisation of collection and processing of personal data on information highways carries risks for the privacy of natural persons;

Considering that technological development also makes it possible to contribute towards the respect of fundamental rights and freedoms, and in particular the right to privacy, when personal data concerning natural persons are processed;

Aware of the need to develop techniques which permit the anonymity of data subjects and the confidentiality of the information exchanged on information highways while respecting the rights and freedoms of others and the values of a democratic society;

Aware that communications carried out with the aid of new information technologies must also respect the human rights and fundamental freedoms and, in particular, the right to privacy and to secrecy of correspondence, as guaranteed by Article 8 of the European Convention on Human Rights;

Recognising that the collection, processing and especially communication of personal data by means of new information technologies, particularly the information highways, are governed by the provisions of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Strasbourg 1981, European Treaty Series No. 108) and by sectoral recommendations on data protection and notably Recommendation No. R (90) 19 on the protection of personal data used for payment and other related operations, Recommendation No. R (91) 10 on the communication to third parties of personal data held by public bodies, and Recommendation No. R (95) 4 on the protection of personal data in the area of telecommunications, with particular reference to telephone services;

Considering that it is appropriate to make users and Internet service providers aware of the general provisions of the above-mentioned convention with regard to the collection and processing of personal data on information highways;

Recommends that the governments of member States disseminate widely the Guidelines contained in the appendix to this recommendation, especially to users and service providers on the Internet as well as to any national authority responsible for supervising respect of data protection provisions.

Appendix to Recommendation No. R (99) 5

Guidelines for the protection of individuals with regard to the collection and processing of personal data on information highways which may be incorporated in or annexed to codes of conduct

I. Introduction

These guidelines set out principles of fair privacy practice for users and Internet service providers (ISP).[1] These principles may be taken up in codes of conduct.

Users should be aware of the responsibilities of ISPs and vice versa. Therefore it is advisable that users and ISPs read the whole text, although for ease of use it is divided into several parts. You may be concerned by one or more parts of the guidelines.

Use of the Internet places responsibilities on each of your actions and poses risks to privacy. It is important to behave in a way that provides protection to yourself and promotes good relations with others. These guidelines suggest some practical ways to safeguard privacy, but you should also know your legal rights and obligations.

Remember that respect for privacy is a fundamental right of each individual which may also be protected by data protection legislation. So it may be well worth checking your legal position.

[1] See part IV, paragraph 1.

II. For Users

000000001. Remember that the Internet is not secure. However, different means exist and are being developed enabling you to improve the protection of your data[1]. Therefore, use all available means to protect your data and communications, such as legally available encryption for confidential e-mail, as well as access codes to your own personal computer.[2]

2. Remember that every transaction you make, every site you visit on the Internet leaves traces. These "electronic tracks" can be used, without your knowledge, to build a profile of what sort of person you are and your interests. If you do not wish to be profiled, you are encouraged to use the latest technical means which include the possibility of being informed every time you leave traces, and to reject such traces. You may also ask for information about the privacy policy of different programmes and sites and give preference to those which record few data or which can be accessed in an anonymous way.

3. Anonymous access to and use of services, and anonymous means of making payments, are the best protection of privacy. Find out about technical means to achieve anonymity, where appropriate.[3]

4. Complete anonymity may not be appropriate because of legal constraints. In those cases**,** if it is permitted by law, you may use a pseudonym so that your personal identity is known only to your ISP.

5. Only give your ISP, or any other person, such data as are necessary in order to fulfil a specific purpose you have been informed about. Be especially careful with credit card and account numbers, which can be used and abused very easily in the context of the Internet.

6. Remember that your e-mail address is personal data, and that others may wish to use it for different purposes, such as inclusion in directories or user lists. Do not hesitate to ask about the purpose of the directory or other use. You can request to be omitted if you do not want to be listed.

7. Be wary of sites which request more data than are necessary for accessing the site or for making a transaction, or which do not tell you why they want all these data from you.

8. Remember that you are legally responsible for the processing of data, for example, if you illicitly upload or download, and that everything may be traced back to you even if you use a pseudonym.

9. Do not send malicious mail. It can bounce back with legal consequences.

10. Your ISP is responsible for proper use of data. Ask your ISP what data he/she collects, processes and stores, in what way and for what purpose. Repeat this request from time to time. Insist that your ISP change them if they are wrong or delete them if they are excessive, out of

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[1] The word "data" refers to "personal data" which concern you or other people.

[2] For example, use passwords and change them regularly.

[3] For example by using public Internet kiosks or pre-paid access and payment cards.

date or no longer required. Ask the ISP to notify this modification to other parties to whom he or she has communicated your data. [1]

11. If you are not satisfied with the way your current ISP collects, uses, stores or communicates data, and he or she refuses to change his or her ways, then consider moving to another ISP. If you believe that your ISP does not comply with data protection rules, you can inform the competent authorities or take legal action.

12. Keep yourself informed of the privacy and security risks on the Internet as well as the methods available to reduce such risks.

13. If you intend to send data to another country, you should be aware that data may be less well protected there. If data about you are involved, you are free, of course, to communicate these data nevertheless. However, before you send data about others to another country, you should seek advice, for example from the authority of your country, on whether the transfer is permissible.[2] You might have to ask the recipient to provide safeguards[3] necessary to ensure protection of the data.

III. For Internet service providers

000000001. Use appropriate procedures and available technologies, preferably those which have been certified**,** to protect the privacy of the people concerned (even if they are not users of the Internet), especially by ensuring data integrity and confidentiality as well as physical and logical security of the network and of the services provided over the network.

2. Inform users of privacy risks presented by use of the Internet before they subscribe or start using services. Such risks may concern data integrity, confidentiality, the security of the network or other risks to privacy such as the hidden collection or recording of data.

3. Inform users about technical means which they may lawfully use to reduce security risks to data and communications, such as legally available encryption and digital signatures. Offer such technical means at a cost-oriented price, not a deterrent price.

4. Before accepting subscriptions and connecting users to the Internet, inform them about the possibilities of accessing the Internet anonymously, and using its services and paying for them in an anonymous way (for example, pre-paid access cards). Complete anonymity may not be appropriate because of legal constraints. In those cases, if it is permitted by law, offer the possibility of using pseudonyms. Inform users of programmes allowing them to search and browse anonymously on the Internet. Design your system in a way that avoids or minimises the use of personal data.

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[1] Data protection laws, following Article 5 of the Council of Europe Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), give responsibility for the accuracy and up-dating of data to the person who processes them.

[2] The laws of numerous European countries forbid transfers to countries which do not ensure an adequate or equivalent level of protection to that of your country. Exceptions are nevertheless provided for, in particular if the person concerned has consented to the transfer of his or her data to such countries**.**

[3] These safeguards may be developed and/or presented in particular in a contract on transborder data flows.

5. Do not read, modify or delete messages sent to others.

6. Do not allow any interference with the contents of communications, unless this interference is provided for by law and is carried out by a public authority.

7. Collect, process and store data about users only when necessary for explicit, specified and legitimate purposes.

8. Do not communicate data unless the communication is provided for by law.[1]

9. Do not store data for longer than is necessary to achieve the purpose of processing.[2]

10. Do not use data for your own promotional or marketing purposes unless the person concerned, after having been informed, has not objected or, in the case of processing of traffic data or sensitive data, he or she has given his or her explicit consent.

11. You are responsible for proper use of data. On your introductory page highlight a clear statement about your privacy policy. This statement should be hyperlinked to a detailed explanation of your privacy practice. Before the user starts using services, when he or she visits your site, and whenever he or she asks, tell him or her who you are, what data you collect, process and store, in what way, for what purpose and for how long you keep them. If necessary, ask for his or her consent. At the request of the person concerned, correct inaccurate data immediately and delete them if they are excessive, out of date or no longer required and stop the processing carried out if the user objects to it. Notify the third parties to whom you have communicated the data of any modification. Avoid the hidden collection of data.

12. Information provided to the user must be accurate and kept up to date.

13. Think twice about publishing data on your site! Such publication may infringe other people's privacy and may also be prohibited by law.

14. Before you send data to another country seek advice, for example from the competent authorities in your country, on whether the transfer is permissible.[3] You may have to ask the recipient to provide safeguards necessary to ensure protection of the data.[4]

IV. Clarification and remedies

[1] In general, data protection laws permit communication to third parties under certain conditions, in particular:

- sensitive data and traffic data, on condition that the person concerned has given his or her explicit consent;

- other data, where communication is necessary to fulfil the legitimate purpose or where the person concerned, after having been informed, does not oppose it.

[2] For example, do not store billing data unless this is provided for by law.

[3] See footnote 10.

[4] See footnote 11.

000000001. Where in this text the term ISP is used, the same applies, where appropriate, to other actors on the Internet, such as access providers, content providers, network providers, navigation software designers, bulletin board operators, and so on.

2. It is important to ensure that your rights are respected. Feedback mechanisms offered by Internet user groups, Internet service provider associations, data protection authorities or other bodies are important ways of ensuring that these guidelines are respected. Contact them if you need clarification or remedies.

3. These guidelines apply to all types of information highways.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (99) 14

of the Committee of Ministers to member states
on universal community service concerning new communication and information services

(Adopted by the Committee of Ministers on 9 September 1999 at the 678th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Recalling the commitment of the member states to the fundamental right to freedom of expression and information as guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and to entrust the supervision of its application to the European Court of Human Rights;

Reaffirming that freedom of expression and information is necessary for the social, economic, cultural and political development of every human being, and constitutes a condition for the harmonious progress of social and cultural groups, nations and the international community, as expressed in the 1982 Declaration on the Freedom of Expression and Information;

Stressing that the continued development of new communication and information services should serve to further the right of everyone to express, to seek, to receive and to impart information and ideas, for the benefit of every individual and the democratic culture of any society;

Welcoming this development as an important factor enabling all member states and everyone to participate in the establishment of a coherent information society throughout the European continent;

Referring to the Declaration and Action Plan of the 2nd Summit of the Heads of State and Government of the Member States of the Council of Europe of 11 October 1997, where the Heads of State and Government resolved to develop a European policy for the application of the new information technologies;

Referring to the declaration and resolutions on the information society adopted by the participating ministers at the 5th European Ministerial Conference on Mass Media Policy, which was held in Thessaloniki on 11 and 12 December 1997;

Convinced that new communication and information services will offer everyone new opportunities for access to information, education and culture;

Convinced also that the use of new communication and information services will facilitate and enhance the possibilities for everyone to participate in the circulation of information and communication across frontiers, so fostering international understanding and the mutual enrichment of cultures;

Convinced that the use of new communication and information services will facilitate the participation of everyone in public life, communication between individuals and public authorities, as well as the provision of public services;

Aware of the fact that many people in Europe do not have sufficient opportunities to have access to new communication and information services, and that the development of access at community level can be achieved in an easier way than at individual level;

Aware of the social, economic and technical differences which exist at national, regional and local levels for the development of new communication and information services;

Aware of the possible synergetic effects of co-operation between public authorities and the private sector for the benefit of users of new communication and information services;

Resolved to encourage the implementation of the principle of universal community service concerning new communication and information services, as defined in Resolution No. 1 of the 5th European Ministerial Conference on Mass Media Policy,

Recommends to the governments of member states:

1. to implement the principles appended to this recommendation, taking account of their respective national circumstances and international commitments;

2. to disseminate widely this recommendation and its appendix, where appropriate accompanied by a translation; and

3. to bring them in particular to the attention of public authorities, new communication and information industries and users.

Appendix to Recommendation No. R (99) 14

Guidelines for a European policy for the implementation of the principle of universal community service concerning new communication and information services

Principle 1 - Access

1. Member states should foster the creation and maintenance of public access points providing access for all to a minimum set of communication and information services in accordance with the principle of universal community service.

This should include encouraging public administrations, educational institutions and private owners of access facilities to new communication and information services to enable the general public to use these facilities.

2. Member states should foster the provision of adequate and internationally connected networks for new communication and information services, and in particular their extension to areas with a low communication and information infrastructure.

3. Member states should foster the provision of adequate facilities for the access to new communication and information services by users requiring support.

Principle 2 - Content and services

1. Member states should encourage public authorities at central, regional and local levels to provide the general public through new communication and information services with the following basic content and services:

a. information of public concern;

b. information about these public authorities, their work and the way by which everyone can communicate with them via new communication and information services or through traditional means;

c. the opportunity to pursue administrative processes and actions between individuals and these public authorities such as the processing of individual requests and the issuing of public acts, unless national law requires the physical presence of the person concerned; and

d. general information necessary for the democratic process.

2. The services referred to in paragraph (1) should not replace traditional ways of communicating with public authorities, in writing or in person, as well as the provision of information by public authorities through traditional media and official publications.

3. Member states should encourage educational institutions to make their educational services available to the general public through new communication and information services.

4. Member states should encourage cultural institutions, such as libraries, museums and theatres, to provide services to the general public through new communication and information services.

Principle 3 - Information and training

1. Member states should promote information about the public access points referred to in Principle 1, the content and services which are accessible via these access points, as well as the means of and possible restrictions to such access.

2. Member states should encourage training for all in the use of the public access points referred to in Principle 1 as well as the services which are accessible via these access points,

including as regards the understanding of the nature of these services and of the implications related to their use.

3. Member states should consider including education in new communication and information technologies and services in the curricula of schools as well as institutions for continuing or adult education.

Principle 4 - Financing the costs of universal community service

1. Member states should examine appropriate ways of financing the implementation of the principle of universal community service, such as by granting subsidies or tax incentives, mixed public and private funding, or private funding including sponsoring.

2. Member states should ensure that the provision of financial support and sponsoring does not lead to the exercise of any undue influence over the implementation of the principle of universal community service.

Principle 5 - Fair competition safeguards

Member states should ensure that fair competition between providers of new communication and information services is not distorted by the implementation of the principle of universal community service.

Principle 6 - Information to be provided to the Council of Europe

Member states should inform the Secretary General of the Council of Europe about the implementation of these principles with a view to their periodical evaluation and a possible amendment of them in the future, as well as in order to achieve a common and coherent European policy for the implementation of the principle of universal community service.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (99) 15

of the Committee of Ministers to member states
on measures concerning media coverage of election campaigns

(Adopted by the Committee of Ministers on 9 September 1999,
at the 678th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Noting the important role of the media in modern societies, especially at the time of elections;

Stressing that the fundamental principle of editorial independence of the media assumes a special importance in election periods;

Aware of the need to take account of the significant differences which exist between the print and the broadcast media;

Underlining that the coverage of elections by the broadcast media should be fair, balanced and impartial;

Considering that public service broadcasters have a particular responsibility in ensuring in their programmes a fair and thorough coverage of elections which may include the granting of free airtime to political parties and candidates;

Noting that particular attention should be paid to certain specific features of the coverage of election campaigns, such as the dissemination of opinion polls, paid political advertising, the right of reply, days of reflection and provision for pre-electoral time;

Stressing the important role of self-regulatory measures by media professionals themselves - for example, in the form of codes of conduct - which set out guidelines of good practice for responsible, accurate and fair coverage of electoral campaigns;

Recognising the complementary nature of regulatory and self-regulatory measures in this area;

Convinced of the usefulness of appropriate frameworks for media coverage of elections to contribute to free and democratic elections, bearing in mind the different legal and practical approaches of member states in this area and the fact that it can be subject to different branches of law;

Acknowledging that any regulatory framework on the coverage of elections should respect the fundamental principle of freedom of expression protected under Article 10 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights;

Recalling the basic principles contained in Resolution No. 2 adopted at the 4th Ministerial Conference on Mass Media Policy (Prague, December 1994) and Recommendation No. R (96) 10 of the Committee of Ministers on the guarantee of the independence of public service broadcasting,

Recommends that the governments of the member states examine ways of ensuring respect for the principles of fairness, balance and impartiality in the coverage of election campaigns by the media, and consider the adoption of measures to implement these principles in their domestic law or practice where appropriate and in accordance with constitutional law.

Appendix to Recommendation No. R (99) 15

Scope of the Recommendation

The principles of fairness, balance and impartiality in the coverage of election campaigns by the media should apply to all types of political elections taking place in member states, that is, presidential, legislative, regional and, where practicable, local elections and political referenda.

These principles should also apply, where relevant, to media reporting on elections taking place abroad, especially when these media address citizens of the country where the election is taking place.

I. Measures concerning the print media

1. Freedom of the press

Regulatory frameworks on media coverage of elections should not interfere with the editorial independence of newspapers or magazines nor with their right to express any political preference.

2. Print media outlets owned by public authorities

Member States should adopt measures whereby print media outlets which are owned by public authorities, when covering electoral campaigns, should do so in a fair, balanced and impartial manner, without discriminating against or supporting a specific political party or candidate.

If such media outlets accept paid political advertising in their publications, they should ensure that all political contenders and parties that request the purchase of advertising space are treated in an equal and non-discriminatory manner.

II. Measures concerning the broadcast media

1. General framework

During electoral campaigns, regulatory frameworks should encourage and facilitate the pluralistic expression of opinions via the broadcast media.

With due respect for the editorial independence of broadcasters, regulatory frameworks should also provide for the obligation to cover electoral campaigns in a fair, balanced and impartial manner in the overall programme services of broadcasters. Such an obligation should apply to both public service broadcasters as well as private broadcasters in their relevant transmission areas.

In member states where the notion of "pre-electoral time" is defined under domestic legislation, the rules on fair, balanced, and impartial coverage of electoral campaigns by the broadcast media should also apply to this period.

2. News and current affairs programmes

Where self-regulation does not provide for this, member states should adopt measures whereby public and private broadcasters, during the election period, should in particular be fair, balanced and impartial in their news and current affairs programmes, including discussion programmes such as interviews or debates.

No privileged treatment should be given by broadcasters to public authorities during such programmes. This matter should primarily be addressed via appropriate self-regulatory measures. As appropriate, member states might examine whether, where practicable, the relevant authorities monitoring the coverage of elections should be given the power to intervene in order to remedy possible shortcomings.

3. Other programmes

Special care should be taken with programmes other than news or current affairs which are not directly linked to the campaign but which may also have an influence on the attitude of voters.

4. Free airtime for political parties/candidates on public broadcast media

Member States may examine the advisability of including in their regulatory frameworks provisions whereby free airtime is made available to political parties/candidates on public broadcasting services in electoral time.

Wherever such airtime is granted, this should be done in a fair and non-discriminatory manner, on the basis of transparent and objective criteria.

5. Paid political advertising

In member states where political parties and candidates are permitted to buy advertising space for electoral purposes, regulatory frameworks should ensure that:

- the possibility of buying advertising space should be available to all contending parties, and on equal conditions and rates of payment;

- the public is aware that the message is a paid political advertisement.

Member States may consider introducing a provision in their regulatory frameworks to limit the amount of political advertising space which a given party or candidate can purchase.

III. Measures concerning both the print and broadcast media

1. "Day of reflection"

Member States may consider the merits of including a provision in their regulatory frameworks to prohibit the dissemination of partisan electoral messages on the day preceding voting.

2. Opinion polls

Regulatory or self-regulatory frameworks should ensure that the media, when disseminating the results of opinion polls, provide the public with sufficient information to make a judgement on the value of the polls. Such information could, in particular:

- name the political party or other organisation or person which commissioned and paid for the poll;

- identify the organisation conducting the poll and the methodology employed;

- indicate the sample and margin of error of the poll;

- indicate the date and/or period when the poll was conducted.

All other matters concerning the way in which the media present the results of opinion polls should be decided by the media themselves.

Any restriction by member states forbidding the publication/broadcasting of opinion polls (on voting intentions) on voting day or a number of days before the election should comply with Article 10 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights.

Similarly, in respect of exit polls, member states may consider prohibiting reporting by the media on the results of such polls until all polling stations in the country have closed.

3. The right of reply

Given the short duration of an election campaign, any candidate or political party which is entitled to a right of reply under national law or systems should be able to exercise this right during the campaign period.

IV. Measures to protect the media at election time

1. Non-interference by public authorities

Public authorities should refrain from interfering in the activities of journalists and other media personnel with a view to influencing the elections.

2. Protection against attacks, intimidation or other unlawful pressures on the media

Public authorities should take appropriate steps for the effective protection of journalists and other media personnel and their premises, as this assumes a greater significance during elections. At the same time, this protection should not obstruct them in carrying out their work.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (2000) 7

of the Committee of Ministers to member states on the right of journalists not to disclose their sources of information

(Adopted by the Committee of Ministers on 8 March 2000, at the 701st meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Recalling the commitment of the member states to the fundamental right to freedom of expression as guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Reaffirming that the right to freedom of expression and information constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and the development of every individual, as expressed in the Declaration on the Freedom of Expression and Information of 1982;

Reaffirming the need for democratic societies to secure adequate means of promoting the development of free, independent and pluralist media;

Recognising that the free and unhindered exercise of journalism is enshrined in the right to freedom of expression and is a fundamental prerequisite to the right of the public to be informed on matters of public concern;

Convinced that the protection of journalists' sources of information constitutes a basic condition for journalistic work and freedom as well as for the freedom of the media;

Recalling that many journalists have expressed in professional codes of conduct their obligation not to disclose their sources of information in case they received the information confidentially;

Recalling that the protection of journalists and their sources has been established in the legal systems of some member states;

Recalling also that the exercise by journalists of their right not to disclose their sources of information carries with it duties and responsibilities as expressed in Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Aware of the Resolution of the European Parliament of 1994 on confidentiality for journalists' sources and the right of civil servants to disclose information;

Aware of Resolution No. 2 on journalistic freedoms and human rights of the 4th European Ministerial Conference on Mass Media Policy held in Prague in December 1994, and recalling Recommendation No. R (96) 4 on the protection of journalists in situations of conflict and tension,

Recommends to the governments of member states:

1. to implement in their domestic law and practice the principles appended to this recommendation,

2. to disseminate widely this recommendation and its appended principles, where appropriate accompanied by a translation, and

3. to bring them in particular to the attention of public authorities, police authorities and the judiciary as well as to make them available to journalists, the media and their professional organisations.

Appendix to Recommendation No. R (2000) 7

Principles concerning the right of journalists not to disclose their sources of information

Definitions

For the purposes of this Recommendation:

a. the term "journalist" means any natural or legal person who is regularly or professionally engaged in the collection and dissemination of information to the public via any means of mass communication;

b. the term "information" means any statement of fact, opinion or idea in the form of text, sound and/or picture;

c. the term "source" means any person who provides information to a journalist;

d. the term "information identifying a source" means, as far as this is likely to lead to the identification of a source:

i. the name and personal data as well as voice and image of a source,
ii. the factual circumstances of acquiring information from a source by a journalist,
iii. the unpublished content of the information provided by a source to a journalist, and
iv. personal data of journalists and their employers related to their professional work.

Principle 1 (Right of non-disclosure of journalists)

Domestic law and practice in member states should provide for explicit and clear protection of the right of journalists not to disclose information identifying a source in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the Convention) and the principles established herein, which are to be considered as minimum standards for the respect of this right.

Principle 2 (Right of non-disclosure of other persons)

Other persons who, by their professional relations with journalists, acquire knowledge of information identifying a source through the collection, editorial processing or dissemination of this information, should equally be protected under the principles established herein.

Principle 3 (Limits to the right of non-disclosure)

a. The right of journalists not to disclose information identifying a source must not be subject to other restrictions than those mentioned in Article 10, paragraph 2 of the Convention. In determining whether a legitimate interest in a disclosure falling within the scope of Article 10, paragraph 2 of the Convention outweighs the public interest in not disclosing information identifying a source, competent authorities of member states shall pay particular regard to the importance of the right of non-disclosure and the pre-eminence given to it in the case-law of the European Court of Human Rights, and may only order a disclosure if, subject to paragraph b, there exists an overriding requirement in the public interest and if circumstances are of a sufficiently vital and serious nature.

b. The disclosure of information identifying a source should not be deemed necessary unless it can be convincingly established that:

i. reasonable alternative measures to the disclosure do not exist or have been exhausted by the persons or public authorities that seek the disclosure, and

ii. the legitimate interest in the disclosure clearly outweighs the public interest in the non-disclosure, bearing in mind that:

- an overriding requirement of the need for disclosure is proved,
- the circumstances are of a sufficiently vital and serious nature,
- the necessity of the disclosure is identified as responding to a pressing social need, and
- member states enjoy a certain margin of appreciation in assessing this need, but this margin goes hand in hand with the supervision by the European Court of Human Rights.

c. The above requirements should be applied at all stages of any proceedings where the right of non-disclosure might be invoked.

Principle 4 (Alternative evidence to journalists' sources)

In legal proceedings against a journalist on grounds of an alleged infringement of the honour or reputation of a person, authorities should consider, for the purpose of establishing the truth or otherwise of the allegation, all evidence which is available to them under national procedural law and may not require for that purpose the disclosure of information identifying a source by the journalist.

Principle 5 (Conditions concerning disclosures)

a. The motion or request for initiating any action by competent authorities aimed at the disclosure of information identifying a source should only be introduced by persons or public authorities that have a direct legitimate interest in the disclosure.

b. Journalists should be informed by the competent authorities of their right not to disclose information identifying a source as well as of the limits of this right before a disclosure is requested.

c. Sanctions against journalists for not disclosing information identifying a source should only be imposed by judicial authorities during court proceedings which allow for a hearing of the journalists concerned in accordance with Article 6 of the Convention.

d. Journalists should have the right to have the imposition of a sanction for not disclosing their information identifying a source reviewed by another judicial authority.

e. Where journalists respond to a request or order to disclose information identifying a source, the competent authorities should consider applying measures to limit the extent of a disclosure, for example by excluding the public from the disclosure with due respect to Article 6 of the Convention, where relevant, and by themselves respecting the confidentiality of such a disclosure.

Principle 6 (Interception of communication, surveillance and judicial search and seizure

a. The following measures should not be applied if their purpose is to circumvent the right of journalists, under the terms of these principles, not to disclose information identifying a source:

> i. interception orders or actions concerning communication or correspondence of journalists or their employers,
>
> ii. surveillance orders or actions concerning journalists, their contacts or their employers, or
>
> iii. search or seizure orders or actions concerning the private or business premises, belongings or correspondence of journalists or their employers or personal data related to their professional work.

b. Where information identifying a source has been properly obtained by police or judicial authorities by any of the above actions, although this might not have been the purpose of

these actions, measures should be taken to prevent the subsequent use of this information as evidence before courts, unless the disclosure would be justified under Principle 3.

Principle 7 (Protection against self-incrimination)

The principles established herein shall not in any way limit national laws on the protection against self-incrimination in criminal proceedings, and journalists should, as far as such laws apply, enjoy such protection with regard to the disclosure of information identifying a source

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation Rec (2000) 23

of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector

(Adopted by the Committee of Ministers on 20 December 2000, at the 735th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress;

Bearing in mind Article 10 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights;

Recalling the importance for democratic societies of the existence of a wide range of independent and autonomous means of communication, making it possible to reflect the diversity of ideas and opinions, as set out in the Declaration on freedom of expression and information of 29 April 1982;

Highlighting the important role played by the broadcasting media in modern, democratic societies;

Emphasising that, to guarantee the existence of a wide range of independent and autonomous media in the broadcasting sector, it is essential to provide for adequate and proportionate regulation of that sector, in order to guarantee the freedom of the media whilst at the same time ensuring a balance between that freedom and other legitimate rights and interests;

Considering that for this purpose, specially appointed independent regulatory authorities for the broadcasting sector, with expert knowledge in the area, have an important role to play within the framework of the law;

Noting that the technical and economic developments, which lead to the expansion and the further complexity of the sector, will have an impact on the role of these authorities and may create a need for greater adaptability of regulation, over and above self-regulatory measures adopted by broadcasters themselves;

Recognising that according to their legal systems and democratic and cultural traditions, member states have established regulatory authorities in different ways, and that consequently there is diversity with regard to the means by which - and the extent to which - independence, effective powers and transparency are achieved;

Considering, in view of these developments, that it is important that member states should guarantee the regulatory authorities for the broadcasting sector genuine independence, in particular, through a set of rules covering all aspects of their work, and through measures enabling them to perform their functions effectively and efficiently,

Recommends that the governments of member states:

a. establish, if they have not already done so, independent regulatory authorities for the broadcasting sector;

b. include provisions in their legislation and measures in their policies entrusting the regulatory authorities for the broadcasting sector with powers which enable them to fulfil their missions, as prescribed by national law, in an effective, independent and transparent manner, in accordance with the guidelines set out in the appendix to this recommendation;

c. bring these guidelines to the attention of the regulatory authorities for the broadcasting sector, public authorities and professional groups concerned, as well as to the general public, while ensuring the effective respect of the independence of the regulatory authorities with regard to any interference in their activities.

Appendix to Recommendation Rec (2000) 23

Guidelines concerning the independence and functions of regulatory authorities for the broadcasting sector

I. General legislative framework

1. Member states should ensure the establishment and unimpeded functioning of regulatory authorities for the broadcasting sector by devising an appropriate legislative framework for this purpose. The rules and procedures governing or affecting the functioning of regulatory authorities should clearly affirm and protect their independence.

2. The duties and powers of regulatory authorities for the broadcasting sector, as well as the ways of making them accountable, the procedures for appointment of their members and the means of their funding should be clearly defined in law.

II. Appointment, composition and functioning

3. The rules governing regulatory authorities for the broadcasting sector, especially their membership, are a key element of their independence. Therefore, they should be defined so as to protect them against any interference, in particular by political forces or economic interests.

4. For this purpose, specific rules should be defined as regards incompatibilities in order to avoid that: regulatory authorities are under the influence of political power;

- members of regulatory authorities exercise functions or hold interests in enterprises or other organisations in the media or related sectors, which might lead to a conflict of interest in connection with membership of the regulatory authority.

5. Furthermore, rules should guarantee that the members of these authorities:

- are appointed in a democratic and transparent manner;

- may not receive any mandate or take any instructions from any person or body;

- do not make any statement or undertake any action which may prejudice the independence of their functions and do not take any advantage of them.

6. Finally, precise rules should be defined as regards the possibility to dismiss members of regulatory authorities so as to avoid that dismissal be used as a means of political pressure.

7. In particular, dismissal should only be possible in case of non-respect of the rules of incompatibility with which they must comply or incapacity to exercise their functions duly noted, without prejudice to the possibility for the person concerned to appeal to the courts against the dismissal. Furthermore, dismissal on the grounds of an offence connected or not with their functions should only be possible in serious instances clearly defined by law, subject to a final sentence by a court.

8. Given the broadcasting sector's specific nature and the peculiarities of their missions, regulatory authorities should include experts in the areas which fall within their competence.

III. Financial independence

9. Arrangements for the funding of regulatory authorities - another key element in their independence - should be specified in law in accordance with a clearly defined plan, with reference to the estimated cost of the regulatory authorities' activities, so as to allow them to carry out their functions fully and independently.

10. Public authorities should not use their financial decision-making power to interfere with the independence of regulatory authorities. Furthermore, recourse to the services or expertise of the national administration or third parties should not affect their independence.

11. Funding arrangements should take advantage, where appropriate, of mechanisms which do not depend on ad-hoc decision-making of public or private bodies.

IV. Powers and competence

Regulatory powers

12. Subject to clearly defined delegation by the legislator, regulatory authorities should have the power to adopt regulations and guidelines concerning broadcasting activities. Within the framework of the law, they should also have the power to adopt internal rules.

Granting of licences

13. One of the essential tasks of regulatory authorities in the broadcasting sector is normally the granting of broadcasting licences. The basic conditions and criteria governing the granting and renewal of broadcasting licences should be clearly defined in the law.

14. The regulations governing the broadcasting licensing procedure should be clear and precise and should be applied in an open, transparent and impartial manner. The decisions made by the regulatory authorities in this context should be subject to adequate publicity.

15. Regulatory authorities in the broadcasting sector should be involved in the process of planning the range of national frequencies allocated to broadcasting services. They should have the power to authorise broadcasters to provide programme services on frequencies allocated to broadcasting. This does not have a bearing on the allocation of frequencies to transmission network operators under telecommunications legislation.

16. Once a list of frequencies has been drawn up, a call for tenders should be made public in appropriate ways by regulatory authorities. Calls for tender should define a number of specifications, such as type of service, minimum duration of programmes, geographical coverage, type of funding, any licensing fees and, as far as necessary for those tenders, technical parameters to be met by the applicants. Given the general interest involved, member states may follow different procedures for allocating broadcasting frequencies to public service broadcasters.

17. Calls for tender should also specify the content of the licence application and the documents to be submitted by candidates. In particular, candidates should indicate their company's structure, owners and capital, and the content and duration of the programmes they are proposing.

Monitoring broadcasters' compliance with their commitments and obligations

18. Another essential function of regulatory authorities should be monitoring compliance with the conditions laid down in law and in the licences granted to broadcasters. They should, in particular, ensure that broadcasters who fall within their jurisdiction respect the basic principles laid down in the European Convention on Transfrontier Television, and in particular those defined in Article 7.

19. Regulatory authorities should not exercise a priori control over programming and the monitoring of programmes should therefore always take place after the broadcasting of programmes.

20. Regulatory authorities should be given the right to request and receive information from broadcasters in so far as this is necessary for the performance of their tasks.

21. Regulatory authorities should have the power to consider complaints, within their field of competence, concerning the broadcasters' activity and to publish their conclusions regularly.

22. When a broadcaster fails to respect the law or the conditions specified in his licence, the regulatory authorities should have the power to impose sanctions, in accordance with the law.

23. A range of sanctions which have to be prescribed by law should be available, starting with a warning. Sanctions should be proportionate and should not be decided upon until the broadcaster in question has been given an opportunity to be heard. All sanctions should also be open to review by the competent jurisdictions according to national law.

Powers in relation to public service broadcasters

24. Regulatory authorities may also be given the mission to carry out tasks often incumbent on specific supervisory bodies of public service broadcasting organisations, while at the same time respecting their editorial independence and their institutional autonomy.

V. Accountability

25. Regulatory authorities should be accountable to the public for their activities, and should, for example, publish regular or ad hoc reports relevant to their work or the exercise of their missions.

26. In order to protect the regulatory authorities' independence, whilst at the same time making them accountable for their activities, it is necessary that they should be supervised only in respect of the lawfulness of their activities, and the correctness and transparency of their financial activities. With respect to the legality of their activities, this supervision should be exercised *a posteriori* only. The regulations on responsibility and supervision of the regulatory authorities should be clearly defined in the laws applying to them.

27. All decisions taken and regulations adopted by the regulatory authorities should be:

- duly reasoned, in accordance with national law;
- open to review by the competent jurisdictions according to national law;
- made available to the public.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation Rec (2001) 7

**of the Committee of Ministers to member states
on measures to protect copyright and neighbouring rights
and combat piracy, especially in the digital environment**

*(Adopted by the Committee of Ministers on 5 September 2001,
at the 762nd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress;

Welcoming the profound improvement in the field of communication and dissemination of data leading towards the information society;

Noting that the development of new information technologies facilitates access to and the exploitation of works, contributions and performances protected by intellectual property rights;

Concerned by the emergence of new forms of piracy as a result of the possibilities offered by information networks, digitisation and data compression;

Noting that this phenomenon seriously affects many sectors within the area of copyright and neighbouring rights;

Aware of the considerable and increasing harm that a lack of protection, on the one hand, and new piracy practices in the digital environment, on the other hand, cause to the interests of authors, publishers, performers, producers and broadcasters, as well as to the cultural professions and related industries as a whole;

Recognising that this situation also has detrimental effects on consumer interests and for the development of the information society, in particular in that it discourages cultural creativity and thereby prejudices both the diversity and quality of products placed on the market;

Reaffirming the significance of the protection of copyright and neighbouring rights as an incentive for literary and artistic creation;

Bearing in mind the losses suffered by national budgets as a result of insufficient protection and of piracy;

Noting the links between trade in pirate material and organised crime;

Bearing in mind the work carried out in other fora towards strengthening the protection of intellectual property rights and towards better enforcement of rights, serving the purpose of fighting piracy, in particular within the framework of the World Intellectual Property Organisation (WIPO), the European Union, Unesco and the World Trade Organisation;

Acknowledging the importance of the standard-setting activity of the World Intellectual Property Organisation in this area at the Diplomatic Conference in 1996, which provides a specific international framework for the systematic protection of works and other material disseminated in digital form;

Recalling its Recommendations:

- No. R (88) 2 on measures to combat piracy in the field of copyright and neighbouring rights;

- No. R (91) 14 on the legal protection of encrypted television services;

- No. R (94) 3 on the promotion of education and awareness in the area of copyright and neighbouring rights concerning creativity;

- No. R (95) 1 on measures against sound and audiovisual piracy,

Recommends that governments of member states take account of the provisions in the appendix to this recommendation when developing their anti-piracy policies and adapting their legislation to the technical developments.

Appendix to Recommendation Rec (2001) 7

Recognition of rights

1. Member states should ensure that authors, performers, producers and broadcasters possess adequate rights in respect of the new forms of exploitation and use of their works, contributions and performances to defend their interests and to combat piracy in the field of copyright and neighbouring rights. In particular, to the extent that they have not already done so, member states should:

   - grant to authors, performers and producers of phonograms the rights contained in the WIPO Copyright Treaty (WCT, Geneva 1996) and in the WIPO Performances and Phonograms Treaty (WPPT, Geneva 1996);

   - increase the protection provided to broadcasters, producers of databases and audiovisual performers as regards their fixed performances, notably in the environment of information networks and digitalisation.

Remedies and sanctions

2. Member states should ensure that their national legislation provides remedies which enable prompt and effective action against persons who infringe copyright and neighbouring rights, including those involved in the importation, exportation or distribution of illegal material. Proceedings, respecting Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, should not be unnecessarily complicated, lengthy or costly.

- ***criminal law***

3. In cases of piracy, member states should provide for appropriate criminal procedures and sanctions. Over and above action based on complaints by the victims, member states should provide for the possibility of action by public authorities at their own initiative.

4. Provision should be made for powers to search the premises of legal or natural persons reasonably suspected of engaging in piracy activities and for the seizure, confiscation or destruction of pirated copies, their means of production, materials and devices predominantly used in the commission of the offence, as well as devices designed or adapted to circumvent technical measures which protect copyright and neighbouring rights. Consideration should also be given to the possibility of introducing powers for securing and forfeiting financial gains made from pirate activities. These measures should be subject to supervision by the competent authorities.

5. Sanctions should include imprisonment and/or monetary fines sufficient to act as a deterrent, consistent with the level of penalties applied for offences of corresponding gravity.

- ***civil law***

6. In the field of civil law, the possibility should exist for judicial authorities to grant injunctions whereby a party is ordered to stop infringing copyright or neighbouring rights.

7. The judicial authorities should also have the possibility to order provisional measures in order to prevent an infringement or to preserve relevant evidence in regard to an alleged infringement of copyright and neighbouring rights. These measures may be taken inaudita altera parte where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a risk of evidence being destroyed.

8. In case of trial, judicial authorities should, upon claim by the right holder, be able to order evidence to be produced by the defending party, and member states may consider the possibility of introducing provisions to the effect that conclusions may be drawn from the silence of the defending party.

9. Judicial authorities should have the authority to order the infringing party to pay the right holder adequate damages to compensate for losses suffered.

10. Member states may provide that the courts shall have the authority to order the infringing party to inform the right holder of the identity of third persons involved in the illicit activity, unless this would be out of proportion to the seriousness of the infringement.

- ***Customs involvement***

11. Member states should closely involve their customs authorities in the fight against piracy and empower such authorities, inter alia, to suspend the release into free circulation of suspect material.

Technological measures and rights management

12. Member states should encourage the development of technological measures which protect copyright and neighbouring rights, and the development of systems of electronic rights management information, in particular by granting them specific protection in national law.

13. Member states should study the possibility of taking measures, with regard to enterprises which have optical media mastering and manufacturing facilities, such as the obligation to use_a unique identification code, so that the origin of their masters and finished products may be determined.

Co-operation between public authorities and between such authorities and rights owners

14. Member states should encourage co-operation at national level between police and customs authorities in relation to the fight against piracy in the field of copyright and related rights, as well as between these authorities and rights holders. Co-operation within the private sector between rights holders should also be encouraged.

15. Member states should also, in the appropriate fora, encourage co-operation in the fight against piracy between the police and customs authorities of different countries.

Co-operation between member states

16. Member states should keep each other fully informed of initiatives taken to combat piracy in the field of copyright and neighbouring rights.

17. Member states should offer each other mutual support in relation to such initiatives and envisage, where desirable and through appropriate channels, undertaking joint action.

Ratification of treaties

18. Member states should adhere as soon as possible to the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), taking into account that an effective protection of rights holders is increasingly dependent on the harmonisation of such protection at the international level.

19. Furthermore, member states should become parties, where they have not already done so, to:

- the Paris Act of the Berne Convention for the Protection of Literary and Artistic Works (1971);

- the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome, 1961);

- the Convention for the Protection of Producers of Phonograms against Unauthorised Duplication of their Phonograms (Geneva, 1971);

- the European Agreement on the Protection of Television Broadcasts (Strasbourg, 1960) and its protocols;

- the European Convention relating to Questions on Copyright Law and Neighbouring Rights in the framework of Transfrontier Broadcasting by Satellite (Strasbourg, 1994);

- the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) (1994).

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation Rec (2001) 8

of the Committee of Ministers to member states on self-regulation concerning cyber content (self-regulation and user protection against illegal or harmful content on new communications and information services)

(Adopted by the Committee of Ministers on 5 September 2001, at the 762nd meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Having regard to its Declaration on a European policy for new information technologies, adopted on the occasion of the 50th anniversary of the Council of Europe in 1999;

Recalling the commitment of the member states to the fundamental right to freedom of expression and information as guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and to entrusting the supervision of its application to the European Court of Human Rights;

Reaffirming that freedom of expression and information is necessary for the social, economic, cultural and political development of every human being, and constitutes a condition for the harmonious progress of social and cultural groups, nations and the international community, as expressed in its Declaration on the Freedom of Expression and Information of 1982;

Stressing that the continued development of new communications and information services should serve to further the right of everyone, regardless of frontiers, to express, seek, receive and impart information and ideas for the benefit of every individual and the democratic culture of any society;

Stressing that the freedom to use new communications and information services should not prejudice the human dignity, human rights and fundamental freedoms of others,-especially of minors;

Recalling its Recommendation No. R (89) 7 concerning principles on the distribution of videograms having a violent, brutal or pornographic content, its Recommendation No. R (92) 19 on video games with a racist content, its Recommendation No. R (97) 19 on the portrayal of violence in the electronic media, its Recommendation No. R (97) 20 on “hate speech” and Article 4, paragraph a of the International Convention on the elimination of all forms of racial discrimination of the United Nations of 1965;

Bearing in mind the differences in national criminal law concerning illegal content as well as the differences in what content may be perceived as potentially harmful, especially to minors and their physical, mental and moral development, hereinafter referred to as "harmful content";

Bearing in mind that self-regulatory organisations could, in accordance with national circumstances and traditions, be involved in monitoring compliance with certain norms, possibly within a co-regulatory framework, as defined in a particular country;

Aware of self-regulatory initiatives for the removal of illegal content and the protection of users against harmful content taken by the new communications and information industries, sometimes in co-operation with the state, as well as of the existence of technical standards and devices enabling users to select and filter content;

Desirous to promote and strengthen self-regulation and user protection against illegal or harmful content,

Recommends that the governments of member states:

1. implement in their domestic law and/or practice the principles appended to this Recommendation;

2. disseminate widely this Recommendation and its appended principles, where appropriate accompanied by a translation; and

3. bring them in particular to the attention of the media, the new communications and information industries, users and their organisations, as well as of the regulatory authorities for the media and new communications and information services and relevant public authorities.

Appendix to Recommendation Rec (2001) 8

Principles and mechanisms concerning self-regulation and user protection against illegal or harmful content on new communications and information services

Chapter I – Self-regulatory organisations

1. Member states should encourage the establishment of organisations which are representative of Internet actors, for example Internet service providers, content providers and users.

2. Member states should encourage such organisations to establish regulatory mechanisms within their remit, in particular with regard to the establishment of codes of conduct and the monitoring of compliance with these codes.

3. Member states should encourage those organisations in the media field with self-regulatory standards to apply them, as far as possible, to the new communications and information services.-

4. Member states should encourage such organisations to participate in relevant legislative processes, for instance through consultations, hearings and expert opinions, and in the implementation of relevant norms, in particular by monitoring compliance with these norms.

5. Member states should encourage Europe-wide and international co-operation between such organisations.

Chapter II – Content descriptors

6. Member states should encourage the definition of a set of content descriptors, on the widest possible geographical scale and in co-operation with the organisations referred to in Chapter I, which should provide for neutral labelling of content, thus enabling users to make their own judgment concerning such content.

7. Such content descriptors should indicate, for example, violent and pornographic content as well as content promoting the use of tobacco or alcohol, gambling services, and content which allows unsupervised and anonymous contacts between minors and adults.

8. Content providers should be encouraged to apply these content descriptors, in order to enable users to recognise and filter such content regardless of its origin.

Chapter III – Content selection tools

9. Member states should encourage the development of a wide range of search tools and filtering profiles, which provide users with the ability to select content on the basis of content descriptors.

10. Filtering should be applied by users on a voluntary basis.

11. Member states should encourage the use of conditional access tools by content and service providers in relation to content harmful to minors, such as age-verification systems, personal identification codes, passwords, encryption and decoding systems or access through cards with an electronic code.

Chapter IV – Content complaints systems

12. Member states should encourage the establishment of content complaints systems, such as hotlines, which are provided by Internet service providers, content providers, user associations or other institutions. Such content complaints systems should, where necessary for ensuring an adequate response against presumed illegal content, be complemented by hotlines provided by public authorities.

13. Member states should encourage the development of common minimum requirements and practices concerning these content complaints systems. Such requirements should include for instance:

a. the provision of a specific permanent Web address;

b. the availability of the content complaints system on a twenty-four-hour basis;

c. the provision of information to the public about the legally responsible persons and entities within the bodies offering content complaints systems;

d. the provision of information to the public about the rules and practices relating to the processing of content complaints, including co-operation with law enforcement authorities with regard to presumed illegal content;

E. the provision of replies to users concerning the processing of their content complaints;

F. the provision of links to other content complaints systems abroad.

14. Member states should set up, at the domestic level, an adequate framework for co-operation between content complaints bodies and public authorities with regard to presumed illegal content. For this purpose, member states should define the legal responsibilities and privileges of bodies offering content complaints systems when accessing, copying, collecting and forwarding presumed illegal content to law enforcement authorities.

15. Member states should foster Europe-wide and international co-operation between content complaints bodies.

16. Member states should undertake all necessary legal and administrative measures for transfrontier co-operation between their relevant law enforcement authorities with regard to complaints and investigations concerning presumed illegal content from abroad.

Chapter V – Mediation and arbitration

17. Member states should encourage the creation, at the domestic level, of voluntary, fair, independent, accessible and effective bodies or procedures for out-of-court mediation as well as mechanisms for arbitration of disputes concerning content-related matters.

18. Member states should encourage Europe-wide and international co-operation between such mediation and arbitration bodies, open access of everyone to such mediation and arbitration procedures irrespective of frontiers, and the mutual recognition and enforcement of out-of-court settlements reached hereby, with due regard to the national order public and fundamental procedural safeguards.

Chapter VI – User information and awareness

19. Member states should encourage the development of quality labels for Internet content, for example for governmental content, educational content and content suitable for children, in order to enable users to recognise or search for such content.

20. Member states should encourage public awareness and information about self-regulatory mechanisms, content descriptors, filtering tools, access restriction tools, content complaints systems, and out-of-court mediation and arbitration.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation Rec (2002) 2

**of the Committee of Ministers to member states
on access to official documents**

*(Adopted by the Committee of Ministers on 21 February 2002,
at the 784th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Bearing in mind, in particular, Article 19 of the Universal Declaration of Human Rights, Articles 6, 8 and 10 of the European Convention on Human Rights and Fundamental Freedoms, the United Nations Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (adopted in Aarhus, Denmark, on 25 June 1998) and the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981 (ETS No. 108); the Declaration on the freedom of expression and information adopted on 29 April 1982; as well as Recommendation No. R (81) 19 on the access to information held by public authorities, Recommendation No. R (91) 10 on the communication to third parties of personal data held by public bodies; Recommendation No. R (97) 18 concerning the protection of personal data collected and processed for statistical purposes and Recommendation No. R (2000) 13 on a European policy on access to archives;

Considering the importance in a pluralistic, democratic society of transparency of public administration and of the ready availability of information on issues of public interest;

Considering that wide access to official documents, on a basis of equality and in accordance with clear rules:

- allows the public to have an adequate view of, and to form a critical opinion on, the state of the society in which they live and on the authorities that govern them, whilst encouraging informed participation by the public in matters of common interest;

- fosters the efficiency and effectiveness of administrations and helps maintain their integrity by avoiding the risk of corruption;

- contributes to affirming the legitimacy of administrations as public services and to strengthening the public's confidence in public authorities;

Considering therefore that the utmost endeavour should be made by member states to ensure availability to the public of information contained in official documents, subject to the protection of other rights and legitimate interests;

Stressing that the principles set out hereafter constitute a minimum standard, and that they should be understood without prejudice to those domestic laws and regulations which already recognise a wider right of access to official documents;

Considering that, whereas this instrument concentrates on requests by individuals for access to official documents, public authorities should commit themselves to conducting an active communication policy, with the aim of making available to the public any information which is deemed useful in a transparent democratic society,

Recommends the governments of member states to be guided in their law and practice by the principles set out in this recommendation.

I. Definitions

For the purposes of this recommendation:

"public authorities" shall mean:

i. government and administration at national, regional or local level;

ii. natural or legal persons insofar as they perform public functions or exercise administrative authority and as provided for by national law.

“official documents” shall mean all information recorded in any form, drawn up or received and held by public authorities and linked to any public or administrative function, with the exception of documents under preparation.

II. Scope

1. This recommendation concerns only official documents held by public authorities. However, member states should examine, in the light of their domestic law and practice, to what extent the principles of this recommendation could be applied to information held by legislative bodies and judicial authorities.

2. This recommendation does not affect the right of access or the limitations to access provided for in the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

III. General principle on access to official documents

Member states should guarantee the right of everyone to have access, on request, to official documents held by public authorities. This principle should apply without discrimination on any ground, including that of national origin.

IV. Possible limitations to access to official documents

1. Member states may limit the right of access to official documents. Limitations should be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting:

i. national security, defence and international relations;
ii. public safety;
iii. the prevention, investigation and prosecution of criminal activities;
iv. privacy and other legitimate private interests;
v. commercial and other economic interests, be they private or public;
vi. the equality of parties concerning court proceedings;
vii. nature;
viii. inspection, control and supervision by public authorities;
ix. the economic, monetary and exchange rate policies of the state;
x. the confidentiality of deliberations within or between public authorities during the internal preparation of a matter.

2. Access to a document may be refused if the disclosure of the information contained in the official document would or would be likely to harm any of the interests mentioned in paragraph 1, unless there is an overriding public interest in disclosure.

3. Member states should consider setting time limits beyond which the limitations mentioned in paragraph 1 would no longer apply.

V. Requests for access to official documents

1. An applicant for an official document should not be obliged to give reasons for having access to the official document.

2. Formalities for requests should be kept to a minimum.

VI. Processing of requests for access to official documents

1. A request for access to an official document should be dealt with by any public authority holding the document.

2. Requests for access to official documents should be dealt with on an equal basis.

3. A request for access to an official document should be dealt with promptly. The decision should be reached, communicated and executed within any time limit which may have been specified beforehand.

4. If the public authority does not hold the requested official document it should, wherever possible, refer the applicant to the competent public authority.

5. The public authority should help the applicant, as far as possible, to identify the requested official document, but the public authority is not under a duty to comply with the request if it is a document which cannot be identified.

6. A request for access to an official document may be refused if the request is manifestly unreasonable.

7. A public authority refusing access to an official document wholly or in part should give the reasons for the refusal.

VII. Forms of access to official documents

1. When access to an official document is granted, the public authority should allow inspection of the original or provide a copy of it, taking into account, as far as possible, the preference expressed by the applicant.

2. If a limitation applies to some of the information in an official document, the public authority should nevertheless grant access to the remainder of the information it contains. Any omissions should be clearly indicated. However, if the partial version of the document is misleading or meaningless, such access may be refused.

3. The public authority may give access to an official document by referring the applicant to easily accessible alternative sources.

VIII. Charges for access to official documents

1. Consultation of original official documents on the premises should, in principle, be free of charge.

2. A fee may be charged to the applicant for a copy of the official document, which should be reasonable and not exceed the actual costs incurred by the public authority.

IX. Review procedure

1. An applicant whose request for an official document has been refused, whether in part or in full, or dismissed, or has not been dealt with within the time limit mentioned in Principle VI.3 should have access to a review procedure before a court of law or another independent and impartial body established by law.

2. An applicant should always have access to an expeditious and inexpensive review procedure, involving either reconsideration by a public authority or review in accordance with paragraph 1 above.

X. Complementary measures

1. Member states should take the necessary measures to:

   i. inform the public about its rights of access to official documents and how that right may be exercised;

   ii. ensure that public officials are trained in their duties and obligations with respect to the implementation of this right;

   iii. ensure that applicants can exercise their right.

2. To this end, public authorities should in particular:

i. manage their documents efficiently so that they are easily accessible;

ii. apply clear and established rules for the preservation and destruction of their documents;

iii. as far as possible, make available information on the matters or activities for which they are responsible, for example by drawing up lists or registers of the documents they hold.

XI. Information made public at the initiative of the public authorities

A public authority should, at its own initiative and where appropriate, take the necessary measures to make public information which it holds when the provision of such information is in the interest of promoting the transparency of public administration and efficiency within administrations or will encourage informed participation by the public in matters of public interest.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation Rec (2002) 7

of the Committee of Ministers to member states on measures to enhance the protection of the neighbouring rights of broadcasting organisations

(Adopted by the Committee of Ministers on 11 September 2002, at the 807th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage and facilitating their economic and social progress;

Reaffirming the significance of the protection of copyright and neighbouring rights as an incentive for literary and artistic creation and production;

Concerned about the increasing exposure of European broadcasting organisations to piracy of their programmes due to technological developments over the last decades;

Recognising that the valuable contribution of European broadcasting organisations to creative and cultural activity requires major investment and effort in order to ensure quality and diversity of programmes and that this contribution is in imminent danger if protection against piracy is insufficient;

Recognising the need to balance broadcasting organisations' rights with the general public interest, in particular as regards education, research and access to information, and the further need for broadcasting organisations to recognise the rights of holders of copyright and neighbouring rights over the works and other protected items contained in their broadcasts;

Recognising the importance of the work undertaken within the framework of WIPO on the protection of broadcasting organisations, as well as the need to take account of any new developments in the international legal framework;

Recommends that governments of member states take account of the provisions in the appendix to this Recommendation in protecting the neighbouring rights of broadcasting organisations and adapting these rights to the digital environment.

Appendix to Recommendation Rec (2002) 7

Rights to be granted

In order to increase the level of protection of the neighbouring rights of broadcasting organisations, member states should grant them the following rights if they have not already done so, bearing in mind that limitations and exceptions to these rights may be provided to the extent permitted by international treaties:

a. the exclusive right to authorise or prohibit the retransmission of their broadcasts by wire or wireless means, whether simultaneous or based on fixations;

b. the exclusive right to authorise or prohibit the fixation of their broadcasts;

c. the exclusive right to authorise or prohibit the direct or indirect reproduction of fixations of their broadcasts in any manner or form;

d. the exclusive right to authorise or prohibit the making available to the public of fixations of their broadcasts, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them;

e. the exclusive right to authorise or prohibit the making available to the public through sale or other transfer of ownership of fixations and copies of fixations of their broadcasts;

f. the exclusive right to authorise or prohibit the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

Pre-broadcast programme carrying signals

Member states should consider taking measures to ensure that broadcasting organisations enjoy adequate protection against any of the acts referred to in a) to f) above in relation to their pre-broadcast programme carrying signals.

Technological measures

Member states should provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures which are used by broadcasting organisations in connection with the exercise of their neighbouring rights and which restrict acts in respect of their broadcasts which are not authorised by the broadcasting organisations concerned or permitted by law.

Rights management information

Member states should provide adequate and effective legal remedies against any person who knowingly removes or alters electronic rights management information without authority, knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Recommendation. The same should apply if a person knowingly simultaneously retransmits a broadcast or transmits, distributes, imports for distribution, communicates or makes available

to the public fixations or copies of broadcasts knowing that electronic rights management information has been removed or altered without authority.

Term of protection

Member states should consider granting to broadcasting organisations a term of protection which lasts, at least, until the end of a period of 50 years computed from the end of the year in which the broadcast took place.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation Rec (2003) 9

of the Committee of Ministers to member states
on measures to promote the democratic and social contribution of digital broadcasting

(Adopted by the Committee of Ministers on 28 May 2003,
at the 840th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles that are their common heritage and fostering economic and social progress;

Recalling that the existence of a wide variety of independent and autonomous media, permitting the reflection of diversity of ideas and opinions, as stated in its Declaration on the freedom of expression and information of 29 April 1982, is important for democratic societies;

Bearing in mind Resolution No.1 on the future of public service broadcasting adopted at the 4th European Ministerial Conference on Mass Media Policy (Prague, 7-8 December 1994), and recalling its Recommendation No R (96) 10 on the guarantee of the independence of public service broadcasting;

Stressing the specific role of the broadcasting media, and in particular of public service broadcasting, in modern democratic societies, which is to support the values underlying the political, legal and social structures of democratic societies, and in particular respect for human rights, culture and political pluralism;

Noting that the development of digital technology opens new possibilities in the field of communication, which may have a certain impact on the audiovisual landscape, both as regards the public and broadcasters;

Considering that the transition to the digital environment offers advantages, but also presents risks, and that adequate preparations must be made for it so that it is carried out in the best possible conditions in the interest of the public, as well as of broadcasters and the audiovisual industry as a whole;

Noting that in parallel with the multiplication of the number of channels in the digital environment, concentration in the media sector is still accelerating, notably in the context of globalisation, and recalling to the member states the principles enunciated in Recommendation No R (99) 1 on measures to promote media pluralism, in particular those concerning media ownership rules, access to platforms and diversity of media content;

Stressing the potential of digital television for bringing the information society into every home and the importance of avoiding exclusion, notably by the availability of free-to-air services and transfrontier television services;

Conscious of the need to safeguard essential public interest objectives in the digital environment, including freedom of expression and access to information, media pluralism, cultural diversity, the protection of minors and human dignity, consumer protection and privacy;

Noting that the governments of the member states have special responsibilities in this respect;

Convinced that the specific role of public service broadcasting as a uniting factor, capable of offering a wide choice of programmes and services to all sections of the population, should be maintained in the new digital environment;

Recalling that the member states should maintain and, where necessary, establish an appropriate and secure funding framework that guarantees public service broadcasters the means necessary to accomplish the remit which is assigned to them by member states in the new digital environment;

Conscious of the risk of democratic and social deficit which technological and market developments may entail, and agreeing that in the digital environment, a balance must be struck between economic interests and social needs, clearly taking a citizen perspective,

Recommends that the governments of the member states, taking account of the principles set out in the appendix:

a. create adequate legal and economic conditions for the development of digital broadcasting that guarantee the pluralism of broadcasting services and public access to an enlarged choice and variety of quality programmes, including the maintenance and, where possible, extension of the availability of transfrontier services;

b. protect and, if necessary, take positive measures to safeguard and promote media pluralism, in order to counterbalance the increasing concentration in this sector;

c. be particularly vigilant to ensure respect for the protection of minors and human dignity and the non-incitement to violence and hatred in the digital environment, which provides access to a wide variety of content;

d. prepare the public for the new digital environment, notably by encouraging the setting-up of a scheme for adequate information on and training in the use of digital equipment and new services;

e. guarantee that public service broadcasting, as an essential factor for the cohesion of democratic societies, is maintained in the new digital environment by ensuring universal access by individuals to the programmes of public service broadcasters and giving it inter alia a central role in the transition to terrestrial digital broadcasting;

f. reaffirm the remit of public service broadcasting, adapting if necessary its means to the new digital environment, with respect for the relevant basic principles set out in previous

Council of Europe texts, while establishing the financial, technical and other conditions that will enable it to fulfil that remit as well as possible;

g. bring the basic principles contained in the appendix to this recommendation to the attention of the public authorities and the professional and industrial circles concerned, and to evaluate on a regular basis the effectiveness of the implementation of these principles.

Appendix to Recommendation Rec (2003) 9

Basic principles for digital broadcasting

General principles

1. Given that, from a technological point of view, the development of digital broadcasting is inevitable, it would be advantageous if, before proceeding with the transition to digital environment, member states, in consultation with the various industries involved and the public, were to draw up a well-defined strategy that would ensure a carefully thought-out transition, which would maximise its benefits and minimise its possible negative effects.

2. Such a strategy, which is particularly necessary for digital terrestrial television, should seek to promote co-operation between operators, complementarity between platforms, the interoperability of decoders, the availability of a wide variety of content, including free-to-air radio and television services, and the widest exploitation of the unique opportunities which digital technology can offer following the necessary reallocation of frequencies.

3. Given that simultaneous analogue and digital broadcasting is costly, member states should seek ways of encouraging a rapid changeover to digital broadcasting while making sure that the interests of the public as well as the interests and constraints of all categories of broadcasters, particularly non-commercial and regional/local broadcasters, are taken into account. In this respect, an appropriate legal framework and favourable economic and technical conditions must be provided.

4. When awarding digital broadcasting licences, the relevant public authorities should ensure that the services on offer are many and varied, and encourage the establishment of regional/local services that meet the public's expectations at these levels.

1. Transition to the digital environment: the public

1.1 Safe transition to digital broadcasting

5. In order to guarantee the public a wide range of programme content, member states should take measures aimed at a high degree of interoperability and compatibility of reception, decoding and decrypting equipment and of systems granting access to digital broadcasting services and related interactive services.

6. Given that for consumers, the changeover to digital broadcasting means acquiring new equipment to decode and decrypt digital signals and, therefore, a certain amount of expense, and in order to avoid any form of material discrimination and any risk of "digital divide"

between different social categories, member states should pay particular attention to ways of reducing the cost of such equipment.

7. With a view to bringing forward the date of the digital switch-over, member states should facilitate the public's change over to digital broadcasting. For example, they could encourage the industry to make available to the public a variety of decoding devices, including a basic decoding apparatus giving access to a range of minimum services.

8. Media literacy is a key factor in reducing the risk of a “digital divide”. Hence, the public should be provided with wide-ranging information on the media. Suitable training courses in the use of digital equipment and new services are another appropriate measure to reduce the aforementioned risk. In particular, steps should be taken to enable the elderly and the less advantaged sectors of the population to understand and use digital technology. All these measures should be taken by the member states, broadcasters, regulatory authorities or other public or private institutions that are concerned with the transition to digital broadcasting.

9. The protection of minors and human dignity, and non-incitement to hatred and violence, notably that of racial and religious origin, as well as the impartiality of information and the protection of consumers, should continue to receive particular attention in the digital convergence environment.

10. Specific measures should be taken to improve access by people with hearing and visual disabilities to digital broadcasting services and their related content.

11. Member states should take all necessary measures to protect the privacy of individuals in the digital environment, notably by forbidding the misuse of personal data collected via the use of broadcasting and related interactive services.

1.2 Finding one's way in the digital environment

12. In order to help the public find its bearings in the new digital environment, member states should encourage broadcasters to produce information on their services for electronic programme guides (EPGs), as well as encourage manufacturers of digital set-top-boxes to include functions allowing information concerning programmes and services to be displayed, so as to give television viewers the basic information they need to make an informed choice among the myriad of programmes/channels and services available to them via digital platforms.

13. Without prejudice to complementary EPGs provided by broadcasters to present their own programming offer, providers of EPGs should propose to all service providers who so request, under fair, reasonable and non-discriminatory terms, a position on the EPGs which they operate. However, public service channels should be prominently displayed and easy to access. Providers of EPGs should also offer a clear classification of programme services by subject, genres, content and so on.

14. EPGs and digital decoders should be designed to be user-friendly for consumers, notably allowing them to decide on the display of programmes and services according to their preference. Particular attention should be paid to the specific needs of people with disabilities

or people who lack knowledge of foreign languages. The use of EPGs as an advertising medium should prejudice neither their functionalities nor the integrity of programmes.

2. Transition to the digital environment: the broadcasters

2.1 General principles

15. When framing their policies on copyright and neighbouring rights, member states should ensure that these policies establish a balance between, on the one hand, the protection of rights owners' rights and, on the other hand, access to information, as well as the circulation of protected works and other content on digital broadcasting services.

16. The economic interests of broadcasters, platform operators and service providers should also be taken into account in the general context of combating piracy in the digital environment, in particular via measures on the legal protection of services based on, or consisting of, conditional access.

17. Access to many national, and even regional, broadcasting services is of great benefit to people who work, live or travel abroad, and contributes to the free flow of information and to a better understanding among cultures. In view of people's increased mobility in Europe and the deepening of European integration, it is important in the digital environment that the availability of free-to-air services and the accessibility of transfrontier audiovisual services are maintained and, where possible, extended.

18. In view of the fact that digital convergence favours the process of concentration in the broadcasting sector, member states should maintain regulation which limits the concentration of media ownership and/or any complementary measures which they may decide to choose to enhance pluralism, while strengthening public service broadcasting as a crucial counter-balance to concentration in the private media sector.

2.2 Principles applicable to public service broadcasting

a. Remit of public service broadcasting

19. Faced with the challenges linked to the arrival of digital technologies, public service broadcasting should preserve its special social remit, including a basic general service that offers news, educational, cultural and entertainment programmes aimed at different categories of the public. Member states should create the financial, technical and other conditions required to enable public service broadcasters to fulfil this remit in the best manner while adapting to the new digital environment. In this respect, the means to fulfil the public service remit may include the provision of new specialised channels, for example in the field of information, education and culture, and of new interactive services, for example EPGs and programme-related on-line services. Public service broadcasters should play a central role in the transition process to digital terrestrial broadcasting.

b. Universal access to public service broadcasting

20. Universality is fundamental for the development of public service broadcasting in the digital era. Member states should therefore make sure that the legal, economic and technical conditions are created to enable public service broadcasters to be present on the different digital platforms (cable, satellite, terrestrial) with diverse quality programmes and services

that are capable of uniting society, particularly given the risk of fragmentation of the audience as a result of the diversification and specialisation of the programmes on offer.

21. In this connection, given the diversification of digital platforms, the must-carry rule should be applied for the benefit of public service broadcasters as far as reasonably possible in order to guarantee the accessibility of their services and programmes via these platforms.

c. *Financing public service broadcasting*

22. In the new technological context, without a secure and appropriate financing framework, the reach of public service broadcasters and the scale of their contribution to society may diminish. Faced with increases in the cost of acquiring, producing and storing programmes, and sometimes broadcasting costs, member states should give public service broadcasters the possibility of having access to the necessary financial means to fulfil their remit.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation Rec (2003) 13

of the Committee of Ministers to member states on the provision of information through the media in relation to criminal proceedings

(Adopted by the Committee of Ministers on 10 July 2003, at the 848th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Recalling the commitment of the member states to the fundamental right to freedom of expression and information as guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "the Convention"), which constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for the development of every individual;

Recalling that the media have the right to inform the public due to the right of the public to receive information, including information on matters of public concern, under Article 10 of the Convention, and that they have a professional duty to do so;

Recalling that the rights to presumption of innocence, to a fair trial and to respect for private and family life under Articles 6 and 8 of the Convention constitute fundamental requirements which must be respected in any democratic society;

Stressing the importance of media reporting in informing the public on criminal proceedings, making the deterrent function of criminal law visible as well as in ensuring public scrutiny of the functioning of the criminal justice system;

Considering the possibly conflicting interests protected by Articles 6, 8 and 10 of the Convention and the necessity to balance these rights in view of the facts of every individual case, with due regard to the supervisory role of the European Court of Human Rights in ensuring the observance of the commitments under the Convention;

Recalling, furthermore, the right of the media and journalists to create professional associations, as guaranteed by the right to freedom of association under Article 11 of the Convention, which is a basis for self-regulation in the media field;

Aware of the many initiatives taken by the media and journalists in Europe to promote the responsible exercise of journalism, either through self-regulation or in co-operation with the state through co-regulatory frameworks;

Desirous to enhance an informed debate on the protection of the rights and interests at stake in the context of media reporting relating to criminal proceedings, and to foster good practice throughout Europe while ensuring access of the media to criminal proceedings;

Recalling its Resolution (74) 26 on the right of reply – position of the individual in relation to the press, its Recommendation No. R (85) 11 on the position of the victim in the framework of criminal law and procedure, its Recommendation No. R (97) 13 concerning the intimidation of witnesses and the rights of the defence, and its Recommendation No. R (97) 21 on the media and the promotion of a culture of tolerance;

Stressing the importance of protecting journalists' sources of information in the context of criminal proceedings, in accordance with its Recommendation No. R (2000) 7 on the right of journalists not to disclose their sources of information;

Bearing in mind Resolution No. 2 on journalistic freedoms and human rights adopted at the 4th European Ministerial Conference on Mass Media Policy (Prague, December 1994) as well as the Declaration on a media policy for tomorrow adopted at the 6th European Ministerial Conference on Mass Media Policy (Cracow, June 2000);

Recalling that this recommendation does not intend to limit the standards already in force in member states which aim to protect freedom of expression,

Recommends, while acknowledging the diversity of national legal systems concerning criminal procedure, that the governments of member states:

1. take or reinforce, as the case may be, all measures which they consider necessary with a view to the implementation of the principles appended to this recommendation, within the limits of their respective constitutional provisions,

2. disseminate widely this recommendation and its appended principles, where appropriate accompanied by a translation, and

3. bring them in particular to the attention of judicial authorities and police services as well as to make them available to representative organisations of lawyers and media professionals.

Appendix to Recommendation Rec (2003) 13

Principles concerning the provision of information through the media in relation to criminal proceedings

Principle 1 - Information of the public via the media

The public must be able to receive information about the activities of judicial authorities and police services through the media. Therefore, journalists must be able to freely report and

comment on the functioning of the criminal justice system, subject only to the limitations provided for under the following principles.

Principle 2 - Presumption of innocence

Respect for the principle of the presumption of innocence is an integral part of the right to a fair trial. Accordingly, opinions and information relating to on-going criminal proceedings should only be communicated or disseminated through the media where this does not prejudice the presumption of innocence of the suspect or accused.

Principle 3 - Accuracy of information

Judicial authorities and police services should provide to the media only verified information or information which is based on reasonable assumptions. In the latter case, this should be clearly indicated to the media.

Principle 4 - Access to information

When journalists have lawfully obtained information in the context of on-going criminal proceedings from judicial authorities or police services, those authorities and services should make available such information, without discrimination, to all journalists who make or have made the same request.

Principle 5 - Ways of providing information to the media

When judicial authorities and police services themselves have decided to provide information to the media in the context of on-going criminal proceedings, such information should be provided on a non-discriminatory basis and, wherever possible, through press releases, press conferences by authorised officers or similar authorised means.

Principle 6 - Regular information during criminal proceedings

In the context of criminal proceedings of public interest or other criminal proceedings which have gained the particular attention of the public, judicial authorities and police services should inform the media about their essential acts, so long as this does not prejudice the secrecy of investigations and police inquiries or delay or impede the outcome of the proceedings. In cases of criminal proceedings which continue for a long period, this information should be provided regularly.

Principle 7 - Prohibition of the exploitation of information

Judicial authorities and police services should not exploit information about on-going criminal proceedings for commercial purposes or purposes other than those relevant to the enforcement of the law.

Principle 8 - Protection of privacy in the context of on-going criminal proceedings

The provision of information about suspects, accused or convicted persons or other parties to criminal proceedings should respect their right to protection of privacy in accordance with Article 8 of the Convention. Particular protection should be given to parties who are minors or

other vulnerable persons, as well as to victims, to witnesses and to the families of suspects, accused and convicted. In all cases, particular consideration should be given to the harmful effect which the disclosure of information enabling their identification may have on the persons referred to in this Principle.

Principle 9 - Right of correction or right of reply

Without prejudice to the availability of other remedies, everyone who has been the subject of incorrect or defamatory media reports in the context of criminal proceedings should have a right of correction or reply, as the case may be, against the media concerned. A right of correction should also be available with respect to press releases containing incorrect information which have been issued by judicial authorities or police services.

Principle 10 - Prevention of prejudicial influence

In the context of criminal proceedings, particularly those involving juries or lay judges, judicial authorities and police services should abstain from publicly providing information which bears a risk of substantial prejudice to the fairness of the proceedings.

Principle 11 - Prejudicial pre-trial publicity

Where the accused can show that the provision of information is highly likely to result, or has resulted, in a breach of his or her right to a fair trial, he or she should have an effective legal remedy.

Principle 12 - Admission of journalists

Journalists should be admitted to public court hearings and public pronouncements of judgements without discrimination and without prior accreditation requirements. They should not be excluded from court hearings, unless and as far as the public is excluded in accordance with Article 6 of the Convention.

Principle 13 - Access of journalists to courtrooms

The competent authorities should, unless it is clearly impracticable, provide in courtrooms a number of seats for journalists which is sufficient in accordance with the demand, without excluding the presence of the public as such.

Principle 14 - live reporting and recordings in court rooms

Live reporting or recordings by the media in court rooms should not be possible unless and as far as expressly permitted by law or the competent judicial authorities. Such reporting should be authorised only where it does not bear a serious risk of undue influence on victims, witnesses, parties to criminal proceedings, juries or judges.

Principle 15 - Support for media reporting

Announcements of scheduled hearings, indictments or charges and other information of relevance to legal reporting should be made available to journalists upon simple request by the competent authorities in due time, unless impracticable. Journalists should be allowed, on

a non-discriminatory basis, to make or receive copies of publicly pronounced judgments. They should have the possibility to disseminate or communicate these judgments to the public.

Principle 16 - Protection of witnesses

The identity of witnesses should not be disclosed, unless a witness has given his or her prior consent, the identification of a witness is of public concern, or the testimony has already been given in public. The identity of witnesses should never be disclosed where this endangers their lives or security. Due respect shall be paid to protection programmes for witnesses, especially in criminal proceedings against organised crime or crime within the family.

Principle 17 - Media reporting on the enforcement of court sentences

Journalists should be permitted to have contacts with persons serving court sentences in prisons, as far as this does not prejudice the fair administration of justice, the rights of prisoners and prison officers or the security of a prison.

Principle 18 - Media reporting after the end of court sentences

In order not to prejudice the re-integration into society of persons who have served court sentences, the right to protection of privacy under Article 8 of the Convention should include the right to protect the identity of these persons in connection with their prior offence after the end of their court sentences, unless they have expressly consented to the disclosure of their identity or they and their prior offence are of public concern again or have become of public concern again.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation Rec (2004) 16[1]

of the Committee of Ministers to member states on the right of reply in the new media environment

(Adopted by the Committee of Ministers on 15 December 2004, at the 909th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and promoting the ideals and principles which are their common heritage;

Recalling its Resolution (74) 26 on the right of reply - position of the individual in relation to the press, the provisions of which should apply to all media;

Noting that, since the adoption of this Resolution, a number of major technological developments have taken place, necessitating a revision of this text in order to adapt it to the current situation of the media sector in Europe;

Recalling, furthermore, that the European Convention on Transfrontier Television (ETS No. 132) refers not only to the right of reply but also to other comparable legal or administrative remedies;

Reaffirming that the right of reply should protect any legal or natural person from any information presenting inaccurate facts concerning that person and affecting his or her rights, and considering consequently that the dissemination of opinions and ideas must remain outside the scope of this Recommendation;

Considering that the right of reply is a particularly appropriate remedy in the online environment due to the possibility of instant correction of contested information and the technical ease with which replies from concerned persons can be attached to it;

Considering that it is also in the interest of the public to receive information from different sources, thereby guaranteeing that they receive complete information;

Acknowledging that the right of reply can be assured not only through legislation, but also through co-regulatory or self-regulatory measures;

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[1] When adopting this Recommendation, the Permanent Representatives of the United Kingdom and the Slovak Republic indicated that, in accordance with Article 10.2 *c* of the Rules of Procedure for the meetings of the Ministers' Deputies, they reserved the right of their Governments to comply or not with the Recommendation, in so far as it referred to online services.

Emphasising that the right of reply is without prejudice to other remedies available to persons whose right to dignity, honour, reputation or privacy have been violated in the media,

Recommends that the governments of the member states should examine and, if necessary, introduce in their domestic law or practice a right of reply or any other equivalent remedy, which allows a rapid correction of incorrect information in online or off-line media along the lines of the following minimum principles, without prejudice to the possibility to adjust their exercise to the particularities of each type of media.

Definition

For the purposes of this Recommendation:

The term "medium" refers to any means of communication for the periodic dissemination to the public of edited information, whether on-line or off-line, such as newspapers, periodicals, radio, television and web-based news services.

Minimum principles

1. Scope of the right of reply

Any natural or legal person, irrespective of nationality or residence, should be given a right of reply or an equivalent remedy offering a possibility to react to any information in the media presenting inaccurate facts about him or her and which affect his/her personal rights.

2. Promptness

The request for a reply should be addressed to the medium concerned within a reasonably short time from the publication of the contested information. The medium in question should make the reply public without undue delay.

3. Prominence

The reply should be given, as far as possible, the same prominence as was given to the contested information in order for it to reach the same public and with the same impact.

4. Free of charge

The reply should be made public free of charge for the person concerned.

5. Exceptions

By way of exception, national law or practice may provide that the request for a reply may be refused by the medium in question in the following cases:

- if the length of the reply exceeds what is necessary to correct the contested information;

- if the reply is not limited to a correction of the facts challenged;

- if its publication would involve a punishable act, would render the content provider liable to civil law proceedings or would transgress standards of public decency;

- if it is considered contrary to the legally protected interests of a third party;

- if the individual concerned cannot show the existence of a legitimate interest;

- if the reply is in a language different from that in which the contested information was made public;

- if the contested information is a part of a truthful report on public sessions of the public authorities or the courts.

6. Safeguarding an effective exercise of the right of reply

In order to safeguard the effective exercise of the right of reply, the media should make public the name and contact details of the person to whom requests for a reply can be addressed.

For the same purpose, national law or practice should determine to what extent the media are obliged to conserve, for a reasonable length of time, a copy of information or programmes made publicly available or, at least, while a request for inserting a reply can be made, or while a dispute is pending before a tribunal or other competent body.

7. Electronic archives

If the contested information is kept publicly available in electronic archives and a right of reply has been granted, a link should be established between the two if possible, in order to draw the attention of the user to the fact that the original information has been subject to a response.

8. Settlement of disputes

If a medium refuses a request to make a reply public, or if the reply is not made public in a manner satisfactory for the person concerned, the possibility should exist for the latter to bring the dispute before a tribunal or another body with the power to order the publication of the reply.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation Rec(2006)3

of the Committee of Ministers to member states on the UNESCO Convention on the protection and promotion of the diversity of cultural expressions

(Adopted by the Committee of Ministers on 1 February 2006 at the 954th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling that, under the terms of the Universal Declaration of Human Rights, everyone is entitled to the realisation of cultural rights indispensable for her or his dignity and the free development of her or his personality and has the right freely to participate in the cultural life of the community;

Recalling also that the aims of the Council of Europe shall be pursued through the discussion of questions of common concern among member states, associating also civil society, and by agreements and common action, *inter alia,* in cultural matters;

Underlining, in this connection, the importance of the right to freedom of expression, which includes freedom to hold opinions and to receive and impart information and ideas without interference;

Noting that, at its 33rd Session (3-21 October 2005), the General Conference of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) adopted a Convention on the protection and promotion of the diversity of cultural expressions, which:

- reaffirms the sovereign right of states to formulate and implement their cultural policies and to adopt measures to protect and promote the diversity of cultural expressions;

- attaches considerable importance to international and regional co-operation, as well as to the participation of civil society, with a view to the creation of conditions conducive to the protection and promotion of the diversity of cultural expressions, notably in order to facilitate dialogue on cultural policy which, in turn, may involve regulatory measures, financial assistance, the establishment of and support to public institutions and enhancing diversity of the media including through public service broadcasting;

Observing the commonality between the objectives and guiding principles set out in above-mentioned UNESCO Convention and a number of Council of Europe instruments concerning culture as well as the media;

Noting that the said UNESCO Convention will enter into force after ratification, acceptance, approval or accession by thirty states or regional economic integration organisations,

Recalling the Council of Europe's Strategy for Developing Intercultural Dialogue adopted at the Faro Ministerial Conference, on 27 and 28 October 2005, and in particular the establishment in this context of a Platform of inter-institutional co-operation between the Council of Europe and UNESCO, open to other interested international or regional partners;

Welcomes the adoption by the General Conference of UNESCO of the Convention on the protection and promotion of the diversity of cultural expressions;

Declares that, in the context of its work, the Council of Europe will have due regard to the provisions of the UNESCO Convention and will contribute to their implementation;

Recommends that, at the earliest opportunity, Council of Europe member states ratify, accept, approve or accede to the UNESCO Convention on the protection and promotion of the diversity of cultural expressions.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation Rec(2006)12

of the Committee of Ministers to member states on empowering children in the new information and communications environment

(Adopted by the Committee of Ministers on 27 September 2006 at the 974th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,

Reaffirming the commitment of member states to the fundamental right to freedom of expression and to receive and impart information and ideas without interference by public authorities and regardless of frontiers, as guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights, ETS No. 5);

Underlining, in this connection, that the development of information and communication technologies and services should contribute to everyone's enjoyment of the rights guaranteed by Article 10 of the European Convention on Human Rights, for the benefit of each individual and the democratic culture of every society;

Recalling the Declaration of the Committee of Ministers on freedom of communication on the Internet of 2003 which stresses that such freedom should not prejudice the dignity or fundamental rights and freedoms of others, especially children;

Aware that communication using new information and communication technologies and services must respect the right to privacy and to secrecy of correspondence, as guaranteed by Article 8 of the European Convention on Human Rights and as elaborated by Recommendation No. R (99) 5 on the protection of privacy on the Internet;

Mindful of the potential impact, both positive and negative, that information and communication technologies and services can have on the enjoyment of fundamental rights in the information society and the particular role and responsibility of member states in securing the protection of those rights;

Bearing in mind the various types of illegal content and behaviour referred to in the Convention on Cybercrime (ETS No. 185) and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189);

Conscious of the risk of harm from content and behaviour in the new information and communications environment which may not always be illegal but which are capable of adversely affecting the physical, emotional and psychological well-being of children, such as

online pornography, the portrayal and glorification of violence and self-harm, demeaning, discriminatory or racist expressions or apologia for such conduct, solicitation (grooming), bullying, stalking and other forms of harassment;

Recalling, in this respect, Recommendation No. R (97) 19 on the portrayal of violence in the electronic media and Recommendation Rec(2001)8 on self-regulation concerning cyber-content;

Convinced that an essential part of the response to content and behaviour carrying a risk of harm lies in the development and provision of information literacy, defined as the competent use of tools providing access to information, the development of critical analysis of content and the appropriation of communication skills to foster citizenship and creativity, and training initiatives for children and their educators in order for them to use information and communication technologies and services in a positive and responsible manner;

Underlining the need for empowerment with regard to information and communication services and technologies, as referred to in the 1999 Declaration on a European policy for new information technologies, and the importance of developing competence in this field, in particular through training at all levels of the education system, formal and informal, and throughout life;

Encouraging, in this connection, active, critical and discerning use of these services and technologies, the promotion of better and wider use of the new information technologies in teaching and learning, and the use of information networks in the education field;

Recalling the importance of education for democratic citizenship which provides children and their educators with the necessary capabilities (knowledge, skills, understanding, attitudes, human rights values and behaviour) they need to live, actively participate and act responsibly with respect to the rights of others, as referred to in Recommendation Rec(2002)12 on education for democratic citizenship;

Recalling the adopted texts of the 7th European Ministerial Conference on Mass Media Policy held in Kyiv in 2005, in particular Resolution No. 3 and the Action Plan, regarding the need to support steps to promote, at all stages of education and as part of ongoing learning, media literacy which involves active and critical use of all media as well as the promotion by member states of the adoption of a adequate level of protection for children against harmful content;

Recalling also the pledge in the Action Plan, adopted at the Third Summit of the Heads of State and Government of the Council of Europe held in Warsaw in 2005, to pursue work on children in the information society, in particular as regards media literacy skills and protection against harmful content;

Noting the important role of private sector and civil society actors in promoting the enjoyment of fundamental rights, such as freedom of expression and respect for human dignity in the information society, as highlighted in the 2005 Declaration of the Committee of Ministers on human rights and the rule of law in the Information Society,

Recommends that member states develop, where necessary, a coherent information literacy and training strategy which is conducive to empowering children and their educators in order

for them to make the best possible use of information and communication services and technologies, having regard to the following:

i. member states should ensure that children are familiarised with, and skilled in, the new information and communications environment and that, to this end, information literacy and training for children become an integral part of school education from an early stage in their lives;

ii. member states should ensure that children acquire the necessary skills to create, produce and distribute content and communications in the new information and communications environment in a manner which is both respectful of the fundamental rights and freedoms of others and conducive to the exercise and enjoyment of their own fundamental rights, in particular the right to freedom of expression and information balanced with the right to private life;

iii. member states should ensure that such skills enable children to better understand and deal with content (for example violence and self-harm, pornography, discrimination and racism) and behaviours (such as grooming, bullying, harassment or stalking) carrying a risk of harm, thereby promoting a greater sense of confidence, well-being and respect for others in the new information and communications environment;

iv. in this connection, member states should encourage and facilitate:

- the development of pedagogical material and learning tools for the use of educators to enable them to recognise and react responsibly to content and behaviour carrying a risk of harm;

- strategies to raise awareness, inform and train educators so that they may effectively empower children in their care, in particular to prevent and limit their exposure to content and behaviour carrying a risk of harm;

- programmes of research which examine the motivations and conduct of children at different developmental stages, with the assistance of public and private sector actors who handle content and communications regarding children's use of information and communication services and technologies.

Member states should have regard to the desirability of pursuing a multi-stakeholder approach to empowering children in the new information and communications environment, as follows:

i. in partnership with governments, the private sector, as one of the key actors in the information society, should be encouraged to promote and facilitate children's skills, well-being and related information literacy and training initiatives. In this connection, actors in this sector should regularly assess and evaluate their information policies and practices regarding child safety and responsible use, while respecting fundamental rights, in particular the right to freedom of expression and to receive and impart information and opinions without interference and regardless of frontiers;

ii. in partnership with governments and the private sector, civil society actors, as key catalysts in promoting the human rights dimension of the information society, should be

encouraged to actively monitor, evaluate and promote children's skills, well-being and related information literacy and training initiatives;

iii. the media should be encouraged to be attentive to their role as a vital source of information and reference for children and their educators in the new information and communications environment, with particular regard to fundamental rights.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation CM/Rec(2007)2

of the Committee of Ministers to member states on media pluralism and diversity of media content

(Adopted by the Committee of Ministers on 31 January 2007 at the 985th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and promoting the ideals and principles which are their common heritage and fostering economic and social development;

Recalling Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), which guarantees freedom of expression and freedom to receive and impart information and ideas without interference by public authority and regardless of frontiers;

Recalling its Declaration on the freedom of expression and information, adopted on 29 April 1982, which stresses that a free flow and wide circulation of information of all kinds across frontiers is an important factor for international understanding, for bringing peoples together and for the mutual enrichment of cultures;

Recalling its Recommendation Rec(2000)23 on the independence and functions of regulatory authorities for the broadcasting sector and its Explanatory Memorandum, which stress the importance of the political, financial and operational independence of broadcasting regulators;

Recalling the opportunities provided by digital technologies as well as the potential risks related to them in modern society as stated in its Recommendation Rec(2003)9 on measures to promote the democratic and social contribution of digital broadcasting;

Recalling its Recommendation No. R (99) 1 on measures to promote media pluralism and its Recommendation No. R (94) 13 on measures to promote media transparency, the provisions of which should jointly apply to all media;

Noting that, since the adoption of Recommendations No. R (99) 1 and No. R (94) 13, important technological developments have taken place, which make a revision of these texts necessary in order to adapt them to the current situation of the media sector in Europe;

Having regard to its Declaration on cultural diversity, adopted on 7 December 2000, and to the provisions on media pluralism contained in the European Convention on Transfrontier Television (ETS No. 132);

Bearing in mind the provisions of the UNESCO Convention on the protection and promotion of the diversity of cultural expressions, adopted on 20 October 2005, which proclaim the sovereign right of states to formulate and implement their cultural policies and to adopt measures to protect and promote intercultural dialogue and the diversity of cultural expressions, in particular, measures aimed at enhancing the diversity of the media including through public service broadcasting;

Reaffirming that media pluralism and diversity of media content are essential for the functioning of a democratic society and are the corollaries of the fundamental right to freedom of expression and information as guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Considering that the demands which result from Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms will be fully satisfied only if each person is given the possibility to form his or her own opinion from diverse sources of information;

Recognising the crucial contribution of the media in fostering public debate, political pluralism and awareness of diverse opinions, notably by providing different groups in society – including cultural, linguistic, ethnic, religious or other minorities – with an opportunity to receive and impart information, to express themselves and to exchange ideas;

Recalling the importance of transparency of media ownership so as to ensure that the authorities in charge of the implementation of regulations concerning media pluralism can take informed decisions, and that the public can make its own analysis of the information, ideas and opinions expressed by the media;

Reaffirming that, in order to protect and actively promote the pluralistic expressions of ideas and opinions as well as cultural diversity, member states should adapt the existing regulatory frameworks, particularly with regard to media ownership, and adopt any regulatory and financial measures called for in order to guarantee media transparency and structural pluralism as well as diversity of the content distributed;

Recalling that the efforts expected from all member states in this field should take into account the necessary editorial independence of newsrooms, the stakes, risks and opportunities inherent to the development of new means of communication, as well as the specific situation of each of the audiovisual and written media that these measures affect, whether it be print and on-line press services, or radio and television services, whichever platforms are used for the transmission;

Bearing in mind that national media policy may also be oriented to preserve the competitiveness of domestic media companies in the context of the globalisation of markets and that the transnational media concentration phenomena can have a negative impact on diversity of content,

Recommends that governments of member states:

i. consider including in national law or practice the measures set out below;

ii. evaluate at national level, on a regular basis, the effectiveness of existing measures to promote media pluralism and content diversity, and examine the possible need to revise them in the light of economic, technological and social developments on the media;

iii. exchange information about the structure of media, domestic law and studies regarding concentration and media diversity.

Recommended measures

I. Measures promoting structural pluralism of the media

1. General principle

1.1. Member states should seek to ensure that a sufficient variety of media outlets provided by a range of different owners, both private and public, is available to the public, taking into account the characteristics of the media market, notably the specific commercial and competition aspects.

1.2. Where the application of general competition rules in the media sector and access regulation are not sufficient to guarantee the observance of the demands concerning cultural diversity and the pluralistic expressions of ideas and opinions, member states should adopt specific measures.

1.3. Member states should in particular envisage adapting their regulatory framework to economic, technological and social developments taking into account, in particular, the convergence and the digital transition and therefore include in it all the elements of media production and distribution.

1.4. When adapting their regulatory framework, member states should pay particular attention to the need for effective and manifest separation between the exercise of political authority or influence and control of the media or decision making as regards media content.

2. Ownership regulation

2.1. Member states should consider the adoption of rules aimed at limiting the influence which a single person, company or group may have in one or more media sectors as well as ensuring a sufficient number of diverse media outlets.

2.2. These rules should be adapted to the size and the specific characteristics of the national, regional or local audiovisual media and/or text-based media market to which they would be applicable.

2.3. These rules may include introducing thresholds based on objective and realist criteria, such as the audience share, circulation, turnover/revenue, the share capital or voting rights.

2.4. These rules should make it possible to take into account the horizontal integration phenomena, understood as mergers in the same branch of activity – in this case mono-media and multi-media concentrations –, as well as vertical integration phenomena, that is, the control by a single person, company or group of some of the key elements of production, distribution and related activities such as advertisement or telecommunications.

2.5. Furthermore, member states should review on a regular basis the established thresholds in the light of ongoing technological, economic and social developments in order not to hinder innovations in the media field.

2.6. Whether they are, or are not, specific to the audiovisual and written media, the authorities responsible for the application of these rules should be vested with the powers required to accomplish their mission, in particular, the power to refuse an authorisation or a license request and the power to act against concentration operations of all forms, notably to divest existing media properties where unacceptable levels of concentration are reached and/or where media pluralism is threatened. Their competences could therefore include the power to require commitments of a structural nature or with regard to conduct from participants in such operations and the capacity to impose sanctions, if need be.

3. Public service media

3.1. Member states should ensure that existing public service media organisations occupy a visible place in the new media landscape. They should allow public service media organisations to develop in order to make their content accessible on a variety of platforms, notably in order to ensure the provision of high-quality and innovative content in the digital environment and to develop a whole range of new services including interactive facilities.

3.2. Member states should encourage public service media to play an active role in promoting social cohesion and integrating all communities, social groups and generations, including minority groups, young people, the elderly, underprivileged and disadvantaged social categories, disabled persons, etc., while respecting their different identities and needs. In this context, attention should be paid to the content created by and for such groups, and to their access to, and presence and portrayal in, public service media. Due attention should also be paid to gender equality issues.

3.3. Member states should invite public service media organisations to envisage the introduction of forms of consultation with the public, which may include the creation of advisory structures, where appropriate reflecting the public in its diversity, so as to reflect in their programming policy the wishes and requirements of the public.

3.4. Member states should adopt the mechanisms needed to guarantee the independence of public service media organisations vital for the safeguard of their editorial independence and for their protection from control by one or more political or social groups. These mechanisms should be established in co-operation with civil society.

3.5. Member states should define ways of ensuring appropriate and secure funding of public service media from a variety of sources – which may include licence fees, public funding, commercial revenues and/or individual payment – necessary for the discharge of their democratic, social and cultural functions.

4. Other media contributing to pluralism and diversity

Member states should encourage the development of other media capable of making a contribution to pluralism and diversity and providing a space for dialogue. These media could, for example, take the form of community, local, minority or social media. The content

of such media can be created mainly, but not exclusively, by and for certain groups in society, can provide a response to their specific needs or demands, and can serve as a factor of social cohesion and integration. The means of distribution, which may include digital technologies, should be adapted to the habits and needs of the public for whom these media are intended.

5. Access regulation and interoperability

5.1. Member states should ensure that content providers have fair access to electronic communication networks.

5.2. In order to promote the development of new means of communication and new platforms and reduce the risk of bottlenecks that block the availability of a broad variety of media content, member states should encourage a greater interoperability of software and equipment, as well as the use of open standards by the manufacturers of software and equipment and by the operators of the media and the electronic communications sectors.

5.3. This result should be obtained by means of improved co-operation between all interested parties, supported, if necessary and with the aim of not hindering innovation, by the relevant authorities.

5.4. Member states should ensure that their regulatory bodies and other relevant authorities have the necessary skills in order to assess how economic and technical developments will affect the structure of the media and their ability to perform their cultural role.

6. Other support measures

6.1. Member states should take any financial and regulatory measures necessary to protect and promote structural pluralism of audiovisual and print media.

6.2. These measures may include support and encouragement aimed at facilitating the digital switchover for traditional broadcast media, and, where appropriate, the digital transition for print media.

II. Measures promoting content diversity

1. General principle

Pluralism of information and diversity of media content will not be automatically guaranteed by the multiplication of the means of communication offered to the public. Therefore, member states should define and implement an active policy in this field, including monitoring procedures, and adopt any necessary measures in order to ensure that a sufficient variety of information, opinions and programmes is disseminated by the media and is available to the public.

2. Promotion of a wider democratic participation and internal diversity

2.1. Member states should, while respecting the principle of editorial independence, encourage the media to supply the public with a diversity of media content capable of promoting a critical debate and a wider democratic participation of persons belonging to all communities and generations.

2.2. Member states should, in particular, encourage the media to contribute to intercultural and inter-religious dialogue, so as to promote mutual respect and tolerance and to prevent potential conflicts through discussions.

To this end, member states should:

- on the one hand, encourage the media to adopt or strengthen a voluntary policy promoting minorities in their internal organisation in all its branches, in order to reflect society's diverse composition and reinforce social cohesion;

- on the other hand, in order to take into account the emergence of new means of communication resulting from dynamic technological changes, consider taking actions in order to promote digital media literacy and to bridge the so-called "digital divide".

3. Allocation of broadcasting licences and must carry/must offer rules

3.1. Member states should consider introducing measures to promote and to monitor the production and provision of diverse content by media organisations. In respect of the broadcasting sector, such measures could be to require in broadcasting licences that a certain volume of original programmes, in particular as regards news and current affairs, is produced or commissioned by broadcasters.

3.2. Member states should consider the introduction of rules aimed at preserving a pluralistic local media landscape, ensuring in particular that syndication, understood as the centralised provision of programmes and related services, does not endanger pluralism.

3.3. Member states should envisage, where necessary, adopting must carry rules for other distribution means and delivery platforms than cable networks. Moreover, in the light of the digitisation process - especially the increased capacity of networks and proliferation of different networks - member states should periodically review their must carry rules in order to ensure that they continue to meet well-defined general interest objectives. Member states should explore the relevance of a must offer obligation in parallel to the must carry rules so as to encourage public service media and principal commercial media companies to make their channels available to network operators that wish to carry them. Any resulting measures should take into account copyright obligations.

4. Support measures

4.1. Support measures for the creation, production and distribution of audiovisual, written and all types of media contents which make a valuable contribution to media diversity should be considered. Such measures could also serve to protect and promote the diversity of the sources of information, such as independent news agencies and investigative journalism. Support measures for media entities printing or broadcasting in a minority language should also be considered.

4.2. Without neglecting competition considerations, any of the above support measures should be granted on the basis of objective and non-partisan criteria, within the framework of transparent procedures and subject to independent control. The conditions for granting

support should be reconsidered periodically to avoid accidental encouragement for any media concentration process or the undue enrichment of enterprises benefiting from support**.**

5. Raising awareness of the role of medias

5.1. Member states should support the training of media professionals, including on-going training, and encourage such training to address the role that media professionals can play in favour of diversity. Society at large should be made aware of this role.

5.2. Diversity could be included as an objective in the charters of media organisations and in codes of ethics adopted by media professionals.

III. Media transparency

1. Member states should ensure that the public have access to the following types of information on existing media outlets:

- information concerning the persons or bodies participating in the structure of the media and on the nature and the extent of the respective participation of these persons or bodies in the structure concerned and, where possible, the ultimate beneficiaries of this participation;

- information on the nature and the extent of the interests held by the above persons and bodies in other media or in media enterprises, even in other economic sectors;

- information on other persons or bodies likely to exercise a significant influence on the programming policy or editorial policy;

- information regarding the support measures granted to the media;

- information on the procedure applied in respect of the right of reply and complaint.

2. Member states should prompt the media to take any measures which could allow the public to make its own analysis of information, ideas and opinions expressed in the media.

IV. Scientific research

1. Member states should support scientific research and study in the field of media concentration and pluralism and promote public debate on these matters. Particular attention could be paid to the effect of media concentration on diversity of media content, on the balance between entertainment programmes, and information and programmes fostering the public debate, on the one hand, and on the contribution of the media to intercultural dialogue on the other.

2. Member states should support international research efforts focused on transnational media concentration and its impact on different aspects of media pluralism.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation CM/Rec(2007)3

of the Committee of Ministers to member states on the remit of public service media in the information society

(Adopted by the Committee of Ministers on 31 January 2007 at the 985th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles that are their common heritage;

Recalling the commitment of member states to the fundamental right to freedom of expression and information, as guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Recalling the importance for democratic societies of a wide variety of independent and autonomous media, able to reflect the diversity of ideas and opinions, and that new information and communication techniques and services must be effectively used to broaden the scope of freedom of expression, as stated in its Declaration on the freedom of expression and information (April 1982);

Bearing in mind Resolution No. 1 on the future of public service broadcasting adopted at the 4th European Ministerial Conference on Mass Media Policy (Prague, December 1994);

Recalling its Recommendation No. R (96) 10 on the guarantee of the independence of public service broadcasting and its Recommendation Rec(2003)9 on measures to promote the democratic and social contribution of digital broadcasting, as well as its Declaration on the guarantee of the independence of public service broadcasting in the member states (September 2006);

Recalling Recommendation 1641 (2004) of the Parliamentary Assembly of the Council of Europe on public service broadcasting, calling for the adoption of a new major policy document on public service broadcasting taking stock of recent technological developments, as well as the report on public service broadcasting by the Parliamentary Assembly's Committee on Culture, Science and Education (Doc. 10029, January 2004), noting the need for the evolution and modernisation of this sector, and the positive reply of the Committee of Ministers to this recommendation;

Bearing in mind the political documents adopted at the 7th European Ministerial Conference on Mass Media Policy (Kyiv, March 2005) and, more particularly, the objective set out in the

Action Plan to examine how the public service remit should, as appropriate, be developed and adapted by member states to suit the new digital environment;

Recalling the UNESCO Convention on the protection and promotion of the diversity of cultural expressions (October 2005), which attaches considerable importance to, *inter alia*, the creation of conditions conducive to diversity of the media including through public service broadcasting;

Conscious of the need to safeguard the fundamental objectives of the public interest in the information society, including freedom of expression and access to information, media pluralism, cultural diversity, and the protection of minors and human dignity, in conformity with the Council of Europe standards and norms;

Underlining the specific role of public service broadcasting, which is to promote the values of democratic societies, in particular respect for human rights, cultures and political pluralism; and with regard to its goal of offering a wide choice of programmes and services to all sectors of the public, promoting social cohesion, cultural diversity and pluralist communication accessible to everyone;

Mindful of the fact that growing competition in broadcasting makes it more difficult for many commercial broadcasters to maintain the public value of their programming, especially in their free-to-air services;

Conscious of the fact that globalisation and international integration, as well as the growing horizontal and vertical concentration of privately-owned media at the national and international levels, have far-reaching effects for states and their media systems;

Noting that in the information society, the public, and especially the younger generations, more and more often turn to the new communication services for content and for the satisfaction of their communication needs, at the expense of traditional media;

Convinced therefore that the public service remit is all the more relevant in the information society and that it can be discharged by public service organisations via diverse platforms and an offer of various services, resulting in the emergence of public service media, which, for the purpose of this recommendation, does not include print media;

Recognising the continued full legitimacy and the specific objectives of public service media in the information society;

Persuaded that, while paying attention to market and competition questions, the common interest requires that public service media be provided with adequate funds for the fulfilment of the public service remit as conferred on them;

Recognising the right of member states to define the remits of individual public service media in accordance with their own national circumstances;

Acknowledging that the remits of individual public service media may vary within each member state, and that these remits may not necessarily include all the principles set out in this recommendation,

Recommends that the governments of member states:

i. guarantee the fundamental role of the public service media in the new digital environment, setting a clear remit for public service media, and enabling them to use new technical means to better fulfil this remit and adapt to rapid changes in the current media and technological landscape, and to changes in the viewing and listening patterns and expectations of the audience;

ii. include, where they have not already done so, provisions in their legislation/regulations specific to the remit of public service media, covering in particular the new communication services, thereby enabling public service media to make full use of their potential and especially to promote broader democratic, social and cultural participation, *inter alia*, with the help of new interactive technologies;

iii. guarantee public service media, via a secure and appropriate financing and organisational framework, the conditions required to carry out the function entrusted to them by member states in the new digital environment, in a transparent and accountable manner;

iv. enable public service media to respond fully and effectively to the challenges of the information society, respecting the public/private dual structure of the European electronic media landscape and paying attention to market and competition questions;

v. ensure that universal access to public service media is offered to all individuals and social groups, including minority and disadvantaged groups, through a range of technological means;

vi. disseminate widely this recommendation and, in particular, bring to the attention of public authorities, public service media, professional groups and the public at large, the guiding principles set out below, and ensure that the necessary conditions are in place for these principles to be put into practice.

Guiding principles concerning the remit of public service mediabin the information society

I. The public service remit: maintaining the key elements

1. Member states have the competence to define and assign a public service remit to one or more specific media organisations, in the public and/or private sector, maintaining the key elements underpinning the traditional public service remit, while adjusting it to new circumstances. This remit should be performed with the use of state-of-the-art technology appropriate for the purpose. These elements have been referred to on several occasions in Council of Europe documents, which have defined public service broadcasting as, amongst other things:

a) a reference point for all members of the public, offering universal access;

b) a factor for social cohesion and integration of all individuals, groups and communities;

c) a source of impartial and independent information and comment, and of innovatory and varied content which complies with high ethical and quality standards;

d) a forum for pluralistic public discussion and a means of promoting broader democratic participation of individuals;

e) an active contributor to audiovisual creation and production and greater appreciation and dissemination of the diversity of national and European cultural heritage.

2. In the information society, relying heavily on digital technologies, where the means of content distribution have diversified beyond traditional broadcasting, member states should ensure that the public service remit is extended to cover provision of appropriate content also via new communication platforms.

II. Adapting the public service remit to the information society

a. A reference point for all members of the public, with universal access offered

3. Public service media should offer news, information, educational, cultural, sports and entertainment programmes and content aimed at the various categories of the public and which, taken as a whole, constitute an added public value compared to those of other broadcasters and content providers.

4. The principle of universality, which is fundamental to public service media, should be addressed having regard to technical, social and content aspects. Member states should, in particular, ensure that public service media can be present on significant platforms and have the necessary resources for this purpose.

5. In view of changing user habits, public service media should be able to offer both generalist and specialised contents and services, as well as personalised interactive and on-demand services. They should address all generations, but especially involve the younger generation in active forms of communication, encouraging the provision of user-generated content and establishing other participatory schemes.

6. Member states should see to it that the goals and means for achievement of these goals by public service media are clearly defined, in particular regarding the use of thematic services and new communication services. This may include regular evaluation and review of such activities by the relevant bodies, so as to ensure that all groups in the audience are adequately served.

b. A factor for social cohesion and integration of all individuals, groups and communities

7. Public service media should be adapted to the new digital environment to enable them to fulfil their remit in promoting social cohesion at local, regional, national and international levels, and to foster a sense of co-responsibility of the public for the achievement of this objective.

8. Public service media should integrate all communities, social groups and generations, including minority groups, young people, old persons, the most disadvantaged social categories, persons with disabilities, while respecting their different identities and needs. In this context, attention should be paid to the content created by and for such groups, and to

their access to, and presence and portrayal in, public service media. Due attention should be also paid to gender equality issues.

9. Public service media should act as a trusted guide of society, bringing concretely useful knowledge into the life of individuals and of different communities in society. In this context, they should pay particular attention to the needs of minority groups and underprivileged and disadvantaged social categories. This role of filling a gap in the market, which is an important part of the traditional public service media remit, should be maintained in the new digital environment.

10. In an era of globalisation, migration and integration at European and international levels, the public service media should promote better understanding among peoples and contribute to intercultural and inter-religious dialogue.

11. Public service media should promote digital inclusion and efforts to bridge the digital divide by, *inter alia*, enhancing the accessibility of programmes and services on new platforms.

c. A source of impartial and independent information and comment, and of innovatory and varied content which complies with high ethical and quality standards

12. Member states should ensure that public service media constitute a space of credibility and reliability among a profusion of digital media, fulfilling their role as an impartial and independent source of information, opinion and comment, and of a wide range of programming and services, satisfying high ethical and quality standards.

13. When assigning the public service remit, member states should take account of the public service media's role in bridging fragmentation, reducing social and political alienation and promoting the development of civil society. A requirement for this is the independent and impartial news and current affairs content, which should be provided on both traditional programmes and new communication services.

d. A forum for public discussion and a means of promoting broader democratic participation of individuals

14. Public service media should play an important role in promoting broader democratic debate and participation, with the assistance, among other things, of new interactive technologies, offering the public greater involvement in the democratic process. Public service media should fulfil a vital role in educating active and responsible citizens, providing not only quality content but also a forum for public debate, open to diverse ideas and convictions in society, and a platform for disseminating democratic values.

15. Public service media should provide adequate information about the democratic system and democratic procedures, and should encourage participation not only in elections but also in decision-making processes and public life in general. Accordingly, one of the public service media's roles should be to foster citizens' interest in public affairs and encourage them to play a more active part.

16. Public service media should also actively promote a culture of tolerance and mutual understanding by using new digital and online technologies.

17. Public service media should play a leading role in public scrutiny of national governments and international governmental organisations, enhancing their transparency, accountability to the public and legitimacy, helping eliminate any democratic deficit, and contributing to the development of a European public sphere.

18. Public service media should enhance their dialogue with, and accountability to, the general public, also with the help of new interactive services.

e. An active contributor to audiovisual creation and production and to a greater appreciation and dissemination of the diversity of national and European cultural heritage

19. Public service media should play a particular role in the promotion of cultural diversity and identity, including through new communication services and platforms. To this end, public service media should continue to invest in new, original content production, made in formats suitable for the new communication services. They should support the creation and production of domestic audiovisual works reflecting as well local and regional characteristics.

20. Public service media should stimulate creativity and reflect the diversity of cultural activities, through their cultural programmes, in fields such as music, arts and theatre, and they should, where appropriate, support cultural events and performances.

21. Public service media should continue to play a central role in education, media literacy and life-long learning, and should actively contribute to the formation of knowledge-based society. Public service media should pursue this task, taking full advantage of the new opportunities and including all social groups and generations.

22. Public service media should play a particular role in preservation of cultural heritage. They should rely on and develop their archives, which should be digitised, thus being preserved for future generations. In order to be accessible to a broader audience, the audiovisual archives should, where appropriate and feasible, be accessible online. Member states should consider possible options to facilitate the accomplishment of such projects.

23. In their programming and content, public service media should reflect the increasingly multi-ethnic and multicultural societies in which they operate, protecting the cultural heritage of different minorities and communities, providing possibilities for cultural expression and exchange, and promoting closer integration, without obliterating cultural diversity at the national level.

24. Public service media should promote respect for cultural diversity, while simultaneously introducing the audience to the cultures of other peoples around the world.

III. The appropriate conditions required to fulfil the public service remit in the information society

25. Member states should ensure that the specific legal, technical, financial and organisational conditions required to fulfil the public service remit continue to apply in, and are adapted to, the new digital environment. Taking into account the challenges of the information society, member states should be free to organise their own national systems of

public service media, suited to the rapidly changing technological and social realities, while at the same time remaining faithful to the fundamental principles of public service.

a. Legal conditions

26. Member states should establish a clear legal framework for the development of public service media and the fulfilment of their remit. They should incorporate into their legislation provisions enabling public service media to exercise, as effectively as possible, their specific function in the information society and, in particular, allowing them to develop new communication services.

27. To reconcile the need for a clear definition of the remit with the need to respect editorial independence and programme autonomy and to allow for flexibility to adapt public service activities rapidly to new developments, member states should find appropriate solutions, involving, if needed, the public service media, in line with their legal traditions.

b. Technical conditions

28. Member states should ensure that public service media have the necessary technical resources to fulfil their function in the information society. Developing a range of new services would enable them to reach more households, to produce more quality contents, responding to the expectations of the public, and to keep pace with developments in the digital environment. Public service media should play an active role in the technological innovation of the electronic media, as well as in the digital switchover.

c. Financial conditions

29. Member states should secure adequate financing for public service media, enabling them to fulfil their role in the information society, as defined in their remit. Traditional funding models relying on sources such as licence fees, the state budget and advertising remain valid under the new conditions.

30. Taking into account the developments of the new digital technology, member states may consider complementary funding solutions paying due attention to market and competition questions. In particular, in the case of new personalised services, member states may consider allowing public service media to collect remunerations. Member states may also take advantage of public and community initiatives for the creation and financing of new types of public service media. However, none of these solutions should endanger the principle of universality of public service media or lead to discrimination between different groups of society. When developing new funding systems, member states should pay due attention to the nature of the content provided in the interest of the public and in the common interest.

d. Organisational conditions

31. Member states should establish the organisational conditions for public service media that provide the most appropriate background for the delivery of the public service remit in the digital environment. In doing so they should pay due attention to the guarantee of the editorial independence and institutional autonomy of public service media and the particularities of their national media systems, as well as organisational changes needed to take advantage of new production and distribution methods in the digital environment.

32. Member states should ensure that public service media organisations have the capacity and critical mass to operate successfully in the new digital environment, fulfil an extended public service remit and maintain their position in a highly concentrated market.

33. In organising the delivery of the public service remit, member states should make sure that public service media can, as necessary, engage in co-operation with other economic actors, such as commercial media, rights holders, producers of audiovisual content, platform operators and distributors of audiovisual content.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Guidelines

of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis

(Adopted by the Committee of Ministers on 26 September 2007 at the 1005th meeting of the Ministers' Deputies)

Preamble

The Committee of Ministers,

1. Emphasising that freedom of expression and information and freedom of the media are crucial for the functioning of a truly democratic society;

2. Reaffirming that Article 10 of the European Convention on Human Rights (ETS No. 5) and the relevant case law of the European Court of Human Rights remain the fundamental standards concerning the exercise of the right to freedom of expression and information;

3. Deeply concerned by the fact that crisis situations, such as wars and terrorist attacks, are still wide spread and threaten seriously human life and liberty, and the fact that governments, concerned about the survival of society may be tempted to impose undue restrictions on the exercise of this right;

4. Condemning the killings and other attacks on media professionals and recalling its Recommendation No. R (96) 4 on the protection of journalists in situations of conflict and tension;

5. Recalling Resolution No. 1 on freedom of expression and information in times of crisis adopted by the Ministers of states participating in the 7th European Ministerial Conference on Mass Media Policy (Kyiv, 10-11 March 2005);

6. Having taken note of Resolution 1535 (2007) and Recommendation 1783 (2007) of the Parliamentary Assembly of the Council of Europe on threats to the lives and freedom of expression of journalists;

7. Welcoming Resolution 1738 (2006) of the Security Council of the United Nations condemning attacks on media professionals in conflict situations and recognising the urgency and necessity of taking action for the protection of these professionals;

8. Underlining that dialogue and co-operation between governments, media professionals and civil society can contribute to the efforts to guarantee freedom of expression and information in times of crisis;

9. Convinced not only that media coverage can be crucial in times of crisis by providing accurate, timely and comprehensive information, but also that media professionals can make a positive contribution to the prevention or resolution of certain crisis situations by adhering to the highest professional standards and by fostering a culture of tolerance and understanding between different groups in society,

10. Adopts, as an extension and complement to the "Guidelines on human rights and the fight against terrorism" adopted on 11 July 2002, the following guidelines and invites member states to ensure that they are widely disseminated and observed by all relevant authorities.

I. Definitions

1. As used in these guidelines,

- the term "crisis" includes, but is not limited to, wars, terrorist attacks, natural and man-made disasters, i.e. situations in which freedom of expression and information is threatened (for example, by limiting it for security reasons);

- the term "media professionals" covers all those engaged in the collection, processing and dissemination of information intended for the media. The term includes also cameramen and photographers, as well as support staff such as drivers and interpreters.

II. Working conditions of media professionals in crisis situations

Personal safety

2. Member states should assure to the maximum possible extent the safety of media professionals – both national and foreign. The need to guarantee the safety, however, should not be used by member states as a pretext to limit unnecessarily the rights of media professionals such as their freedom of movement and access to information.

3. Competent authorities should investigate promptly and thoroughly the killings and other attacks on media professionals. Where applicable, the perpetrators should be brought to justice under a transparent and rapid procedure.

4. Member states should require from military and civilian agencies in charge of managing crisis situations to take practical steps to promote understanding and communication with media professionals covering such situations.

5. Journalism schools, professional associations and media are encouraged to provide as appropriate general and specialised safety training for media professionals.

6. Employers should strive for the best possible protection of their media staff on dangerous missions, including by providing training, safety equipment and practical counselling. They should also offer them adequate insurance in respect of risks to the physical integrity. International organisations of journalists might consider facilitating the establishment of an insurance system for freelance media professionals covering crisis situations.

7. Media professionals who are expelled from zones with restricted access for disobeying national and international law, inciting violence or hatred in the content of their news or spreading propaganda of warring parties should be accompanied by military forces to a neutral, secure region or a country or embassy.

Freedom of movement and access to information

8. Member states should guarantee freedom of movement and access to information to media professionals in times of crisis. In order to accomplish this task, authorities in charge of managing crisis situations should allow media professionals accredited by their media organisations access to crisis areas.

9. Where appropriate, accreditation systems for media professionals covering crisis situations should be used in accordance with Principle 11 of the Appendix to Recommendation No. R (96) 4 of the Committee of Ministers to member states on the protection of journalists in situations of conflict and tension.

10. If required by national law, accreditation should be given to all media professionals without discrimination according to clear and fast procedures free of bureaucratic obstacles.

11. Military and civilian authorities in charge of managing crisis situations should provide regular information to all media professionals covering the events through briefings, press conferences, press tours or other appropriate means. If possible, the authorities should set up a secure information centre with appropriate equipment for the media professionals.

12. The competent authorities in member states should provide information to all media professionals on an equal basis and without discrimination. Embedded journalists should not get more privileged access to information than the rest except for the advantage naturally due to their attachment to military units.

III. Protection of journalists' sources of information and journalistic material

13. Member states should protect the right of journalists not to disclose their sources of information in accordance with Recommendation No. R (2000) 7 of the Committee of Ministers on the same subject. Member states should implement in their domestic law and practice, as a minimum, the principles appended to this recommendation.

14. With a view, *inter alia*, to ensuring their safety, media professionals should not be required by law-enforcement agencies to hand over information or material (for example, notes, photographs, audio and video recordings) gathered in the context of covering crisis situations nor should such material be liable to seizure for use in legal proceedings. Any exceptions to this principle should be strictly in conformity with Article 10 of the European Convention on Human Rights and the relevant case law of European Court of Human Rights.

IV. Guarantees against misuse of defamation legislation

15. Member states should not misuse in crisis situations libel and defamation legislation and thus limit freedom of expression. In particular, member states should not intimidate media professionals by law suits or disproportionate sanctions in libel and defamation proceedings.

16. The relevant authorities should not use otherwise legitimate aims as a pretext to bring libel and defamation suits against media professionals and thus interfere with their freedom of expression.

V. Guarantees against undue limitations on freedom of expression and information and manipulation of public opinion

17. Member states should not restrict the public's access to information in times of crisis beyond the limitations allowed by Article 10 of the European Convention on Human Rights and interpreted in the case law of the European Court of Human Rights.

18. Member states should always bear in mind that free access to information can help to effectively resolve the crisis and expose abuses that may occur. In response to the legitimate need for information in situations of great public concern, the authorities should guarantee to the public free access to information, including through the media.

19. Member states should not use vague terms when imposing restrictions of freedom of expression and information in times of crisis. Incitement to violence and public disorder should be adequately and clearly defined.

20. International and national courts should always weigh the public's legitimate need for essential information against the need to protect the integrity of court proceedings.

21. Member states should constantly strive to maintain a favourable environment, in line with the Council of Europe standards, for the functioning of independent and professional media, notably in crisis situations. In this respect, special efforts should be made to support the role of public service media as a reliable source of information and a factor for social integration and understanding between the different groups of society.

22. Member states should consider criminal or administrative liability for public officials who try to manipulate, including through the media, public opinion exploiting its special vulnerability in times of crisis.

VI. Responsibilities of media professionals

23. Media professionals need to adhere, especially in times of crisis, to the highest professional and ethical standards, having regard to their special responsibility in crisis situations to make available to the public timely, factual, accurate and comprehensive information while being attentive to the rights of other people, their special sensitivities and their possible feeling of uncertainty and fear.

24. If a system of embedded journalists needs to be maintained and journalists choose to make use of it, they are advised to make this clear in their reports and to point out the source of their information.

25. Self-regulation as the most appropriate mechanism for ensuring that media professionals perform in a responsible and professional way needs to be made more effective in times of crisis. In this regard, co-operation between self-regulatory bodies is encouraged at both the regional and the European levels. Member states, professional organisations of

journalists, other relevant non-governmental organisations and the media are invited to facilitate such co-operation and provide further assistance where appropriate.

26. Media professionals are invited to take into consideration in their work Recommendation No. R (97) 21 of the Committee of Ministers to member states on the media and the promotion of a culture of tolerance and to apply as a minimum the professional practices outlined in the appendix to this recommendation.

VII. Dialogue and co-operation

27. National governments, media organisations, national or international governmental and non-governmental organisations should strive to ensure the protection of freedom of expression and information in times of crisis through dialogue and co-operation.

28. At the national level, relevant stakeholders such as governmental bodies, regulatory authorities, non-governmental organisations and the media including owners, publishers and editors might consider the establishment of voluntary fora to facilitate, through dialogue, the exercise of the right to freedom of expression and information in times of crisis.

29. Media professionals themselves are encouraged, directly or through their representative organisations, to engage in a constructive dialogue with the authorities in situations of crisis.

30. Non-governmental organisations and in particular specialised watchdog organisations are invited to contribute to the safeguarding of freedom of expression and information in times of crisis in various ways, such as:

- maintaining help lines for consultation and for reporting harassment of journalists and other alleged violations of the right to freedom of expression and information;

- offering support, including in appropriate cases free legal assistance, to media professionals facing, as a result of their work, lawsuits or problems with the public authorities;

- co-operating with the Council of Europe and other relevant organisations to facilitate exchange of information and to effectively monitor possible violations.

31. Governmental and non-governmental donor institutions are strongly encouraged to include media development and media assistance as part of their strategies for conflict prevention, conflict resolution and post-conflict reconstruction.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

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

(Adopted by the Committee of Ministers on 26 September 2007 at the 1005th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,

Reaffirming the commitment of member states to the fundamental right to freedom of expression and to receive and impart information and ideas without interference by public authorities and regardless of frontiers, as guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, ETS No. 5);

Mindful of the potential impact, both positive and negative, that information and communication technologies and services can have on the enjoyment of human rights and fundamental freedoms in the information society and the particular roles and responsibilities of member states in securing the protection and promotion of those rights;

Underlining, in this connection, that the development of information and communication technologies and services should contribute to everyone's enjoyment of the rights guaranteed by Article 10 of the ECHR, for the benefit of each individual and the democratic culture of every society;

Recalling Recommendation No. R (99) 14 of the Committee of Ministers on universal community service concerning new communication and information services, which underlines the need to continually develop these services in order to further the right of everyone to express, to seek, to receive and to impart information and ideas, for the benefit of every individual and society as a whole;

Stressing the importance of free or affordable access to content and services in view of the convergence of the media and new communication service sectors and the emergence of common platforms and services between telecommunication operators, hardware and software manufacturers, print, electronic and new communication service outlets, Internet service providers and other next generation network operators;

Recalling the 2005 Declaration by the Committee of Ministers on human rights and the rule of law in the information society which recognises that limited or no access to information and communication technologies (ICTs) can deprive individuals of the ability to exercise fully their human rights and fundamental freedoms;

Recalling also Recommendation Rec(2002)2 of the Committee of Ministers on access to official documents and Recommendation No. R (81) 19 of the Committee of Ministers on the access to information held by public authorities;

Aware that communication using new technologies and new information and communication services must respect the right to privacy and to secrecy of correspondence, as guaranteed by Article 8 of the ECHR and as elaborated by the case law of the European Court of Human Rights, as well as the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and Recommendation No. R (99) 5 of the Committee of Ministers on the protection of privacy on the Internet;

Recalling the 2003 Declaration of the Committee of Ministers on freedom of communication on the Internet, which stresses that such freedom should not prejudice the human dignity or human rights and fundamental freedoms of others, especially children;

Recalling Recommendation Rec(2001)8 of the Committee of Ministers on self-regulation concerning cyber content (self-regulation and user protection against illegal or harmful content on new communications and information services) which encourages the neutral labelling of content to enable users to make their own value judgements over such content;

Recalling also Recommendation Rec(2006)12 of the Committee of Ministers on empowering children in the new information and communications environment, which underlines the importance for children to acquire the necessary skills to create, produce and distribute content and communications in a manner which is both respectful of the fundamental rights and freedoms of others and conducive to the exercise and enjoyment of their own fundamental rights;

Conscious of the risk of harm from content and behaviours in the new information and communications environment, which are capable of adversely affecting the physical, emotional and psychological well-being of children, such as online pornography, the portrayal and glorification of violence and self-harm, demeaning, discriminatory or racist expressions or apologia for such conduct, solicitation (grooming), bullying, stalking and other forms of harassment;

Recalling the importance of education for democratic citizenship which provides children and their educators with the necessary capabilities (knowledge, skills, understanding, attitudes, human rights values and behaviour) they need to live, actively participate and act responsibly while respecting the rights of others, as referred to in Recommendation Rec(2002)12 of the Committee of Ministers on education for democratic citizenship;

Noting the outcome documents of the World Summit on the Information Society (Geneva, 2003 – Tunis, 2005) which refer to the important roles and importance of stakeholders in building the information society while fully respecting human rights and fundamental freedoms;

Aware that the actions and decisions of both state and non-state actors, in particular the private sector, can have an impact on the exercise and enjoyment of fundamental rights, such as freedom of expression and respect for human dignity in the information society;

Stressing the need for member states to constantly examine and review the legal and regulatory framework within which stakeholders operate, which impacts on the exercise and enjoyment of human rights and fundamental freedoms,

Recommends that the governments of member states take all necessary measures to promote the full exercise and enjoyment of human rights and fundamental freedoms in the new information and communications environment, in particular the right to freedom of expression and information pursuant to Article 10 of the ECHR and the relevant case law of the European Court of Human Rights, by:

- adopting common standards and strategies to implement these guidelines; and

- bring these guidelines to the attention of all relevant stakeholders, in particular the private sector, civil society and the media so that they take all necessary measures to contribute to their implementation.

Guidelines

I. Empowering individual users

The constant evolution and change in the design and use of technologies and services challenges the ability of individual users to fully understand and exercise their rights and freedoms in the new information and communications environment. In this regard, the transparency in the processing and presentation of information as well as the provision of information, guidance and other forms of assistance are of paramount importance to their empowerment. Media education is of particular importance in this context.

Member states, the private sector and civil society are encouraged to develop common standards and strategies to promote transparency and the provision of information, guidance and assistance to the individual users of technologies and services, in particular in the following situations:

i. the monitoring of e-mail and usage of the Internet and the processing of personal data with regard to the right to private life and to secrecy of correspondence;

ii. determining the level of personal anonymity when using technologies and services with regard to the right to private life and to secrecy of correspondence;

iii. determining the level of personal security when using technologies and services with regard to the right to private life, to secrecy of correspondence and rule of law considerations;

iv. the profiling of user information and the retention of personal data by search engine and content providers with regard to the right to private life and secrecy of correspondence;

v. the listing and prioritisation of information provided by search engines with regard to the right to receive and impart information;

vi. the blocking of access to and filtering of content and services with regard to the right to receive and impart information;

vii. the removal of content deemed to be illegal with regard to the rule of law considerations;

viii. children's exposure to content and behaviours carrying a risk of harm with regard to human dignity, the rights of others and the right to private life;

ix. the production of user generated content and communications with regard to human dignity, the rights of others, and the right to private life.

II. Common standards and strategies for reliable information, flexible content creation and transparency in the processing of information

The speed, diversity and volume of content and communications circulating in the new information and communications environment can challenge the values and sensibilities of individuals. A fair balance should be struck between the right to express freely and to impart information in this new environment and respect for human dignity and the rights of others, bearing in mind that the right to freedom of expression may be subject to formalities, conditions and restrictions in order to ensure proportionality.

In this connection, the private sector and member states are encouraged to develop common standards and strategies regarding the following:

i. the rating and labelling of content and services carrying a risk of harm and carrying no risk of harm especially those in relation to children;

ii. the rating, labelling and transparency of filtering mechanisms which are specifically designed for children;

iii. the creation of interactive content and its distribution between users (for example peer-to-peer networks and blogs) while respecting the legitimate interests of right-holders to protect their intellectual property rights;

iv. the labelling and standards for the logging and processing of personal data.

III. Affordable access to ICT infrastructure

The new information and communications environment has become an essential tool in the lives of many individuals to live and work and to exercise their rights and freedoms fully. Affordable access to ICT infrastructure is therefore a prerequisite for affordable access to the Internet, thereby helping to bridge the digital divide, in order to maximise the enjoyment of these rights and freedoms.

In this connection, member states, in co-operation with the private sector and civil society, are encouraged to promote and enhance access to ICT infrastructure by:

i. creating an enabling environment that is attractive for the private sector to invest in ICT infrastructure and services, including a stable legal and regulatory framework;

ii. facilitating and promoting community based networks;

iii. facilitating policies and partnerships which promote the qualitative and quantitative development of ICT infrastructure with a view to ensuring universal and affordable access to the Internet;

iv. reviewing and creating universal service obligations, taking into account, *inter alia,* converging next generation networks.

IV. Access to information as a public service

The Internet is increasingly important in facilitating the lives of many individuals who use and depend upon public services. Access to the new information and communications environment facilitates the exercise of their rights and freedoms, in particular their participation in public life and democratic processes.

In this connection member states should:

i. facilitate policies and partnerships which promote the installation of Internet access points on the premises of public authorities and, where appropriate, in other public places. These Internet access points should be open to all users, including those with special needs;

ii. ensure that public authorities increase the provision and transparency of their online services to citizens and businesses so that they allow every individual access to public information;

iii. ensure that public authorities offer a range of online public services in appropriate language scripts (for example, in non-ASCII characters) which accords with common standards (for example, the guidelines of the Web Accessibility Initiative).

V. Co-operation between stakeholders

For individuals to fully exercise and enjoy their rights and freedoms in the new information and communications environment, in particular the right to freedom of expression and information and the right to private life and secrecy of correspondence, it is of paramount importance that member states, the private sector and civil society develop various forms of multi-stakeholder co-operation and partnerships, taking into account their respective roles and responsibilities.

In this connection, member states are encouraged to:

i. engage in regular dialogue with all relevant stakeholders with a view to elaborating and delineating the boundaries of their respective roles and responsibilities with regard to freedom of expression and information and other human rights;

ii. elaborate, where appropriate, and in co-operation with other stakeholders, a clear legal framework on the roles and responsibilities of stakeholders;

iii. ensure that complementary regulatory systems such as new forms of co-regulation and self-regulation respond adequately to the changes in technological development and are fully compatible with the respect for human rights and the rule of law.

The private sector should be encouraged to:

i. acknowledge and familiarise itself with its evolving ethical roles and responsibilities, and to co-operate in reviewing and, where necessary, adjusting their key actions and decisions which impact on individuals rights and freedoms;

ii. develop, where appropriate, new forms of open, transparent and accountable self-regulation.

Civil society, including institutions of higher education and the media, should be encouraged to monitor the ethical and social consequences of the actions and decisions of stakeholders and their compatibility with human rights and the rule of law, raise public awareness of those stakeholders who do not act responsibly, and assist those individuals and groups of individuals whose rights and freedoms have been adversely affected, in particular by addressing the stakeholders concerned.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation CM/Rec(2007)15

of the Committee of Ministers to member states
on measures concerning media coverage of election campaigns

(Adopted by the Committee of Ministers on 7 November 2007
at the 1010th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe;

Noting the important role of the media in modern societies, especially at the time of elections;

Considering the constant development of information and communication technology and the evolving media landscape which necessitates the revision of Recommendation No. R (99) 15 of the Committee of Ministers on measures concerning media coverage of election campaigns;

Aware of the need to take account of the significant differences which still exist between the print and the broadcast media;

Considering the differences between linear and non-linear audiovisual media services, in particular as regards their reach, impact and the way in which they are consumed;

Stressing that the fundamental principle of editorial independence of the media assumes a special importance in election periods;

Underlining that the coverage of elections by the broadcast media should be fair, balanced and impartial;

Recalling the basic principles contained in Resolution No. 2 adopted at the 4th Ministerial Conference on Mass Media Policy (Prague, December 1994), and Recommendation No. R (96) 10 of the Committee of Ministers on the guarantee of the independence of public service broadcasting;

Noting the emergence of public service media in the information society as elaborated in Recommendation Rec(2007)3 of the Committee of Ministers on the remit of public service media in the information society;

Considering that public service media are a publicly accountable source of information which have a particular responsibility in ensuring in their programmes, a fair, balanced and thorough coverage of elections, which may include the carrying of messages of political parties and candidates free of charge and on an equitable basis;

Noting that particular attention should be paid to certain specific features of the coverage of election campaigns, such as the dissemination of opinion polls, paid political advertising, the right of reply, days of reflection and provision for pre-election time;

Stressing the important role of self-regulatory measures by media professionals themselves – for example, in the form of codes of conduct – which set out guidelines of good practice for responsible, accurate and fair coverage of election campaigns;

Recognising the complementary nature of regulatory and self-regulatory measures in this area;

Convinced of the usefulness of appropriate frameworks for media coverage of elections to contribute to free and democratic elections, bearing in mind the different legal and practical approaches of member states in this area and the fact that it can be subject to different branches of law;

Acknowledging that any regulatory framework on the media coverage of elections should respect the fundamental principle of freedom of expression protected under Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights;

Recalling Recommendation Rec(2004)16 of the Committee of Ministers on the right of reply in the new media environment which allows the possibility for easy-to-use instant or rapid correction of contested information,

Recommends that the governments of the member states, if they have not already done so, examine ways of ensuring respect for the principles stated hereinafter regarding the coverage of election campaigns by the media, and, where necessary, adopt appropriate measures to implement these principles in their domestic law or practice and in accordance with constitutional law.

Definition

For the purposes of this recommendation:

The term “media” refers to those responsible for the periodic creation of information and content and its dissemination over which there is editorial responsibility, irrespective of the means and technology used for delivery, which are intended for reception by, and which could have a clear impact on, a significant proportion of the general public. This could, *inter alia*, include print media (newspapers, periodicals) and media disseminated over electronic communication networks, such as broadcast media (radio, television and other linear audiovisual media services), online news-services (such as online editions of newspapers and newsletters) and non-linear audiovisual media services (such as on-demand television).

Scope of the recommendation

The principles of this recommendation apply to all types of political elections taking place in member states, including presidential, legislative, regional and, where practicable, local elections and referenda.

These principles should also apply, where relevant, to media reporting on elections taking place abroad, especially when these media address persons in the country where the election is taking place.

In member states where the notion of the "pre-election period" is defined under domestic legislation, the principles contained in this recommendation should also apply.

Principles

I. General provisions

1. Non-interference by public authorities

Public authorities should refrain from interfering in the activities of journalists and other media personnel with a view to influencing the elections.

2. Protection against attacks, intimidation or other types of unlawful pressure on the media

Public authorities should take appropriate steps for the effective protection of journalists and other media personnel and their premises, as this assumes a greater significance during elections. At the same time, this protection should not obstruct the media in carrying out their work.

3. Editorial independence

Regulatory frameworks on media coverage of elections should respect the editorial independence of the media.

Member states should ensure that there is an effective and manifest separation between the exercise of control of media and decision making as regards media content and the exercise of political authority or influence.

4. Ownership by public authorities

Member states should adopt measures whereby the media which are owned by public authorities, when covering election campaigns, should do so in a fair, balanced and impartial manner, without discriminating against or supporting a specific political party or candidate.

If such media outlets accept paid political advertising in their publications, they should ensure that all political contenders and parties that request the purchase of advertising space are treated in an equal and non-discriminatory manner.

5. Professional and ethical standards of the media

All media are encouraged to develop self-regulatory frameworks and incorporate self-regulatory professional and ethical standards regarding their coverage of election campaigns, including, *inter alia,* respect for the principles of human dignity and non-discrimination. These standards should reflect their particular roles and responsibilities in democratic processes.

6. Transparency of, and access to, the media

If the media accept paid political advertising, regulatory or self-regulatory frameworks should ensure that such advertising is readily recognisable as such.

Where media is owned by political parties or politicians, member states should ensure that this is made transparent to the public.

7. The right of reply or equivalent remedies

Given the short duration of an election campaign, any candidate or political party which is entitled to a right of reply or equivalent remedies under national law or systems should be able to exercise this right or equivalent remedies during the campaign period without undue delay.

8. Opinion polls

Regulatory or self-regulatory frameworks should ensure that the media will, when disseminating the results of opinion polls, provide the public with sufficient information to make a judgement on the value of the polls. Such information could, in particular :

- name the political party or other organisation or person which commissioned and paid for the poll;
- identify the organisation conducting the poll and the methodology employed;

- indicate the sample and margin of error of the poll;
- indicate the date and/or period when the poll was conducted.

All other matters concerning the way in which the media present the results of opinion polls should be decided by the media themselves.

Any restriction by member states forbidding the publication/dissemination of opinion polls (on voting intentions) on voting day or a number of days before the election should comply with Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights.

Similarly, in respect of exit polls, member states may consider prohibiting reporting by the media on the results of such polls until all polling stations in the country have closed.

9. "Day of reflection"

Member states may consider the merits of including a provision in their regulatory frameworks to prohibit the dissemination of partisan electoral messages on the day preceding voting or to provide for their correction.

II. Measures concerning broadcast media

1. General framework

During election campaigns, regulatory frameworks should encourage and facilitate the pluralistic expression of opinions via the broadcast media.

With due respect for the editorial independence of broadcasters, regulatory frameworks should also provide for the obligation to cover election campaigns in a fair, balanced and impartial manner in the overall programme services of broadcasters. Such an obligation should apply to both public service media and private broadcasters in their relevant transmission areas.

Member states may derogate from these measures with respect to those broadcast media services exclusively devoted to, and clearly identified as, the self-promotion of a political party or candidate.

2. News and current affairs programmes

Where self-regulation does not provide for this, member states should adopt measures whereby public service media and private broadcasters, during the election period, should in particular be fair, balanced and impartial in their news and current affairs programmes, including discussion programmes such as interviews or debates.

No privileged treatment should be given by broadcasters to public authorities during such programmes. This matter should primarily be addressed via appropriate self-regulatory measures. In this connection, member states might examine whether, where practicable, the relevant authorities monitoring the coverage of elections should be given the power to intervene in order to remedy possible shortcomings.

3. Non-linear audiovisual services of public service media

Member states should apply the principles contained in points 1 and 2 above or similar provisions to non-linear audiovisual media services of public service media.

4. Free airtime and equivalent presence for political parties/candidates on public service media

Member states may examine the advisability of including in their regulatory frameworks provisions whereby public service media may make available free airtime on their broadcast and other linear audiovisual media services and/or an equivalent presence on their non-linear audiovisual media services to political parties/candidates during the election period.

Wherever such airtime and/or equivalent presence is granted, this should be done in a fair and non-discriminatory manner, on the basis of transparent and objective criteria.

5. Paid political advertising

In member states where political parties and candidates are permitted to buy advertising space for election purposes, regulatory frameworks should ensure that all contending parties have

the possibility of buying advertising space on and according to equal conditions and rates of payment.

Member states may consider introducing a provision in their regulatory frameworks to limit the amount of political advertising space and time which a given party or candidate can purchase.

Regular presenters of news and current affairs programmes should not take part in paid political advertising.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

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 by the Committee of Ministers on 7 November 2007
at the 1010th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Recalling that States Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights – ETS No. 5) have undertaken to secure to everyone within their jurisdiction the human rights and fundamental freedoms defined in the Convention;

Mindful of the particular roles and responsibilities of member states in securing the protection and promotion of these rights and freedoms;

Noting that information and communication technologies (ICTs) can, on the one hand, significantly enhance the exercise of human rights and fundamental freedoms, such as the right to freedom of expression, information and communication, the right to education, the right to assembly, and the right to free elections, while, on the other hand, they may adversely affect these and other rights, freedoms and values, such as the respect for private life and secrecy of correspondence, the dignity of human beings and even the right to life;

Concerned by the risk of harm posed by content and communications on the Internet and other ICTs as well as by the threats of cybercrime to the exercise and enjoyment of human rights and fundamental freedoms, and recalling in this regard the Convention on Cybercrime (ETS No. 185) and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189) and the specific provisions in the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201);

Aware that communication using new information and communication technologies and services must respect the right to privacy as guaranteed by Article 8 of the European Convention on Human Rights and by the 1981 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), and as elaborated by Recommendation No. R (99) 5 of the Committee of Ministers to member states on the protection of privacy on the Internet;

Noting that the outcome documents of the World Summit on the Information Society (WSIS) (Geneva 2003 – Tunis 2005) recognise the right for everyone to benefit from the information society and reaffirmed the desire and commitment of participating states to build a people-centred, inclusive and development-oriented information society, respecting fully and upholding the Universal Declaration of Human Rights, as well as the universality, indivisibility, interdependence and interrelation of all human rights and fundamental freedoms, including the right to development;

Convinced that access to and the capacity and ability to use the Internet should be regarded as indispensable for the full exercise and enjoyment of human rights and fundamental freedoms in the information society;

Recalling the 2003 UNESCO Recommendation concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace, which calls on member states and international organisations to promote access to the Internet as a service of public interest;

Recalling the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which states that freedom of thought, expression and information, as well as diversity of the media, enable cultural expressions to flourish within societies, and which calls on Parties to encourage individuals and social groups to create, produce, disseminate, distribute and have access to their own cultural expressions;

Aware that the media landscape is rapidly changing and that the Internet is playing an increasingly important role in providing and promoting diverse sources of information to the public, including user-generated content;

Noting that our societies are rapidly moving into a new phase of development, towards a ubiquitous information society, and therefore that the Internet constitutes a new pervasive social and public space which should have an ethical dimension, which should foster justice, dignity and respect for the human being and which should be based on respect for human rights and fundamental freedoms, democracy and the rule of law;

Recalling the currently accepted working definition of Internet governance, as 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;

Convinced therefore that the governance of the Internet should be people-centred and pursue public policy goals which protect human rights, democracy and the rule of law on the Internet and other ICTs;

Aware of the public service value of the Internet, understood as people's significant reliance on the Internet as an essential tool for their everyday activities (communication, information, knowledge, commercial transactions) and the resulting legitimate expectation that Internet services be accessible and affordable, secure, reliable and ongoing;

Firmly convinced that the Internet and other ICT services have high public service value in that they serve to promote the exercise and enjoyment of human rights and fundamental freedoms for all who use them, and that their protection should be a priority with regard to the governance of the Internet,

Recommends that, having regard to the guidelines in the appendix to this recommendation, the governments of member states, in co-operation, where appropriate, with all relevant stakeholders, take all necessary measures to promote the public service value of the Internet by:

- upholding human rights, democracy and the rule of law on the Internet and promoting social cohesion, respect for cultural diversity and trust between individuals and between peoples in the use of ICTs, and in particular, the Internet;

- elaborating and delineating the boundaries of the roles and responsibilities of all key stakeholders within a clear legal framework, using complementary regulatory frameworks;

- encouraging the private sector to acknowledge and familiarise itself with its evolving ethical roles and responsibilities, and to co-operate in reviewing and, where necessary, adjusting its key actions and decisions which may impact on individual rights and freedoms;

- encouraging in this regard the private sector to develop, where appropriate and in co-operation with other stakeholders, new forms of open and transparent self- and co-regulation on the basis of which key actors can be held accountable;

- encouraging the private sector to contribute to achieving the goals set out in this recommendation and developing public policies to supplement the operation of market forces where these are insufficient;

- bringing this recommendation to the attention of all relevant stakeholders, in particular the private sector and civil society, so that all necessary measures are taken to contribute to the implementation of its objectives.

Appendix to the recommendation

I. Human rights and democracy

Human rights

Member states should adopt or develop policies to preserve and, whenever possible, enhance the protection of human rights and respect for the rule of law in the information society. In this regard, particular attention should be paid to:

- the right to freedom of expression, information and communication on the Internet and via other ICTs promoted, *inter alia,* by ensuring access to them;

- the need to ensure that there are no restrictions to the abovementioned right (for example in the form of censorship) other than to the extent permitted by Article 10 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights;

- the right to private life and private correspondence on the Internet and in the use of other ICTs, including the respect for the will of users not to disclose their identity, promoted

by encouraging individual users and Internet service and content providers to share the responsibility for this;

- the right to education, including media and information literacy;

- the fundamental values of pluralism, cultural and linguistic diversity, and non-discriminatory access to different means of communication via the Internet and other ICTs;

- the dignity and integrity of the human being with regard to the trafficking of human beings carried out using ICTs and by signing and ratifying the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197);

- the right to the presumption of innocence, which should be respected in the digital environment, and the right to a fair trial and the principle according to which there should be no punishment without law, which should be upheld by developing and encouraging legal, and also self- and co-regulatory frameworks for journalists and media service providers as concerns the reporting on court proceedings;

- the freedom for all groups in society to participate in ICT-assisted assemblies and other forms of associative life, subject to no other restrictions than those provided for by Article 11 of the European Convention on Human Rights as interpreted by the European Court of Human Rights;

- the right to property, including intellectual property rights, subject to the right of the state to limit the use of property in accordance with the general interest as provided by Article 1 of The Protocol to the European Convention on Human Rights (ETS No. 9).

Democracy

Member states should develop and implement strategies for e-democracy, e-participation and e-government that make effective use of ICTs in democratic process and debate, in relationships between public authorities and civil society, and in the provision of public services as part of an integrated approach that makes full and appropriate use of a number of communication channels, both online and offline. In particular, e-democracy and e-governance should uphold human rights, democracy and the rule of law by:

- strengthening the participation, initiative and involvement of citizens in national, regional and local public life and in decision-making processes, thereby contributing to more dynamic, inclusive and direct forms of democracy, genuine public debate, better legislation and active scrutiny of the decision-making processes;

- improving public administration and services by making them more accessible (*inter alia* through access to official documents), responsive, user-oriented, transparent, efficient and cost-effective, thus contributing to the economic and cultural vitality of society.

Member states should, where appropriate, consider introducing only e-voting systems which are secure, reliable, efficient, technically robust, open to independent verification and easily accessible to voters, in line with Recommendation Rec(2004)11 of the Committee of Ministers to member states on legal, operational and technical standards for e-voting.

Member states should encourage the use of ICTs (including online forums, weblogs, political chats, instant messaging and other forms of citizen-to-citizen communication) by citizens, non-governmental organisations and political parties to engage in democratic deliberations, e-activism and e-campaigning, put forward their concerns, ideas and initiatives, promote dialogue and deliberation with representatives and government, and to scrutinise officials and politicians in matters of public interest.

Member states should use the Internet and other ICTs in conjunction with other channels of communication to formulate and implement policies for education for democratic citizenship to enable individuals to be active and responsible citizens throughout their lives, to respect the rights of others and to contribute to the defence and development of democratic societies and cultures.

Member states should promote public discussion on the responsibilities of private actors, such as Internet service providers, content providers and users, and encourage them – in the interests of the democratic process and debate and the protection of the rights of others – to take self-regulatory and other measures to optimise the quality and reliability of information on the Internet and to promote the exercise of professional responsibility, in particular with regard to the establishment, compliance with, and monitoring of the observance of codes of conduct.

II. Access

Member states should develop, in co-operation with the private sector and civil society, strategies which promote sustainable economic growth via competitive market structures in order to stimulate investment, particularly from local capital, into critical Internet resources and ICTs, especially in areas with a low communication and information infrastructure, with particular reference to:

- developing strategies which promote affordable access to ICT infrastructure, including the Internet;

- promoting technical interoperability, open standards and cultural diversity in ICT policy covering telecommunications, broadcasting and the Internet;

- promoting a diversity of software models, including proprietary, free and open source software;

- promoting affordable access to the Internet for individuals, irrespective of their age, gender, ethnic or social origin, including the following persons and groups of persons:

  a. those on low incomes;

  b. those in rural and geographically remote areas; and

  c. those with special needs (for example, disabled persons), bearing in mind the importance of design and application, affordability, the need to raise awareness among these persons and groups, the appropriateness and attractiveness of Internet access and services as well as their adaptability and compatibility;

- promoting a minimum number of Internet access points and ICT services on the premises of public authorities and, where appropriate, in other public places, in line with Recommendation No. R (99) 14 of the Committee of Ministers to member states on universal community service concerning new communication services;

- encouraging, where practicable, public administrations, educational institutions and private owners of access facilities to new communication and information services to enable the general public to use these facilities;

- promoting the integration of ICTs into education and promoting media and information literacy and training in formal and non-formal education sectors for children and adults in order to:

  a. empower them to use media technologies effectively to create, access, store, retrieve and share content to meet their individual and community needs and interests;

  b. encourage them to exercise their democratic rights and civic responsibilities effectively;

  c. encourage them to make informed choices when using the Internet and other ICTs by using and referring to diverse media forms and content from different cultural and institutional sources; understanding how and why media content is produced; critically analysing the techniques, language and conventions used by the media and the messages they convey; and identifying media content and services that may be unsolicited, offensive or harmful.

III. Openness

Member states should affirm freedom of expression and the free circulation of information on the Internet, balancing them, where necessary, with other legitimate rights and interests, in accordance with Article 10, paragraph 2, of the European Convention on Human Rights as interpreted by the European Court of Human Rights, by:

- promoting the active participation of the public in using, and contributing content to, the Internet and other ICTs;

- promoting freedom of communication and creation on the Internet, regardless of frontiers, in particular by:

  a. not subjecting individuals to any licensing or other requirements having a similar effect, nor any general blocking or filtering measures by public authorities, or restrictions that go further than those applied to other means of content delivery;

  b. facilitating, where appropriate, “re-users”, meaning those wishing to exploit existing digital content resources in order to create future content or services in a way that is compatible with respect for intellectual property rights;

  c. promoting an open offer of services and accessible, usable and exploitable content via the Internet which caters to the different needs of users and social groups, in particular by:

- allowing service providers to operate in a regulatory framework which guarantees them non-discriminatory access to national and international telecommunication networks;

- increasing the provision and transparency of their online services to citizens and businesses;

- engaging with the public, where appropriate, through user-generated communities rather than official websites;

- encouraging, where appropriate, the re-use of public data by non-commercial users, so as to allow every individual access to public information, facilitating their participation in public life and democratic processes;

- promoting public domain information accessibility via the Internet which includes government documents, allowing all persons to participate in the process of government; information about personal data retained by public entities; scientific and historical data; information on the state of technology, allowing the public to consider how the information society might guard against information warfare and other threats to human rights; creative works that are part of a shared cultural base, allowing persons to participate actively in their community and cultural history;

- adapting and extending the remit of public service media, in line with Recommendation Rec(2007)3 of the Committee of Ministers to member states on the remit of public service media in the information society, so as to cover the Internet and other new communication services and so that both generalist and specialised contents and services can be offered, as well as distinct personalised interactive and on-demand services.

IV. Diversity

Member states are encouraged to ensure that Internet and ICT content is contributed by all regions, countries and communities so as to ensure over time representation of all peoples, nations, cultures and languages, in particular by:

- encouraging and promoting the growth of national or local cultural industries, especially in the field of digital content production, including that undertaken by public service media, where necessary crossing linguistic and cultural barriers (including all potential content creators and other stakeholders), in order to encourage linguistic diversity and artistic expression on the Internet and other new communication services. This should apply also to educational, cultural, scientific, scholarly and other content which may not be commercially viable in accordance with the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions;

- developing strategies and policies and creating appropriate legal and institutional frameworks to preserve the digital heritage of lasting cultural, scientific, or other values, in co-operation with holders of copyright and neighbouring rights, and other legitimate stakeholders in order, where appropriate, to set common standards and ensure compatibility and share resources. In this regard, access to legally deposited digital heritage materials, within reasonable restrictions, should also be assured;

- developing a culture of participation and involvement, *inter alia* by providing for the creation, modification and remixing of interactive content and the transformation of consumers into active communicators and creators of content;

- promoting mechanisms for the production and distribution of user - and community - generated content (thereby facilitating online communities), *inter alia* by encouraging public service media to use such content and co-operate with such communities;

- encouraging the creation and processing of and access to educational, cultural and scientific content in digital form, so as to ensure that all cultures can express themselves and have access to the Internet in all languages, including indigenous ones;

- encouraging capacity building for the production of local and indigenous content on the Internet;

- encouraging the multilingualisation of the Internet so that everyone can use it in their own language.

V. Security

Member states should engage in international legal co-operation as a means of developing and strengthening security on the Internet and observance of international law, in particular by:

- signing and ratifying the Convention on Cybercrime (ETS No. 185) and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189), in order to be able to implement a common criminal policy aimed at the protection of society against cybercrime, to co-operate for the purposes of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence, and to resolve jurisdictional problems in cases of crimes committed in other states parties to the convention;

- promoting the signature and ratification of the Convention and Additional Protocol by non-member states as well as their use as model cybercrime legislation at the national level, so that a worldwide interoperable system and framework for global co-operation in fighting cybercrime among interested countries emerges;

- enhancing network and information security to enable them to resist actions that compromise their stability as well as the availability, authenticity, integrity and confidentiality of stored or transmitted data and the related services offered by or accessible via these networks and systems;

- empowering stakeholders to protect network and information security;

- adopting legislation and establishing appropriate enforcement authorities, where necessary, to combat spam. Member states should also facilitate the development of appropriate technical solutions related to combating spam, improve education and awareness among all stakeholders and encourage industry-driven initiatives, as well as engage in cross-border spam enforcement co-operation;

- encouraging the development of common rules on the co-operation between providers of information society services and law enforcement authorities ensuring that such co-operation has a clear legal basis and respects privacy regulations;

- protecting personal data and privacy on the Internet and other ICTs (to protect users against the unlawful storage of personal data, the storage of inaccurate personal data, or the abuse or unauthorised disclosure of such data, or against the intrusion of their privacy through, for example, unsolicited communications for direct marketing purposes) and harmonising legal frameworks in this area without unjustifiably disrupting the free flow of information, in particular by:

    a. improving their domestic frameworks for privacy law in accordance with Article 8 of the European Convention on Human Rights and by signing and ratifying the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108);

    b. providing appropriate safeguards for the transfer of international personal data to states which do not have an adequate level of data protection;

    c. facilitating cross-border co-operation in privacy law enforcement;

- combating piracy in the field of copyright and neighbouring rights;

- working together with the business sector and consumer representatives to ensure e-commerce users are afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce. This may include the introduction of requirements concerning contracts which can be concluded by electronic means, in particular requirements concerning secure electronic signatures;

- promoting the safer use of the Internet and of ICTs, particularly for children, fighting against illegal content and tackling harmful and, where necessary, unwanted content through regulation, the encouragement of self-regulation, including the elaboration of codes of conduct, and the development of adequate technical standards and systems;

- promoting the signature and ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201).

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

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**

*(Adopted by the Committee of Ministers on 26 March 2008
at the 1022nd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Recalling that States Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights – ETS No. 5) have undertaken to secure to everyone within their jurisdiction the human rights and fundamental freedoms defined in the Convention;

Reaffirming the commitment of member states to the fundamental right to freedom of expression and to receive and impart information and ideas without interference by public authorities and regardless of frontiers, as guaranteed by Article 10 of the European Convention on Human Rights;

Aware that any intervention by member states that forbids access to specific Internet content may constitute a restriction on freedom of expression and access to information in the online environment and that such a restriction would have to fulfil the conditions in Article 10, paragraph 2, of the European Convention on Human Rights and the relevant case law of the European Court of Human Rights;

Recalling in this respect the Declaration on human rights and the rule of law in the information society, adopted by the Committee of Ministers on 13 May 2005, according to which member states should maintain and enhance legal and practical measures to prevent state and private censorship;

Recalling Recommendation 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, according to which member states, the private sector and civil society are encouraged to develop common standards and strategies to promote transparency and the provision of information, guidance and assistance to the individual users of technologies and services concerning, *inter alia*, the blocking of access to and filtering of content and services with regard to the right to receive and impart information;

Noting that the voluntary and responsible use of Internet filters (products, systems and measures to block or filter Internet content) can promote confidence and security on the

Internet for users, in particular children and young people, while also aware that the use of such filters can impact on the right to freedom of expression and information, as protected by Article 10 of the European Convention on Human Rights;

Recalling Recommendation Rec(2006)12 of the Committee of Ministers on empowering children in the new information and communications environment, which underlines the importance of information literacy and training strategies for children to enable them to better understand and deal with content (for example violence and self-harm, pornography, discrimination and racism) and behaviours (such as grooming, bullying, harassment or stalking) carrying a risk of harm, thereby promoting a greater sense of confidence, well-being and respect for others in the new information and communications environment;

Convinced of the necessity to ensure that users are made aware of, understand and are able to effectively use, adjust and control filters according to their individual needs;

Recalling Recommendation Rec(2001)8 of the Committee of Ministers on self-regulation concerning cyber content (self-regulation and user protection against illegal or harmful content on new communications and information services), which encourages the neutral labelling of content to enable users to make their own value judgements over such content and the development of a wide range of search tools and filtering profiles, which provide users with the ability to select content on the basis of content descriptors;

Aware of the public service value of the Internet, understood as people's significant reliance on the Internet as an essential tool for their everyday activities (communication, information, knowledge, commercial transactions, entertainment) and the resulting legitimate expectation that Internet services be accessible, affordable, secure, reliable and ongoing and recalling in this regard Recommendation Rec(2007)16 of the Committee of Ministers on measures to promote the public service value of the Internet;

Recalling the Declaration of the Committee of Ministers on freedom of communication on the Internet of 28 May 2003, which stresses that public authorities should not, through general blocking or filtering measures, deny access by the public to information and other communication on the Internet, regardless of frontiers, but that this does not prevent the installation of filters for the protection of minors, in particular in places accessible to them, such as schools or libraries;

Reaffirming the commitment of member states to everyone's right to private life and secrecy of correspondence, as protected by Article 8 of the European Convention on Human Rights, and recalling the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and its Additional Protocol regarding supervisory authorities and transborder data flows (ETS No. 181) as well as Recommendation No. R (99) 5 of the Committee of Ministers on the protection of privacy on the Internet,

Recommends that member states adopt common standards and strategies with regard to Internet filters to promote the full exercise and enjoyment of the right to freedom of expression and information and related rights and freedoms in the European Convention on Human Rights, in particular by:

– taking measures with regard to Internet filters in line with the guidelines set out in the appendix to this recommendation;

– bringing these guidelines to the attention of all relevant private and public sector stakeholders, in particular those who design, use (install, activate, deactivate and implement) and monitor Internet filters, and to civil society, so that they may contribute to their implementation.

Appendix to Recommendation CM/Rec(2008)6

Guidelines

I. Using and controlling Internet filters in order to fully exercise and enjoy the right to freedom of expression and information

Users' awareness, understanding of and ability to effectively use Internet filters are key factors which enable them to fully exercise and enjoy their human rights and fundamental freedoms, in particular the right to freedom of expression and information, and to participate actively in democratic processes. When confronted with filters, users must be informed that a filter is active and, where appropriate, be able to identify and to control the level of filtering the content they access is subject to. Moreover, they should have the possibility to challenge the blocking or filtering of content and to seek clarifications and remedies.

In co-operation with the private sector and civil society, member states should ensure that users are made aware of activated filters and, where appropriate, are able to activate and deactivate them and be assisted in varying the level of filtering in operation, in particular by:

i. developing and promoting a minimum level of information for users to enable them to identify when filtering has been activated and to understand how, and according to which criteria, the filtering operates (for example, black lists, white lists, keyword blocking, content rating, etc., or combinations thereof);

ii. developing minimum levels of and standards for the information provided to the user to explain why a specific type of content has been filtered;

iii. regularly reviewing and updating filters in order to improve their effectiveness, proportionality and legitimacy in relation to their intended purpose;

iv. providing clear and concise information and guidance regarding the manual overriding of an activated filter, namely whom to contact when it appears that content has been unreasonably blocked and the reasons which may allow a filter to be overridden for a specific type of content or Uniform Resource Locator (URL);

v. ensuring that content filtered by mistake or error can be accessed without undue difficulty and within a reasonable time;

vi. promoting initiatives to raise awareness of the social and ethical responsibilities of those actors who design, use and monitor filters with particular regard to the right to freedom of expression and information and to the right to private life, as well as to the active participation in public life and democratic processes;

vii. raising awareness of the potential limitations to freedom of expression and information and the right to private life resulting from the use of filters and of the need to ensure proportionality of such limitations;

viii. facilitating an exchange of experiences and best practices with regard to the design, use and monitoring of filters;

ix. encouraging the provision of training courses for network administrators, parents, educators and other people using and monitoring filters;

x. promoting and co-operating with existing initiatives to foster responsible use of filters in compliance with human rights, democracy and the rule of law;

xi. fostering filtering standards and benchmarks to help users choose and best control filters.

In this context, civil society should be encouraged to raise users' awareness of the potential benefits and dangers of filters. This should include promoting the importance and significance of free and unhindered access to the Internet so that every individual user may fully exercise and enjoy their human rights and fundamental freedoms, in particular the right to freedom of expression and information and the right to private life, as well as to effectively participate in public life and democratic processes.

II. Appropriate filtering for children and young people

The Internet has significantly increased the number and diversity of ideas, information and opinions which people may receive and impart in the fulfilment of their right to freedom of expression and information without interference by public authorities and regardless of frontiers. At the same time, it has increased the amount of readily available content carrying a risk of harm, particularly for children and young people. To satisfy the legitimate desire and duty of member states to protect children and young people from content carrying a risk of harm, the proportionate use of filters can constitute an appropriate means of encouraging access to and confident use of the Internet and be a complement to other strategies on how to tackle harmful content, such as the development and provision of information literacy.

In this context, member states should:

i. facilitate the development of strategies to identify content carrying a risk of harm for children and young people, taking into account the diversity of cultures, values and opinions;

ii. co-operate with the private sector and civil society to avoid over-protection of children and young people by, *inter alia*, supporting research and development for the production of "intelligent" filters that take more account of the context in which the information is provided (for example by differentiating between harmful content itself and unproblematic references to it, such as may be found on scientific websites);

iii. facilitate and promote initiatives that assist parents and educators in the selection and use of developmental-age appropriate filters for children and young people;

iv. inform children and young people about the benefits and dangers of Internet content and its filtering as part of media education strategies in formal and non-formal education.

Furthermore, the private sector should be encouraged to:

i. develop "intelligent" filters offering developmental-age appropriate filtering which can be adapted to follow the child's progress and age while, at the same time, ensuring that filtering does not occur when the content is deemed neither harmful nor unsuitable for the group which the filter has been activated to protect;

ii. co-operate with self- and co-regulatory bodies in order to develop standards for developmental-age appropriate rating systems for content carrying a risk of harm, taking into account the diversity of cultures, values and opinions;

iii. develop, in co-operation with civil society, common labels for filters to assist parents and educators in making informed choices when acquiring filters and to certify that they meet certain quality requirements;

iv. promote the interoperability of systems for the self-classification of content by providers and help to increase awareness about the potential benefits and dangers of such classification models.

Moreover, civil society should be encouraged to:

i. debate and share their experiences and knowledge when assessing and raising awareness of the development and use of filters as a protective measure for children and young people;

ii regularly monitor and analyse the use and impact of filters for children and young people, with particular regard to their effectiveness and their contribution to the exercise and enjoyment of the rights and freedoms guaranteed by Article 10 and other provisions of the European Convention on Human Rights.

III. Use and application of Internet filters by the public and private sector

Notwithstanding the importance of empowering users to use and control filters as mentioned above, and noting the wider public service value of the Internet, public actors on all levels (such as administrations, libraries and educational institutions) which introduce filters or use them when delivering services to the public, should ensure full respect for all users' right to freedom of expression and information and their right to private life and secrecy of correspondence.

In this context, member states should:

i. refrain from filtering Internet content in electronic communications networks operated by public actors for reasons other than those laid down in Article 10, paragraph 2, of the European Convention on Human Rights, as interpreted by the European Court of Human Rights;

ii. guarantee that nationwide general blocking or filtering measures are only introduced by the state if the conditions of Article 10, paragraph 2, of the European Convention on Human Rights are fulfilled. Such action by the state should only be taken if the filtering concerns specific and clearly identifiable content, a competent national authority has taken a decision on its illegality and the decision can be reviewed by an independent and impartial tribunal or

regulatory body, in accordance with the requirements of Article 6 of the European Convention on Human Rights;

iii. introduce, where appropriate and necessary, provisions under national law for the prevention of intentional abuse of filters to restrict citizens' access to lawful content;

iv. ensure that all filters are assessed both before and during their implementation to ensure that the effects of the filtering are proportionate to the purpose of the restriction and thus necessary in a democratic society, in order to avoid unreasonable blocking of content;

v. provide for effective and readily accessible means of recourse and remedy, including suspension of filters, in cases where users and/or authors of content claim that content has been blocked unreasonably;

vi. avoid the universal and general blocking of offensive or harmful content for users who are not part of the group which a filter has been activated to protect, and of illegal content for users who justifiably demonstrate a legitimate interest or need to access such content under exceptional circumstances, particularly for research purposes;

vii. ensure that the right to private life and secrecy of correspondence is respected when using and applying filters and that personal data logged, recorded and processed via filters are only used for legitimate and non-commercial purposes.

Furthermore, member states and the private sector are encouraged to:

i. regularly assess and review the effectiveness and proportionality regarding the introduction of filters;

ii. strengthen the information and guidance to users who are subject to filters in private networks, including information about the existence of, and reasons for, the use of a filter and the criteria upon which the filter operates;

iii. co-operate with users (customers, employees, etc.) to improve the transparency, effectiveness and proportionality of filters.

In this context, civil society should be encouraged to follow the development and deployment of filters both by key state and private sector actors. It should, where appropriate, call upon member states and the private sector, respectively, to ensure and to facilitate all users' right to freedom of expression and information, in particular as regards their freedom to receive information without interference by public authorities and regardless of frontiers in the new information and communications environment.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

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

(Adopted by the Committee of Ministers on 8 July 2009
at the 1063rd meeting of the Ministers' Deputies)

1. Protecting freedom of expression and human dignity in the information and communications environment by ensuring a coherent level of protection for minors against harmful content and developing children's media literacy skills is a priority for the Council of Europe.

2. The risk of harm may arise from content and behaviour, such as online pornography, the degrading and stereotyped portrayal of women, the portrayal and glorification of violence and self-harm, demeaning, discriminatory or racist expressions or apologia for such conduct, solicitation (grooming), the recruitment of child victims of trafficking in human beings, bullying, stalking and other forms of harassment, which are capable of adversely affecting the physical, emotional and psychological well-being of children.

3. Attention should be drawn to the normative texts adopted by the Committee of Ministers designed to assist member states in dealing with these risks and, as a corollary, in securing everyone's human rights and fundamental freedoms. These texts include Recommendation CM/Rec(2008)6 on measures to promote the respect for freedom of expression and information with regard to Internet filters; the 2008 Declaration on protecting the dignity, security and privacy of children on the Internet; Recommendation CM/Rec(2007)11 on promoting freedom of expression and information in the new information and communications environment; Recommendation Rec(2006)12 on empowering children in the new information and communications environment; and Recommendation Rec(2001)8 of the Committee of Ministers on self-regulation concerning cyber content (self-regulation and user protection against illegal or harmful content on new communications and information services).

4. There is a need to provide children with the knowledge, skills, understanding, attitudes, human rights values and behaviour necessary to participate actively in social and public life, and to act responsibly while respecting the rights of others.

5. There is also the need to encourage trust and promote confidence on the Internet, in particular by neutral labelling of content to enable both children and adults to make their own value judgments regarding Internet content.

6. The Committee of Ministers recommends that member states, in co-operation with private sector actors and civil society, develop and promote coherent strategies to protect children against content and behaviour carrying a risk of harm while advocating their active

participation in and best possible use of the new information and communications environment, in particular by:

– encouraging the development and use of safe spaces (walled gardens), as well as other tools facilitating access to websites and Internet content appropriate for children;

– promoting the further development and voluntary use of labels and trustmarks allowing parents and children to easily distinguish non-harmful content from content carrying a risk of harm;

– promoting the development of skills among children, parents and educators to understand better and deal with content and behaviour that carries a risk of harm;

– bringing this recommendation and its appended guidelines to the attention of all relevant private and public sector stakeholders.

Appendix to Recommendation CM/Rec(2009)5

Guidelines

I. Providing safe and secure spaces for children on the Internet

7. The development of new communication technologies and the evolution of the Internet have led to a vacuum in appropriate measures to protect children against content carrying a risk of harm. While the protection against content in the offline world is, in most cases, much easier to guarantee, it has become significantly more difficult to do so in the online world, especially considering that every action to restrict access to content is potentially in conflict with the right to freedom of expression and information as enshrined in Article 10 of the European Convention on Human Rights (ETS No. 5). It should be recalled that this fundamental right and freedom is a primary objective of the Council of Europe and its member states; at the same time states also have a legitimate right, and even an obligation, to protect children from content which is unsuitable or inappropriate.

8. While parental responsibility and media education are of primary importance in effectively protecting children, there are also tools and methods which can assist parents and educators in their efforts to inform and guide children about the Internet and Information and Communication Technologies (ICTs). The provision of safe and secure spaces (walled gardens) for children on the Internet and the Council of Europe's online game "Through the Wild Web Woods" are notable examples of such tools and methods.

9. On this basis, member states, in co-operation with the private sector, the media and civil society, are encouraged to develop safe and secure spaces on the Internet for children safely to explore and participate actively in the information society, in particular by:

– creating safe and secure websites for children, for example by developing age-appropriate online portals;

– developing professional standards for the maintenance of such Internet websites and portals, particularly with regard to links and references to other sites;

– raising awareness of these safe and secure Internet websites for children, in particular among parents, educators, content developers and their respective associations;

– considering the integration of the benefits of these safe and secure Internet websites in school curricula, and in educational materials such as "The Internet literacy handbook", a Council of Europe publication.

II. Encouraging the development of a pan-European trustmark and labelling systems

10 There is an increasing demand for systems which help to protect children from content carrying a risk of harm. The development of Internet content filters has provided one form of protection which subsequently led to the adoption of Recommendation CM/Rec(2008)6 of the Committee of Ministers on measures to promote the respect for freedom of expression and information with regard to Internet filters.

11. Apart from automated content rating and filtering, there are initiatives which exist to label online content on a voluntary basis and labelling which is performed by the content creator. Among them, the Internet Content Rating Association (part of the Family Online Safety Institute (FOSI)) and PEGI Online (part of the Pan-European Game Information (PEGI) plus system), both of which have led to the development of systems which promote descriptions of online content.

12. The labelling of online content contributes to the development of safe and secure spaces for children on the Internet. However, the effectiveness and trustworthiness of labelling systems greatly depend on the accountability of those responsible for these systems and their interoperability. The development of a pan-European trustmark for responsible labelling systems – prepared in full compliance with the right to freedom of expression and information in accordance with Article 10 of the European Convention on Human Rights – would enhance these systems and initiatives, facilitate the provision of safe and secure spaces for children on the Internet and avoid and/or mitigate their exposure to content and behaviour carrying a risk of harm.

13. Online content which is not labelled should not however be considered dangerous or less valuable for children, parents and educators. Labelling has limited scope and should be seen as one possibility, among others, to promote the democratic participation and protection of children on the Internet in countering content and behaviour that carry a risk of harm.

14. On this basis, member states, in co-operation with the private sector, the media and civil society, are encouraged to develop and promote the responsible use of labelling systems for online content, in particular in:

– creating a pan-European trustmark for labelling systems of online content. Criteria for this trustmark would include:

- adherence to human rights principles and standards, including the right to provide for effective means of recourse and remedy, for example the possibility to re-assess labelling when users and/or creators/authors of online content claim that content has been incorrectly labelled;

- labelling systems are provided and used on a voluntary basis, both by creators/authors and users;

- the inadmissibility of any form of censorship of content;

- respect for the editorial independence of media and media-like online content services;

- regular review of the labelled content, for example by introducing a maximum length of time of the validity of the label;

– promoting initiatives for the interoperability of labelling systems, including the creation of a unique pan-European logo which signals the suitability of content for different age groups;

– developing principles for the age-appropriate rating of content, taking into account the different traditions of member states;

– promoting research and development, in particular as regards the possibility to label content through metadata;

– raising awareness among parents and educators about the advantages of labelling content in order to facilitate access to safe and secure spaces for children on the Internet;

– assessing and evaluating labelling systems and their effectiveness, in particular with regard to their compliance with Article 10 of the European Convention on Human Rights and the accessibility and affordability of the services emanating from these systems for the general public.

III. Promoting Internet skills and literacy for children, parents and educators

15. Safe and secure spaces on the Internet and the labelling of online content can contribute to making the use of the Internet an enjoyable and confidence-building experience for children. It should, however, be accepted that it is not possible to eliminate entirely the danger of children being exposed to content or behaviour carrying a risk of harm, and that consequently media (information) literacy for children, parents and educators remains a key element in providing coherent protection for children against such risks.

16. On this basis, member states, in co-operation with the private sector, associations of parents, teachers and educators, the media and civil society, are encouraged to promote media (information) literacy for children, young people, parents and educators, in order to prepare them for possible encounters with content and behaviours carrying a risk of harm, in particular by:

– raising awareness and developing critical attitudes about both the benefits and risks for children freely using the Internet and ICTs;

– adapting school curricula to include practical learning about how best to use the Internet and ICTs, and encouraging teachers to analyse and counter sexism in online content which shapes children’s attitudes;

– informing children, parents and educators about safe and secure spaces on the Internet and trustworthy labels for online content;

– fostering knowledge and practical understanding of the human rights dimensions of labelling systems and filtering mechanisms, and their potential risks to freedom of expression and information, *inter alia* by drawing the attention of all relevant stakeholders to the Council of Europe’s standard-setting instruments and tools in this field.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Declaration Decl-29.04.82

on the freedom of expression and information

(Adopted by the Committee of Ministers on 29 April 1982, at its 70th Session)

The member states of the Council of Europe,

1. Considering that the principles of genuine democracy, the rule of law and respect for human rights form the basis of their co-operation, and that the freedom of expression and information is a fundamental element of those principles;

2. Considering that this freedom has been proclaimed in national constitutions and international instruments, and in particular in Article 19 of the Universal Declaration of Human Rights and Article 10 of the European Convention on Human Rights;

3. Recalling that through that convention they have taken steps for the collective enforcement of the freedom of expression and information by entrusting the supervision of its application to the organs provided for by the convention;

4. Considering that the freedom of expression and information is necessary for the social, economic, cultural and political development of every human being, and constitutes a condition for the harmonious progress of social and cultural groups, nations and the international community;

5. Convinced that the continued development of information and communication technology should serve to further the right, regardless of frontiers, to express, to seek, to receive and to impart information and ideas, whatever their source;

6. Convinced that states have the duty to guard against infringements of the freedom of expression and information and should adopt policies designed to foster as much as possible a variety of media and a plurality of information sources, thereby allowing a plurality of ideas and opinions;

7. Noting that, in addition to the statutory measures referred to in paragraph 2 of Article 10 of the European Convention on Human Rights, codes of ethics have been voluntarily established and are applied by professional organisations in the field of the mass media;

8. Aware that a free flow and wide circulation of information of all kinds across frontiers is an important factor for international understanding, for bringing peoples together and for the mutual enrichment of cultures,

I. Reiterate their firm attachment to the principles of freedom of expression and information as a basic element of democratic and pluralist society;

II. Declare that in the field of information and mass media they seek to achieve the following objectives:

a. protection of the right of everyone, regardless of frontiers, to express himself, to seek and receive information and ideas, whatever their source, as well as to impart them under the conditions set out in Article 10 of the European Convention on Human Rights;

b. absence of censorship or any arbitrary controls or constraints on participants in the information process, on media content or on the transmission and dissemination of information;

c. the pursuit of an open information policy in the public sector, including access to information, in order to enhance the individual's understanding of, and his ability to discuss freely political, social, economic and cultural matters;

d. the existence of a wide variety of independent and autonomous media, permitting the reflection of diversity of ideas and opinions;

e. the availability and access on reasonable terms to adequate facilities for the domestic and international transmission and dissemination of information and ideas;

f. the promotion of international co-operation and assistance, through public and private channels, with a view to fostering the free flow of information and improving communication infrastructures and expertise;

III. Resolve to intensify their co-operation in order:

a. to defend the right of everyone to the exercise of the freedom of expression and information;

b. to promote, through teaching and education, the effective exercise of the freedom of expression and information;

c. to promote the free flow of information, thus contributing to international understanding, a better knowledge of convictions and traditions, respect for the diversity of opinions and the mutual enrichment of cultures;

d. to share their experience and knowledge in the media field;

e. to ensure that new information and communication techniques and services, where available, are effectively used to broaden the scope of freedom of expression and information.

Protocol Amending the European Convention on Transfrontier Television (ETS No. 171)

Convention on Information and Legal Co-operation concerning "Information Society Services" (ETS No. 180)

Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows (ETS No. 181)

European Convention for the protection of the Audiovisual Heritage (ETS No. 183)

Protocol to European Convention for the protection of the Audiovisual Heritage, on the protection of Television Productions (ETS No. 184)

Convention on Cybercrime (ETS No. 185)

Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189)

Recommendation No. R (90) 19 on the protection of personal data used for payment and other related operations

Recommendation No. R (91) 10 on the communication to third parties of personal data held by public bodies

Recommendation No. R (95) 4 on the protection of personal data in the area of telecommunications, with particular reference to telephone service

Resolution ResAP (2001) 3 "Towards full citizenship for persons with disabilities through inclusive new technologies"

Recommendation Rec(2001)7 of the Committee of Ministers to member states on measures to protect copyright and neighbouring rights and combat piracy, especially in the digital environment

Recommendation Rec(2002)2 of the Committee of Ministers to member states on access to official documents

Recommendation Rec(2004)11 of the Committee of Ministers to member states on legal, operational and technical standards for e-voting

Recommendation Rec(2004)15 of the Committee of Ministers to member states on electronic governance ("e-governance")

Declaration of the Committee of Ministers on a European policy for New Information Technologies, adopted on 7 May 1999

Declaration of the Committee of Ministers on Cultural Diversity, adopted on 7 December 2000

Declaration of the Committee of Ministers on freedom of communication on the Internet, adopted on 28 May 2003

Political Message from the Committee of Ministers to the World Summit on the Information Society (Geneva, 10-12 December 2003) of 19 June 2003

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Declaration Decl-27.09.2006

of the Committee of Ministers on the guarantee of the independence of public service broadcasting in the member states

(Adopted by the Committee of Ministers on 27 September 2006 at the 974th meeting of the Ministers' Deputies)

The Committee of Ministers of the Council of Europe,

Recalling the commitment of member states to the fundamental right to freedom of expression and information, as guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights);

Recalling, in particular, the importance of freedom of expression and information as a cornerstone of democratic and pluralist society, as underlined in the relevant case law of the European Court of Human Rights and, in this context, stressing the importance of the existence of a wide variety of independent and autonomous media, permitting the reflection of diversity of ideas and opinions, as stated in the Committee of Ministers' Declaration on freedom of expression and information of 29 April 1982;

Highlighting the specific remit of public service broadcasting and reaffirming its vital role as an essential element of pluralist communication and of social cohesion which, through the provision of comprehensive programme services accessible to everyone, comprising information, education, culture and entertainment, seeks to promote the values of modern democratic societies and, in particular, respect for human rights, cultural diversity and political pluralism;

Reiterating the objective to ensure the absence of any arbitrary controls or constraints on participants in the information process, on media content or on the transmission and dissemination of information, as stated in the Declaration on the freedom of expression and information;

Bearing in mind the undertaking made at the 4th European Ministerial Conference on Mass Media Policy (Prague, December 1994) to guarantee the independence of public service broadcasters against any political and economic interference and, more particularly, recalling Recommendation No. R (96) 10 on the guarantee of the independence of public service broadcasting;

Considering that the editorial independence and institutional autonomy of public service broadcasting, including through an appropriate, secure and transparent funding framework, should be guaranteed by means of a coherent policy and an adequate legal framework, and ensured by the effective implementation of the said policy and framework;

Welcoming the situation which prevails in those member states where the independence of public service broadcasting is solidly entrenched through the regulatory framework and scrupulously respected in practice, as well as the progress being made in other member states towards securing such independence;

Noting the concern expressed by the Parliamentary Assembly of the Council of Europe in its Recommendation 1641 (2004) on public service broadcasting that the fundamental principle of the independence of public service broadcasting contained in Recommendation No. R (96) 10 is still not firmly established in a number of member states;

Bearing in mind the texts adopted at the 7th European Ministerial Conference on Mass Media Policy (Kyiv, March 2005), in particular the Ministers' call for the monitoring of the implementation by member states of Recommendation No. R (96) 10, and taking note, in this connection, of the overview contained in the appendix hereto concerning the situation in member states;

Regretting developments in a few member states that tend to weaken the guarantee of independence of public service broadcasting or lessen the independence that had already been attained, and expressing concern about the slow or insignificant progress being made in certain other member states towards securing independent public service broadcasting, be it as a result of an inadequate regulatory framework or the failure to apply in practice existing laws and regulations,

I. Reiterates its firm attachment to the objectives of editorial independence and institutional autonomy of public service broadcasting organisations in member states;

II. Calls on member states to:

- implement, if they have not yet done so, Recommendation No. R (96) 10 on the guarantee of the independence of public service broadcasting, with particular reference to the guidelines appended thereto, and having regard to the opportunities and challenges brought about by the information society, as well as by political, economic and technological changes in Europe;

- provide the legal, political, financial, technical and other means necessary to ensure genuine editorial independence and institutional autonomy of public service broadcasting organisations, so as to remove any risk of political or economic interference;

- disseminate widely the present declaration and, in particular, bring it to the attention of the relevant authorities and of public service broadcasting organisations, as well as to other interested professional and industrial circles;

III. Invites public service broadcasters to be conscious of their particular remit in a democratic society as an essential element of pluralist communication and of social cohesion, which should offer a wide range of programmes and services to all sectors of the public, to be attentive to the conditions required in order to fulfil that remit in a fully independent manner and, to this end, to elaborate and adopt or, if appropriate, review, and to respect codes of professional ethics or internal guidelines.

Appendix to the Declaration

Introduction

1. By decision of 24 November 2004, the Committee of Ministers of the Council of Europe instructed the Steering Committee on the Mass Media (CDMM), which subsequently became the Steering Committee on the Media and New Communications Services (CDMC), *inter alia* to look into "the independence of the public broadcasting service".

The Ministers participating in the 7th European Ministerial Conference on Mass Media Policy (Kyiv, March 2005) also requested that the Council of Europe "monitor the implementation by member states of Recommendation No. R (96) 10 of the Committee of Ministers on the guarantee of the independence of public service broadcasting, with a view, if necessary, to providing further guidance to member states on how to secure this independence".

2. This appendix contains an overview on the independence of public service broadcasting organisations in member states. The appendix and the Committee of Ministers' declaration that precedes it have been prepared under the authority of the CDMC by its subordinate Group of Specialists on public service broadcasting in the information society (MC-S-PSB) in response to the above-mentioned instructions and request.

3. This appendix is based on Council of Europe documents as well as on information available from a variety of other sources, including international and non-governmental organisations.[1] Its purpose is to give an overview of the complex and diverse situation in Council of Europe member states and to identify areas where national audiovisual or media policies, as well as legal, institutional or financial frameworks for public service broadcasting resulting from these policies, may need to be re-examined to become better aligned with Council of Europe standards.

Legal framework

4. According to Recommendation No. R (96) 10, the legal framework governing public service broadcasting organisations should clearly stipulate their independence. The general provisions in Part I of the appendix to that recommendation highlight a number of issues requiring appropriate regulations in order to guarantee that independence.[2] Specific reference

[1] Particular reference should be made to the following: responses by member states to a questionnaire on the degree of implementation of Recommendation No. R (96) 10 of the Committee of Ministers; the report of 12 January 2004 on public service broadcasting, prepared by the Committee on Culture, Science and Education of the Parliamentary Assembly of the Council of Europe (Doc. 10029), and Parliamentary Assembly Recommendation 1641 (2004) on public service broadcasting; the report of 14 January 2003 on freedom of expression in the media in Europe, also prepared by the Committee on Culture, Science and Education of the Parliamentary Assembly (Doc. 9640 revised), and Parliamentary Assembly Recommendation 1589 (2003) on freedom of expression in the media in Europe; Parliamentary Assembly country specific reports and recommendations; the United Nations Educational, Scientific and Cultural Organisation (UNESCO) document on "Public Service Broadcasting: A best practices sourcebook"; and the report of the European Union Monitoring and Advocacy Program of Open Society Institute entitled "Television across Europe: regulation, policy and independence".

[2] Namely the definition of programme schedules; the conception and production of programmes; the editing and presentation of news and current affairs programmes; the organisation of the activities of the service; recruitment, employment and staff management within the service; the purchase, hire, sale and use of goods and services; the management of financial resources; the preparation and execution of the budget; the negotiation, preparation and signature of legal acts relating to the operation of the service; the representation of the service in legal proceedings as well as with respect to third parties.

is made to the need to regulate the responsibility and supervision of public service broadcasting organisations and of their statutory organs,[1] and to the requirement that there be no form of undue interference in the form of censorship and a-priori control of their activities.

5. Almost all Council of Europe member states have established legal frameworks governing public service broadcasting, in a few cases with a clear constitutional basis. The latter reflects the understanding that the legal basis of public service broadcasting should be subject to broad consensus.

Many of those legal frameworks can be regarded as meeting Council of Europe standards, in particular to the extent that they declare the editorial independence and institutional autonomy of public service broadcasting organisations and set out rules for the establishment, membership and operation of their governing and supervisory bodies. Some of those regulatory frameworks and the manner in which they are applied in practice are fully consistent with Council of Europe standards on the subject and, on occasion, can even be characterised as exemplary.

6. By contrast, in a number of Council of Europe member states, legal frameworks for public service broadcasting organisations are unclear or incomplete. In some cases, the applicable regulations are not capable of guaranteeing editorial independence and institutional autonomy of public service broadcasters, whether as a result of the tenor of substantive provisions or of the weakness or absence of mechanisms designed to ensure their application.

Reportedly, in some cases, while relevant provisions may be adequate, they are disregarded in practice, leaving public service broadcasting organisation under the effective control of the government or political bodies or formations, serving the interests of those bodies rather than society at large.

On occasion, the provisions relating to governing or supervisory bodies (as, for example, regarding the selection, appointment and termination of appointment of members) entail a risk of interference. In this connection, complaints have been voiced to the effect that proposed or actual changes to the regulatory framework in a few member states curtail the independence of public service broadcasters' governing and/or supervisory bodies.

Public service remit

7. Resolution No. 1 on the future of public service broadcasting, adopted at the 4th European Ministerial Conference on Mass Media Policy (Prague, December 1994), summarises the main missions of public service broadcasters.[2] In this context, it should be recalled that Recommendation Rec(2003)9 on measures to promote the democratic and social contribution of digital broadcasting states that "public service broadcasting should preserve its special social remit, including a basic general service that offers news, educational, cultural and entertainment programmes aimed at different categories of the public".

Further, the above-mentioned Resolution No. 1 includes an undertaking "to define clearly, in accordance with appropriate arrangements in domestic law and practice and in respect for

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[1] More detailed guidance concerning governing and supervisory bodies of public service broadcasting organisations (their competencies, status and responsibilities) is offered in Parts II and III of the appendix to Recommendation No. R (96) 10.

[2] As regards developments concerning the public service remit, see footnote 7.

their international obligations, the role, missions and responsibilities of public service broadcasters and to ensure their editorial independence against political and economic interference".[1]

In the media context, a genuine public service presupposes the independence of the organisations entrusted with the delivery of that service. It also involves the ability, in terms of legal provisions and material possibilities, to adapt to changing circumstances. This close link between public service remit and independence is the guiding principle behind Recommendation No. R (96) 10.

8. In practically all Council of Europe member states, the relevant legal frameworks address the question of public service remit.

While there is great diversity in the approach followed (for example, as to the degree of detail provided, reflecting each country's broadcasting strategy and policies, as well as the cultural, economic or political context, mostly by defining it in a clear and comprehensive manner), the determination of the remit of public service broadcasting organisations can on the whole be regarded as satisfactory. In some cases, the public service broadcasting organisations' purpose is particularly well defined, both in terms of immediate aims and the manner in which those aims should be achieved, as well as envisaged future developments (for example, in view of the new information and communication technologies (ITCs).

9. By contrast, in some member states, the remit of public service media is unclear or difficult to apply. This has not paved the way to offering quality services of public interest (for example, balanced/impartial news programmes; education and learning; investigative journalism; ensuring pluralism and diversity in the media; minority and local/community programmes; offering quality entertainment; and promoting creativity) which have traditionally distinguished public service broadcasting organisations from commercial ones.

There has been criticism that, in certain countries, the distinction between public service and commercial broadcasting has become increasingly blurred, leading to what is called "programme convergence", to the detriment of the quality of the programmes offered by the former. While it is important for public service broadcasters to offer entertainment programmes and to seek to reach wide audiences, the distinctiveness of public service content as a whole, vis-à-vis commercial output, must also be ensured. Moreover, on occasion, the public service broadcasters are not provided with the legal means or the material resources necessary for the adequate implementation of the public service entrusted to them. This

[1] Reference could also be made to Recommendation 1589 (2003) on freedom of expression in the media in Europe, where the Parliamentary Assembly asked the Committee of Ministers to urge member states, where appropriate "[…] to revise in particular their broadcasting legislation and implement it with a view to the provision of a genuine public service". Further, in its Recommendation 1641 (2004) on public service broadcasting, the Parliamentary Assembly stated that "public service broadcasting, a vital element of democracy in Europe, is under threat. It is challenged by political and economic interests, by increasing competition from commercial media, by media concentrations and by financial difficulties. It is also faced with the challenge of adapting to globalisation and the new technologies". The Parliamentary Assembly also indicated that "it is a matter of concern that many European countries have so far failed to meet the commitment that their governments undertook, at the 4th European Ministerial Conference on Mass Media Policy held in Prague in 1994, to maintain and develop a strong public broadcasting system. It is also worrying that the fundamental principle of the independence of public service broadcasting contained in Recommendation No. R (96) 10 of the Committee of Ministers is still not firmly established in a number of member states. Moreover, governments across the continent are in the process of reorienting their media policies in the light of the development of digital technology and are in danger of leaving public service broadcasting without enough support".

situation can result in poor quality programmes or lead to over-reliance on mass-appeal and revenue-generating programmes, which is not in keeping with the public service remit.

10. It would appear that, in those countries where the situations described in the foregoing paragraph prevail, either there is little knowledge both among professionals and within society at large of the particular mission of public service broadcasters and understanding of the characteristics of public media, or proper performance of the public service mission is prevented by extraneous circumstances. In some of those countries, there would also seem to be a lack of experience as regards public service broadcasting, leading to widespread indifference regarding its role in a democratic society or a lack of confidence that genuine public service in the audiovisual area will be established and safeguarded.

Remedying these shortcomings, restoring or enhancing the legitimacy of public service broadcasting and, more particularly, raising awareness of and promoting the importance of such a service based on Council of Europe standards is essential. The role of public authorities in this respect should not be underestimated.

11. As already indicated, in some member states, public service broadcasting organisations' legal framework specifically permits them to adapt in light of developments (for example, new communication technologies). In several member states, while this is not specifically foreseen in the legal framework, nothing prevents them from offering the public service entrusted to them using new formats or platforms. Progress in this area is to be welcomed. In other cases, however, existing provisions do not allow or are interpreted as an obstacle for such development.[1]

Editorial independence

12. Article 10, paragraph 1, of the European Convention on Human Rights stipulates that "everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority […]". In its case law, the European Court of Human Rights has repeatedly underlined the importance of this right with regard to freedom of the media and editorial independence.

13. The Council of Europe has developed further standards reinforcing freedom of the media and editorial independence.

[1] As regards access by public service broadcasting organisations to new communications technologies, see *inter alia*, Part VII of the appendix to Recommendation No. R (96) 10, which indicates that "public service broadcasting organisations should be able to exploit new communications technologies and, where authorised, to develop new services based on such technologies in order to fulfil in an independent manner their missions as defined by law." More recently, in the texts adopted at the 7th European Ministerial Conference on Mass Media Policy, reference is made to "the particularly important role of public service broadcasting in the digital environment, as an element of social cohesion, a reflection of cultural diversity and an essential factor for pluralistic communication accessible to all" and to "the importance of ensuring free and universal access to the services of public service broadcasters across various platforms and the need to develop further the public service broadcasting remit in the light of digitisation and convergence". In line with the action plan adopted at the 7th European Ministerial Conference on Mass Media Policy, work is being carried out under the authority of the CDMC by its subordinate group of specialists, the MC-S-PSB, to "examine how the public service remit should, as appropriate, be developed and adapted by member states to suit the new digital environment, and study the legal, financial, technical and other conditions needed to enable public service broadcasters to discharge it in the best possible manner, so as to formulate any legal or other proposals which it may consider advisable for this purpose".

In its Declaration on freedom of expression and information, adopted on 29 April 1982, the Committee of Ministers underlined the objective to ensure the absence of any arbitrary controls or constraints on participants in the information process, on media content or on the transmission and dissemination of information. Further, at the 4th European Ministerial Conference on Mass Media Policy, Council of Europe member states undertook to guarantee the independence of public service broadcasters against political and economic interference. These commitments and objectives have been reiterated in a number of other Council of Europe documents, and are also at the origin of Recommendation No. R (96) 10.

More particularly, in Part I, Recommendation No. R (96) 10 stipulates that the legal framework governing public service broadcasting organisations should provide for their editorial independence, offers guidance designed to facilitate the guarantee of editorial independence[1] and proscribes interference in the form of censorship or control of their activities.[2]

14. As already indicated, the legal frameworks in many Council of Europe member states make provision for the editorial independence of public service broadcasting organisations.

In practice, in a majority of member states, public service broadcasters enjoy editorial independence and institutional autonomy. It is generally acknowledged that, in those member states, interference with editorial independence would be met with a strong reaction from the public service broadcasting organisations concerned, as well as by other media, civil society and the public in general. In several member states, legal mechanisms have been set up to deal with such situations should they occur.

15. However, in other cases, some public service broadcasting organisations reportedly face interference and pressure. Such allegations concern close ties between public service broadcasters and government, politicians or public or private entities, or the undue influence of such bodies or persons on public service broadcasting organisations, which compromise editorial independence. The situation during electoral periods and campaigns is often highlighted; it is alleged that, during such periods, leverage over public broadcasters is used to ensure favourable coverage.[3]

16. In some Council of Europe member states, the process of transformation of state broadcasting organisations into genuine public service broadcasters has been slow or still is under way and has, on occasion, been more formal than real. In some countries, the influence of governments and politicians on broadcasting regulators or the broadcasting sector in general has been identified as the key impediment to building and ensuring a diverse, impartial and pluralistic broadcasting landscape. The undue influence of private actors has also on occasion been reported.

17. It might be added that, in some member states, there is a lack of tradition concerning self-regulation or co-regulation, the adoption of and compliance with editorial standards, and a general culture of objectivity and professionalism. Ethical codes and internal guidelines,

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[1] Particular reference is made to programme schedules, the conception and production of programmes, and the editing and presentation of news and current affairs programmes.

[2] See also Part VI of the appendix to Recommendation No. R (96) 10, dealing with specific aspects of the programming policy of public service broadcasting organisations.

[3] See also, in this context, Recommendation No. R (99) 15 on measures concerning media coverage of election campaigns.

which can greatly contribute to the independent functioning of public service broadcasters, have not yet been adopted in all member states experiencing the problems outlined above.

Funding

18. The question of resources available to public service broadcasting organisations is at the crux of the issue of their independence and their ability to fulfil their remit. This explains the undertakings made at the 4th European Ministerial Conference on Mass Media Policy "to guarantee public service broadcasters secure and appropriate means necessary for the fulfilment of their missions" and "to maintain and, where necessary, establish an appropriate and secure funding framework which guarantees public service broadcasting organisations the means necessary to accomplish their missions", as well as the attention paid to the matter in Recommendation No. R (96) 10.[1]

19. In some Council of Europe member states, public service broadcasting organisations receive appropriate funding, be it in the form of direct contributions from the state, licence fees, income-generating activities or a combination of these sources.

Whichever approach is adopted, it can be implemented with due respect for the market. It is generally agreed that care should be taken so that funding of public service broadcasters does not affect competition on the audiovisual market to an extent which would be contrary to the common interest.[2, 3] That said, excessive reliance on income-generating activities, which is often caused by a lack of public funding, can have a negative impact on programming and, in consequence, on the fulfilment of the public service remit entrusted to the organisations concerned.

It is often advanced that there is some degree of correlation between the resources available to public service broadcasting organisations and the quality of the services rendered by them. However, the satisfactory delivery of public service and sound management can also be regarded as contributing to attracting adequate resources.

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[1] Part V of the appendix to Recommendation No. R (96) 10 makes reference, *inter alia*, to the requirement that the question of funding should not be used to exert, directly or indirectly, any influence over the editorial independence and institutional autonomy of public service broadcasting organisations; that public service broadcasting organisations should be consulted on the subject of funding; payments should be made in a way which guarantees the continuity of the activities of the public service broadcasting organisation and which allows it to engage in long-term planning; and to the fact that financial supervision of public service broadcasting organisations should not prejudice their independence in programming matters.

[2] The Amsterdam Protocol on the system of public broadcasting in European Union member states, annexed to the Treaty establishing the European Community, states that the system of public broadcasting in those states is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism. Furthermore, it stipulates that "the provisions of the Treaty establishing the European Community shall be without prejudice to the competence of member states to provide for the funding of public service broadcasting in so far as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each member state, and in so far as such funding does not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account".

[3] In this context, reference can also be made to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which reaffirms the sovereign right of states to formulate and implement their cultural policies and to adopt measures to protect and promote the diversity of cultural expressions, notably through regulatory measures, financial assistance, the establishment of and support to public institutions and enhancing diversity of the media including through public service broadcasting.

20. Reportedly, in other Council of Europe member states, there is no appropriate, secure and transparent funding framework guaranteeing public service broadcasting organisations the means necessary to accomplish their remit. On occasion, funding commitments and mechanisms often represent mere statements of intention, without efforts being made to implement them in practice.

Concerns are also frequently expressed as regards the threat to the continuity of the activities of public service broadcasting organisations due to uncertainty of both short- and longer-term funding (for example, as a result of lack of consultation on state contributions, difficulties arising from the fee collection system, failure to adjust contributions of licence fees in view of inflation) or exposure to pressure from authorities with financial decision-making power and the resulting threat to editorial independence and institutional autonomy. In order to avoid such risks, especially in cases where public funding comes from the state budget, appropriate safeguards should be put in place.

Employee protection

21. The relevance of staff policy matters has also been recognised in Recommendation No. R (96) 10, which contains some references to recruitment and non-discrimination, associative activities and the right to engage in industrial action, and the requirement that staff be free from influence from outside the public service broadcasting organisation concerned.[1]

22. It would appear that these criteria are met in many Council of Europe member states, and that employee protection standards are generally respected.

23. However, reportedly, in a number of Council of Europe member states, such standards are not yet well-established, particularly where the media are concerned. This situation renders media professionals more exposed to political and economic influence and pressure and less committed to professional standards.

Complaints are sometimes made of discrimination or dismissal of journalists resulting from pressure brought to bear on management by outside persons or bodies, and allegations have been made to the effect that, in certain countries, under cover of the process of transformation of state broadcasting organisations into public service broadcasters, journalists who are thought to be too controversial or inquisitive have been dismissed.

Concern has also been expressed in respect of proposals to give responsibility for the management of staff issues in public service broadcasters or regulatory bodies to the government.

[1] As regards the latter point, Part IV of the appendix to Recommendation No. R (96) 10 sets out the need for clear provisions to the effect that staff of public service broadcasting organisations may not take any instructions whatsoever from persons or bodies outside the organisation employing them without the agreement of the board of management of the organisation, subject to the competencies of the supervisory bodies.

Openness, transparency and accountability

24. Due to its very nature, public service broadcasting should be accountable to society at large, both because it exists to serve the public in general and because, in most cases, it is financed at least partly from public resources (for example, state contributions) or from broadcasting fees, paid by the intended beneficiaries of the service. According to Resolution No. 1 adopted at the 4th European Ministerial Conference on Mass Media Policy, "public service broadcasters must be directly accountable to the public. To that end, public service broadcasters should regularly publish information on their activities and develop procedures for allowing viewers and listeners to comment on the way in which they carry out their missions".

It goes without saying that accountability is also desirable as regards the sound management of the resources available to public service broadcasting organisations.

25. In most Council of Europe member states, public service broadcasting organisations are relatively open and transparent.

Noteworthy examples of good practice as regards accountability concern some public service broadcasting organisations that engage very actively in seeking audience feedback with a view to assessing their own performance and review, when necessary, the services provided by them.

Many public service broadcasters publish relevant information on a regular basis, some being subject to statutory obligations to publishing yearly reports or submit such reports to parliament. This allows for desirable public scrutiny.

26. However, in some cases, there is insufficient openness, transparency and accountability vis-à-vis society at large as to how public service broadcasting organisations implement their mission and use the (public) resources available to them. It has also been advanced that there are cases where, despite provisions concerning submission of an annual report to the national parliament, such a report is rarely the subject of scrutiny and real debate.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Declaration Decl-31.01.2007

of the Committee of Ministers
on protecting the role of the media in democracy in the context of media concentration

(Adopted by the Committee of Ministers on 31 January 2007
at the 985th meeting of the Ministers' Deputies)

The Committee of Ministers,

Reiterating that media freedoms and pluralism are vital for democracy, given their essential role in guaranteeing free expression of opinions and ideas and in contributing to peoples' effective participation in democratic processes;

Recalling the need, in the context of democratic processes, for diverse views to be expressed and presented to the public and for genuine and lively political debate on matters of general interest, helping people to be better or more fully informed in the context of their democratic participation, as well as the crucial role of the media in achieving these aims and in the functioning of a democratic and participatory public sphere;

Recalling, in this context, the Committee of Ministers' Declaration on the freedom of expression and information of April 1982, its Recommendation No. R (99) 15 on measures concerning media coverage of election campaigns and its Declaration on freedom of political debate in the media of February 2004;

Noting that globalisation and concentration leading to the growth of multinational, including European, media and communications groups are fundamentally changing the media landscape and bringing about opportunities in respect, for example, of market efficiency, diversification of offer and consumer-tailored content, but also the ability to support media outlets which do not turn a profit, finance start-up costs of new media outlets and create jobs;

Noting, however, that these changes also pose challenges in particular as regards preserving diversity of media outlets in small markets, but also in respect of the existence of a multiplicity of channels for the expression of plurality of ideas and opinions and to the existence of adequate spaces for public debate in the context of democratic processes;

Aware, in this context, that a plethora of media outlets in a situation of strong media concentration does not by itself guarantee a diversity of sources of information or that various ideas or opinions can be expressed and presented to the public;

Concerned that media concentration can place a single or a few media owners or groups in a position of considerable power to separately or jointly set the agenda of public debate and

significantly influence or shape public opinion, and thus also exert influence on the government and other state bodies and agencies;

Conscious that the above-mentioned position of power could potentially be misused to the detriment of political pluralism or the overall democratic process;

Aware also that the concentration of media ownership can entail conflicts of interest, which could compromise editorial independence and the media's important role as public watchdog, and noting the importance of editorial statutes in this respect;

Concerned that policies designed to promote solely the competitiveness of media systems and market efficiency, tending to reduce ownership-related restrictions, can ultimately be detrimental to the common interest if, as a result, there are no longer sufficient independent and autonomous channels capable of presenting a plurality of ideas and opinions to the public, in order to ensure the existence of adequate space for public debate on matters of general interest;

Mindful of the necessity to preserve those channels and a pluralistic public sphere, in the interest of democracy and democratic processes;

Conscious of the opportunities offered by the development of new communication services and of phenomena such as multimedia, alternative media, community media and consumer-generated content on the Internet, but aware also that their opinion-shaping impact is often dependent upon their content being carried in or reported by mainstream media;

Recalling also the Committee of Ministers' Declaration on human rights and the rule of law in the Information Society of May 2005, which notes that information and communication technologies provide unprecedented opportunities for all to enjoy freedom of expression, but also pose many serious challenges to that freedom, such as state and private censorship;

Noting that it emerges from Article 10 of the European Convention on Human Rights and the relevant case law of the European Court of Human Rights that, as ultimate guarantors of pluralism, states should take positive measures to safeguard and promote a pluralist media landscape to serve democratic society;

Acknowledging, in this respect, that most democratic societies, which are based on the rule of law, have adopted measures to sustain, promote and protect media pluralism, including through market regulation comprising competition law and, where appropriate, sector-specific rules taking into account democratic principles and values;

Recalling also the Committee of Ministers' Recommendations No. R (94) 13 on measures to promote media transparency, No. R (99) 1 on measures to promote media pluralism, No. R (96) 10 on the guarantee of the independence of public service broadcasting and Rec(2000)23 on the independence and functions of regulatory authorities for the broadcasting sector, and its Declaration on the guarantee of the independence of public service broadcasting in member states of 27 September 2006,

Alerts member states to the risk of misuse of the power of the media in a situation of strong concentration of the media and new communication services, and its potential consequences for political pluralism and for democratic processes and, in this context:

I. Underlines the desirability for effective and manifest separation between the exercise of control of media and decision making as regards media content and the exercise of political authority or influence;

II. Draws attention to the necessity of having regulatory measures in place with a view to guaranteeing full transparency of media ownership and adopting regulatory measures, if appropriate and having regard to the characteristics of each media market, with a view to preventing such a level of media concentration as could pose a risk to democracy or the role of the media in democratic processes;

III. Highlights the usefulness of regulatory and/or co-regulatory mechanisms for monitoring media markets and media concentration which, *inter alia*, permit the competent authorities to keep abreast of developments and to assess risks, and which could permit them to identify suitable preventive or remedial action;

IV. Stresses that adequately equipped and financed public service media, in particular public service broadcasting, enjoying genuine editorial independence and institutional autonomy, can contribute to counterbalancing the risk of misuse of the power of the media in a situation of strong media concentration;

V. Stresses that policies designed to encourage the development of not-for-profit media can be another way to promote a diversity of autonomous channels for the dissemination of information and expression of opinion, especially for and by social groups on which mainstream media rarely concentrate.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Declaration Decl-26.09.2007

by the Committee of Ministers
on the protection and promotion of investigative journalism

(Adopted by the Committee of Ministers on 26 September 2007
at the 1005th meeting of the Ministers' Deputies)

The Committee of Ministers of the Council of Europe,

1. Recalling Article 10 of the European Convention on Human Rights which guarantees the freedom to receive and impart information and ideas without interference by public authority and regardless of frontiers;

2. Recalling also its declarations on the freedom of expression and information of 29 April 1982 and on freedom of political debate in the media of 12 February 2004 and reiterating the importance of free and independent media for guaranteeing the right of the people to be fully informed on matters of public concern and to exercise scrutiny over public authorities and political affairs, as repeatedly confirmed by the European Court of Human Rights;

3. Convinced that the essential function of the media as public watchdog and as part of the system of checks and balances in a democracy would be severely crippled without promoting such investigative journalism, which helps to expose legal or ethical wrongs that might have been deliberately concealed, and thus contributes to the formation of enlightened and active citizenry, as well as to the improvement of society at large;

4. Acknowledging, in this context, the important work of investigative journalists who engage in accurate, in-depth and critical reporting on matters of special public concern, work which often requires long and difficult research, assembling and analysing information, uncovering unknown facts, verifying assumptions and obtaining corroborative evidence;

5. Emphasising, however, that investigative journalism needs to be distinguished from journalistic practices which involve probing into and exposing people's private and family lives in a way that would be incompatible with Articles 8 and 10 of the European Convention on Human Rights and the related case law of the European Court of Human Rights;

6. Bearing in mind also that investigative journalism could benefit from the adherence of media professionals to voluntarily adopted self-regulatory instruments such as professional codes of conduct and of ethics which take full account of the rights of other people and the role and responsibility of the media in a democratic society;

7. Considering that, because of its very nature, investigative journalism is of particular significance in times of crisis, a notion that includes, but is not limited to, wars, terrorist

attacks and natural and man-made disasters, when there may be a temptation to limit the free flow of information for security or public safety reasons;

8. Conscious that in emerging democracies the encouragement and development of investigative journalism is especially important for the stimulation of free public opinion and the entrenchment of a democratic political culture while, at the same time, it is at a greater danger of potential abuse;

9. Bearing in mind the Parliamentary Assembly of the Council of Europe's Recommendation 1506 (2001) on freedom of expression and information in the media in Europe, and in particular its concern about the continuing use of violence as a way of intimidating investigative journalists;

10. Recalling its Recommendation No. R (2000) 7 on the right of journalists not to disclose their sources of information;

11. Welcoming developments in certain member states' domestic case law tending to confirm and uphold the right of journalists to investigate matters of public interest and disclose facts and express opinions in respect of such matters without interference by public authorities,

I. Declares its support for investigative journalism in service of democracy.

II. Calls on member states to protect and promote investigative journalism, having regard to Article 10 of the European Convention on Human Rights, the relevant case law of the European Court of Human Rights and other Council of Europe standards, and in this context:

i. to take, where necessary, suitable measures designed to ensure the personal safety of media professionals, especially those involved in investigative journalism, and promptly investigate all cases of violence against or intimidation of journalists;

ii. to ensure the freedom of movement of media professionals and their access to information in line with Council of Europe standards and facilitate critical and in-depth reporting in service of democracy;

iii. to ensure the right of journalists to protect their sources of information in accordance with Council of Europe standards;

iv. to ensure that deprivation of liberty, disproportionate pecuniary sanctions, prohibition to exercise the journalistic profession, seizure of professional material or search of premises are not misused to intimidate media professionals and, in particular, investigative journalists;

v. to take into consideration and to incorporate into domestic legislation where appropriate the recent case law of the European Court of Human Rights which has interpreted Article 10 of the European Convention of Human Rights as extending its protection not only to the freedom to publish, but also to journalistic research, the important preceding stage which is essential for investigative journalism.

III. Draws the attention of member states to recent worrying developments which might have an adverse effect on journalistic activity and on investigative journalism in particular and

calls on member states, if appropriate, to take remedial action, in line with Council of Europe standards, when faced with the following situations:

i. an apparent trend towards increasing limitations on freedom of expression and information in the name of protecting public safety and fighting terrorism;

ii. lawsuits brought against media professionals for acquiring or publishing information of public interest which the authorities sought without good reason to keep undisclosed;

iii. cases of unjustified surveillance of journalists, including the monitoring of their communications;

iv. legislative measures being taken or sought to limit the protection granted to “whistle blowers”.

IV. Invites the media, journalists and their associations to encourage and support investigative journalism while respecting human rights and applying high ethical standards.

V. Calls on member states to disseminate widely this declaration, where appropriate accompanied by a translation, and to bring it, in particular, to the attention of relevant governmental bodies, legislators and the judiciary as well as to make it available to journalists, the media and their professional organisations.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Declaration Decl-20.02.2008/1

of the Committee of Ministers on protecting the dignity, security and privacy of children on the Internet

(Adopted by the Committee of Ministers on 20 February 2008 at the 1018th meeting of the Ministers' Deputies)

The Committee of Ministers of the Council of Europe,

Recalling the fundamental right to freedom of expression and to receive and impart information and ideas without interference by public authorities and regardless of frontiers, as guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights – ETS No. 5);

Recalling the 1989 United Nations Convention of the Rights of the Child, in particular the inherent right for children to dignity, to special protection and care as is necessary for their well-being, to protection against all forms of discrimination or arbitrary or unlawful interference with their privacy and to unlawful attacks on their honour and reputation;

Convinced that the well-being and best interests of children are fundamental values shared by all member states, which must be promoted without any discrimination;

Convinced that the Internet is an important tool for children's everyday activities, such as communication, information, knowledge, education and entertainment;

Concerned however by the enduring presence of content created by children which can be damaging to their dignity, security, privacy and honour both now and in the future as adults;

Recalling the Committee of Ministers' Declaration on freedom of communication on the Internet, adopted on 28 May 2003, which stresses that the exercise of such freedom should not prejudice the dignity or fundamental rights and freedoms of others, especially children;

Conscious that the traceability of children's activities via the Internet may expose them to criminal activities, such as the solicitation of children for sexual purposes, or otherwise illegal or harmful activities, such as discrimination, bullying, stalking and other forms of harassment, by others;

Recalling the measures to protect children referred to in the 2001 Convention on Cybercrime (ETS No. 185), in particular concerning child pornography, and the 2007 Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201), in particular concerning the solicitation of children for sexual purposes;

Convinced of the need to inform children about the enduring presence and risks of the content they create on the Internet and, in this connection, of the need to develop and promote their information literacy, defined as the competent use of tools providing access to information, the development of critical analysis of content and the appropriation of communication skills to foster citizenship and creativity, as referred to in Recommendation Rec(2006)12 of the Committee of Ministers on empowering children in the new information and communications environment;

Aware that communication using new technologies and new information and communication services must respect the right to privacy and to secrecy of correspondence, as guaranteed by Article 8 of the European Convention on Human Rights and as elaborated by the case law of the European Court of Human Rights, as well as the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108);

Concerned by the profiling of information and the retention of personal data regarding children's activities for commercial purposes;

Noting the outcome documents of the United Nations World Summit on the Information Society (Geneva, 2003 – Tunis, 2005), in particular the 2005 Tunis Agenda for the Information Society which reaffirmed the commitment to effective policies and frameworks to protect children and young people from abuse and exploitation through information and communication technologies;

Noting also the mandate of the United Nations Internet Governance Forum, in particular to identify emerging issues regarding the development and security of the Internet and to help find solutions to the issues arising from the use and misuse of the Internet, of concern to everyday users;

Aware of the emerging tendency for certain types of institutions, such as educational establishments, and prospective employers to seek information about children and young people when deciding on important issues concerning their lives,

Declares that, other than in the context of law enforcement, there should be no lasting or permanently accessible record of the content created by children on the Internet which challenges their dignity, security and privacy or otherwise renders them vulnerable now or at a later stage in their lives;

Invites member states together, where appropriate, with other relevant stakeholders, to explore the feasibility of removing or deleting such content, including its traces (logs, records and processing), within a reasonably short period of time.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Declaration Decl-20.02.2008/2

of the Committee of Ministers on the allocation and management of the digital dividend and the public interest

(Adopted by the Committee of Ministers on 20 February 2008 at the 1018th meeting of the Ministers' Deputies)

The Committee of Ministers of the Council of Europe,

Recalling the commitment of member states to the fundamental right to freedom of expression and information, as guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights – ETS No. 5);

Stressing the importance for democratic societies of the existence of a wide variety of independent and autonomous media, permitting the reflection of diversity of ideas and opinions, as stated in the Committee of Ministers' Declaration on the freedom of expression and information (29 April 1982);

Conscious of the advantages and opportunities but also the challenges for free and pluralist communication offered by digital technology, and of the need to safeguard essential public interest objectives in the digital environment, including freedom of expression and access to information, media pluralism and cultural diversity, social cohesion, democratic participation, consumer protection and privacy;

Aware of the fact that technical and legislative choices involved in the switchover to the digital environment should not be determined by economic factors alone but ought also to take account of social, cultural and political factors, and agreeing that a balance must be struck between economic interests and objectives of common interest;

Conscious that a balance might need to be struck between the development of a purely market-based approach to spectrum allocation and management, on the one hand, and the promotion of pluralism, cultural and linguistic diversity and access of the public to audiovisual services in Europe, in particular free-to-air broadcasting, on the other hand;

Aware, in particular, that radio spectrum will be freed as a result of the switchover from analogue to digital broadcasting and conscious of the need for states to take decisions in respect of the allocation and management of this scarce public resource in the common interest;

Stressing that the digital dividend[1] is an excellent opportunity to meet the rapidly growing demand for new services and that it can open up the spectrum for broadcasters to significantly develop and expand their services while, at the same time, ensuring that other important social and economic uses, such as broadband applications or mobile multimedia capable of

[1] The radio spectrum freed as a result of the switchover from analogue to digital broadcasting.

contributing to overcome the digital divide, are taken into account when allocating and managing this valuable resource;

Mindful of the importance of stepping up efforts to ensure effective and equitable access for all persons to the new communication services, education and knowledge, especially with a view to preventing digital exclusion and to narrowing or, ideally, bridging the digital divide;

Recalling Recommendation Rec(2003)9 on measures to promote the democratic and social contribution of digital broadcasting, and in particular its citizen-oriented approach and stipulations regarding the transition to digital broadcasting;

Recalling also Recommendation Rec(2007)3 on the remit of public service media in the information society, underlining the fundamental role of public service media in the new digital environment, which is to promote the values of democratic societies, in particular respect for human rights, cultures and political pluralism, offering a wide choice of programmes and services to all sectors of the public and promoting social cohesion, cultural diversity and pluralist communication accessible to everyone;

Recognising, without prejudice to ongoing efforts within other international fora to find a harmonised approach, the right of member states to define their own policies regarding the transition from analogue to digital broadcasting, and the use of the digital dividend, understood as radio spectrum capacity freed as a result of the switchover to the digital environment;

Aware of the different situations in which various member states find themselves with regard to the digital dividend for geographical, historical, political, cultural, linguistic or other reasons, which may be accommodated through international co-ordination and planning, but make rigid harmonisation difficult;

Stressing the need to guarantee to users stable reception of digital terrestrial broadcasting services and to resolve interference problems before a decision, if any, is taken to put broadcasting services and mobile telephone services in the same or adjacent bands,

Declares that member states:

i. should acknowledge the public nature of the digital dividend resulting from the switchover and the need to manage such a public resource efficiently in the public interest, taking account of present and foreseeable future needs for radio spectrum;

ii. should pay special attention to the promotion of innovation, pluralism, cultural and linguistic diversity, and access of the public to audiovisual services in the allocation and management of the digital dividend and, for this purpose, take in due account the needs of broadcasters and of the media at large, both public service and commercial media, as well as those of other existing or incoming spectrum users;

iii. should also consider the benefit that the allocation and management of the digital dividend may bring to society in terms of an increased number of diversified audiovisual services, including mobile services, with potentially improved geographical coverage and interactive capability, as well as services offering high definition technology, mobile reception, or easier and more affordable access.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Declaration Decl-26.03.2008

of the Committee of Ministers
on the independence and functions of regulatory authorities for the broadcasting sector

(Adopted by the Committee of Ministers on 26 March 2008
at the 1022nd meeting of the Ministers' Deputies)

The Committee of Ministers of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress;

Bearing in mind Article 10 of the European Convention on Human Rights (ETS No. 5), guaranteeing the right to freedom of expression, which includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontiers;

Recalling the importance for democratic societies of the existence of a wide range of independent and autonomous means of communication, making it possible to reflect the diversity of ideas and opinions and the absence of any arbitrary controls or constraints on participants in the information process, on media content or on the transmission and dissemination of information, as set out in the Declaration on the freedom of expression and information (29 April 1982);

Recalling its Recommendation Rec(2000)23 to member states on the independence and functions of regulatory authorities for the broadcasting sector, and its Recommendation Rec(2003)9 to member states on measures to promote the democratic and social contribution of digital broadcasting, as well as its Declaration on the guarantee of the independence of public service broadcasting in the member states (27 September 2006);

Mindful of the case law of the European Court of Human Rights and the relevant decisions of the European Commission of Human Rights, in particular when the latter states that a licensing system not respecting the requirements of pluralism, tolerance and broadmindedness, without which there is no democratic society, would infringe Article 10, paragraph 1, of the European Convention on Human Rights and that the rejection by a state of a licence application must not be manifestly arbitrary or discriminatory, and thereby contrary to the principles set out in the preamble to the Convention and the rights secured therein;

Recalling the commitment made by member states in the Political Declaration of the 7th European Ministerial Conference on Mass Media Policy (Kyiv, 10 and 11 March 2005) to undertake to ensure that the regulatory measures which they may take with regard to the

media and new communication services will respect and promote the fundamental values of pluralism and diversity, respect for human rights and non-discriminatory access;

Recalling the objective of Recommendation Rec(2000)23 that, to guarantee the existence of a wide range of independent and autonomous media in the broadcasting sector, it is essential to provide for adequate and proportionate regulation of that sector, in order to guarantee the freedom of the media whilst at the same time ensuring a balance between that freedom and other legitimate rights and interests;

Underlining the important role played by the traditional and digital broadcasting media in modern, democratic societies in particular for informing the public, for the free formation of public opinion and the expression of ideas and for scrutinising the activities of public authorities as underlined in its Recommendation Rec(2003)9 as well as in its Declaration on the guarantee of the independence of public service broadcasting in the member states;

Noting the overview concerning the legislative framework of members states and its practical implementation, as well as legal and institutional solutions developed in particular countries regarding regulatory authorities in the broadcasting sector, and which is reproduced in the appendix hereto;

Welcoming, in this context, the situation in many Council of Europe member states where, in line with Recommendation Rec(2000)23, the independent and efficient regulation of the broadcasting sector in the public interest, as well as the independence, transparency and accountability of regulatory authorities for the broadcasting sector, is ensured by law and in practice;

Concerned, however, that the guidelines of Recommendation Rec(2000)23 and the main principles underlining it are not fully respected in law and/or in practice in other Council of Europe member states due to a situation in which the legal framework on broadcasting regulation is unclear, contradictory or in conflict with the principles of Recommendation Rec(2000)23, the political and financial independence of regulatory authorities and its members is not properly ensured, licences are allocated and monitoring decisions are made without due regard to national legislation or Council of Europe standards, and broadcasting regulatory decisions are not made available to the public or are not open to review;

Aware that a ‘culture of independence’, where members of regulatory authorities in the broadcasting sector affirm and exercise their independence and all members of society, public authorities and other relevant players including the media, respect the independence of the regulatory authorities, is essential to independent broadcasting regulation;

Aware that independent broadcasting regulatory authorities can only function in an environment of transparency, accountability, clear separation of powers and due respect for the legal framework in force;

Aware of the new challenges to the regulation of the broadcasting landscape resulting from concentration in the broadcasting sector and technological developments in broadcasting, in particular digital broadcasting;

I. Affirms that the ‘culture of independence’ should be preserved and, where they are in place, independent broadcasting regulatory authorities in member states need to be effective, transparent and accountable and therefore;

II. Declares its firm attachment to the objectives of the independent functioning of broadcasting regulatory authorities in member states;

III. Calls on member states to:

– implement, if they have not yet done so, Recommendation Rec(2000)23 on the independence and functions of regulatory authorities for the broadcasting sector, with particular reference to the guidelines appended thereto, and having regard to the opportunities and challenges brought about by political, economic and technological changes in Europe;

– provide the legal, political, financial, technical and other means necessary to ensure the independent functioning of broadcasting regulatory authorities, so as to remove risks of political or economic interference;

– disseminate widely the present declaration and, in particular, bring it to the attention of the relevant authorities, the media and of broadcasting regulatory authorities in particular, as well as to that of other interested professional and business players;

IV. Invites broadcasting regulatory authorities to:

– be conscious of their particular role in a democratic society and their importance in creating a diverse and pluralist broadcasting landscape;

– ensure the independent and transparent allocation of broadcasting licences and monitoring of broadcasters in the public interest;

– contribute to the entrenchment of a ‘culture of independence’ and, in this context, develop and respect guidelines that guarantee their own independence and that of their members;

– make a commitment to transparency, effectiveness and accountability;

V. Invites civil society and the media to contribute actively to the ‘culture of independence’, which is vital for the adequate regulation of broadcasting in the new technological environment, by monitoring closely the independence of these authorities, bringing to the attention of the public good examples of independent broadcasting regulation as well as infringements on regulators’ independence.

Appendix to the Declaration by the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector

Introduction

At its 3rd meeting, in June 2006, the Steering Committee on Media and New Information Services (CDMC) discussed the implementation of non-binding instruments in its area of competence, in particular that of Recommendation Rec(2000)23 on the independence and functions of regulatory authorities for the broadcasting sector. It asked the Secretariat to collect information with a view to assessing the situation as regards the independence and functions of regulatory authorities in the broadcasting sector in member states.

In October 2006, the Bureau of the CDMC examined a first draft document prepared by the Secretariat and decided that this draft should be reviewed with a view "to develop in greater detail the possible deficiencies in the legislative framework of member states and its practical implementation, without however naming specific countries. The second part, which includes information on the situation in the member states, should be a factual overview of legal and institutional solutions developed in particular countries regarding regulatory authorities in the broadcasting sector, using as a template the main requirements of the recommendation, providing information on whether the safeguards of the regulatory authorities' independence and functioning laid down in the recommendation are observed in practice in the particular country".

This document contains an overview on the implementation of Recommendation Rec(2000)23 and, more particularly, information on the independence of regulatory authorities in the Council of Europe member states. The document examines the legal framework and practice on broadcasting regulatory authorities and broadcasting regulation in member states and the degree of compliance with regard to the guidelines set out in Recommendation Rec(2000)23.

This overview was prepared on the basis of information provided by member states on their legal frameworks. It also takes account of information gathered from other sources which include reports by the Parliamentary Assembly, the OSCE Special Representative on Freedom of the Media, a report by the Open Society Institute on broadcasting in Europe,[1] information provided by the European Platform of Regulatory Authorities (EPRA),[2] as well as information from international and national non-governmental organisations.

Overview of the legislative framework of members states and its practical implementation as well as legal and institutional solutions developed in particular countries regarding regulatory authorities in the broadcasting sector

I. LEGISLATIVE FRAMEWORK

1. According to Recommendation Rec(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector (hereafter 'the recommendation'), an appropriate legal framework is essential for the setting up and proper functioning of a broadcasting regulator. Laws and

[1] Open Society Institute, EU Monitoring and Advocacy Programme (2005) "Television Across Europe: Regulation, Policy and Independence".

[2] In particular a background paper on "The Independence of Regulatory Authorities" prepared by the EPRA Secretariat for the 25th EPRA meeting, Prague, 16-18 May 2007, doc EPRA/2007/02.

regulations should indicate clearly how and by whom members are nominated, the ways of making them accountable, how the regulatory authority is financed and what its competencies are in order to ensure the financial and political independence of the authority and its members (cf. Appendix to the recommendation, Section I, paragraphs 1 and 2).

2. All Council of Europe member states have at least some basic legal provisions on broadcasting regulation. However, not all broadcasting regulators are established by law as independent authorities, neither are all required by law to act independently.

3. Almost all member states have clear legal provisions on the financing and competencies of the regulator and the nomination of its members. A number of laws, however, do not address all relevant matters. For those states where the broadcasting sector is not regulated by an independent body but by government bodies or bodies directly under the authority of a ministry or minister, rules on independent financing or the independent nomination of members can be considered redundant. In other cases, there is no apparent reason why the law does not provide the details required by the recommendation.

4. In general, the majority of Council of Europe member states' laws on broadcasting regulation seem to provide an adequate protection for the independence of regulatory authorities. However, it would appear that, in a number of member states, the legal framework does not protect the independence of regulatory authorities as required by the recommendation. In particular, the rules on the appointment of members to the regulatory authority often do not provide members adequate protection against political pressure (see below for further details).

It has also been reported that, in a number of member states, public authorities have failed to respect the legal framework or have taken advantage of legal loopholes to interfere with the independence of the regulatory authority (see below for further details).

5. In a number of member states, laws have been described as too vague or contradictory, making it difficult for regulatory authorities to reach consistent and objective decisions. In some cases, contradictory and seemingly arbitrary decisions by the broadcasting regulator have been explained by the fact that frequent changes to the broadcasting legislation give rise to uncertainty about the legal and regulatory framework in force at a particular point in time.

6. The quantity and detail of the regulations vary considerably between member states. However, there does not seem to be a clear link between the amount of detail in a country's legislation on broadcasting regulation and the regulatory authority's independence. In fact, some of the regulatory authorities that are governed by a very limited set of rules are considered in practice to operate relatively independently. Some importance has been attributed to a 'culture of independence' where law makers, government and other players, under the scrutiny of society at large, respect the regulatory authorities' independence without being explicitly required to do so by law.

II. APPOINTMENT, COMPOSITION AND FUNCTIONING

7. According to the recommendation (cf. the Appendix thereto, Section II, paragraph 3), the rules governing regulatory authorities in the broadcasting sector should secure their

independence and protect them against any interference, in particular by political and economic interests.

8. The majority of the broadcasting regulatory authorities in Council of Europe member states are established by law as autonomous bodies. However, certain of them are government bodies or bodies directly under the authority of a ministry or minister. These regulators often depend on the administrative support of the ministry to which they are attached and seldom manage their own budget independently. In some such cases, the authorities concerned are said to succeed in working independently, usually due to a long-standing practice of independence or comprehensive regulatory frameworks which provide clear guidelines on the regulatory authorities' competences. Almost all of the authorities which are not formally established as autonomous agencies but which are reported to work independently in practice seem to be found in longstanding democracies with relatively low levels of corruption, where the transparency of public bodies in general is ensured and where independent media and a vibrant civil society keep the regulatory authority's work under close scrutiny.

9. To guarantee the independence of members of regulatory authorities from political and economic pressure, the recommendation calls on member states to ensure that regulatory bodies have incompatibility rules, preserving their members from being under the influence of political powers or prohibiting them from holding interests in enterprises of other organisations in the media or related sectors (cf. Appendix to the Recommendation, Section II, paragraph 4).

10. Most Council of Europe member states have rules that prohibit members of regulatory authorities from holding political office; the number of states that also ban them from having commercial interests in the media sector is lower. Indeed, in certain cases, the incompatibility rules for members of regulatory authorities go beyond the guidelines appended to the recommendation and members of regulatory authorities are not permitted to work in the media business or engage in politics for several years after the expiry of their mandate. To prevent members from signing over their commercial interests in a media business to a family member, the law in some member states also requires that close relatives of members give up commercial interests in the media. This requirement extends on occasion to relatives holding political office.

However, in other member states, the framework seeking to guarantee the independence of members of regulatory authorities is far less satisfactory and, in many cases, incompatibilities do not extend to potentially conflicting relations with or interests in media businesses or politics.

11. In certain Council of Europe member states, the members of regulatory authorities have the power to decide over a member's possible conflict of interest, or a member can choose not to make use of his or her voting rights, should personal interests be at stake in a regulatory decision. Another practice is for the other members to decide to exclude a member in case of proven conflict of interest.

12. To guarantee the integrity of the members of regulatory authorities, the recommendation calls for rules designed to ensure that members of regulatory authorities are appointed in a democratic and transparent manner (cf. Appendix to the recommendation, Section II, paragraph 5).

13. In most Council of Europe member states, the members of regulatory authorities are appointed by the parliament or by the head of state at the proposal of parliament. In some member states, in order to ensure that the membership of the regulatory authority reflects the country's social and political diversity, part or all of the members are nominated by non-governmental groups which are considered to be representative of society. Further, in a few member states, the law provides objective selection criteria for the appointment of members.

By contrast, in a number of countries, members are appointed by sole decision of one state authority, e.g. the head of state or a state department, often without clearly specified selection criteria. The appointment of members of regulatory authorities by the head of state and/or parliament has sometimes been criticised advancing that, in such cases, membership would represent or reproduce political power structures.

14. Concerns have often been raised that the nominating or appointing bodies could exert pressure on the members after their appointment. In fact, in some member states, the members of regulatory authorities are frequently accused of acting on behalf of the state body that designated them or political formation behind the designating or appointing authority.

15. To avoid that dismissal be used as a means of political pressure, the recommendation calls for precise rules on the possibility to dismiss members. Accordingly, dismissal should only be possible in case of non-respect of the rules of incompatibility, duly noted incapacity to exercise a member's functions and conviction (by a court of law) for a serious criminal offence. An appeal before the competent courts should be possible against any dismissal (see Appendix to the recommendation, Section II, paragraphs 6 and 7).

16. Whereas in a majority of member states regulations exist on the dismissal of members, they are not always limited to the list of justifications for dismissal provided for by the recommendation. In a number of member states, the law stipulates that members of regulatory authorities can be dismissed if convicted of an offence, but it is not always specified that this has to be a serious offence as opposed to a minor or administrative offence.

17. In some member states, to avoid dismissal procedures being used as a means of exerting pressure on members, members of regulatory authorities cannot be dismissed at all. This practice has apparently given rise to concern in at least one member state, where members could not be held accountable and dismissed for licensing decisions that were allegedly in violation of national law.

III. FINANCIAL INDEPENDENCE

18. Another key factor for ensuring the independence of regulatory authorities is their funding arrangements, which, according to the recommendation, should be specified in law in accordance with a clearly defined plan, and with reference to the estimated cost of the regulatory authorities' activities, so as to allow them to carry out their functions fully and independently (cf. Appendix to the recommendation, Section III, paragraphs 9 to 11).

19. The majority of Council of Europe member states have legal provisions defining the source of funding of the regulatory body. By contrast, in at least a quarter of member states, the legal framework does not appear to be clear on this subject.

20. It is common practice amongst many regulatory authorities in Council of Europe member states to receive their funding directly through fees in order to be independent from public authorities' decision making. Nonetheless, the laws of a large number of member states specify that the regulatory authority is to be financed by the state budget. In some member states, the law mentions clearly that public authorities must not use their financial decision-making power to interfere with the independence of the regulatory authority; however in most countries where the regulatory authority is financed by the state budget no such precautions are laid down in the law.

21. In some member states, the law stipulates that the regulatory authority proposes its annual budget plan which then has to be automatically approved by a specific state body (or the approval of such a body being a formality). However, in at least a third of all Council of Europe member states, no clear rules exist to ensure that the approval for the regulatory authority's funding is not up to the discretion of such other state bodies.

22. It would appear that, despite the law envisaging an independent funding plan for the regulatory authority, in certain Council of Europe member states those authorities claim to feel under threat of or have experienced pressure from governments which go back on agreed funding plans and/or use funding decisions as leverage in political power struggles.

Reportedly, in more than one case, broadcasting regulatory authorities which, according to the law should be financed independently, in practice received their revenue from the state because of a weak broadcasting market or because the licence fee collecting system was ineffective. In at least two member states, the regulatory authority did not publicly disclose the source of their revenue after the licence fee system had collapsed.

23. In addition, many regulators also complain that they are not given the means (in particular human resources) to adequately perform their duties (see below for further details).

IV. POWERS AND COMPETENCE

24. According to the recommendation, the legislator should entrust the regulatory authority with the power to adopt regulations and guidelines concerning broadcasting activities as well as internal rules (cf. Appendix to the recommendation, Section IV, paragraph 12).

25. In a significant number of Council of Europe member states, the law clearly stipulates that regulatory authorities have the power to adopt regulations and guidelines concerning broadcasting activities and have the power to adopt internal rules. However, in at least a quarter of the member states, the legal framework does not foresee such rights. In at least two member states, these powers are in fact expressly vested upon another body or authority.

26. An essential task of the broadcasting regulatory authority should be the granting of licences. The basic conditions and criteria governing the granting and renewal of broadcasting licences should be clearly defined in the law. The regulations governing the broadcasting licensing procedure should be clear and precise and should be applied in an open, transparent and impartial manner and decisions should be made public. Calls for tenders should also be made public, should define a number of conditions to be met by the applicants and specify the

content of the licence application (cf. Appendix to the recommendation, Section IV, paragraph 13 to 17).

27. The above-mentioned requirements are fully met in some Council of Europe member states and partially in many of them. In particular, the majority of regulatory authorities in Council of Europe member states are given the competence to award broadcasting licences. However, in at least one fifth of all member states, a body other than a broadcasting regulator awards broadcasting licences. Further, the legislation of not less than nine member states fail to define clearly the basic conditions and criteria for the granting and renewal of broadcasting licences.

28. In almost half of all Council of Europe member states, tender procedures are insufficiently detailed. It would appear that, in at least 18 member states, there are no legal provisions requiring that the licence tendering process be public. In a comparable number of member states, the law does not specify on the selection criteria to be met by applicants for licences. Again, in almost one in two member states, the legal framework is either silent or provides insufficient detail on the content of licence applications.

29. Even though licensing decisions are often criticised, the majority of regulatory authorities seem to award licenses in a manner which is consistent with the recommendation. Nevertheless, in a number of Council of Europe member states, the broadcasting licensing procedure allegedly lacks transparency, is arbitrary or politically biased. It is claimed that, in many cases, this is due to a lack of regulations and licence selection criteria, and frequent revisions of the law apparently add to the confusion.

30. In addition, some broadcasting authorities have not been able to enforce the law when allocating licenses, because regulations were not clear as to the distribution of competences in the licensing process or because broadcasting regulators were not given the authority and/or financial means to establish or to implement an effective licensing system.

31. Another essential function of regulatory authorities should be the monitoring of broadcasters' compliance with their commitments and obligations. Regulatory authorities should have the power to consider complaints and there should be no *a priori* monitoring. Regulatory authorities should have the power to impose sanctions in cases of violations. The sanctions have to be defined by law and should start with a warning (cf. Appendix to the recommendation, Section IV, paragraphs 18 to 23).

32. The laws in almost all Council of Europe member states envisage an independent body to monitor broadcasters' compliance with the law and with licence conditions. This task is usually entrusted to the regulatory body that awards licenses although, in some countries, the law creates a separate independent authority for that purpose. There are, however, some member states where organs that are under the direct authority of or answerable to governmental authorities are vested with monitoring duties.

33. Hardly any of the legislations in member stipulate clearly that monitoring should be conducted only after broadcasting, although practice is broadly in compliance with this requirement.

34. In most member states, regulatory authorities are empowered to impose sanctions as prescribed by law. However, in at least seven member states, there are either no provisions on

the body that would enforce sanctions or this function is carried out directly by government bodies or authorities.

Many member states give details on the sanctions that can be handed down in cases of violations of the laws or licence requirements. However, the lower end of the scale is not always a warning. Further, in a small number of member states, the law contains no details on possible sanctions.

It might be added that, only in about one quarter of Council of Europe member states, the law explicitly allows monitoring bodies to consider third party complaints concerning broadcasters' activities.

35. Almost all regulatory authorities in Council of Europe member states are by law required to monitor the respect of licence conditions. Many regulators have performed their monitoring duties successfully for many years, interpreting and developing licence requirements, on occasion in cooperation with broadcasters, in order to best protect the rules defined in national legislation. A significant number of bodies, however, allegedly monitor insufficiently or not at all because they do not have the necessary financial or human resources to do so.

36. On a number of occasions, regulators have been accused of applying sanctions arbitrarily or inconsistently. Further, in a few countries, complaints have been made that the sanctions were too harsh or too lax, motivated by archaic moral ideas or that they were politically motivated. This has apparently been due to vague licence conditions or broadcasting requirements with regulators being uncertain about how to interpret those conditions. It has also been argued that some regulatory authorities do not have the political support or are not given the means to enforce sanctions.

V. ACCOUNTABILITY

37. In its final part (cf. Appendix to the recommendation, Section V, paragraphs 25 to 27), the recommendation states that regulatory authorities should be accountable to the public for their activities, for example by means of publishing annual reports. The recommendation also underlines that regulatory authorities should make their decisions public and should only be supervised in respect of the lawfulness of their activities and the correctness and transparency of their financial activities.

38. In many member states, regulatory authorities are accountable to state bodies or authorities, for example the parliament, the head of state or the auditing authorities. By contrast, broadcasting regulatory authorities are accountable by law to the public in only a few cases. That said, in at least eight Council of Europe member states, the law clearly requires regulatory authorities to make their decisions public, while many other legal frameworks are silent on these issues.

In at least eight of the member states where the law prescribes that regulatory authorities are accountable to a state body or to the public, the legal framework does not specify clearly that the regulatory authorities can only be supervised in respect of the lawfulness of their activities and the correctness and transparency of their financial activities. Moreover, in a number of member states, regulatory authorities cannot be held accountable by law to anyone.

39. In approximately half of the Council of Europe member states, the law prescribes that decisions of the broadcasting regulator are open to review (usually by a court of justice). However, in other member states, decisions cannot be challenged before the courts.

40. The majority of regulatory bodies in Council of Europe member states publish their decisions in annual reports. In some countries where regulatory bodies are accountable by law to parliament and/or the head of state, it has been alleged that annual reports were rejected and regulatory authorities dissolved not on objective grounds but for political reasons.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Declaration Decl-11.02.2009

of the Committee of Ministers on the role of community media in promoting social cohesion and intercultural dialogue

(Adopted by the Committee of Ministers on 11 February 2009 at the 1048th meeting of the Ministers' Deputies)

The Committee of Ministers of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles that are their common heritage;

Recalling the importance for democratic societies of a wide variety of free and independent media, which are able to reflect a diversity of ideas and opinions and contribute to the mutual enrichment of cultures, as stated in its Declaration on the freedom of expression and information (29 April 1982);

Reaffirming that media pluralism and diversity of media content are essential for the functioning of a democratic society and are the corollaries of the fundamental right to freedom of expression and information as guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), given their essential role in guaranteeing free expression of opinions and ideas and in contributing to effective participation in democratic processes by many groups and individuals;

Recalling its Recommendation CM/Rec(2007)2 on media pluralism and diversity of media content, which calls on member states to encourage the development of different types of media, including community, local, minority or social media, capable of making a contribution to pluralism and diversity and providing a space for dialogue, while responding to the specific needs or requests of certain groups in civil society and serving as a factor of social cohesion and integration;

Recalling also its Declaration on protecting the role of the media in democracy in the context of media concentration (31 January 2007), which stresses that policies designed to encourage the development of not-for-profit media can be another way to promote a diversity of autonomous channels for the dissemination of information and expression of opinion, especially for and by social groups on which mainstream media rarely concentrate;

Bearing in mind its Recommendation No. R (97) 21 on the media and the promotion of a culture of tolerance, which stresses that the media can make a positive contribution to the fight against intolerance, especially when they foster a culture of understanding between different ethnic, cultural and religious groups in civil society;

Recalling also its Recommendation No. R (97) 20 on hate speech, which recommends that member states take appropriate steps to combat hate speech and ensure that such steps form part of a comprehensive approach to the phenomenon, which also targets its social, economic, political, cultural and other root causes;

Convinced, in this context, that member states should, in particular, while respecting the principle of editorial independence, encourage the media to contribute to intercultural dialogue, as defined in the Council of Europe White Paper on Intercultural Dialogue (May 2008), so as to promote mutual respect, pluralism, tolerance and broadmindedness, and to prevent potential conflicts through discussions and the wider democratic participation of persons belonging to all ethnic, cultural, religious or other communities;

Recalling the importance of the Framework Convention for the Protection of National Minorities (ETS No. 157), in particular as regards the obligation of the Parties to recognise the right of persons belonging to national minorities to receive and impart information in the minority language and to ensure that persons belonging to national minorities are not discriminated against in their access to the media and are granted the possibility of creating and using their own media;

Recalling also the European Charter for Regional or Minority Languages (ETS No. 148), in particular as regards the obligation of the Parties to ensure, facilitate and/or encourage the creation of media outlets in regional or minority languages;

Bearing in mind the political documents adopted at the 7th European Ministerial Conference on Mass Media Policy (Kyiv, March 2005), which underline, *inter alia*, the need to foster intercultural dialogue via the media, paying particular attention to the interests of persons belonging to minority groups and to minority community media; and, more specifically, the objective set out in the Action Plan to examine how different types of media can play a part in promoting social cohesion and integrating all communities and generations;

Bearing in mind also the provisions of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, adopted on 20 October 2005, which stipulates the right of the Parties to formulate and implement their cultural policies and to adopt measures to protect and promote intercultural dialogue and the diversity of cultural expressions;

Recalling the recommendations of the UNESCO Maputo Declaration on fostering freedom of expression, access to information and empowerment of people, adopted on 3 May 2008, regarding the particular contribution that all three tiers of broadcasters – public service, commercial and community – make to media diversity and, in particular, the role of community broadcasters in fostering under-represented or marginalised populations' access to information, means of expression and participation in decision-making processes, and stressing the need to improve conditions for the development of community media;

Recalling Parliamentary Assembly Recommendation 1466 (2000) on "Media education" especially as concerns the need for the involvement of different stakeholders in an active dialogue on media education, *inter alia*, educational bodies, parents' organisations, media professionals, Internet service providers, NGOs, etc.;

Recalling the European Parliament Resolution of 25 September 2008 on "Community Media in Europe" (INI/2008/2011), which stresses that community media are an effective means of strengthening cultural and linguistic diversity, social inclusion and local identity, as well as media pluralism;

Recalling also the Joint Declaration on Diversity in Broadcasting of the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organisation for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organisation of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information in Africa, adopted on 14 December 2007, stating that community broadcasting should be explicitly recognised in law as a distinct form of broadcasting and benefit from fair and simple licensing procedures;

Understanding community media, also referred to in different sources as "third sector", "minority media", or "social or civic media", as complementary to public service media and commercial media, and noting that community media operate in many Council of Europe member states and in over 115 countries worldwide;

Convinced that community media, which by definition and by their very nature are close to their audiences, serve many societal needs and perform functions that neither commercial nor public service media can meet or undertake fully and adequately;

Recognising the contribution of community media in fostering public debate, political pluralism and awareness of diverse opinions, notably by providing various groups in society – including cultural, linguistic, ethnic, religious or other minorities – with an opportunity to receive and impart information, to express themselves and to exchange ideas;

Conscious that in today's radically changed media landscape, community media can play an important role, notably by promoting social cohesion, intercultural dialogue and tolerance, as well as by fostering community engagement and democratic participation at local and regional level, as documented by research;

Recognising that minority community media, by using the language of their audience, are able to reach out effectively to minority audiences;

Aware that while community media can play a positive role for social cohesion and intercultural dialogue, they may also, in certain cases, contribute to social isolation or intolerance; conscious that to avoid this risk, community media should always respect the essential journalistic values and ethics common to all media;

Recognising the crucial contribution of community media in developing media literacy through the direct involvement of citizens in the process of creation and distribution of media content, as well as through the organisation of training programmes, issues that are particularly important in the digital environment;

Recognising the role of community media in developing innovation and creativity of citizens, which is also vital for increasing diversity of content;

Noting that community media, taking the form of broadcasting and/or other electronic media projects, as well as print format, may share to a greater or lesser extent some of the following characteristics: independence from government, commercial and religious institutions and political parties; a not-for-profit nature; voluntary participation of members of civil society in the devising and management of programmes; activities aiming at social gain and community benefit; ownership by and accountability to the communities of place and/or of interest which they serve; commitment to inclusive and intercultural practices,

Declares its support for community media, with a view to helping them play a positive role for social cohesion and intercultural dialogue, and in this connection:

i. Recognises community media as a distinct media sector, alongside public service and private commercial media and, in this connection, highlights the necessity to examine the question of how to adapt legal frameworks which would enable the recognition and the development of community media and the proper performance of their social functions;

ii. Draws attention to the desirability of allocating to community media, to the extent possible, a sufficient number of frequencies, both in analogue and digital environments, and ensuring that community broadcasting media are not disadvantaged after the transition to the digital environment;

iii. Underlines the need to develop and/or support educational and vocational programmes for all communities in order to encourage them to make full use of available technological platforms;

iv. Stresses the desirability of:

a. recognising the social value of community media and examining the possibility of committing funds at national, regional and local level to support the sector, directly and indirectly, while duly taking into account competition aspects;

b. encouraging studies of good practice in community media, and facilitating co-operation and the exchange of good practice, including exchanges with such media in other regions of the world, as well as between community media and other interested media, for example by exchanging programmes and content or by developing joint projects;

c. facilitating capacity building and training of community media staff, for example via training schemes within the framework of lifelong learning and media literacy, as well as staff and volunteer exchanges with other media and internship arrangements, which could enhance the quality of community media programmes;

d. encouraging the media's contribution to intercultural dialogue through initiatives such as the setting up of a network to exchange information and support and facilitate initiatives which exist in this field in Europe;

v. Invites community media to be conscious of their role in promoting social cohesion and intercultural dialogue and, to this end, to elaborate and adopt or, if appropriate, review codes of professional ethics or internal guidelines and to ensure that they are respected.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Declaration Decl-13.01.2010

of the Committee of Ministers on measures to promote the respect of Article 10 of the European Convention on Human Rights

(Adopted by the Committee of Ministers on 13 January 2010 at the 1074th meeting of the Ministers' Deputies)

Freedom of expression and information, including freedom of the media, are indispensable for genuine democracy and democratic processes. When those freedoms are not upheld, accountability is likely to be undermined and the rule of law can also be compromised. All Council of Europe member states have undertaken to secure to everyone within their jurisdiction the fundamental right to freedom of expression and information, in accordance with Article 10 of the European Convention on Human Rights.

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The enforcement mechanism provided for in the European Convention on Human Rights, namely the European Court of Human Rights, operates in relation to alleged violations of Article 10 brought before the Court after exhaustion of domestic remedies. This mechanism, together with the execution procedure, has achieved considerable results and continues to contribute to improving respect for the fundamental right to freedom of expression and information.

In addition to redress for violations, other means for the protection and promotion of freedom of expression and information and of freedom of the media are essential components of any strategy to strengthen democracy. The Council of Europe has adopted a significant body of standards in this area which give guidance to member states. It is important to strengthen the implementation of those standards in the law and practice of member states. The promotion of the respect of Article 10 of the European Convention on Human Rights is therefore a priority area for Council of Europe action. It requires the active support, engagement and co-operation of all member states.

Various Council of Europe bodies and institutions are able, within their respective mandates, to contribute to the protection and promotion of freedom of expression and information and of freedom of the media. The Committee of Ministers, the Parliamentary Assembly, the Secretary General, the Commissioner for Human Rights and other bodies are all active in this area. The action taken by other institutions, such as the Organisation for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, as well as civil society organisations, must also be acknowledged and welcomed.

The Committee of Ministers welcomes the proposals made by the Steering Committee on the Media and New Communication Services (CDMC) to increase the potential for Council of Europe bodies and institutions to promote, within their respective mandates, respect of Article 10 of the European Convention on Human Rights.

In line with those proposals, the Committee of Ministers invites the Secretary General to make arrangements for improved collection and sharing of information and enhanced co-ordination between the secretariats of the different Council of Europe bodies and institutions, without prejudice to their respective mandates and to the independence of those bodies and institutions.

The Committee of Ministers calls on all member states to co-operate with the relevant bodies and institutions of the Council of Europe in ensuring compliance of national law and practice with the relevant standards of the Council of Europe, guided by a spirit of dialogue and co-operation.

The Secretary General is further invited to report to the Committee of Ministers and to the Parliamentary Assembly on the implementation of these arrangements and to conduct within three years an evaluation on their functioning and effectiveness.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Declaration Decl-26.05.2010

of the Committee of Ministers on enhanced participation of member states in Internet governance matters – Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN)

(Adopted by the Committee of Ministers on 26 May 2010 at the 1085th meeting of the Ministers' Deputies)

1. All Council of Europe member states have undertaken to secure within their jurisdiction the rights and freedoms set out in the European Convention on Human Rights.

2. The Internet and other information and communication technologies (ICTs) serve to promote the exercise and enjoyment of human rights and fundamental freedoms and therefore have high public service value.[1] Enabling access to and use of the Internet and ICTs, as well as ensuring their protection, should therefore be high priorities for member states' policies with regard to Internet governance.

3. The Tunis Agenda for the Information Society[2] defines Internet governance as "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". Further, it reaffirms that "the management of the Internet encompasses both technical and public policy issues and should involve all stakeholders and relevant intergovernmental and international organisations". It recognises that "Policy authority for Internet-related public policy issues is the sovereign right of states" and that states "have rights and responsibilities for international Internet-related public policy issues". It also underlines that, "Intergovernmental organisations have had and should continue to have a facilitating role in the co-ordination of Internet-related public policy issues".

4. Council of Europe member states have a shared responsibility to take reasonable measures to ensure the ongoing functioning, stability, openness and universality of the Internet; solidarity in interstate relations is important in this context. [3]

5. Public policy authority with regard to the Internet and the related responsibilities concern, on the one hand, technical co-ordination of shared global resources and, on the other hand, human rights and fundamental freedoms, in particular, freedom of expression, privacy and freedom of assembly. The rights protected under the European Convention on Human

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[1] Recommendation CM/Rec(2007)16 of the Committee of Ministers to member states on measures to promote the public service value of the Internet.
[2] The Tunis Agenda on the Information Society was adopted by the second phase of the United Nations World Summit on the Information Society (WSIS), held in Tunis from 16 to 18 November 2005.
[3] Resolution on Internet governance and critical Internet resources adopted by the 47 Council of Europe member states at the 1st Council of Europe Conference of Ministers responsible for Media and New Communication Services (Reykjavik, 28-29 May 2009).

Rights and its protocols extend also to questions related to physical safety and integrity, education and property.

6. The private sector's leadership in the management of critical Internet resources and ongoing efforts of non-state actors to promote the universality of the Internet and to ensure the stability, security, robustness and resilience of its networks should be acknowledged and welcomed.

7. In particular, the International Corporation for Assigned Names and Numbers (ICANN) plays a key role in ensuring the operational stability, security and resilience of the Internet. Moreover, in implementing its mission and in line with the Tunis Agenda objectives, ICANN has embraced a multi-stakeholder approach in its organisational structures and processes, and promotes open and transparent policy-development.

8. ICANN's Governmental Advisory Committee (GAC) can play a key role in ensuring that technical decisions on, and activities carried out in connection with, the management of Internet resources under ICANN's remit take full account of international human rights law and other public policy objectives. GAC can also contribute to promoting transparency and accountability in the management of those resources.

9. At present, GAC's secretariat services depend on ad hoc arrangements made by specific national authorities. The European Commission has facilitated these services in the past. Efforts are currently underway to establish a competent, independent and more stable secretariat for GAC.

10. The Council of Europe could encourage due consideration of fundamental rights and freedoms in ICANN policy-making processes. At the conference in Reykjavik in 2009, the Council of Europe Ministers responsible for Media and New Communication Services undertook to further explore the relevance of Council of Europe values in this field and, if necessary, ways in which to provide advice to the various corporations, agencies and entities that manage critical Internet resources with a transnational function. This is to ensure that they take full account of international law, including international human rights law. Further, if appropriate, international supervision and accountability of the management of those resources should be promoted.

11. The Committee of Ministers therefore:

– encourages an active participation of all Council of Europe member states in GAC or other forms of involvement in ICANN's work with the objective of promoting the Council of Europe's values and standards in the multi-stakeholder governance of the Internet;

– invites the Secretary General to make arrangements for the Council of Europe to participate as an observer in GAC's activities and to explore, in consultation with GAC, ICANN and other relevant stakeholders, ways in which the Council of Europe can contribute to arrangements concerning GAC's secretariat, subject to budget neutrality.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Resolution (88) 15

setting up a European support fund for the co-production and distribution of creative cinematographic and audiovisual works ("Eurimages")

(Adopted by the Committee of Ministers on 26 October 1988 at the 420th meeting of the Ministers' Deputies, and amended by Resolutions (89) 6, (90) 34, (92) 3, (93) 10 and (95) 4)

The Representatives on the Committee of Ministers of Belgium, Cyprus, Denmark, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain and Sweden,[1]

Considering the European Cultural Convention;

Considering the Committee of Ministers' Resolution (86) 3 on European cultural co-operation;

Considering Resolution No. 1 on the promotion of European audiovisual works, adopted by the 1st European Ministerial Conference on Mass Media Policy, held in Vienna on 9 and 10 December 1986;

Considering the Committee of Ministers' Recommendation No. R (86) 3 on the promotion of audiovisual production in Europe and Recommendation No. R (87) 7 on film distribution in Europe;

Considering the work of the 5th Conference of European Ministers responsible for Cultural Affairs, held in Sintra from 15 to 17 September 1987, and of the informal meeting of the European Ministers responsible for Cultural Affairs, held in Brussels on 13 and 14 September 1988, as well as the conclusions of the colloquy on film co-distribution in the European area, organised by the Committee of Governmental Experts on the Cinema of the Council for Cultural Co-operation in Rimini on 3 and 4 July 1987;

Realising that the constant advance of information and communication technology and the large-scale emergence of new transmission and distribution channels will result in increased demand for programmes and increased competition in the programme market;

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[1] The following states have become members of the fund: Iceland, 26 January 1989; Norway, 26 January 1989; Switzerland, 26 January 1989; Hungary, 1 January 1990; Finland, 5 February 1990; Turkey, 28 February 1990; Austria, 5 February 1991; Poland, 19 September 1991; Ireland, 1 September 1992; Bulgaria, 1 January 1993; United Kingdom, 1 April 1993; Czech Republic, 1 January 1994.

Wishing, therefore, to foster the co-production and distribution of creative cinematographic and audiovisual works in order to take full advantage of the new communications techniques and to meet the cultural and economic challenges arising from their development;

Wishing to intensify co-operation and exchanges for the purpose of stimulating film and audiovisual production as an important means of promoting Europe's cultural identity;

Wishing, accordingly, to take concrete measures in the financial field to encourage the production and distribution of films and audiovisual works and, thereby, the development of the programme industries;

Having regard to Committee of Ministers Resolution (51) 62, concerning partial agreements;

Having regard to the decision taken by the Committee of Ministers at the 420th meeting of the Ministers' Deputies (October 1988) authorising the member states who so wish to pursue these objectives within the Council of Europe by means of a partial agreement,

Resolve to set up a European support fund for the co-production and distribution of creative cinematographic and audiovisual works to be governed by the following rules:

1. Purpose and functions of the fund[1]

1.1. The purpose of the European support fund for the co-production and distribution of creative cinematographic and audiovisual works – hereinafter referred to as "the fund" – shall be to encourage in any way to be defined by the board of management the co-production, distribution, broadcasting and exploitation of creative cinematographic and audiovisual works, particularly by helping to finance co-production, distribution, broadcasting and exploitation.

1.2. The fund shall receive, hold and utilise the resources allocated to it in accordance with paragraph 4 below, in pursuance of decisions taken by the board of management set up pursuant to paragraph 2 below.

1.3. By a decision of the board of management, the fund may enter into arrangements with any organisation pursuing objectives of cinematographic and audiovisual interest, with a view to co-ordinating their work.

1.4. The headquarters of the fund shall be in Strasbourg.

2. Board of management[2]

2.1. Each member state of the fund shall appoint one representative to the board of management.

2.2. The board of management shall take all decisions regarding the granting of financial aid. It shall determine the policy and modalities for the granting of financial aid, assuring

[1] Amended according to the provisions of Resolution (93) 10, adopted by the Committee of Ministers on 13 April 1993, at the 492nd meeting of the Ministers' Deputies.
[2] Amended according to the provisions of Resolution (95) 4, adopted by the Committee of Ministers on 7 June 1995, at the 540th meeting of the Ministers' Deputies.

itself beforehand that the works retained fulfil in particular the cultural criteria conforming to the objectives of the fund. It shall also ensure the most effective use of the resources of the fund.

2.3. The board of management shall manage the fund. For this purpose, it may secure the assistance of experts and representatives of the professional circles concerned.

2.4. The board of management shall adopt its rules of procedure.

Decisions shall be taken by a two-thirds majority of the votes cast, each of the fund's member states casting one vote. The decisions thus taken shall be valid provided the above-mentioned majority represents half of the paid-in capital of the fund, calculated on the basis of the contribution of each of the fund's member states.

However, procedural decisions shall be taken by a majority of the votes cast.

2.5. The board of management shall invite the representative of an associate member to attend board of management meetings whenever such associate member is directly concerned by one of the items on the agenda. The associate member shall be entitled to vote in respect of any such item, and the voting rules set out in paragraph 2.4 above shall be construed accordingly.

3. Audit of accounts[1]

3.1. The accounts of the fund shall be audited by the Board of Auditors of the Council of Europe.

3.2. The Board of Auditors shall examine the accounts of the fund and verify the accuracy of the management account and balance sheet. It shall also verify whether the fund's resources have been used for the specified purposes. It shall draw up an annual report on the financial situation and management of the fund to be submitted to the governments of the fund's member states. The report shall also be submitted to the Committee of Ministers.

4. Resources of the fund[2]

4.1. The fund's resources shall comprise:

a. the annual contributions of each of the fund's member states and associate member states;

b. the amounts of repaid loans;

c. any other payments, donations or legacies, subject to the provisions of paragraph 4.3 below.

[1] Amended according to the provisions of Resolution (89) 6, adopted by the Committee of Ministers on 15 June 1989, at the 427th meeting of the Ministers' Deputies.
[2] Amended according to the provisions of Resolution (95) 4, adopted by the Committee of Ministers on 7 June 1995, at the 540th meeting of the Ministers' Deputies.

4.2. The contributions of the fund's member states and associate member states shall be determined each year by their representatives on the board of management, duly authorised to that effect by their respective governments.

4.3. The crediting to the fund of payments, donations or legacies referred to in paragraph 4.1.c above, in excess of the amount fixed by the board of management, shall be subject to the agreement of the latter.

4.4. The fund's assets shall be acquired and held in the name of the Council of Europe and as such shall enjoy the privileges and immunities accorded to the Council's assets under the relevant agreements. The fund's assets shall be kept separate from the Council of Europe's other assets.

5. Conditions attaching to the award of financial aid[1, 2, 3, 4]

5.1. The board of management may grant financial aid to natural or legal persons, governed by the legislation of one of the fund's member states, which produce films and/or audiovisual works as well as to natural or legal persons which distribute, broadcast or exploit them.

5.2. In reaching its decision on whether to grant aid, the board of management shall take into account the quality of the work and shall ascertain whether it is apt to reflect and to promote the contribution of the diverse national components to Europe's cultural identity.

5.3. Co-production aid may be granted for co-productions originating in member states of the fund including at least three co-producers from the fund's member states.

Such aid may also be granted for co-productions involving co-producers from member states on the one hand and associate member or non-member states of the fund on the other hand, provided that the contribution by the latter states does not exceed 30% of the cost of producing the co-production.

The contribution, from public or private sources, of each of the co-producers from fund member states may not exceed 70% of the production costs.

5.4. Aid for the co-production of films and audiovisual works shall be granted in respect of co-productions of works primarily intended for cinema showing and of co-productions of works primarily intended for broadcasting by television or cable distribution, where such work is produced by producers independent of the broadcasting agencies.

5.5. Aid for the distribution, broadcasting and promotion of a film or audiovisual work originating in one or more member states of the fund shall be granted to cover expenditure specified in the application for the manufacture of copies, subtitling and/or dubbing and recourse to various means of promotion. Such aid may not exceed 50% of such expenditure.

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[1] Amended according to the provisions of Resolution (90) 34, adopted by the Committee of Ministers on 30 November 1990, at the 449th meeting of the Ministers' Deputies.

[2] Amended according to the provisions of Resolution (92) 3, adopted by the Committee of Ministers on 10 February 1992, at the 470th meeting of the Ministers' Deputies.

[3] Amended according to the provisions of Resolution (93) 10, adopted by the Committee of Ministers on 13 April 1993, at the 492nd meeting of the Ministers' Deputies.

[4] Amended according to the provisions of Resolution (95) 4, adopted by the Committee of Ministers on 7 June 1995, at the 540th meeting of the Ministers' Deputies.

5.6. Aid for exploitation shall be granted to support and develop the exploitation of European films or audiovisual works in the member states of the fund.

5.7. Distributors and exhibitors from an associate member state can benefit from the support scheme for distribution and cinemas.

5.8. Aid shall be allocated in the form of grants, loans at a preferential rate or advances on receipts.

6. Accession and withdrawal[1]

6.1. Any member state of the Council of Europe may become a member or associate member of the fund at any time by so notifying the Secretary General of the Council of Europe.

6.2. A European non-member state of the Council of Europe may accede to the fund, either as a member or associate member, provided that its application is unanimously accepted by the fund's member states. The European Community may also accede to the fund on the same condition.

6.3. The fund's member states, represented on the board of management, shall agree with any new member state or associate member state upon the percentage of its annual financial contribution in relation to the total amount contributed to the fund by states.

6.4. Any member state or associate member state may withdraw from the fund upon giving six months' notice expiring at the end of the financial year.

7. Secretariat

7.1. The Secretary General of the Council of Europe shall act as secretary of the fund.

8. Operation[2]

8.1. The fund's operational expenditure shall be apportioned as follows:

a. the travel and subsistence expenses of participants at meetings of the fund shall be paid by each member or associate member state of the fund;

b. the cost of implementing decisions of the board of management and common secretariat expenditure (documents, staff, official travel, translation, interpretation and all other specific expenditure relating to the operation of the fund) shall be provided for in a partial agreement budget, financed by the member states and associate member states of the fund.

[1] Amended according to the provisions of Resolution (95) 4, adopted by the Committee of Ministers on 7 June 1995, at the 540th meeting of the Ministers' Deputies.
[2] Amended according to the provisions of Resolution (95) 4, adopted by the Committee of Ministers on 7 June 1995, at the 540th meeting of the Ministers' Deputies.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Resolution (89) 6

**modifying resolution (88) 15
setting up a European support fund for the co-production
and distribution of creative cinematographic and audiovisual works ("Eurimages")**

*(Adopted by the Committee of Ministers on 15 June 1989,
At the 427th meeting of the Ministers' Deputies)*

The Representatives on the Committee of Ministers of Belgium, Cyprus, Denmark, France, the Federal Republic of Germany, Greece, Iceland, Italy, Luxembourg, Norway, the Netherlands, Portugal, Spain, Sweden and Switzerland,

Having regard to Resolution (88) 15, Rule 3, defining the functions of a supervisory board for the fund;

Whereas it is desirable to modify the said Rule 3 of Resolution (88) 15,

Resolve as follows:

Single article

Rule 3 of Resolution (88) 15 is hereby modified to read as follows:

"**3. Audit of accounts**

3.1. The accounts of the fund shall be audited by the Board of Auditors of the Council of Europe.

3.2. The Board of Auditors shall examine the accounts of the fund and verify the accuracy of the management account and balance sheet. It shall also verify whether the fund's resources have been used for the specified purposes. It shall draw up an annual report on the financial situation and management of the fund to be submitted to the governments of the fund's member states. The report shall also be submitted to the Committee of Ministers. "

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Resolution (92) 3

**modifying resolution (88) 15
setting up a European support fund for the co-production
and distribution of creative cinematographic and audio-visual works ("Eurimages")**

*(Adopted by the Committee of Ministers on 10 February 1992,
at the 470th meeting of the Ministers' Deputies)*

The Representatives on the Committee of Ministers of Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Luxembourg, the Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland and Turkey,

Having regard to Resolution (88) 15, Rule 5, paragraph 4, defining the eligibility of co-production set-ups for Eurimages' support, in particular setting out the minimum required number of co-producers from the fund's member states and the maximum financial participation of each of the co-producers from fund member states;

Whereas it is desirable to modify the said Rule 5, paragraph 4, of Resolution (88) 15,

Resolve as follows:

Single article

Rule 5, paragraph 4, of Resolution (88) 15 is hereby modified to read as follows:

"5.4. Co-production aid may be granted for schemes including at least three co-producers from the fund's member states. In the case of creative documentaries, the Board of Management may derogate from this rule.

Such aid may also be granted for co-productions involving co-producers from member states of the fund and co-producers from non-member states of the fund, provided that the latter's contribution does not exceed 30% of the co-producers' costs.

The contribution, from public or private sources, of each of the co-producers from fund member states may not exceed 60% of the co-production costs. In appropriate cases the Board of Management may derogate from this rule."

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Resolution (92) 70

establishing a European Audiovisual Observatory

(Adopted by the Committee of Ministers on 15 December 1992,
at the 485th meeting of the Ministers' Deputies)

The representatives on the Committee of Ministers of Austria, Belgium, Bulgaria, Cyprus, Czechoslovakia, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Turkey and United Kingdom,

Convinced that the establishment of a European Audiovisual Observatory would make a significant contribution to meeting the information needs of audiovisual professionals and also to promoting transparency of the market;

Having regard to the Joint Declaration adopted by the ministers and representatives of twenty-six countries and the President of the Commission of the European Communities in Paris, on 2 October 1989;

Considering that, in the said declaration, the Audiovisual EUREKA Co-ordinators' Committee was instructed to examine questions relating to the institution, role and organisation of a European Audiovisual Observatory, as well as the modalities of its establishment and functioning, in co-operation with the professionals of this sector and utilising in the best way the existing resources of participating states and European institutions;

Noting, moreover, that, according to the said declaration, the tasks of the Observatory would be to collect and process existing information and statistics as well as to define possible further needs, such data being placed at the disposal of the professionals;

Considering also that the Council of Europe was asked in this connection to examine what measures could be taken to support the activities of this Observatory;

Noting that, in the declaration adopted at the Audiovisual EUREKA Ministerial Conference (Helsinki, 12 June 1992), it was decided to establish a European Audiovisual Observatory – with a maximum annual budget of 2 million ecus during the pilot phase – according to the modalities specified in the said declaration;

Having regard to the conclusions of the Audiovisual EUREKA Co-ordinators' Committee concerning the conditions under which the Observatory should be established and should function;

Having regard to the arrangement between the Council of Europe and the European Community, concluded on 16 June 1987;

Having regard to Resolution (51) 62 of the Committee of Ministers on Partial Agreements;

Having regard to the decision taken by the Committee of Ministers at the 485th meeting of the Ministers' Deputies on 15 December 1992 authorising those member states which so wish to pursue certain objectives on the basis of an agreement extended to include members of Audiovisual EUREKA,

Decide as follows:

1. A European Audiovisual Observatory is hereby established in accordance with the provisions of the appended statute, which forms an integral part of this resolution;

2. The European Audiovisual Observatory is established for an initial period of three years, at the end of which the Audiovisual EUREKA Co-ordinators' Committee will decide on the continuation of the Observatory's activities on the basis of a report evaluating such activities. The report will be referred to the Committee of Ministers.

Note that, during the aforementioned initial period of three years, the maximum annual budget of the Observatory will be 2 million ecus.

Appendix to Resolution (92) 70

Statute of the European Audiovisual Observatory

1. Aim and functions of the Observatory

1.1. The aim of the European Audiovisual Observatory – hereinafter "the Observatory" – shall be to improve the transfer of information within the audiovisual industry, to promote a clearer view of the market and a greater transparency. In doing so, the Observatory shall pay particular attention to ensuring reliability, compatibility and comparability of information.

1.2. Specifically, the task of the Observatory shall be to collect and process information and statistics on the audiovisual sector (namely, legal, economic and programme information) – excluding any standard-setting or regulatory activities – and to place these at the disposal of professionals and the Audiovisual EUREKA Co-ordinators' Committee.

1.3. To perform this task, the Observatory shall:

- bring about co-operation between public and private suppliers of information and elaborate a policy for the negotiated use of their database so as to foster wide distribution, whilst at the same time respecting the independence and confidentiality of information provided by professionals;

- constitute a network consisting of a central unit and co-operating institutions and partners, based on the principles of flexibility and decentralisation and relying, as far as

possible, on existing centres and institutes, in relation to which the Observatory will play not only a role of co-ordination but also of harmonisation.

1.4. As a general rule, the services thus provided by the Observatory shall be charged to users on the basis of criteria determined by the Executive Council. However, members of the Executive Council shall, in principle, have free access to information held by the Observatory, according to modalities determined by the said council.

2. Headquarters

2.1. The Observatory's headquarters shall be in Strasbourg.

3. Members of the Observatory

3.1. A participating member of Audiovisual EUREKA is ex officio a member of the Observatory.

3.2. The loss of capacity as a participating member of Audiovisual EUREKA shall entail loss of capacity as a member of the Observatory.

3.3. The chairman of the Audiovisual EUREKA Co-ordinators' Committee shall notify the Secretary General of the Council of Europe of any acquisition or loss of capacity as a participating member of Audiovisual EUREKA.

4. The Observatory's constituent bodies

4.1. The Observatory's constituent bodies shall be:

- the Executive Council;
- the Advisory Committee.

5. Executive Council

5.1. The Executive Council shall consist of one representative for each member of the Observatory, that representative being, in principle, the representative appointed to the Audiovisual EUREKA Co-ordinators' Committee.

5.2. The Executive Council shall elect a Bureau, composed of the chairperson of the Executive Council and a maximum of eight members thereof, to perform those functions which the Council shall entrust to it.

5.3. The Executive Council shall take the decisions necessary for the operation and management of the Observatory. In particular, it shall:

i. adopt the Observatory's annual budget;

ii. determine the Observatory's programme of activities in accordance with the budgetary resources available, having received the opinion of the Advisory Committee on the matter;

iii. approve the Observatory's accounts;

iv. approve the Observatory's activity report;

v. choose the Observatory's Executive Director;

vi. determine the working languages of the Observatory in accordance with the decision taken in this regard by the Audiovisual EUREKA Co-ordinators' Committee on 18 September 1992.

5.4. The Executive Council shall take the decisions foreseen in Articles 5.3.i, 8.1 and 9.2 by a unanimous vote. Other decisions shall be taken by a two-thirds majority of the votes cast.

However, procedural decisions shall be taken by a majority of the votes cast.

5.5. Each member of the Observatory is entitled to cast one vote. However, unless decided otherwise by the Executive Council, a member which has not paid its compulsory contribution for the last financial exercise shall no longer take part in the decision-making until such time as the said contribution has been paid.

5.6. The Executive Council shall adopt its rules of procedure.

5.7. The Executive Council shall adopt its financial regulations in accordance with the provisions of Article 8.

5.8. The Executive Council shall hold at least one meeting a year, as a general rule in conjunction with a meeting of the Advisory Committee.

6. Advisory Committee

6.1. The Observatory's partner institutions and the representative European organisations of audiovisual professionals shall each appoint a representative to the Advisory Committee. The list of partner institutions and of organisations entitled to appoint representatives shall be determined by the Executive Council. This list shall be up-dated at least every two years.

6.2. The Executive Council, if it deems it appropriate, may invite any person or representative of an institution or organisation which is not on the aforementioned list to take part in all or part of a meeting of the Advisory Committee.

6.3. The Advisory Committee shall be consulted on the Observatory's draft programme of activities and on any other matter which the Executive Council deems useful to refer to it. In formulating its opinions, the Advisory Committee may adopt recommendations to the Executive Council.

6.4. The Advisory Committee shall adopt its opinions and recommendations by a two-thirds majority of the votes cast, each member casting one vote.

However, procedural decisions shall be taken by a majority of the votes cast.

6.5. The Advisory Committee shall adopt its rules of procedure.

6.6. The Advisory Committee shall hold one meeting a year. Further meetings may be convened by the Executive Council, either on its own initiative, or at the request of the Advisory Committee or of one or more partner institutions or professional organisations represented on it.

7. The Observatory's financial resources

7.1. The Observatory's financial resources shall consist of:

a. the annual compulsory contributions of members of the Observatory;
b. additional voluntary contributions of members of the Observatory;
c. payments for services provided by the Observatory;
d. any other payments, gifts or legacies, subject to paragraph 7.3 below;
e. the credit balance of the last closed and approved financial exercise.

7.2. Members' compulsory contributions to the Observatory shall be determined every year on the basis of the scale of shared expenses applicable within Audiovisual EUREKA, as determined by the Audiovisual EUREKA Co-ordinators' Committee.

7.3. Allocation to the Observatory's budget of payments, gifts or legacies covered by paragraph 7.1.d above in excess of the amount determined by the Executive Council shall be subject to the latter's agreement.

7.4. The Observatory's assets shall be acquired and held on behalf of the Council of Europe and shall benefit as such from the privileges and immunities applicable to the Council's assets under existing agreements. The Observatory's assets may not be amalgamated with other Council of Europe assets.

8. Financial regime

8.1. In derogation of the financial regulations of the Council of Europe, the Observatory's own financial regulations shall be adopted by the Executive Council and approved by the Committee of Ministers.

8.2. The financial regulations shall provide appropriate arrangements for the control of the operation of the budget.

9. Secretariat

9.1. The Observatory's Secretariat shall be led by an Executive Director, chosen by the Executive Council.

9.2. The Executive Council shall determine the Observatory's staffing level.

9.3. The Executive Director shall be accountable to the Executive Council for the financial and budgetary management, as well as the implementation of the programme of activities of the Observatory. He/she shall be accountable to the Secretary General of the Council of Europe as regards the application of the staff regulations. Staff shall be appointed in agreement with the Executive Director.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Resolution (97) 4

confirming the continuation of the European Audiovisual Observatory

(Adopted by the Committee of Ministers on 20 March 1997,
at the 586th meeting of the Ministers' Deputies)

The Representatives on the Committee of Ministers of Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey and the United Kingdom,

Having taken note of the position of the Commission of the European Communities, following the arrangement between the Council of Europe and the European Community, concluded on 16 June 1987 and supplemented on 5 November 1996, in favour of the continuation of the Observatory;

Having regard to Committee of Ministers' Statutory Resolution (93) 28 on partial and enlarged agreements and to Resolution (96) 36 establishing the criteria for partial and enlarged agreements of the Council of Europe;

Having regard to Resolution (92) 70, adopted by the Committee of Ministers on 15 December 1992 at the 485th meeting of the Ministers' Deputies, establishing a European Audiovisual Observatory for an initial period of three years, at the end of which its activities were to be evaluated;

Having regard to the conclusions of an external evaluation on the activities and operations of the Observatory undertaken on the initiative of the Audiovisual EUREKA Co-ordinators' Committee;

Having regard also to the opinion and recommendations of the Advisory Committee of the Observatory, adopted at its sixth meeting on 21 March 1996, expressing support for the continuation of the Observatory;

Having regard to the decision of the Audiovisual EUREKA Co-ordinators' Committee, adopted at its meeting in Cracow on 13 June 1996, to recommend the continuation of the European Audiovisual Observatory in accordance with the new orientations determined at that meeting;

Having regard to the draft revised statute which was approved by the Observatory's Executive Council at its fifteenth meeting in Brussels on 5 February 1997;

Noting that this revision clarifies the status of the European Audiovisual Observatory in respect of privileges and immunities, including in particular tax matters;

Convinced that the continuation of the European Audiovisual Observatory's mission to collect and process existing information and statistics will make a significant contribution to meeting the information needs of audiovisual professionals and also to promoting transparency of the market,

Decide to confirm the continuation of the European Audiovisual Observatory as an enlarged partial agreement of the Council of Europe. The Observatory shall be governed by the provisions of the appended revised statute which enters into force upon adoption of the present resolution. The services and activities of the Observatory shall be submitted to evaluations at regular intervals according to the arrangements and the timetable determined by its Executive Council. These evaluation reports shall be transmitted to the Committee of Ministers.

Appendix to Resolution (97) 4

Statute of the European Audiovisual Observatory

1. Aim and functions of the Observatory

1.1. The aim of the European Audiovisual Observatory - hereinafter "the Observatory" - shall be to improve the transfer of information within the audiovisual industry, to promote a clearer view of the market and a greater transparency. In doing so, the Observatory shall pay particular attention to ensuring reliability, compatibility and comparability of information.

1.2. Specifically, the task of the Observatory shall be to collect and process information and statistics on the audiovisual sector (namely, legal, economic and programme information) - excluding any standard-setting or regulatory activities - and to place these at the disposal of professionals and the Audiovisual EUREKA Co-ordinators' Committee.

1.3. To perform this task, the Observatory shall:

- bring about co-operation between public and private suppliers of information and elaborate a policy for the negotiated use of their database so as to foster wide distribution, whilst at the same time respecting the independence and confidentiality of information provided by professionals;

- constitute a network consisting of a central unit and co-operating institutions and partners, resting on the principles of flexibility and decentralisation and relying, as far as possible, on existing centres and institutes, in relation to which the Observatory will play not only a role of co-ordination but also of harmonisation;

- have an appropriate staff.

1.4. As a general rule, the services thus provided by the Observatory shall be charged to users on the basis of criteria determined by the Executive Council. However, members of the

Executive Council shall, in principle, have free access to information held by the Observatory, according to modalities determined by the said council.

2. Headquarters

2.1. The Observatory's premises shall be in Strasbourg, the seat of the Council of Europe.

3. Members of the Observatory

3.1. A participating member of Audiovisual EUREKA is ex officio a member of the Observatory.

3.2. The loss of capacity as a participating member of Audiovisual EUREKA shall entail loss of capacity as a member of the Observatory.

3.3. The chairman of the Audiovisual EUREKA Co-ordinators' Committee shall notify the Secretary General of the Council of Europe of any acquisition or loss of capacity as a participating member of Audiovisual EUREKA.

4. The Observatory's constituent bodies

4.1. The Observatory's constituent bodies shall be:

- the Executive Council;
- the Advisory Committee.

4.2. In addition, there shall be a Financial Committee which will only exercise the functions laid down in Articles 7.3 and 7.5. This organ shall be composed of the Representatives on the Committee of Ministers of the member states of the Council of Europe which are also members of the Observatory, and of representatives of any other members of the Observatory.

5. Executive Council

5.1. The Executive Council shall consist of one representative for each member of the Observatory, that representative being, in principle, the representative appointed to the Audiovisual EUREKA Co-ordinators' Committee.

5.2. The Executive Council shall elect a Bureau, composed of the chairperson of the Executive Council and a maximum of eight members thereof, to perform those functions which the Council shall entrust to it.

5.3. The Executive Council shall take the decisions necessary for the operation and management of the Observatory.

In particular, it shall:

i. approve the Observatory's draft annual budget, before transmitting it to the Financial Committee;

ii. determine the Observatory's programme of activities in accordance with the budgetary resources available, having received the opinion of the Advisory Committee on the matter;

iii. approve the Observatory's accounts;

iv. approve the Observatory's activity report before transmitting it to the Committee of Ministers;

v. choose the Observatory's Executive Director, with a view to his/her appointment by the Secretary General of the Council of Europe in accordance with the provisions of Article 9;

vi. determine the working languages of the Observatory in accordance with the decision taken in this regard by the Audiovisual EUREKA Co-ordinators' Committee on 18 September 1992.

5.4. The Executive Council shall take the decisions foreseen in Articles 5.3.i, 5.3.iv, 8.1 et 9.2 by unanimous vote. Other decisions shall be taken by a two-thirds majority of the votes cast.

However, procedural decisions shall be taken by a majority of the votes cast.

5.5. Each member of the Observatory is entitled to cast one vote. However, unless decided otherwise by the Executive Council, a member which has not paid its compulsory contribution for the last financial exercise shall no longer take part in the decision making until such time as the said contribution has been paid.

5.6. The Executive Council shall adopt its rules of procedure.

5.7. The Executive Council shall adopt financial regulations in accordance with the provisions of Article 8.

5.8. The Executive Council shall hold at least one meeting a year, as a general rule in conjunction with a meeting of the Advisory Committee.

6. Advisory Committee

6.1. The Observatory's partner institutions and the representative European organisations of audiovisual professionals shall each appoint a representative to the Advisory Committee. The list of partner institutions and of organisations entitled to appoint representatives shall be determined by the Executive Council. This list shall be updated at least every two years.

6.2. The Executive Council, if it deems it appropriate, may invite any person or representative of an institution or organisation which is not on the aforementioned list to take part in all or part of a meeting of the Advisory Committee.

6.3. The Advisory Committee shall be consulted on the Observatory's draft programme of activities and on any other matter which the Executive Council deems it useful to refer to it.

In formulating its opinions, the Advisory Committee may adopt recommendations to the Executive Council.

6.4. The Advisory Committee shall adopt its opinions and recommendations by a two-thirds majority of the votes cast, each member casting one vote.

However, procedural decisions shall be taken by a majority of the votes cast.

6.5. The Advisory Committee shall adopt its rules of procedure.

6.6. The Advisory Committee shall hold one meeting a year. Further meetings may be convened by the Executive Council, either on its own initiative, or at the request of the Advisory Committee or of one or more partner institutions or professional organisations represented on it.

7. The Observatory's financial resources

7.1. The Observatory's financial resources shall consist of:

a. the annual compulsory contributions of members of the Observatory;
b. additional voluntary contributions of members of the Observatory;
c. payments for services provided by the Observatory;
d. any other payments, gifts or legacies, subject to paragraph 7.3 below;
e. the credit balance of the last closed and approved financial exercise.

7.2. Members' compulsory contributions to the Observatory shall be determined every year on the basis of the scale of shared expenses applicable within Audiovisual EUREKA, as determined by the Audiovisual EUREKA Co-ordinators' Committee.

7.3. Allocation to the Observatory's budget of payments, gifts or legacies covered by paragraph 7.1.d above in excess of the amount determined by the Executive Council and by the Financial Committee shall be subject to the agreement of these two organs.

7.4. The Observatory's assets shall be acquired and held on behalf of the Council of Europe and shall benefit as such from the privileges and immunities applicable to the Council's assets under existing agreements.

7.5. The Observatory's budget shall be adopted annually by the Financial Committee, by a unanimous decision.

8. Financial regime

8.1. The Observatory's own financial regulations which shall respect the general principles of the financial regulations of the Council of Europe shall be adopted by the Executive Council and approved by the Committee of Ministers.

8.2. The financial regulations shall provide appropriate arrangements for the control of the operation of the budget.

9. Secretariat

9.1. The Secretariat of the Observatory shall be headed by an Executive Director who shall be chosen by the Executive Council and appointed by the Secretary General of the Council of Europe.

9.2. The Executive Council shall determine the number of staff of the Observatory. Staff shall be appointed by the Secretary General of the Council of Europe with the agreement of the Executive Director.

9.3. The Executive Director shall manage the Observatory's finances in conformity with the Observatory's financial regulations. He/she shall be accountable to the Secretary General of the Council of Europe, in particular as regards the application of the Staff Regulations.

Appendix II

Supplement to DH-MC(2010)001

Selected relevant texts adopted by the Committee of Ministers

(13 January 2010 – 21 September 2011)

Recommendations and Declarations of the Committee of Ministers in the field of media and new communication services[1]

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Recommendation 4 (1995) on the protection of personal data in the area of telecommunication services, with particular reference to telephone services 294

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[1] Before 1978, Recommendations appeared in the form of a Resolution.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

RECOMMENDATION No. R (95) 4

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON THE PROTECTION OF PERSONAL DATA
IN THE AREA OF TELECOMMUNICATION SERVICES,
WITH PARTICULAR REFERENCE TO TELEPHONE SERVICES

(Adopted by the Committee of Ministers on 7 February 1995
at the 528th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity among its members;

Aware of the increasing use of automated data processing in the area of telecommunications services, as well as the advantages to be gained by users from technological developments, in particular in the area of telephone services;

Bearing in mind in this regard the move towards digitalisation of networks, with the advantages which this brings to users of telecommunications services;

Believing, nevertheless, that technological development in the area of telecommunications, in particular telephone services, may entail possible risks to the privacy of the user, as well as possible inhibitions on his freedom of communication;

Referring, in this regard, to certain new features particularly in the area of telephone services, for instance, calling-line identification, call-forwarding and mobile telephones, as well as malicious call tracing devices and automatic dialling devices;

Noting also the risks to privacy and freedom of communication accompanying the provision of itemised telephone bills;

Recognising that the provisions of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Strasbourg 1981; ETS 108) apply to the automated data processing activities of network operators and other parties providing telecommunications services;

Believing, however, that it is appropriate to apply more specifically the general provisions of the convention so as to adapt them to the collection and processing of personal data by network operators and any other party providing telecommunications services;

Noting, in addition, that new developments in telecommunications services must respect the right to private life and secrecy of correspondence as guaranteed by Article

8 of the European Convention on Human Rights,

Recommends that the governments of member states:

- take account in their domestic law and practice of the principles annexed to this recommendation;
- bring this recommendation to the attention of any authority involved in the implementation of national policies in respect of data protection or telecommunications;
- ensure that the provisions of the recommendation are brought to the attention of network operators, providers of telecommunications services, equipment and software suppliers, organisations using telecommunications means for direct marketing, as well as bodies representing any of these and consumer organisations;
- promote the provisions of the recommendation within the various international bodies dealing with telecommunications.

Appendix to Recommendation No. R (95) 4

1. Scope and definitions

1.1. The principles contained in this recommendation apply to network operators and service providers who for the accomplishment of their functions collect and process personal data.

1.2. These principles apply to personal data undergoing automatic processing. Member states may extend the principles contained in this recommendation to personal data undergoing manual processing.

1.3. Member states may extend the principles contained in this recommendation to the collection and processing of personal data relating to legal persons.

1.4. For the purposes of this recommendation:
- the term "personal data" covers any information relating to an identified or identifiable individual (data subject). An individual shall not be regarded as "identifiable" if identification requires an unreasonable amount of time or manpower;
- the term "telecommunications services" covers the various services offered over telecommunications networks for voice, text, image and data transmission between users in communication or correspondence;
- the term "network operators" refers to any public or private entity which makes available the use of telecommunications networks;
- the term "service providers" refers to any public or private entity which provides and operates telecommunications services using a network made available by a network operator or using its own network.

2. Respect for privacy

2.1. Telecommunications services, and in particular telephone services which are being developed, should be offered with due respect for the privacy of users, the secrecy of the correspondence and the freedom of communication.

2.2. Network operators, service providers and equipment and software suppliers should exploit information technology for constructing and operating networks, equipment and software, in a way which ensures the privacy of users.

Anonymous means of accessing the telecommunications network and services should be made available.

2.3. Unless authorised for technical storage or message transmission or for other legitimate purposes, or for the execution of a service contract with the subscriber, any interference by network operators or service providers with the content of communications should be prohibited. Subject to Principle 4.2 the data pertaining to the content of messages collected during any such interference should not be communicated to third parties.

2.4. Interference by public authorities with the content of a communication, including the use of listening or tapping devices or other means of surveillance or interception of communications, must be carried out only when this is provided for by law and constitutes a necessary measure in a democratic society in the interests of:

a. protecting state security, public safety, the monetary interests of the state or the suppression of criminal offences;
b. protecting the data subject or the rights and freedoms of others.

2.5. In the case of interference by public authorities with the content of a communication, domestic law should regulate:

a. the exercise of the data subject's rights of access and rectification;
b. in what circumstances the responsible public authorities are entitled to refuse to provide information to the person concerned, or delay providing it;
c. storage or destruction of such data.

If a network operator or service provider is instructed by a public authority to effect an interference, the data so collected should be communicated only to the body designated in the authorisation for that interference.

2.6. Domestic law should determine the conditions and safeguards under which network operators are authorised to use technical means to locate the source of malicious or abusive calls.

3. Collection and processing of data

3.1. The collection and processing of personal data in the area of telecommunications services should take place and develop within the framework of data protection policy, taking account of the provisions of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and in particular the principle of purpose specification.

Without prejudice to other purposes foreseen in this recommendation, personal data should only be collected and processed by network operators and service providers for the purposes of connecting a user to the network and making available to him a

particular telecommunications service and for billing and verification purposes, as well as for ensuring the optimal technical operation and development of the network and service.

3.2. Network operators and service providers should inform, in an appropriate manner, subscribers to the various telecommunications services of the categories of personal data concerning them which they collect and process, the legal bases of collection, the purposes for which they are collected and processed, the use made of the data and the periods over which they are stored.

4. Communication of data

4.1. Personal data collected and processed by network operators or service providers should not be communicated, unless the subscriber concerned has given in writing his express and informed consent and the information communicated does not make it possible to identify called parties. The subscriber may revoke his consent at any time but without retroactive effect.

4.2. Personal data collected and processed by network operators or service providers may be communicated to public authorities when this is provided for by law and constitutes a necessary measure in a democratic society in the interests of:

a. protecting state security, public safety, the monetary interests of the state or the suppression of criminal offences;
b. protecting the data subject or the rights and freedoms of others.

4.3. In cases of communication to public authorities of personal data, domestic law should regulate:

a. the exercise of rights of access and rectification by the data subject;
b. the conditions under which the competent public authorities shall be entitled to refuse to give information to
the data subject or to defer the issue thereof;
c. conservation or destruction of such data.

4.4. Subscriber lists which contain personal data may only be communicated by network operators and service providers to third parties if one of the following conditions has been met:

a. the subscriber has given in writing his express and informed consent, or
b. the subscriber has been informed of the intended communication and has not objected, or
c. the data protection authority has authorised the communication, or
d. communication is provided for under domestic law.

The subscriber may revoke his consent at any time but without retroactive effect.

4.5. Communication of personal data between network operators and service providers is allowed where such communication is necessary for operational and invoicing purposes.

5. Rights of access and rectification

5.1. Each subscriber should, on request and at reasonable intervals and without excessive delay or expense, be able to obtain all data concerning him which have been collected and processed by network operators or service providers, and to have them rectified or erased where they are found to be inaccurate, irrelevant or excessive, or where they have been stored for an excessive length of time.

5.2. Fulfilment of the requests made under Principle 5.1 may be refused, limited or postponed when this is provided for by law and constitutes a necessary measure in a democratic society in the interests of:

a. protecting state security, public safety, the monetary interests of the state or the suppression of criminal offences;
b. protecting the data subject or the rights and freedoms of others.

6. Security

6.1. Network operators and service providers should take all appropriate technical and organisational measures to ensure the physical and logical security of the network, services and the data which they collect and process, and to prevent unauthorised interference with, or interception of, communications.

6.2. Subscribers to telecommunications services should be informed about network security risks and methods for subscribers to reduce the security risks of their messages.

7. Implementation of principles

a. Directories

7.1. Subscribers should have the right to refuse without justification and at no extra cost, to have their personal data included in a directory.
Where domestic law requires certain data to be included in a directory, however, the subscriber should be entitled to have his data excluded for valid reasons.

Where domestic law requires a subscriber to pay a fee for ex-directory facilities, any such fee should not exceed a reasonable amount and should in no case be a deterrent to exercising the right to take advantage of ex-directory facilities.

7.2. A subscriber wishing to have data concerning co-users of his terminal included in a directory should first obtain the consent of the latter.

7.3. Subject to the wish of the subscriber to have additional data concerning himself included, the personal data contained in a directory should be limited to such as are necessary to identify reasonably a particular subscriber and to avoid confusion between or among different subscribers listed in the directory.

7.4. When an electronic directory is consulted, technical means should be provided to prevent abuse and in particular unauthorised remote downloading. The matching of

data contained in an electronic directory with other data or files should be prohibited unless this is allowed by domestic law or is essential to the network operators or service providers for operational purposes.

7.5. Data contained in a directory may be used by network operators or service providers to operate a service replying to precise enquiries about the directory. Answers to directory enquiries should be limited to communication of the data appearing in the directory. Measures should be taken to prevent abuse. Directory enquiries services should not provide information relating to subscribers not appearing in the directory except with their written and informed consent.

7.6. Use of data appearing in the directory shall also be governed by the relevant principles of Recommendation No. R (91) 10 on the communication to third parties of personal data held by public bodies.

b. Use of data for the purposes of direct marketing

7.7. The principles laid down in Recommendation No. R (85) 20 on the protection of personal data used for the purposes of direct marketing apply to the use of subscriber data by third parties for purposes of direct marketing.

7.8. Domestic law should provide the appropriate guarantees and determine the conditions under which subscriber data may be used by network operators, service providers and third parties for the purposes of direct marketing by telephone or by other telecommunications means.

7.9. The elaboration of codes of practice should be encouraged so as to ensure that the practice is carried out in a way which does not cause distress or discomfort to subscribers. In particular, domestic law or codes of practice should apply to the time when calls may be made, the nature of the message and the manner in which the message is communicated.

7.10. Direct marketing by telephone or by other telecommunications means may not be directed at any subscriber who has expressed the wish not to receive any advertising material. For this purpose, appropriate means should be developed for identifying those subscribers who do not wish to receive any advertising material over the telephone.

7.11. Automatic call devices for transmitting pre-recorded messages of an advertising nature, may only be directed at subscribers who have given their express and informed consent to providers of this sort of service. The subscriber may revoke his consent at any time.

c. Detailed billing

7.12. Itemised bills should only be made available by network operators and service providers to the subscriber on his request. Consideration should be given to the privacy of the co-users and correspondents.

7.13. Data needed for billing should not be stored by network operators or service

providers for a period which is longer than strictly necessary for settling the account, bearing in mind the possible need to store data for a reasonable period with a view to complaints on the billing, or if legal provisions require those data to be kept longer.

d. Private branch exchange systems (PBX systems)

7.14. In principle, individuals should be informed by appropriate means whenever data resulting from the use of a telephone are collected and processed by the operator of the private branch exchange. The data stored should be erased immediately on payment of the invoice.

7.15. The principles laid down in Recommendation No. R (89) 2 on the protection of personal data used for employment purposes apply to the operation by employers of telephone call logging systems at their places of work.

e. Calling-line identification

7.16. The introduction of a service feature permitting the display of the telephone number of an incoming call on the called subscriber's terminal should be accompanied by information to all subscribers that this feature is now available to some subscribers, and therefore that the possibility exists that their telephone number may be disclosed to the called subscriber.

The introduction of this feature should be accompanied by the possibility of the calling party to prevent in a simple manner the disclosure of their telephone number to the called party.

7.17. Domestic law should determine the conditions and safeguards under which network operators are authorised or obliged to override the decision of a calling party to suppress the display of his number on the called party's terminal.

f. Call forwarding

7.18. Consideration should be given to mechanisms whereby a third party subscriber may seek cancellation of call forwarding in case of dispute.

7.19. Where, in accordance with the provisions of principle 2.4 relating to interception of communications, the surveillance or interception of incoming and outgoing calls of a subscriber has been authorised, the surveillance or interception measures should not extend to all incoming calls on the terminal of a third party subscriber but only to those which have been forwarded by the former.

g. Mobile telephones

7.20. When providing and operating a mobile telephone service, network operators and service providers should inform subscribers of the risks for secrecy of correspondence which may accompany the use of mobile telephone networks, in particular in the absence of encryption of radiocommunications. Means of offering encryption possibilities or equivalent safeguards to subscribers to mobile telephone networks should be found.

7.21. Consideration should be given to the need to ensure that billing for the use of a mobile telephone does not require the storage of data revealing with too great a precision the location of the subscriber or the called party at the time of use.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

DECLARATION

ON THE PROTECTION OF JOURNALISTS

IN SITUATIONS OF CONFLICT AND TENSION

(Adopted by the Committee of Ministers on 3 May 1996,
at its 98th Session)

1. The Committee of Ministers of the Council of Europe condemns the growing number of killings, disappearances and other attacks on journalists and considers these to be also attacks on the free and unhindered exercise of journalism.

2. The Committee of Ministers appeals to all states, in particular to all member states of the Council of Europe, to recognise that the right of individuals and the general public to be informed about all matters of public interest and to be able to evaluate the actions of public authorities and other parties involved is especially important in situations of conflict and tension.

3. The Committee of Ministers solemnly reaffirms that all journalists working in situations of conflict and tension are, without qualification, entitled to the full protection offered by applicable international humanitarian law, the European Convention on Human Rights and other international human rights instruments.

4. The Committee of Ministers reaffirms the commitments of governments of member states to respect these existing guarantees for the protection of journalists.

5. The Committee of Ministers, on the occasion of World Press Freedom Day, draws attention to Recommendation No. R (96) 4 on the protection of journalists in situations of conflict and tension and the appended basic principles.

6. The Committee of Ministers shall consider, together with the Secretary General, ways of strengthening, in general, existing arrangements within the Council of Europe for receiving information, and taking action on, infringements of rights and freedoms of journalists in situations of conflict and tension.

7. The Committee of Ministers considers in this context that, in urgent cases, the Secretary General could take speedily all appropriate action on receipt of reports on infringements of rights and freedoms of journalists in member states in situations of conflict and tension and calls on the member states to co-operate with the Secretary General in this regard.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

DECLARATION

ON THE EXPLOITATION OF PROTECTED RADIO AND TELEVISION PRODUCTIONS

HELD IN THE ARCHIVES OF BROADCASTING ORGANISATIONS

(Adopted by the Committee of Ministers on 9 September 1999
at the 678th meeting of the Ministers' Deputies)

The Committee of Ministers of the Council of Europe,

Recalling that copyright and neighbouring rights are at the basis of the creation, production and circulation of radio and television productions in Europe and that it is necessary to guarantee adequate protection of rights holders, while facilitating the possibilities of offering radio and television productions to the public through the new opportunities offered by technical developments,

Noting,

that many broadcasters keep in their archives a number, often substantial, of radio and television productions which are part of the national and European cultural heritage and that there are productions amongst them which are of an important cultural, educational or informative value;

the need for European programme material for the new modes of distribution to the public made possible by digitisation and new electronic media;

that such programmes may be of great interest for exploitation via the above-mentioned new modes of distribution and that, while stressing the desirability to produce new European radio and television productions, it should be possible to make use of Europe's audio-visual heritage;

that in the past, at the time of production and because of the circumstances prevailing at that time, broadcasters may have acquired rights from the various programme contributors only for radio and/or television broadcasting over the air (wireless) or via cable/wire/optical fibre (cable origination);

that such rights have been limited in time and/or for a certain number of transmissions and/or a certain geographical area;

that, as a consequence, these broadcasters do not hold all the relevant rights of individual programme contributors to their own past radio and television archive productions, which would enable use in new formats;

that collecting societies or other representative bodies do not necessarily hold or represent the above-mentioned rights to such past archive production, or not for each category of right owners in question;

that, given the number of potential rights holders involved, it is often actually or practically, under conditions which are still economically worthwhile, impossible in many countries for the broadcasters in question to identify, find and negotiate with every single individual programme contributor or their successors-in-title;

that, as a result, an important number of productions of cultural, educational or informative value made by European broadcasters risk remaining in their archives, until the expiry of the term of protection of the copyright and neighbouring rights involved in these productions;

and that consequently, these productions or relevant parts thereof may not be offered to the public in the new digital environment;

Recognising that this situation, in general, is undesirable and therefore needs to be addressed and, if necessary, resolved whenever possible;

Appreciating, however,

that these productions may have considerable value;

that copyright and neighbouring rights are essential ownership rights providing the owners with the exclusive right to decide upon the use of their property and/or a right to remuneration;

that therefore, as a matter of principle, broadcasters, together with the organisations representing rights holders interests, should be urged to make all possible efforts to identify the potential rights holders and to reach contractual solutions;

Realising, however, that under certain circumstances, despite such efforts, it may prove to be impossible to obtain the necessary authorisations and to clear the necessary rights, inter alia, because not all rights holders involved can be identified;

Bearing in mind the different legal and other situations in the member States of the Council of Europe;

Underlining the obligations which the member States of the Council of Europe have under international treaties, conventions and other international instruments in the field of copyright and neighbouring rights;

Calls on member States to monitor the issue from their own perspective and their own legal traditions and practices;

Encourages rights holders and/or their representatives organisations, on the one hand, and broadcasters and/or their representative organisations, on the other hand, to enter into negotiations so as to find a satisfactory and workable contractual solution;

Invites those member States where the above-mentioned problems arise and for which no contractual solutions have proved to be possible, to examine and, if appropriate, develop initiatives to remedy the situation in accordance with their obligations under international treaties, conventions and other international instruments in the field of copyright and neighbouring rights, bearing in mind the respective rights of the rights holders and the legitimate interests of the public;

Decides that in due time, it will evaluate the situation and decide whether any action should be taken at the level of the Council of Europe, following appropriate consultations with all interested parties.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation Rec(2002)5
of the Committee of Ministers to member states
on the protection of women against violence[1]

(Adopted by the Committee of Ministers on 30 April 2002
at the 794th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,

Reaffirming that violence towards women is the result of an imbalance of power between men and women and is leading to serious discrimination against the female sex, both within society and within the family;

Affirming that violence against women both violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms;

Noting that violence against women constitutes a violation of their physical, psychological and/or sexual integrity;

Noting with concern that women are often subjected to multiple discrimination on ground of their gender as well as their origin, including as victims of traditional or customary practices inconsistent with their human rights and fundamental freedoms;

Considering that violence against women runs counter to the establishment of equality and peace and constitutes a major obstacle to citizens' security and democracy in Europe;

Noting with concern the extent of violence against women in the family, whatever form the family takes, and at all levels of society;

Considering it urgent to combat this phenomenon which affects all European societies and concerns all their members;

Recalling the Final Declaration adopted at the Second Council of Europe Summit (Strasbourg, 1997), in which the heads of state and government of the member states affirmed their determination to combat violence against women and all forms of sexual exploitation of women;

Bearing in mind the provisions of the European Convention on Human Rights (1950) and the case-law of its organs, which safeguard, *inter alia*, the right to life and the right not to be subjected to torture or to inhuman or degrading treatment or punishment, the right to liberty and security and the right to a fair trial;

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[1] In conformity with Article 10.2c of the Rules of Procedure of the Ministers' Deputies, Sweden reserved its right to comply or not with paragraph 54 of this recommendation.

Considering the European Social Charter (1961) and the revised European Social Charter (1996), in particular the provisions therein concerning equality between women and men with regard to employment, as well as the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Recalling the following recommendations of the Committee of Ministers to member states of the Council of Europe: Recommendation No. R (79) 17 concerning the protection of children against ill-treatment; Recommendation No. R (85) 4 on violence in the family; Recommendation No. R (85) 11 on the position of the victim within the framework of criminal law and procedure; Recommendation No. R (87) 21 on assistance to victims and the prevention of victimisation; Recommendation No. R (90) 2 on social measures concerning violence within the family; Recommendation No. R (91) 11 concerning sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults; Recommendation No. R (93) 2 on the medico-social aspects of child abuse, Recommendation No. R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation and Recommendation Rec(2001)16 on the protection of children against sexual exploitation;

Recalling also the Declarations and Resolutions adopted by the 3rd European Ministerial Conference on Equality between Women and Men held by the Council of Europe (Rome, 1993);

Bearing in mind the United Nations Declaration on the Elimination of Violence against Women (1993), the United Nations Convention on the Elimination of All Forms of Discrimination against Women (1979), the United Nations Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000), the Platform for Action adopted at the Fourth World Conference on Women (Beijing, 1995) and the Resolution on Further actions and initiatives to implement the Beijing Declaration and Platform for Action adopted by the United Nations General Assembly (23rd extraordinary session, New York, 5-9 June 2000);

Bearing in mind the United Nations Convention on the Rights of the Child (1989), as well as its Optional Protocol on the sale of children, child prostitution and child pornography (2000);

Also bearing in mind the International Labour Organisation Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999) and Recommendation (R 190) on the Worst Forms of Child Labour (1999);

Recalling the basic principles of international humanitarian law, and especially the 4th Geneva Convention relative to the protection of civilian persons in time of war (1949) and the 1st and 2nd additional Protocols thereto;

Recalling also the inclusion of gender-related crimes and sexual violence in the Statute of the International Criminal Court (Rome, 17 July 1998),

Recommends that the governments of member states:

I. Review their legislation and policies with a view to:

1. guaranteeing women the recognition, enjoyment, exercise and protection of their human rights and fundamental freedoms;

2. taking necessary measures, where appropriate, to ensure that women are able to exercise freely and effectively their economic and social rights;

3. ensuring that all measures are co-ordinated nation-wide and focused on the needs of the victims and that relevant state institutions as well as non-governmental organisations (NGOs) be associated with the elaboration and the implementation of the necessary measures, in particular those mentioned in this recommendation;

4. encouraging at all levels the work of NGOs involved in combating violence against women and establishing active co-operation with these NGOs, including appropriate logistic and financial support;

II. Recognise that states have an obligation to exercise due diligence to prevent, investigate and punish acts of violence, whether those acts are perpetrated by the state or private persons, and provide protection to victims;

III. Recognise that male violence against women is a major structural and societal problem, based on the unequal power relations between women and men and therefore encourage the active participation of men in actions aiming at combating violence against women;

IV. Encourage all relevant institutions dealing with violence against women (police, medical and social professions) to draw up medium- and long-term co-ordinated action plans, which provide activities for the prevention of violence and the protection of victims;

V. Promote research, data collection and networking at national and international level;

VI. Promote the establishment of higher education programmes and research centres including at university level, dealing with equality issues, in particular with violence against women;

VII. Improve interactions between the scientific community, the NGOs in the field, political decision-makers and legislative, health, educational, social and police bodies in order to design co-ordinated actions against violence;

VIII. Adopt and implement the measures described in the appendix to this recommendation in the manner they consider the most appropriate in the light of national circumstances and preferences, and, for this purpose, consider establishing a national plan of action for combating violence against women;

IX. Inform the Council of Europe on the follow-up given at national level to the provisions of this recommendation.

Appendix to Recommendation Rec(2002)5

Definition

1. For the purposes of this recommendation, the term "violence against women" is to be understood as any act of gender-based violence, which results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life. This includes, but is not limited to, the following:

a. violence occurring in the family or domestic unit, including, *inter alia*, physical and mental aggression, emotional and psychological abuse, rape and sexual abuse, incest, rape between spouses, regular or occasional partners and cohabitants, crimes committed in the name of honour, female genital and sexual mutilation and other traditional practices harmful to women, such as forced marriages;

b. violence occurring within the general community, including, inter alia, rape, sexual abuse, sexual harassment and intimidation at work, in institutions or elsewhere trafficking in women for the purposes of sexual exploitation and economic exploitation and sex tourism;

c. violence perpetrated or condoned by the state or its officials;

d. violation of the human rights of women in situations of armed conflict, in particular the taking of hostages, forced displacement, systematic rape, sexual slavery, forced pregnancy, and trafficking for the purposes of sexual exploitation and economic exploitation.

General measures concerning violence against women

2. It is the responsibility and in the interest of states as well as a priority of national policies to safeguard the right of women not to be subjected to violence of any kind or by any person. To this end, states may not invoke custom, religion or tradition as a means of evading this obligation.

3. Member states should introduce, develop and/or improve where necessary, national policies against violence based on:

a. maximum safety and protection of victims;

b. empowerment of victimised women by optimal support and assistance structures which avoid secondary victimisation;

c. adjustment of the criminal and civil law including the judicial procedure;

d. raising of public awareness and education of children and young persons;

e. ensuring special training for professionals confronted with violence against women;

f. prevention in all respective fields.

4. In this framework, it will be necessary to set up, wherever possible, at national level, and in co-operation with, where necessary, regional and/or local authorities, a governmental co-ordination institution or body in charge of the implementation of measures to combat violence against women as well as of regular monitoring and evaluation of any legal reform or new form of intervention in the field of action against violence, in consultation with NGOs and academic and other institutions.

5. Research, data collection and networking at national and international level should be developed, in particular in the following fields:

a. the preparation of statistics sorted by gender, integrated statistics and common indicators in order to better evaluate the scale of violence against women;

b. the medium- and long-term consequences of assaults on victims;

c. the consequence of violence on those who are witness to it, *inter alia*, within the family;

d. the health, social and economic costs of violence against women;

e. the assessment of the efficiency of the judiciary and legal systems in combating violence against women;

f. the causes of violence against women, i.e. the reasons which cause men to be violent and the reasons why society condones such violence;

g. the elaboration of criteria for benchmarking in the field of violence.

Information, public awareness, education and training

Member states should:

6. compile and make available to the general public appropriate information concerning the different types of violence and their consequences for victims, including integrated statistical data, using all the available media (press, radio and television, etc.);

7. mobilise public opinion by organising or supporting conferences and information campaigns so that society is aware of the problem and its devastating effects on victims and society in general and can therefore discuss the subject of violence towards women openly, without prejudice or preconceived ideas;

8. include in the basic training programmes of members of the police force, judicial personnel and the medical and social fields, elements concerning the treatment of domestic violence, as well as all other forms of violence affecting women;

9. include in the vocational training programmes of these personnel, information and training so as to give them the means to detect and manage crisis situations and improve the manner in which victims are received, listened to and counselled;

10. encourage the participation of these personnel in specialised training programmes, by integrating the latter in a merit-awarding scheme;

11. encourage the inclusion of questions concerning violence against women in the training of judges;

12. encourage self-regulating professions, such as therapists, to develop strategies against sexual abuse which could be committed by persons in positions of authority;

13. organise awareness-raising campaigns on male violence towards women, stressing that men should be responsible for their acts and encouraging them to analyse and dismantle mechanisms of violence and to adopt different behaviour;

14. introduce or reinforce a gender perspective in human rights education programmes, and reinforce sex education programmes that give special importance to gender equality and mutual respect;

15. ensure that both boys and girls receive a basic education that avoids social and cultural patterns, prejudices and stereotyped roles for the sexes and includes training in assertiveness skills, with special attention to young people in difficulty at school; train all members of the teaching profession to integrate the concept of gender equality in their teaching;

16. include specific information in school curricula on the rights of children, help-lines, institutions where they can seek help and persons they can turn to in confidence.

Media

Member states should:

17. encourage the media to promote a non-stereotyped image of women and men based on respect for the human person and human dignity and to avoid programmes associating violence and sex; as far as possible, these criteria should also be taken into account in the field of the new information technologies;

18. encourage the media to participate in information campaigns to alert the general public to violence against women;

19. encourage the organisation of training to inform media professionals and alert them to the possible consequences of programmes that associate violence and sex;

20. encourage the elaboration of codes of conduct for media professionals, which would take into account the issue of violence against women and, in the terms of reference of media watch organisations, existing or to be established, encourage the inclusion of tasks dealing with issues concerning violence against women and sexism.

Local, regional and urban planning

Member states should:

21. encourage decision-makers in the field of local, regional and urban planning to take into account the need to reinforce women's safety and to prevent the occurrence of violent acts in public places;

22. as far as possible, take all necessary measures in this respect, concerning in particular public lighting, organisation of public transport and taxi services, design and planning of car parks and residential buildings.

Assistance for and protection of victims (reception, treatment and counselling)

Member states should:

23. ensure that victims, without any discrimination, receive immediate and comprehensive assistance provided by a co-ordinated, multidisciplinary and professional effort, whether or not they lodge a complaint, including medical and forensic medical examination and treatment, together with post-traumatic psychological and social support as well as legal assistance; this should be provided on a confidential basis, free of charge and be available around the clock;

24. in particular, ensure that all services and legal remedies available for victims of domestic violence are provided to immigrant women upon their request;

25. take all the necessary measures in order to ensure that collection of forensic evidence and information is carried out according to standardised protocol and forms;

26. provide documentation particularly geared to victims, informing them in a clear and comprehensible manner of their rights, the service they have received and the actions they could envisage or take, regardless of whether they are lodging a complaint or not, as well as of their possibilities to continue to receive psychological, medical and social support and legal assistance;

27. promote co-operation between the police, health and social services and the judiciary system in order to ensure such co-ordinated actions, and encourage and support the establishment of a collaborative network of non-governmental organisations;

28. encourage the establishment of emergency services such as anonymous, free of charge telephone help-lines for victims of violence and/or persons confronted or threatened by situations of violence; regularly monitor calls and evaluate the data obtained from the assistance provided with due respect for data protection standards;

29. ensure that the police and other law-enforcement bodies receive, treat and counsel victims in an appropriate manner, based on respect for human beings and dignity, and handle complaints confidentially; victims should be heard without delay by specially-trained staff in premises that are designed to establish a relationship of confidence between the victim and the police officer and ensure, as far as possible, that the

victims of violence have the possibility to be heard by a female officer should they so wish;

30. to this end, take steps to increase the number of female police officers at all levels of responsibility;

31. ensure that children are suitably cared for in a comprehensive manner by specialised staff at all the relevant stages (initial reception, police, public prosecutor's department and courts) and that the assistance provided is adapted to the needs of the child;

32. take steps to ensure the necessary psychological and moral support for children who are victims of violence by setting up appropriate facilities and providing trained staff to treat the child from initial contact to recovery; these services should be provided free of charge;

33. take all necessary measures to ensure that none of the victims suffer secondary (re)victimisation or any gender-insensitive treatment by the police, health and social personnel responsible for assistance, as well as by judiciary personnel.

Criminal law, civil law and judicial proceedings

Criminal law

Member states should:

34. ensure that criminal law provides that any act of violence against a person, in particular physical or sexual violence, constitutes a violation of that person's physical, psychological and/or sexual freedom and integrity, and not solely a violation of morality, honour or decency;

35. provide for appropriate measures and sanctions in national legislation, making it possible to take swift and effective action against perpetrators of violence and redress the wrong done to women who are victims of violence. In particular, national law should:

- penalise sexual violence and rape between spouses, regular or occasional partners and cohabitants;

- penalise any sexual act committed against non-consenting persons, even if they do not show signs of resistance;

- penalise sexual penetration of any nature whatsoever or by any means whatsoever of a non-consenting person;

- penalise any abuse of the vulnerability of a pregnant, defenceless, ill, physically or mentally handicapped or dependent victim;

- penalise any abuse of the position of a perpetrator, and in particular of an adult *vis-à-vis* a child.

Civil law

Member states should:

36. ensure that, in cases where the facts of violence have been established, victims receive appropriate compensation for any pecuniary, physical, psychological, moral and social damage suffered, corresponding to the degree of gravity, including legal costs incurred;

37. envisage the establishment of financing systems in order to compensate victims.

Judicial proceedings

Member states should:

38. ensure that all victims of violence are able to institute proceedings as well as, where appropriate, public or private organisations with legal personality acting in their defence, either together with the victims or on their behalf;

39. make provisions to ensure that criminal proceedings can be initiated by the public prosecutor;

40. encourage prosecutors to regard violence against women and children as an aggravating or decisive factor in deciding whether or not to prosecute in the public interest;

41. take all necessary steps to ensure that at all stages in the proceedings, the victims' physical and psychological state is taken into account and that they may receive medical and psychological care;

42. envisage the institution of special conditions for hearing victims or witnesses of violence in order to avoid the repetition of testimony and to lessen the traumatising effects of proceedings;

43. ensure that rules of procedure prevent unwarranted and/or humiliating questioning for the victims or witnesses of violence, taking into due consideration the trauma that they have suffered in order to avoid further trauma;

44. where necessary, ensure that measures are taken to protect victims effectively against threats and possible acts of revenge;

45. take specific measures to ensure that children's rights are protected during proceedings;

46. ensure that children are accompanied, at all hearings, by their legal representative or an adult of their choice, as appropriate, unless the court gives a reasoned decision to the contrary in respect of that person;

47. ensure that children are able to institute proceedings through the intermediary of their legal representative, a public or private organisation or any adult of their choice approved by the legal authorities and, if necessary, to have access to legal aid free of charge;

48. provide that, for sexual offences and crimes, any limitation period does not commence until the day on which the victim reaches the age of majority;

49. provide for the requirement of professional confidentiality to be waived on an exceptional basis in the case of persons who may learn of cases of children subject to sexual violence in the course of their work, as a result of examinations carried out or of information given in confidence.

Intervention programmes for the perpetrators of violence

Member states should:

50. organise intervention programmes designed to encourage perpetrators of violence to adopt a violence-free pattern of behaviour by helping them to become aware of their acts and recognise their responsibility;

51. provide the perpetrator with the possibility to follow intervention programmes, not as an alternative to sentence, but as an additional measure aiming at preventing violence; participation in such programmes should be offered on a voluntary basis;

52. consider establishing specialised state-approved intervention centres for violent men and support centres initiated by NGOs and associations within the resources available;

53. ensure co-operation and co-ordination between intervention programmes directed towards men and those dealing with the protection of women.

Additional measures with regard to sexual violence

A genetic data bank

Member states should:

54. consider setting up national and European data banks comprising the genetic profile of all identified and non-identified perpetrators of sexual violence in order to put in place an effective policy to catch offenders, prevent re-offending, and taking into account the standards laid down by domestic legislation and the Council of Europe in this field.

Additional measures with regard to violence within the family

Member states should:

55. classify all forms of violence within the family as criminal offence;

56. revise and/or increase the penalties, where necessary, for deliberate assault and battery committed within the family, whichever member of the family is concerned;

57. preclude adultery as an excuse for violence within the family;

58. envisage the possibility of taking measures in order to:

a. enable police forces to enter the residence of an endangered person, arrest the perpetrator and ensure that he or she appears before the judge;

b. enable the judiciary to adopt, as interim measures aimed at protecting the victims, the banning of a perpetrator from contacting, communicating with or approaching the victim, residing in or entering certain defined areas;

c. establish a compulsory protocol for operation so that the police and medical and social services follow the same procedure;

d. promote pro-active victim protection services which take the initiative to contact the victim as soon as a report is made to the police;

e. ensure smooth co-operation of all relevant institutions, such as police authorities, courts and victim protection services, in order to enable the victim to take all relevant legal and practical measures for receiving assistance and taking actions against the perpetrator within due time limits and without unwanted contact with the perpetrator;

f. penalise all breaches of the measures imposed on the perpetrators by the authorities.

59. consider, where needed, granting immigrant women who have been/are victims of domestic violence an independent right to residence in order to enable them to leave their violent husbands without having to leave the host country.

Additional measures with regard to sexual harassment

Member states should:

60. take steps to prohibit all conducts of a sexual nature, or other conduct based on sex affecting the dignity of women at work, including the behaviour of superiors and colleagues: all conduct of a sexual nature for which the perpetrator makes use of a position of authority, wherever it occurs (including situations such as neighbourhood relations, relations between students and teachers, telephone harassment, etc.), is concerned. These situations constitute a violation of the dignity of persons;

61. promote awareness, information and prevention of sexual harassment in the workplace or in relation to work or wherever it may occur and take the appropriate measures to protect women and men from such conduct.

Additional measures with regard to genital mutilation

Member states should:

62. penalise any mutilation of a woman's or girl's genital organs either with or without her consent; genital mutilation is understood to mean sewing up of the clitoris, excision, clitoridectomy and infibulation;

63. penalise any person who has deliberately participated in, facilitated or encouraged any form of female genital mutilation, with or without the person's consent; such acts shall be punishable even if only partly performed;

64. organise information and prevention campaigns aimed at the population groups concerned, in particular immigrants and refugees, on the health risks to victims and the criminal penalties for perpetrators;

65. alert the medical professions, in particular doctors responsible for pre- and post-natal medical visits and for monitoring the health of children;

66. arrange for the conclusion or reinforcement of bilateral agreements concerning prevention, and prohibition of female genital mutilation and the prosecution of perpetrators;

67. consider the possibility of granting special protection to these women as a threatened group for gender-based reasons.

Additional measures concerning violence in conflict and post-conflict situations

Member states should:

68. penalise all forms of violence against women and children in situations of conflict, in accordance with the provisions of international humanitarian law, whether they occur in the form of humiliation, torture, sexual slavery or death resulting from these actions;

69. penalise rape, sexual slavery, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity as an intolerable violation of human rights, as crimes against humanity and, when committed in the context of an armed conflict, as war crimes;

70. ensure protection of witnesses before the national courts and international criminal tribunals trying genocide, crimes against humanity and war crimes, and provide them with legal residence at least during the proceedings;

71. ensure social and legal assistance to all persons called to testify before the national courts and international criminal tribunals trying genocide, crimes against humanity and war crimes;

72. consider providing refugee status or subsidiary protection for reasons of gender-based persecution and/or providing residence status on humanitarian grounds to women victims of violence during conflicts;

73. support and fund NGOs providing counselling and assistance to victims of violence during conflicts and in post-conflict situations;

74. in post-conflict situations, promote the inclusion of issues specific to women into the reconstruction and the political renewal process in affected areas;

75. at national and international levels, ensure that all interventions in areas which have been affected by conflicts are performed by personnel who have been offered gender-sensitive training;

76. support and fund programmes which follow a gender-sensitive approach in providing assistance to victims of conflicts and contributing to the reconstruction and repatriation efforts following a conflict.

Additional measures concerning violence in institutional environments

Member states should:

77. penalise all forms of physical, sexual and psychological violence perpetrated or condoned by the state or its officials, wherever it occurs and in particular in prisons or detention centres, psychiatric institutions, etc;

78. penalise all forms of physical, sexual and psychological violence perpetrated or condoned in situations in which the responsibility of the state or of a third party may be invoked, for example in boarding schools, retirement homes and other establishments.

Additional measures concerning failure to respect freedom of choice with regard to reproduction

Member states should:

79. prohibit enforced sterilisation or abortion, contraception imposed by coercion or force, and pre-natal selection by sex, and take all necessary measures to this end.

Additional measures concerning killings in the name of honour

Member states should:

80. penalise all forms of violence against women and children committed in accordance with the custom of “killings in the name of honour”;

81. take all necessary measures to prevent “killings in the name of honour”, including information campaigns aimed at the population groups and the professionals concerned, in particular judges and legal personnel;

82. penalise anyone having deliberately participated in, facilitated or encouraged a “killing in the name of honour”;

83. support NGOs and other groups which combat these practices.

Additional measures concerning early marriages

Member states should:

84. prohibit forced marriages, concluded without the consent of the persons concerned;

85. take the necessary measures to prevent and stop practices related to the sale of children.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS
DECLARATION

on freedom of communication on the Internet

(Adopted by the Committee of Ministers
on 28 May 2003
at the 840th meeting of the Ministers' Deputies)

The member states of the Council of Europe,

Recalling the commitment of member states to the fundamental right to freedom of expression and information, as guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Considering that freedom of expression and the free circulation of information on the Internet need to be reaffirmed;

Aware at the same time of the need to balance freedom of expression and information with other legitimate rights and interests, in accordance with Article 10, paragraph 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Recalling in this respect the Convention on Cybercrime and Recommendation Rec(2001)8 on self-regulation concerning cyber content;

Recalling, furthermore, Resolution No. 1 of the 5th European Ministerial Conference on Mass Media Policy (Thessaloniki, 11-12 December 1997);

Concerned about attempts to limit public access to communication on the Internet for political reasons or other motives contrary to democratic principles;

Convinced of the necessity to state firmly that prior control of communications on the Internet, regardless of frontiers, should remain an exception;

Considering, furthermore, that there is a need to remove barriers to individual access to the Internet, and thus to complement measures already undertaken to set up public access points in line with Recommendation No. R (99) 14 on universal community service concerning new communication and information services;

Convinced that freedom to establish services provided through the Internet will contribute to guaranteeing the right of users to access pluralistic content from a variety of domestic and foreign sources;

Convinced also that it is necessary to limit the liability of service providers when they act as mere transmitters, or when they, in good faith, provide access to, or host, content from third parties;

Recalling in this respect Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in

particular electronic commerce, in the Internal Market (Directive on electronic commerce);

Stressing that freedom of communication on the Internet should not prejudice the human dignity, human rights and fundamental freedoms of others, especially minors;

Considering that a balance has to be found between respecting the will of users of the Internet not to disclose their identity and the need for law enforcement authorities to trace those responsible for criminal acts;

Welcoming efforts by service providers to co-operate with law enforcement agencies when faced with illegal content on the Internet;

Noting the importance of co-operation between these agencies in the fight against such content,

Declare that they seek to abide by the following principles in the field of communication on the Internet:

Principle 1: Content rules for the Internet

Member states should not subject content on the Internet to restrictions which go further than those applied to other means of content delivery.

Principle 2: Self-regulation or co-regulation

Member states should encourage self-regulation or co-regulation regarding content disseminated on the Internet.

Principle 3: Absence of prior state control

Public authorities should not, through general blocking or filtering measures, deny access by the public to information and other communication on the Internet, regardless of frontiers. This does not prevent the installation of filters for the protection of minors, in particular in places accessible to them, such as schools or libraries.

Provided that the safeguards of Article 10, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms are respected, measures may be taken to enforce the removal of clearly identifiable Internet content or, alternatively, the blockage of access to it, if the competent national authorities have taken a provisional or final decision on its illegality.

Principle 4: Removal of barriers to the participation of individuals in the information society

Member states should foster and encourage access for all to Internet communication and information services on a non-discriminatory basis at an affordable price. Furthermore, the active participation of the public, for example by setting up and

running individual websites, should not be subject to any licensing or other requirements having a similar effect.

Principle 5: Freedom to provide services via the Internet

The provision of services via the Internet should not be made subject to specific authorisation schemes on the sole grounds of the means of transmission used.

Member states should seek measures to promote a pluralistic offer of services via the Internet which caters to the different needs of users and social groups. Service providers should be allowed to operate in a regulatory framework which guarantees them non-discriminatory access to national and international telecommunication networks.

Principle 6: Limited liability of service providers for Internet content

Member states should not impose on service providers a general obligation to monitor content on the Internet to which they give access, that they transmit or store, nor that of actively seeking facts or circumstances indicating illegal activity.

Member states should ensure that service providers are not held liable for content on the Internet when their function is limited, as defined by national law, to transmitting information or providing access to the Internet.

In cases where the functions of service providers are wider and they store content emanating from other parties, member states may hold them co-responsible if they do not act expeditiously to remove or disable access to information or services as soon as they become aware, as defined by national law, of their illegal nature or, in the event of a claim for damages, of facts or circumstances revealing the illegality of the activity or information.

When defining under national law the obligations of service providers as set out in the previous paragraph, due care must be taken to respect the freedom of expression of those who made the information available in the first place, as well as the corresponding right of users to the information.

In all cases, the above-mentioned limitations of liability should not affect the possibility of issuing injunctions where service providers are required to terminate or prevent, to the extent possible, an infringement of the law.

Principle 7: Anonymity

In order to ensure protection against online surveillance and to enhance the free expression of information and ideas, member states should respect the will of users of the Internet not to disclose their identity. This does not prevent member states from taking measures and co-operating in order to trace those responsible for criminal acts, in accordance with national law, the Convention for the Protection of Human Rights and Fundamental Freedoms and other international agreements in the fields of justice and the police.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS
DECLARATION

on the provision of information through the media in relation to criminal proceedings

(Adopted by the Committee of Ministers on 10 July 2003
at the 848th meeting of the Ministers' Deputies)

The Committee of Ministers of the Council of Europe,

Recalling the commitment of the member states to the fundamental right to freedom of expression, as guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "the Convention");

Reaffirming that the right to freedom of expression and information constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for the development of every individual, as expressed in its Declaration on the Freedom of Expression and Information of 1982;

Recalling the commitment to the fundamental right to the presumption of innocence and to a fair trial under Article 6 of the Convention and the fundamental right to respect for private and family life under Article 8 of the Convention;

Recalling furthermore the right of the media and journalists to create professional associations, as guaranteed by the right to freedom of association under Article 11 of the Convention, which is a basis for self-regulation in the media field;

Considering the possibly conflicting interests protected by Articles 6, 8 and 10 of the Convention and the necessity to balance these rights in view of the facts of every individual case, with due regard to the supervisory role of the European Court of Human Rights in ensuring the observance of the commitments under the Convention;

Considering also the value which self-regulation by the media and co-regulation can have in striking such a balance;

Aware of the many initiatives taken by the media and journalists in Europe to promote the responsible exercise of journalism, either through self-regulation or in co-operation with the state through co-regulatory frameworks;

Aware also of the need to enhance an informed debate on the protection of the rights and interests at stake in the context of media reporting relating to criminal proceedings;

Desiring to strengthen the responsible exercise of journalism in this context, notably by promoting the adoption of good practice by the media through codes of conduct or other initiatives;

Concerned by the increasing commercialisation of information in the context of criminal proceedings;

Desiring at the same time to foster the right to freedom of expression and information in relation to criminal proceedings, in particular by ensuring access by the media to such proceedings;

Recalling its Resolution (74) 26 of the right of reply – position of the individual in relation to the press, its Recommendation No. (85) 11 on the position of the victim in the framework of criminal law and procedure, its Recommendation No. R (97) 13 concerning the intimidation of witnesses and the rights of the defence, its Recommendation No. R (97) 21 on the media and the promotion of a culture of tolerance and its Recommendation No. R (2000) 7 on the right of journalists not to disclose their sources of information;

Bearing in mind Resolution No. 2 on journalistic freedoms and human rights adopted at the 4th European Ministerial Conference on Mass Media Policy (Prague, December 1994) as well as the Declaration on a media policy for tomorrow adopted at the 6th European Ministerial Conference on Mass Media Policy (Cracow, June 2000);

Aware of the seminars on media self-regulation organised by the Steering Committee on the Mass Media in Strasbourg on 7 and 8 October 1998, as well as by the European Commission and Germany in Saarbrücken from 19 to 21 April 1999;

Aware of the public consultation with media professionals which was conducted by the Steering Committee on the Mass Media in January 2002,

Calls on member states:

1. to encourage responsible reporting on criminal proceedings in the media by supporting the training of journalists in the field of law and court procedure, in co-operation with the media and their professional organisations, educational institutions and the courts, in so far this is necessary for understanding court proceedings and the rights and interests of the parties to criminal proceedings and the state which are at stake during such proceedings;

2. to support any self-regulatory initiatives by which the media define professional ethical standards with regard to media reports on criminal proceedings in order to ensure respect for the principles contained in Recommendation Rec(2003)13 of the Committee of Ministers to member states on the provision of information through the media in relation to criminal proceedings;

3. to seek co-operation with self-regulatory bodies in the media field;

4. to involve professional associations in the media field in the relevant legislative processes concerning media reporting on criminal proceedings, for example via hearings or consultations;

5. to make this Declaration available to the public authorities and the courts as well as to the media, journalists and their professional organisations.

Invites the media and journalists:

1. to organise themselves in voluntary professional associations and foster pan-European co-operation between such associations;

2. to draw up professional ethical guidelines and standards for journalists, especially in relation to media reports on criminal proceedings, where such guidelines and standards do not yet exist, and to foster compliance with such professional ethical guidelines and standards;

3. to treat in their reports both suspects and accused as innocent until found guilty by a court of law, given that they enjoy that right under Article 6 of the Convention;

4. to respect the dignity, the security and, unless the information is of public concern, the right to privacy of victims, claimants, suspects, accused, convicted persons and witnesses as well as of their families, as guaranteed under Article 8 of the Convention;

5. not to recall a former offence of a person, unless it is of public concern or has become of public concern again;

6. to be sensitive to the interests of minors and other vulnerable persons involved in criminal proceedings;

7. to avoid prejudicing criminal investigations and court proceedings;

8. to avoid prejudicial and pejorative references in their reports on criminal proceedings, where these are likely to incite xenophobia, discrimination or violence;

9. to entrust reporting on criminal proceedings to journalists with adequate training in these matters.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Declaration on freedom of political debate in the media

(Adopted by the Committee of Ministers on 12 February 2004
at the 872nd meeting of the Ministers' Deputies)

The Committee of Ministers of the Council of Europe,

More than 50 years after having opened the Convention for the Protection of Human Rights and Fundamental Freedoms, hereinafter referred to as "the Convention", for signature by the member states, the Convention being the supreme instrument throughout Europe for the protection of the rights and freedoms enshrined therein;

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles that are their common heritage;

Recalling the commitment of all member states to the fundamental principles of pluralist democracy, respect for human rights and the rule of law, as reaffirmed by the Heads of State and Government at their Second Summit in Strasbourg on 11 October 1997;

Reaffirming that the fundamental right to freedom of expression and information as guaranteed by Article 10 of the Convention constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and the development of every individual, as expressed in its Declaration on the Freedom of Expression and Information of 1982;

Referring to the Declaration on a media policy for tomorrow adopted at the 6th European Ministerial Conference on Mass Media Policy in Cracow on 15 and 16 June 2000;

Recalling its Resolution (74) 26 on the right of reply – position of the individual in relation to the press and its Recommendation No. R (99) 15 on measures concerning media coverage of election campaigns;

Recalling also its Recommendation No. R (97) 20 on "hate speech" and emphasising that freedom of political debate does not include freedom to express racist opinions or opinions which are an incitement to hatred, xenophobia, antisemitism and all forms of intolerance;

Aware of Resolution 1165 (1998) of the Parliamentary Assembly on the right to privacy;

Reaffirming the pre-eminent importance of freedom of expression and information, in particular through free and independent media, for guaranteeing the right of the public to be informed on matters of public concern and to exercise public scrutiny over public and political affairs, as well as for ensuring accountability and transparency of

political bodies and public authorities, which are necessary in a democratic society, without prejudice to the domestic rules of member states concerning the status and liability of public officials;

Recalling that the exercise of freedom of expression carries with it duties and responsibilities, which media professionals must bear in mind, and that it may legitimately be restricted in order to maintain a balance between the exercise of this right and respect for other fundamental rights, freedoms and interests protected by the Convention;

Conscious that natural persons who are candidates for, or have been elected to, or have retired from political bodies, hold a political function at local, regional, national or international level or exercise political influence, hereinafter referred to as "political figures", as well as natural persons who hold a public office or exercise public authority at those levels, hereinafter referred to as "public officials", enjoy fundamental rights which might be infringed by the dissemination of information and opinions about them in the media;

Conscious that some domestic legal systems still grant legal privileges to political figures or public officials against the dissemination of information and opinions about them in the media, which is not compatible with the right to freedom of expression and information as guaranteed by Article 10 of the Convention;

Conscious that the right to exercise public scrutiny over public affairs may include the dissemination of information and opinions about individuals other than political figures and public officials,

Calls on member states to disseminate widely this Declaration, where appropriate accompanied by a translation, and to bring it, in particular, to the attention of political bodies, public authorities and the judiciary as well as to make it available to journalists, the media and their professional organisations;

Draws particular attention to the following principles concerning the dissemination of information and opinions in the media about political figures and public officials:

I. Freedom of expression and information through the media

Pluralist democracy and freedom of political debate require that the public is informed about matters of public concern, which includes the right of the media to disseminate negative information and critical opinions concerning political figures and public officials, as well as the right of the public to receive them.

II. Freedom to criticise the state or public institutions

The state, the government or any other institution of the executive, legislative or judicial branch may be subject to criticism in the media. Because of their dominant position, these institutions as such should not be protected by criminal law against defamatory or insulting statements. Where, however, these institutions enjoy such a protection, this protection should be applied in a restrictive manner, avoiding in any

circumstances its use to restrict freedom to criticise. Individuals representing these institutions remain furthermore protected as individuals.

III. Public debate and scrutiny over political figures

Political figures have decided to appeal to the confidence of the public and accepted to subject themselves to public political debate and are therefore subject to close public scrutiny and potentially robust and strong public criticism through the media over the way in which they have carried out or carry out their functions.

IV. Public scrutiny over public officials

Public officials must accept that they will be subject to public scrutiny and criticism, particularly through the media, over the way in which they have carried out or carry out their functions, insofar as this is necessary for ensuring transparency and the responsible exercise of their functions.

V. Freedom of satire

The humorous and satirical genre, as protected by Article 10 of the Convention, allows for a wider degree of exaggeration and even provocation, as long as the public is not misled about facts.

VI. Reputation of political figures and public officials

Political figures should not enjoy greater protection of their reputation and other rights than other individuals, and thus more severe sanctions should not be pronounced under domestic law against the media where the latter criticise political figures. This principle also applies to public officials; derogations should only be permissible where they are strictly necessary to enable public officials to exercise their functions in a proper manner.

VII. Privacy of political figures and public officials

The private life and family life of political figures and public officials should be protected against media reporting under Article 8 of the Convention. Nevertheless, information about their private life may be disseminated where it is of direct public concern to the way in which they have carried out or carry out their functions, while taking into account the need to avoid unnecessary harm to third parties. Where political figures and public officials draw public attention to parts of their private life, the media have the right to subject those parts to scrutiny.

VIII. Remedies against violations by the media

Political figures and public officials should only have access to those legal remedies against the media which private individuals have in case of violations of their rights by the media. Damages and fines for defamation or insult must bear a reasonable relationship of proportionality to the violation of the rights or reputation of others, taking into consideration any possible effective and adequate voluntary remedies that have been granted by the media and accepted by the persons concerned. Defamation

or insult by the media should not lead to imprisonment, unless the seriousness of the violation of the rights or reputation of others makes it a strictly necessary and proportionate penalty, especially where other fundamental rights have been seriously violated through defamatory or insulting statements in the media, such as hate speech.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Declaration on freedom of expression and information in the media in the context of the fight against terrorism

(Adopted by the Committee of Ministers on 2 March 2005 at the 917th meeting of the Ministers' Deputies)

The Committee of Ministers of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and promoting the ideals and principles which are their common heritage;

Considering the dramatic effect of terrorism on the full enjoyment of human rights, in particular the right to life, its threat to democracy, its aim notably to destabilise legitimately constituted governments and to undermine pluralistic civil society and its challenge to the ideals of everyone to live free from fear;

Unequivocally condemning all acts of terrorism as criminal and unjustifiable, wherever and by whomever committed;

Noting that every state has the duty to protect human rights and fundamental freedoms of all persons;

Recalling its firm attachment to the principles of freedom of expression and information as a basic element of democratic and pluralist society and a prerequisite for the progress of society and for the development of human beings, as underlined in the case-law of the European Court of Human Rights under Article 10 of the European Convention on Human Rights as well as in the Committee of Ministers' Declaration on the freedom of expression and information of 1982;

Considering that the free and unhindered dissemination of information and ideas is one of the most effective means of promoting understanding and tolerance, which can help prevent or combat terrorism;

Recalling that states cannot adopt measures which would impose restrictions on freedom of expression and information going beyond what is permitted by Article 10 of the European Convention on Human Rights, unless under the strict conditions laid down in Article 15 of the Convention;

Recalling furthermore that in their fight against terrorism, states must take care not to adopt measures that are contrary to human rights and fundamental freedoms, including the freedom of expression, which is one of the very pillars of the democratic societies that terrorists seek to destroy;

Noting the value which self-regulatory measures taken by the media may have in the particular context of the fight against terrorism;

Recalling Article 10 of the European Convention on Human Rights, the Committee of Ministers' Declarations on the freedom of expression and information adopted on 29 April 1982, on the protection of journalists in situations of conflict and tension adopted on 3 May 1996, and its Recommendations No. R (97) 20 on hate speech, No. R (97) 21 on the media and the promotion of a culture of tolerance, No. R (2000) 7 on the right of journalists not to disclose their sources of information and Rec(2003)13 on the provision of information through the media in relation to criminal proceedings;

Bearing in mind the Resolutions and Recommendations of the Parliamentary Assembly on terrorism;

Recalling the Guidelines on Human Rights and the Fight against Terrorism which it adopted on 11 July 2002,

Calls on public authorities in member states:

- not to introduce any new restrictions on freedom of expression and information in the media unless strictly necessary and proportionate in a democratic society and after examining carefully whether existing laws or other measures are not already sufficient;

- to refrain from adopting measures equating media reporting on terrorism with support for terrorism;

- to ensure access by journalists to information regularly updated, in particular by appointing spokespersons and organising press conferences, in accordance with national legislation;

- to provide appropriate information to the media with due respect for the principle of the presumption of innocence and the right to respect for private life;

- to refrain from creating obstacles for media professionals in having access to scenes of terrorist acts that are not imposed by the need to protect the safety of victims of terrorism or of law enforcement forces involved in an ongoing anti-terrorist operation, of the investigation or the effectiveness of safety or security measures; in all cases where the authorities decide to restrict such access, they should explain the reasons for the restriction and its duration should be proportionate to the circumstances and a person authorised by the authorities should provide information to journalists until the restriction has been lifted;

- to guarantee the right of the media to know the charges brought by the judicial authorities against persons who are the subject of anti-terrorist judicial proceedings, as well as the right to follow these proceedings and to report on them, in accordance with national legislation and with due respect for the presumption of innocence and for private life; these rights may only be restricted when prescribed by law where their exercise is likely to prejudice the secrecy of investigations and police inquiries or to delay or impede the outcome of the proceedings and without prejudice to the

exceptions mentioned in Article 6 paragraph 1 of the European Convention on Human Rights;

- to guarantee the right of the media to report on the enforcement of sentences, without prejudice to the right to respect for private life;

- to respect, in accordance with Article 10 of the European Convention on Human Rights and with Recommendation No. R (2000) 7, the right of journalists not to disclose their sources of information; the fight against terrorism does not allow the authorities to circumvent this right by going beyond what is permitted by these texts;

- to respect strictly the editorial independence of the media, and accordingly, to refrain from any kind of pressure on them;

- to encourage the training of journalists and other media professionals regarding their protection and safety and to take, where appropriate and, if circumstances permit, with their agreement, measures to protect journalists or other media professionals who are threatened by terrorists;

Invites the media and journalists to consider the following suggestions:

- to bear in mind their particular responsibilities in the context of terrorism in order not to contribute to the aims of terrorists; they should, in particular, take care not to add to the feeling of fear that terrorist acts can create, and not to offer a platform to terrorists by giving them disproportionate attention;

- to adopt self-regulatory measures, where they do not exist, or adapt existing measures so that they can effectively respond to ethical issues raised by media reporting on terrorism, and implement them;

- to refrain from any self-censorship, the effect of which would be to deprive the public of information necessary for the formation of its opinion;

- to bear in mind the significant role which they can play in preventing “hate speech” and incitement to violence, as well as in promoting mutual understanding;

- to be aware of the risk that the media and journalists can unintentionally serve as a vehicle for the expression of racist or xenophobic feelings or hatred;

- to refrain from jeopardising the safety of persons and the conduct of antiterrorist operations or judicial investigations of terrorism through the information they disseminate;

- to respect the dignity, the safety and the anonymity of victims of terrorist acts and of their families, as well as their right to respect for private life, as guaranteed by Article 8 of the European Convention on Human Rights;

- to respect the right to the presumption of innocence of persons who are prosecuted in the context of the fight against terrorism;

- to bear in mind the importance of distinguishing between suspected or convicted terrorists and the group (national, ethnic, religious or ideological) to which they belong or to which they claim to subscribe;

- to assess the way in which they inform the public of questions concerning terrorism, in particular by consulting the public, by analytical broadcasts, articles and colloquies, and to inform the public of the results of this assessment;

- to set up training courses, in collaboration with their professional organisations, for journalists and other media professionals who report on terrorism, on their safety and the historical, cultural, religious and geopolitical context of the scenes they cover, and to invite journalists to follow these courses.

The Committee of Ministers agrees to monitor, within the framework of the existing procedures, the initiatives taken by governments of member states aiming at reinforcing measures, in particular in the legal field, to fight terrorism as far as they could affect the freedom of the media, and invites the Parliamentary Assembly to do alike.

Ministers' Deputies
CM Documents
CM(2005)56 final 13 May 2005

Declaration of the Committee of Ministers on human rights and the rule of law in the Information Society

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The member states of the Council of Europe,

Recalling their commitment to building societies based on the values of human rights, democracy, rule of law, social cohesion, respect for cultural diversity and trust between individuals and between peoples, and their determination to continue honouring this commitment as their countries enter the Information Age;

Respecting the obligations and commitments as undertaken within existing Council of Europe standards and other documents;

Recognising that information and communication technologies (ICTs) are a driving force in building the Information Society and have brought about a convergence of different communication mediums;

Considering the positive contribution the deployment of ICTs makes to economic growth and prosperity as well as labour productivity;

Aware of the profound impact, both positive and negative, that ICTs have on many aspects of human rights;

Aware, in particular, that ICTs have the potential to bring about changes to the social, technological and legal environment in which current human rights instruments were originally developed;

Aware that ICTs are increasingly becoming an integral part of the democratic process;

Recognising that ICTs can offer a wider range of possibilities in exercising human rights;

Recognising therefore that limited or no access to ICTs can deprive individuals of the ability to exercise fully their human rights;

Reaffirming that all rights enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) remain fully valid in the Information Age and should continue to be protected regardless of new technological developments;

Recognising the need to take into account in national legislation new ICT-assisted forms of human rights violations and the fact that ICTs can greatly intensify the impact of such violations;

Conclude that, to better respond to the new challenges of protecting human rights in a rapidly evolving Information Society, member states need to review and, where necessary, adjust the application of human rights instruments;

Undertake to adopt policies for the further development of the Information Society which are compliant with the ECHR and the case-law of the European Court of Human Rights, and which aim to preserve, and whenever possible enhance, democracy, to protect human rights, in particular freedom of expression and information, and to promote respect for the rule of law;

Declare that when circumstances lead to the adoption of measures to curtail the exercise of human rights in the Information Society, in the context of law enforcement or the fight against terrorism, such measures shall comply fully with international human rights standards. These measures must be lawful and defined as precisely as possible, be necessary and proportionate to the aim pursued, and be subject to supervision by an independent authority or judicial review. Further, when such measures fall under the scope of Article 15 of the ECHR, they need to be reassessed on a regular basis with the purpose of lifting them when the circumstances under which they were adopted no longer exist;

Declare that the exercise of the rights and freedoms enshrined in the ECHR shall be secured for all without discrimination, regardless of the technical means employed;

Declare that they seek to abide by the principles and guidelines regarding respect for human rights and the rule of law in the Information Society, found in section I below;

Invite civil society, the private sector and other interested stakeholders to take into account in their work towards an inclusive Information Society for all, the considerations in section II below;

Invite the Chair of the Committee of Ministers to submit this Declaration, as a Council of Europe contribution, to the Tunis Phase of the World Summit on the Information Society (WSIS) for consideration.

I. Human rights in the Information Society

1. The right to freedom of expression, information and communication

ICTs provide unprecedented opportunities for all to enjoy freedom of expression. However, ICTs also pose many serious challenges to that freedom, such as state and private censorship.

Freedom of expression, information and communication should be respected in a digital as well as in a
non-digital environment, and should not be subject to restrictions other than those provided for in Article 10 of the ECHR, simply because communication is carried in digital form.

In guaranteeing freedom of expression, member states should ensure that national legislation to combat illegal content, for example racism, racial discrimination and child pornography, applies equally to offences committed via ICTs.

Member states should maintain and enhance legal and practical measures to prevent state and private censorship. At the same time, member states should ensure compliance with the Additional Protocol to the Convention on Cybercrime and other relevant conventions which criminalise acts of a racist and xenophobic nature committed through computer systems. In that context, member states should promote frameworks for self- and co-regulation by private sector actors (such as the ICT industry, Internet service providers, software manufacturers, content providers and the International Chamber of Commerce). Such frameworks would ensure the protection of freedom of expression and communication.

Member states should promote, through appropriate means, interoperable technical standards in the digital environment, including those for digital broadcasting, that allow citizens the widest possible access to content.

2. The right to respect for private life and correspondence

The large-scale use of personal data, which includes electronic processing, collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, disclosure by transmission or otherwise, has improved the efficiency of governments and the private sector. Moreover, ICTs, such as Privacy Enhancing Technology (PETs), can be used to protect privacy. Nevertheless, such advances in technology pose serious threats to the right to private life and private correspondence.

Any use of ICTs should respect the right to private life and private correspondence. The latter should not be subject to restrictions other than those provided for in Article 8 of the ECHR, simply because it is carried in digital form. Both the content and traffic data of electronic communications fall under the scope of Article 8 of the ECHR and should not be submitted to restrictions other than those provided for in that provision. Any automatic processing of personal data falls under the scope of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and should respect the provisions of that instrument.

Member states should promote frameworks for self- and co-regulation by private sector actors with a view to protecting the right to respect for private life and private correspondence. A key element of the promotion of such self- or co-regulation should be that any processing of personal data by governments or the private sector should be compatible with the right to respect for private life, and that no exception should exceed those provided for in Article 8, paragraph 2, of the ECHR, or in Article 9, paragraph 2, of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

3. The right to education and the importance of encouraging access to the new information technologies and their use by all without discrimination

New forms of access to information will stimulate wider dissemination of information regarding social, economic and cultural aspects of life, and can bring about greater

inclusion and overcome forms of discrimination. E-learning has a great potential for promoting democratic citizenship through education and enhancing the level of people's knowledge throughout the world. At the same time, there is a serious risk of exclusion for the "computer illiterate" and for those without adequate access to information technologies for social, economic or cultural reasons.

Computer literacy is a fundamental prerequisite for access to information, the exercise of cultural rights and the right to education through ICTs. Any regulatory measure on the media and new communication services should respect and, wherever possible, promote the fundamental values of pluralism, cultural and linguistic diversity, and non-discriminatory access to different means of communication.

Member states should facilitate access to ICT devices and promote education to allow all persons, in particular children, to acquire the skills needed to work with a broad range of ICTs and assess critically the quality of information, in particular that which would be harmful to them.

4. The prohibition of slavery and forced labour, and the prohibition of trafficking in human beings

The use of ICTs has expanded the possibilities for trafficking in human beings and has created a new virtual form of this practice.

In a digital environment, such as the Internet, when trafficking in human beings contravenes Article 4 of the ECHR, it should be treated in the same manner as in a non-digital environment.

Member states should maintain and enhance legal and practical measures to prevent and combat ICT-assisted forms of trafficking in human beings.

5. The right to a fair trial and to no punishment without law

ICTs facilitate access to legal material and knowledge. Moreover, public transmission of court proceedings and transparency of information regarding trials facilitates better public scrutiny of court proceedings. Trials can be conducted more efficiently by using ICT-facilities. However, given the speed of ICT-driven communication and the resulting wide-ranging impact, ICTs can greatly intensify pre-trial publicity and influence witnesses and public opinion before and during a trial. Moreover, ICTs allow crimes not covered by legal frameworks, which may hinder combating infringements of human rights. The global reach of ICTs, in particular the Internet, can create problems of jurisdiction and also raise issues on the ability to apply legal frameworks to instances of human rights violation.

In the determination of their civil rights and obligations or any criminal charge against them, everyone is entitled, in conformity with Article 6 of the ECHR, to identical protection in a digital environment, such as the Internet, to that which they would receive in a non-digital environment. The right of no punishment without law applies equally to a digital and a non-digital environment.

Member states should promote codes of conduct for representatives of the media and information service providers, which stress that media reporting on trials should be in conformity with the prescriptions of Article 6 of the ECHR. They should also consider whether there is a need to develop further international legal frameworks on jurisdiction to ensure that the right to no punishment without law is respected in a digital environment.

6. The protection of property

In the ICT environment, the protection of property refers mainly to intellectual property, such as patents, trademarks and copyrights. ICTs provide unprecedented access to material covered by intellectual property rights and opportunities for its exploitation. However, ICTs can facilitate the abuse of intellectual property rights and hinder the prosecution of offenders, due to the speed of technology changes, the low cost of dissemination of content, the volume of infringement, the difficulty in tracking offences across international borders and the decentralised nature of file sharing. Innovation and creativity would be discouraged and investment diminished without effective means of enforcing intellectual property rights.

Intellectual property rights must be protected in a digital environment, in accordance with the provisions of international treaties in the area of intellectual property. At the same time, access to information in the public domain must be protected, and attempts to curtail access and usage rights prevented.

Member states should provide the legal framework necessary for the above-mentioned goals. They should also seek, where possible, to put the political, social services, economic, and research information they produce into the public domain, thereby increasing access to information of vital importance to everyone. In so doing, they should take note of the Council of Europe's Convention on Cybercrime, in particular Article 10, on offences related to infringements of copyright and related rights.

7. The right to free elections

ICTs have the potential, if appropriately used, to strengthen representative democracy by making it easier to hold elections and public consultations which are accessible to all, raise the quality of public deliberation, and enable citizens and civil society to take an active part in policy making at national, regional and local levels. ICTs can make all public services more efficient, responsive, transparent and accountable. At the same time, improper use of ICTs may subvert the principles of universal, equal, free and secret suffrage, as well as create security and reliability problems with regard to some e-voting systems.

E-voting should respect the principles of democratic elections and referendums and be at least as reliable and secure as democratic elections and referendums which do not involve the use of electronic means.

Member states should examine the use of ICTs in fostering democratic processes with a view to strengthening the participation, initiative, knowledge and engagement of citizens, improving the transparency of democratic decision making, the accountability and responsiveness of public authorities, and encouraging public

debate and scrutiny of the decision-making process. Where member states use e-voting, they shall take steps to ensure transparency, verifiability and accountability, reliability and security of the e-voting systems, and in general ensure their compatibility with Committee of Ministers' Recommendation Rec(2004)11 on legal, operational and technical standards for e-voting.

8. Freedom of assembly

ICTs bring an additional dimension to the exercise of freedom of assembly and association, thus extending and enriching ways of enjoying these rights in a digital environment. This has crucial implications for the strengthening of civil society, for participation in the associative life at work (trade unions and professional bodies) and in the political sphere, and for the democratic process in general. At the same time, ICTs provide extensive means of monitoring and surveillance of assembly and association in a digital environment, as well as the ability to erect electronic barriers, severely restricting the exercise of these rights.

All groups in society should have the freedom to participate in ICT-assisted associative life as this contributes to the development of a vibrant civil society. This freedom should be respected in a digital environment, such as the Internet, as well as in a non-digital one and should not be subject to restrictions other than those provided for in Article 11 of the ECHR, simply because assembly takes place in digital form.

Member states should adapt their legal frameworks to guarantee freedom of ICT-assisted assembly and take the steps necessary to ensure that monitoring and surveillance of assembly and association in a digital environment does not take place, and that any exceptions to this must comply with those provided for in Article 11, paragraph 2, of the ECHR.

II. A multi-stakeholder governance approach for building the Information Society: the roles and responsibilities of stakeholders

Building an inclusive Information Society, based on respect for human rights and the rule of law, requires new forms of solidarity, partnership and cooperation among governments, civil society, the private sector and international organisations. Through open discussions and exchanges of information worldwide, a multi-stakeholder governance approach will help shape agendas and devise new regulatory and non-regulatory models which will account for challenges and problems arising from the rapid development of the Information Society.

1. Council of Europe member states

Council of Europe member states should promote the opportunities afforded by ICTs for fuller enjoyment of human rights and counteract the threats they pose in this respect, while fully complying with the ECHR. The primary objective of all measures taken should be to extend the benefits of ICTs to everyone, thus encouraging inclusion in the Information Society. This can be done by ensuring effective and equitable access to ICTs, and developing the skills and knowledge necessary to exploit this access, including media education.

The exercise of human rights should be subject to no restrictions other than those provided for in the ECHR or the case law of the European Court of Human Rights, simply because it is conducted in a digital environment. At the same time, determined efforts should be undertaken to protect individuals against new and intensified forms of human rights violations through the use of the ICTs.

Taking full account of the differences between services delivered by different means and people's expectations of these services, member states, with a view to protecting human rights, should promote self- and co-regulation by private sector actors to reduce the availability of illegal and of harmful content and to enable users to protect themselves from both.

2. Civil society

Civil society actors have been and always will be instrumental in shaping the society in which they live, and the Information Society is no exception. To successfully build an Information Society which complies with the standards defined by the ECHR requires the full participation of civil society in both determining strategies and implementing them. Civil society can contribute to developing a common vision for maximising the benefits of ICTs for all and provide its own input into future common regulatory measures that will best promote human rights.

At the Council of Europe, one major channel of civil society input is the Conference of International Non-governmental Organisations (INGOs).

In addition, civil society, in partnership with governments and the business sector, is invited to preserve and enhance its role of drawing attention to and combating the abuse and misuse of ICTs, which are detrimental to both individuals and democratic society in general.

At a trans-national level, civil society is urged to cooperate in the sharing of objectives, best practice and experience with respect to expanding the opportunities held by the Information Society.

3. Private sector

Private sector actors are urged to play a role in upholding and promoting human rights, such as freedom of expression and the respect of human dignity. This role can be fulfilled most effectively in partnership with governments and civil society.

In cooperation with governments and civil society, private sectors actors are urged to take measures to prevent and counteract threats, risks and limitations to human rights posed by the misuse of ICTs or their use for illegal purposes, and to promote e-inclusion. In addition, they are invited to establish and further broaden the scope of codes of conduct and other forms of self-regulation for the promotion of human rights through ICTs.

Private sector actors are also invited to initiate and develop self- and co-regulatory measures on the right to private life and private correspondence, as well as on the issue of upholding freedom of expression and communication.

Self- and co-regulatory measures with regard to private life and private correspondence should emphasise in particular that any processing of personal data should comply with the right to private life. Against this background, private sector actors should pay particular attention to, *inter alia*, the following current issues:

- the collection, processing and monitoring of traffic data;
- the monitoring of private correspondence via e-mail or other forms of electronic communication;
- the right to privacy in the work place;
- camera observation;
- biometric identification;
- malware, including spam;
- the collection and use of genetic data and genetic testing.

With regard to self- and co-regulatory measures which aim to uphold freedom of expression and communication, private sector actors are encouraged to address in a decisive manner the following issues:

- hate speech, racism and xenophobia and incitation to violence in a digital environment such as the Internet;
- private censorship (hidden censorship) by Internet service providers, for example blocking or removing content, on their own initiative or upon the request of a third party;
- the difference between illegal content and harmful content.

Finally, private sector actors are urged to participate in the combat against virtual trafficking of child pornography images and virtual trafficking of human beings.

4. The Council of Europe

The Council of Europe will raise awareness of and promote accession to the Convention on Cybercrime and its Additional Protocol, and the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, on a worldwide basis. The Convention Committee will monitor the implementation of these conventions and their additional protocols and will, if need be, propose any amendments.

In accordance with the Action Plan adopted by the 7th European Ministerial Conference on Mass Media Policy (Kiev, 10-11 March 2005), the Steering Committee on the Media and New Communications Services (CDMC) will:

- take any necessary initiatives, including the preparation of guidelines, *inter alia*, on the roles and responsibilities of intermediaries and other Internet actors in ensuring freedom of expression and communication;
- promote the adoption by member states of measures to ensure, at the pan-European level, a coherent level of protection for minors against harmful content in traditional and new electronic media, while securing freedom of expression and the free flow of information;
- establish a regular pan-European forum to exchange information and best practice between member states and other stakeholders on measures to promote inclusion in

the Information Society;
- monitor the impact of the development of new communication and information services on the protection of copyright and neighbouring rights, so as to take any initiative which might prove necessary to secure this protection.

The objectives of the project “Good governance in the Information Society” will be further defined, taking into account the Council of Europe's work in the fields of e-voting and e-governance, and in particular its achievements represented by Committee of Ministers' Recommendation Rec(2004)11 on legal, operational and technical standards for e-voting, and Recommendation Rec(2004)15 on electronic governance (“e-governance”).

The Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD) will look into the application of data protection principles to worldwide telecommunication networks.

Appendix to the Declaration

Council of Europe Reference Texts

Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 005)
Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data
(ETS No. 108)
European Convention on Transfrontier Television (ETS No. 132)
Protocol Amending the European Convention on Transfrontier Television (ETS No. 171)
Convention on Information and Legal Co-operation concerning “Information Society Services” (ETS No. 180)
Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows (ETS No. 181)
European Convention for the protecti on of the Audiovisual Heritage (ETS No. 183)
Protocol to European Convention for the protection of the Audiovisual Heritage, on the protection of Television Productions (ETS No. 184)
Convention on Cybercrime (ETS No. 185)
Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189)
Recommendation No. R (90) 19 on the protection of personal data used for payment and other related operations
Recommendation No. R (91) 10 on the communication to third parties of personal data held by public bodies
Recommendation No. R (95) 4 on the protection of personal data in the area of telecommunications, with particular reference to telephone service
Resolution ResAP (2001) 3 “Towards full citizenship for persons with disabilities through inclusive new technologies”
Recommendation Rec(2001)7 of the Committee of Ministers to member states on measures to protect copyright and neighbouring rights and combat piracy, especially

in the digital environment
Recommendation Rec(2002)2 of the Committee of Ministers to member states on access to official documents
Recommendation Rec(2004)11 of the Committee of Ministers to member states on legal, operational and technical standards for e-voting
Recommendation Rec(2004)15 of the Committee of Ministers to member states on electronic governance ("e-governance")
Declara tion of the Committee of Ministers on a European policy for New Information Technologies, adopted on 7 May 1999
Declaration of the Committee of Ministers on Cultural Diversity, adopted on 7 December 2000
Declaration of the Committee of Ministers on freedom of communication on the Internet, adopted on 28 May 2003
Political Message from the Committee of Ministers to the World Summit on the Information Society (Geneva, 10-12 December 2003) of 19 June 2003

Recommendation CM/Rec(2009)7
of the Committee of Ministers to member states
on national film policies and the diversity of cultural expressions

(Adopted by the Committee of Ministers on 23 September 2009
at the 1066th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members in order to safeguard and promote the ideals and principles which form their common heritage;

Reaffirming the fundamental importance of freedom of expression and of safeguarding diversity as common European ideals;

Considering the European Convention on Cinematographic Co-Production (ETS No. 147) and the vital contribution of the European Support Fund for the Co-production and Distribution of Creative Cinematographic and Audiovisual works "Eurimages" to European film culture;

Taking into account its Resolution Res (97) 4 on confirming the continuation of the European Audiovisual Observatory, created with the mission to improve the transfer of information within the audiovisual industry and to promote a clearer view of the market and a greater transparency;

Considering the European Convention on Transfrontier Television (ETS No. 132), which foresees specific measures to ensure the broadcasting of European works;

Considering the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Paris, 20 October 2005), which recognises cultural diversity as a defining characteristic of humanity and strives to strengthen the creation, production, dissemination, distribution and enjoyment of cultural expressions;

Taking into account the Memorandum of Understanding between the Council of Europe and the European Union of 11 May 2007, and its potential to strengthen information exchange and co-operation in relation to audiovisual policies;

Affirming, in the spirit of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, that film has both an economic and a cultural nature so that making a distinction between cultural films and commercial films is neither possible nor desirable;

Aware that film is an important means of cultural and artistic expression with an essential role in upholding the freedom of expression, diversity and creativity, as well as democratic citizenship;

Recalling Parliamentary Assembly Recommendation 1674 (2004) on “Challenges facing the European audiovisual sector”, which states that the European audiovisual sector remains in a precarious state and that the real challenge facing this sector at present is to combine the artistic creativity and cultural diversity of European works with a truly European dimension, in terms of the cultural values that these represent and in terms of their market reach;

Taking into account the results of the Council of Europe Forum “Shaping policies for the cinema of tomorrow” held in Cracow from 11 to 13 September 2008;

Asserting that national and regional policy makers and film bodies are responsible for putting in place policies that cover not only production but all aspects of the film value chain (development, production, distribution and marketing, screening, media literacy and training, access to audiences and film heritage) and that they encompass not only financial support but also regulation, research and data collection ;

Affirming that it is notably through its ability to reach distinct audiences that film fulfils its cultural goals, in particular in relation to cultural diversity, and that film policies should seek to facilitate film’s access to audiences;

Aware that globalisation and market developments, technological developments and changing audience behaviour require constant adaptation of film policies in order to ensure that they continue to fulfil their goals,

Recommends that governments of member states:

a. use every available means in accordance with their constitutions and their national, regional or local circumstances to take into account the principles and implement the measures set out in the appendix to this recommendation with respect to the development of their film policies;

b. bring this recommendation to the attention of the relevant public and private bodies in their countries through the appropriate national channels;

c. use the existing Council of Europe cultural policy information tools to follow up on this recommendation, including knowledge transfer and the exchange of good practice;

d. reinforce the positive impact of the European Convention on Cinematographic Co-production, the goal of which is to foster transnational co-operation in the cinema sector by reviewing this instrument with the view of ensuring its long-term effectiveness;

e. co-operate in the framework of the Council of Europe and, where appropriate, with other international organisations with common objectives and goals in the cultural field, in particular in the audiovisual field, in order to:

i. study the possibility of developing a set of common goals and indicators, as well as common evaluation and benchmarking tools and

guidelines for film policies, that could be used by member states on a voluntary basis;

ii. consider future opportunities to continue the discussion, at European level, on key principles and issues for film policy in order to support the implementation of the measures and objectives set out in this recommendation and in other relevant legal texts of the Council of Europe and of the European Union in the field of film policy, creative industries and cultural diversity;

Asks the Secretary General of the Council of Europe to bring this recommendation to the attention of States Parties to the European Cultural Convention (ETS No. 18) which are not members of the Council of Europe.

Appendix to Recommendation CM/Rec(2009)7

Context

1. The conditions under which European films are financed, produced and accessed are undergoing massive change. While new opportunities are apparent, in particular as a function of technological progress and its potential impact on more diverse and improved access to film, most of the prevailing business models are obsolete and European films are struggling to obtain fair representation on screens worldwide.

2. While there is a longstanding consensus on the economic and cultural importance of having strong film production in Europe, it is clear that such production can be maintained and strengthened only if there is an increased emphasis on the effectiveness and efficiency of film policies and the optimisation of the use of resources at all levels.

3. Relevant European organisations and discussion fora allow the opportunity for the enhancement of synergies between national film policies and are a framework for continuous learning and the exchange of good practices.

4. A review of national film policies taking into account market and technology changes is needed to improve policy decisions that in turn will determine whether and to what extent the changes will be beneficial to the specificity and quality of European film.

Purpose

5. This appendix provides general guidelines for the review of national film policies with the aim of furthering their development and increasing their effectiveness in a changing audiovisual environment. The following priority areas have been identified: I) developing a comprehensive approach to film policies; II) addressing film development and production; III) improving the regulatory frameworks for co-production and co-distribution; IV) encouraging the distribution and circulation of European films ; V) European cinema and young people; VI) realising the full potential of digital technologies; and VII) transparency and accountability.

I. Developing a comprehensive approach to film policies

6. Film policies should place emphasis on the different stages of the film value chain.

7. The role of public film bodies is to develop, implement and evaluate these policies, through funding, regulation and other appropriate means.

Recommended measures

8. National and (where appropriate) regional film authorities in Europe should in general:

– develop comprehensive film policies which address not only production, but also training, development, distribution, promotion and exploitation, as well as education and film heritage, in order to increase the chances of European films reaching audiences. Film policies should have clear principles and goals; combine continuity and adequate, evidence-based review mechanisms; dispose of clear and effective rules and instruments with a strong emphasis on transparency and accountability;

– ensure that the objectives of film policies and the specificity of audiovisual products are duly taken into account when devising and implementing other policies and regulations, and in particular in the areas of education, intellectual property rights, media, competition and trade. To that end, better co-ordination should be sought between the public bodies in charge of these policy areas, at regional, national and European levels;

– encourage film policy bodies to exchange, develop and implement common objectives and good practices;

– engage, on a voluntary basis and in a spirit of co-operation and solidarity, in transnational initiatives aimed at making best use of financial support available at the European level and in particular at enhancing the user-friendliness, efficiency and operational complementarity of regional, national and European public financing and other forms of support ;

– ensure that films that have been financed with public funds can be collected, preserved, restored and made available for cultural and educational purposes by recognised film heritage institutions. For example, film producers who have received public funding could be asked to agree that film heritage institutions arrange cultural screenings of those films without having to pay any fee.

II. Addressing film development and production

9. Public funds should reduce the risks linked to development for producers and, if possible, make a more effective use of production funding by providing adequate development funding.

10. In particular, development support should encourage the emergence of new talent and innovation.

11. Film policies should reward producers and distributors for taking greater responsibility for the results of their films. Therefore, producers and distributors should be encouraged to set up common strategies, as early as possible in the production process, with a view to better taking into account promotion and distribution costs and to developing realistic distribution strategies.

12. Film policies should adopt a comprehensive and structured approach to helping companies to grow, for instance by providing the opportunity for the funding of slates of films and facilitating access to finance.

III. Improving the regulatory frameworks for co-production and co-distribution

13. Co-production and co-distribution foster artistic and technical co-operation across borders and contribute to transnational circulation of films. Encouraging the conclusion of co-production and co-distribution agreements and ensuring their effective implementation are instrumental in promoting cultural diversity through film production. The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions recognises the contribution of co-productions to diversity and invites Parties to encourage the conclusion of co-production and co-distribution agreements (Article 12.*e*).

14. A range of opportunities exist for co-production in Europe and between European and non-European producers, but co-production rules in Europe need to support films' artistic aims properly and to contribute as much as possible to the cross-border distribution of films.

15. The European Convention on Cinematographic Co-Production could advance these two objectives. It might need to be reviewed to fully take into account the changes that are taking place in how films are made, distributed and viewed, as well as the overall objectives of film policy.

Recommended measures

16. Member states should engage in a review of the European Convention on Cinematographic Co-Production to take into account new developments in markets, in technologies and in co-production practices.

17. States should also turn their attention to supporting slates of co-productions.

18. The circulation of co-produced works in each of the territories could be enhanced by making public funding conditional upon the existence of a realistic distribution plan.

IV. Encouraging the distribution and circulation of European films

19. European countries produce a wealth of films, but many of them encounter severe difficulties in reaching audiences, being in effect "crowded out" by productions from dominant players. The potential for cultural diversity of European film is therefore not being fully realised.

Recommended measures

20. While maintaining their commitment to supporting the circulation of films in cinemas, public policies should take account of how, film is consumed in the digital age. Public policies should also fully embrace the role that broadcasters (in particular public-service broadcasters), video on-demand providers and festivals play – or can play – in the circulation of films.

21. Linguistic barriers are ones that can be largely overcome by technology. Therefore, providing support for the subtitling and dubbing of films, in particular those intended for digital distribution, should be a priority.

22. All operators involved in the distribution of audiovisual content have a role to play in the development and implementation of film policy objectives. Such operators need to define and implement clear strategies to contribute to film policy goals relating not only to the financing of production, but also to the promotion of films and of film culture.

23. Member states should consider the possibility of improving the monitoring of the cultural objectives of the European Convention on Transfrontier Television in order to assess whether those objectives have a positive impact on the circulation of European films.

V. European cinema and young people

24. Particular attention needs to be paid to measures aimed at children and young people: the films they watch, how they watch them and how they engage with film culture. The development of audiences which appreciate the diversity of European films and actively seek such films is crucial to the success of European film. The objective is not to support films specifically produced for young audiences, which is a separate issue, but rather to bring quality films to young audiences, with a view to teaching them about the variety and richness of film culture.

25. Film education is essential for the development of young audiences. It is important to provide film education both within the curriculum and through out-of-school activities. Within schools, the objective is to bring films to young audiences (discovering a film and making comments about it and analysing it). Outside school, several objectives can be advanced: encouraging film practice (through the organisation of specific workshops with a view to training young people in film programming, film direction, etc.) and nurturing the "film experience" (through taking them to cinema screenings).

Recommended measures

26. Public film policies should actively support the production and distribution of films for young audiences.

27. Film education should be included in the curriculum in schools and film education initiatives should be developed both inside and outside school. Film education should preferably include the cinema experience.

28. Obstacles to the use of film in school should be removed, for instance by providing adequate equipment and facilitating licensing or special pricing. Producers of publicly supported films could be asked to agree to the educational use of their films as a condition for receiving public funding.

29. Instruments to facilitate the transborder circulation of European films for young audiences should be adopted or reinforced, for instance a video-on-demand service for children and young people both within and outside the educational environment, a European film education network and a European children's channel.

30. Public funding for the dubbing and subtitling of children's film should be a priority.

VI. Realising the full potential of digital technologies

31. Digital technologies are having an impact on the whole value chain, leading to new ways of creating, producing, distributing and accessing film, and offering new opportunities such as better quality of screening, increased flexibility of programming, and direct access to much wider film catalogues – at any time, and anywhere.

32. These benefits do not, however, flow automatically from the technology. Technology in itself cannot secure the circulation of European films.

33. More specifically, many European cinemas are struggling to switch to digital, in particular those with one or only a few screens.

Recommended measures

34. Robust, well informed public policies relating to digitisation in every phase of the value chain need to be developed urgently in every State Party to the European Cultural Convention.

35. Public policies should urgently and proactively take into account the need to support the emergence of business models for digital film and the development of new platforms and services for European cinema.

36. Such models should respect the diversity and specificity of cinemas in Europe and of their programming, and make sure that distributors keep control of release plans. Models should also ensure that all theatres wishing to engage in such a "digitisation process" can do so in a co-ordinated way, and within a reasonable timeframe.

37. European participation in the ongoing international digital cinema standards definition process should be strengthened and enforcement of these standards should be ensured.

38. Public intervention, including public-private partnerships, is essential to avoid further reduction of the screen space for European film.

39. Public policies should also:

− provide incentives for producers and distributors to take advantage of the opportunities that digital distribution offers;

− facilitate transborder distribution of film in digital format;

− review the release-window system to maximise the potential of digital distribution in all its forms;

− encourage people to copy digital films via legal means and combat film theft and infringement of copyright;

− encourage the accessibility of European film heritage through Europeana.

VII. Transparency and accountability

40. Transparency and accountability are key elements of effective policy making. The current level of transparency should not be considered as satisfactory: for example, vital data, related to film distribution on DVD, on television and through new on-demand services, or the presence of European film on international markets, are either too limited or not available.

41. Evaluation of performance and the results obtained, both cultural and economic, provides the basis for demonstrating the value of film policies and their further improvement.

42. Comprehensive, reliable and up-to-date data on the sector will furthermore contribute to a more favourable environment for private investment and for bank involvement in the sector.

Recommended measures

43. Both the providers and the recipients of public support should have the duty to ensure that the information is available to permit the proper evaluation and the fair remuneration of owners of copyright and the repayment of public loans.

44. In a context of growing competition between the various stakeholders, voluntary disclosure of data appears insufficient to ensure transparency. Therefore, regulatory intervention may be required both to ensure fair play and the accuracy, availability and disclosure of data, while securing the legitimate confidentiality of individual companies.

45. Public authorities in charge of film policies should be empowered to collect, process and make public, relevant data on all aspects of film production, distribution and exploitation, and be provided with sufficient resources to perform this task on the basis of sound methodology, as proposed by the European Audiovisual Observatory and the European Film Agency Research Network.

46. Governments should strengthen the position of the European Audiovisual Observatory and its ability to rise to the challenges of the audiovisual markets and technological change.

Recommendation CM/Rec(2010)5
of the Committee of Ministers to member states
on measures to combat discrimination on grounds of sexual orientation or gender identity

(Adopted by the Committee of Ministers on 31 March 2010
at the 1081st meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, and that this aim may be pursued, in particular, through common action in the field of human rights;

Recalling that human rights are universal and shall apply to all individuals, and stressing therefore its commitment to guarantee the equal dignity of all human beings and the enjoyment of rights and freedoms of all individuals without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) (hereinafter referred to as "the Convention") and its protocols;

Recognising that non-discriminatory treatment by state actors, as well as, where appropriate, positive state measures for protection against discriminatory treatment, including by non-state actors, are fundamental components of the international system protecting human rights and fundamental freedoms;

Recognising that lesbian, gay, bisexual and transgender persons have been for centuries and are still subjected to homophobia, transphobia and other forms of intolerance and discrimination even within their family – including criminalisation, marginalisation, social exclusion and violence – on grounds of sexual orientation or gender identity, and that specific action is required in order to ensure the full enjoyment of the human rights of these persons;

Considering the case law of the European Court of Human Rights ("hereinafter referred to as "the Court") and of other international jurisdictions, which consider sexual orientation a prohibited ground for discrimination and have contributed to the advancement of the protection of the rights of transgender persons;

Recalling that, in accordance with the case law of the Court, any difference in treatment, in order not to be discriminatory, must have an objective and reasonable justification, that is, pursue a legitimate aim and employ means which are reasonably proportionate to the aim pursued;

Bearing in mind the principle that neither cultural, traditional nor religious values, nor the rules of a "dominant culture" can be invoked to justify hate speech or any other form of discrimination, including on grounds of sexual orientation or gender identity;

Having regard to the message from the Committee of Ministers to steering committees and other committees involved in intergovernmental co-operation at the Council of Europe on equal rights and dignity of all human beings, including lesbian, gay, bisexual and transgender persons, adopted on 2 July 2008, and its relevant recommendations;

Bearing in mind the recommendations adopted since 1981 by the Parliamentary Assembly of the Council of Europe regarding discrimination on grounds of sexual orientation or gender identity, as well as Recommendation 211 (2007) of the Congress of Local and Regional Authorities of the Council of Europe on “Freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons”;

Appreciating the role of the Commissioner for Human Rights in monitoring the situation of lesbian, gay, bisexual and transgender persons in the member states with respect to discrimination on grounds of sexual orientation or gender identity;

Taking note of the joint statement, made on 18 December 2008 by 66 states at the United Nations General Assembly, which condemned human rights violations based on sexual orientation and gender identity, such as killings, torture, arbitrary arrests and “deprivation of economic, social and cultural rights, including the right to health”;

Stressing that discrimination and social exclusion on account of sexual orientation or gender identity may best be overcome by measures targeted both at those who experience such discrimination or exclusion, and the population at large,

Recommends that member states:

1. examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;

2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;

3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;

4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;

5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible.

Appendix to Recommendation CM/Rec(2010)5

I. Right to life, security and protection from violence_

A. “Hate crimes” and other hate-motivated incidents

1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.

2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.

3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related “hate crimes” and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.

4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.

5. Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on “hate crimes” and hate-motivated incidents related to sexual orientation or gender identity.

B. “Hate speech”

6. Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such “hate speech” should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.

7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.

8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.

II. Freedom of association

9. Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.

10. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.

11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.

III. Freedom of expression and peaceful assembly

13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.

14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.

15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.

16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.

17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.

IV. Right to respect for private and family life

18. Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.

19. Member states should ensure that personal data referring to a person’s sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.

20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.

21. Member states should take appropriate measures to guarantee the full legal recognition of a person’s gender reassignment in all areas of life, in particular by

making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.

22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.

23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.

24. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.

25. Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.

26. Taking into account that the child's best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.

27. Taking into account that the child's best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.

28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.

V. Employment

29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.

30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular

regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.

VI. Education

31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.

VII. Health

33. Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.

34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.

35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.

VIII. Housing

37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.

38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.

IX. Sports

39. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.

40. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.

41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.

X. Right to seek asylum

42. In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.

43. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.

44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.

XI. National human rights structures

45. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

XII. Discrimination on multiple grounds

46. Member states are encouraged to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity; national human rights structures should have a broad mandate to enable them to tackle such issues.

Declaration of the Committee of Ministers on network neutrality

*(Adopted by the Committee of Ministers on 29 September 2010
at the 1094th meeting of the Ministers' Deputies)*

1. The member states of the Council of Europe have repeatedly expressed their commitment to the protection and promotion of human rights on the Internet. This applies in particular to the fundamental rights to freedom of expression and information regardless of frontiers, the right to respect for private life and correspondence, the right to freedom of thought and religion, the right to freedom of association, the right to education and the right to the protection of property, as well as to related procedural rights guaranteed by the European Convention on Human Rights (ETS No. 5).

2. Recommendation CM/Rec(2007)16 of the Committee of Ministers to member states on measures to promote the public service value of the Internet underlines people's significant reliance on the Internet as an essential tool for their everyday activities (communication, information, knowledge, commercial transactions) and the resulting legitimate expectation that Internet services be accessible and affordable, secure, reliable and ongoing.

3. Electronic communication networks have become basic tools for the free exchange of ideas and information. They help to ensure freedom of expression and access to information, pluralism and diversity and contribute to the enjoyment of a range of fundamental rights. A competitive and dynamic environment may encourage innovation, increasing network availability and performance and lowering costs, and can promote the free circulation of a wide range of content and services on the Internet. However, users' right to access and distribute information online and the development of new tools and services might be adversely affected by non-transparent traffic management, content and services' discrimination or impeding connectivity of devices.

4. Users should have the greatest possible access to Internet-based content, applications and services of their choice, whether or not they are offered free of charge, using suitable devices of their choice. Such a general principle, commonly referred to as network neutrality, should apply irrespective of the infrastructure or the network used for Internet connectivity. Access to infrastructure is a prerequisite for the realisation of this objective.

5. There is an exponential increase in Internet traffic due to the growing number of users and new applications, content and services that take up more bandwidth than ever before. The connectivity of existing types of devices is broadened as regards networks and infrastructure, and new types of devices are connected. In this context, operators of electronic communication networks may have to manage Internet traffic. This management may relate to quality of service, the development of new services, network stability and resilience or combating cybercrime.

6. In so far as it is necessary in the context described above, traffic management should not be seen as a departure from the principle of network neutrality. However,

exceptions to this principle should be considered with great circumspection and need to be justified by overriding public interests. In this context, member states should pay due attention to the provisions of Article 10 of the European Convention on Human Rights and the related case law of the European Court of Human Rights. Member states may also find it useful to refer to the guidelines of 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.

7. Reference might also be made in this context to the European Union regulatory framework on electronic communications whereby national regulatory authorities are tasked with promoting users' ability to access and distribute information and to run applications and services of their choice.

8. Users and service, application or content providers should be able to gauge the impact of network management measures on the enjoyment of fundamental rights and freedoms, in particular the rights to freedom of expression and to impart or receive information regardless of frontiers, as well as the right to respect for private life. Those measures should be proportionate, appropriate and avoid unjustified discrimination; they should be subject to periodic review and not be maintained longer than strictly necessary. Users and service providers should be adequately informed about any network management measures that affect in a significant way access to content, applications or services. As regards procedural safeguards, there should be adequate avenues, respectful of rule of law requirements, to challenge network management decisions and, where appropriate, there should be adequate avenues to seek redress.

9. The Committee of Ministers declares its commitment to the principle of network neutrality and underlines that any exceptions to this principle should comply with the requirements set out above. This subject should be explored further within a Council of Europe framework with a view to providing guidance to member states and/or to facilitating the elaboration of guidelines with and for private sector actors in order to define more precisely acceptable management measures and minimum quality-of-service requirements.

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

(Adopted by the Committee of Ministers on 21 September 2011 at the 1121st meeting of the Ministers' Deputies)

Introduction

The purpose of media

1. Since their emergence as a means of mass communication, media have been the most important tool for freedom of expression in the public sphere, enabling people to exercise their right to seek and receive information. Media animate and provide a space for public debate. Media offer comment and opinion as part of political dialogue, contribute to setting the political agenda and the shaping of public opinion, and they often seek to promote certain values. Media facilitate the scrutiny of public and political affairs and private or business-related matters, thereby increasing transparency and accountability. Moreover, media provide education, entertainment, cultural and artistic expression. Media also play an important part in the economy, create jobs and generate income.

Media and democracy

2. Freedom of expression, in particular the right to seek, impart and receive information, and its corollary freedom of the media, are indispensable for genuine democracy and democratic processes. In a democratic society, people must be able to contribute to and participate in the decision-making processes which concern them. This applies to local, national or international governance models as well as to other specific communities. In this context, democratic governance should be understood in broad terms to include processes concerning private or business-related matters with public policy relevance or collective interest. All content provided by the media has potential impact on society regardless of the value attributed to it. The power of the media can be misused, especially in a context of strong media concentration, to the detriment of pluralism and democracy.

Media standards and regulation

3. All Council of Europe member states have undertaken to secure to everyone within their jurisdiction the fundamental right to freedom of expression and information, in accordance with Article 10 of the European Convention on Human Rights ("the Convention", ETS No. 5). This right is not absolute; it carries with it duties and responsibilities and can be subject to limitations in accordance with Article 10, paragraph 2, of the Convention.

4. Historically, media regulation has been justified by and graduated having regard to its potential high impact on society and on individual rights; regulation has also been a means of managing scarce resources in the public interest. Given their importance for democracy, media have been the subject of extensive Council of

Europe standard-setting activity. The purpose has been to ensure the highest protection of media freedom and to provide guidance on duties and responsibilities. As a form of interference, any regulation should itself comply with the requirements set out in Article 10 of the European Convention on Human Rights and the standards that stem from the relevant case law of the European Court of Human Rights.

Developments in the media ecosystem

5. Developments in information and communication technologies and their application to mass communication have led to significant changes in the media ecosystem, understood in broad terms to encompass all actors and factors whose interaction allows the media to function and to fulfil their role in society. It has allowed for new ways of disseminating content on a large scale and often at considerably lower cost and with fewer technical and professional requirements. New features include unprecedented levels of interaction and engagement by users, offering new opportunities for democratic citizenship. New applications also facilitate users' participation in the creation process and in the dissemination of information and content, blurring the boundaries between public and private communication. The media's intrinsic editorial practices have diversified, adopting new modalities, procedures and outcomes.

6. With these changes in the media ecosystem, the functioning and existence of traditional media actors, as well as their economic models and professional standards, are being complemented or replaced by other actors. New actors have assumed functions in the production and distribution process of media services which, until recently, had been performed only (or mostly) by traditional media organisations; these include content aggregators, application designers and users who are also producers of content. A number of "intermediaries" or "auxiliaries", often stemming from the information and communication (ICT) sector, including those serving at the outset as mere hosts or conduits (for example infrastructure, network or platform operators), are essential for digital media's outreach and people's access to them. Services provided by these new actors have become essential pathfinders to information, at times turning the intermediaries or auxiliaries into gatekeepers or into players who assume an active role in mass communication editorial processes. Such services have complemented or, on occasion, partly replaced traditional media actors in respect of those functions. The roles of each actor can easily change or evolve fluidly and seamlessly. Furthermore, some have developed services or applications which have put them in a dominant position on a national or even at a global level.

A new notion of media which requires a graduated and differentiated approach

7. Despite the changes in its ecosystem, the role of the media in a democratic society, albeit with additional tools (namely interaction and engagement), has not changed. Media-related policy must therefore take full account of these and future developments, embracing a notion of media which is appropriate for such a fluid and multi-dimensional reality. All actors – whether new or traditional – who operate within the media ecosystem should be offered a policy framework which guarantees an appropriate level of protection and provides a clear indication of their duties and responsibilities in line with Council of Europe standards. The response should be graduated and differentiated according to the part that media services play in content

production and dissemination processes. Attention should also be paid to potential forms of interference in the proper functioning of media or its ecosystem, including through indirect action against the media's economic or operational infrastructure.

The Committee of Ministers, under the terms of Article 15. *b* of the Statute of the Council of Europe recommends that member states:

– **adopt a new, broad notion of media** which encompasses all actors involved in the production and dissemination, to potentially large numbers of people, of content (for example information, analysis, comment, opinion, education, culture, art and entertainment in text, audio, visual, audiovisual or other form) and applications which are designed to facilitate interactive mass communication (for example social networks) or other content-based large-scale interactive experiences (for example online games), while retaining (in all these cases) editorial control or oversight of the contents;

– **review regulatory needs in respect of all actors** delivering services or products in the media ecosystem so as to guarantee people's right to seek, receive and impart information in accordance with Article 10 of the European Convention on Human Rights, and to extend to those actors relevant safeguards against interference that might otherwise have an adverse effect on Article 10 rights, including as regards situations which risk leading to undue self-restraint or self-censorship;

– **apply the criteria set out in the appendix hereto when considering a graduated and differentiated response** for actors falling within the new notion of media based on relevant Council of Europe media-related standards, having regard to their specific functions in the media process and their potential impact and significance in ensuring or enhancing good governance in a democratic society;

– **engage in dialogue with all actors in the media ecosystem** in order for them to be properly apprised of the applicable legal framework; invite traditional and new media to exchange good practice and, if appropriate, consult each other in order to develop self-regulatory tools, including codes of conduct, which take account of, or incorporate in a suitable form, generally accepted media and journalistic standards;

– **adopt strategies to promote, develop or ensure suitable levels of public service delivery** so as to guarantee a satisfactory level of pluralism, diversity of content and consumer choice and ensure close scrutiny or monitoring of developments;

– **remain attentive to addressing situations of strong concentration in the media ecosystem** which might result in the misuse of an actor's ability to shape or influence public opinion or people's choices with potentially adverse consequences in respect of governance and, more particularly, political pluralism and democratic processes, especially as new types of services, applications or platforms gain relevance in these respects;

– **undertake action, individually or collectively**, to promote these approaches in appropriate international fora.

Appendix to Recommendation CM/Rec(2011)7

Criteria for identifying media and guidance for a graduated and differentiated response

Introduction

1. Democracy and freedom of expression require member states to refrain from undue interference with the media. Member states should also take proactive measures to promote media freedom, independence, pluralism and diversity and to protect the activities that ensure the adequate functioning of the media ecosystem, understood in broad terms to encompass all actors and factors whose interaction allow the media to function and to fulfil their role in society.

2. The policy framework in place should be clear and the consequences of its application should be foreseeable. It should be articulated towards protecting and promoting freedom of expression, diversity and pluralism, and should identify the duties and responsibilities of all actors in the media ecosystem, subject to the strict limits stipulated in Article 10 of the European Convention on Human Rights, as interpreted in the relevant case law of the European Court of Human Rights.

3. Policy-making and, more particularly, regulatory processes should ensure that due attention is paid to the principle that, as a form of interference, any regulation should itself comply with the requirements set out in Article 10 of the European Convention on Human Rights and the standards that stem from the relevant case law of the European Court of Human Rights. Regulatory responses should therefore respond to a pressing social need and, having regard to their tangible impact, they should be proportional to the aim pursued.

4. The Council of Europe has developed over the years a significant body of standards with regard to the media in order to assist media policy makers in their necessary endeavour to offer media the protection they need for their proper functioning and in their related policy-making and regulatory activities. In order to assist member states in the implementation of the Recommendation on a New Notion of Media, guidance is proposed in the present Appendix, on the one hand, to facilitate discerning whether particular activities, services or actors might be categorised as media (Part I) and, on the other hand, to inspire a graduated and differentiated policy approach in respect of the various activities, services or actors that are part of the media ecosystem (Part II).

5. The result of examining activities, services or actors in the light of the criteria (and indicators) should assist in gauging the necessity and the extent of policy-making or regulatory needs and also the degree of application of relevant legal frameworks (both as concerns freedoms and responsibilities). For example, policy responses for media focussing on news services may differ from those offering a platform for political debate or entertainment, in turn different from the mere association of revenue-generating activities to the dissemination of content through means of mass communication.

6. To this end, based on existing Council of Europe standards, Part II provides guidance to policy makers on how to apply media standards to new media activities, services or actors. It also offers the opportunity to address, or reinforce, the gender equality perspective in response to the call made by the Committee of Ministers of the Council of Europe in its Madrid Declaration “Making gender equality a reality” (12 May 2009) and the call made in the report of the Group of Eminent Persons’ entitled “Living together. Combining diversity and freedom in 21st century Europe”, presented to the Committee of Ministers in Istanbul on 10 May 2011.

7. A differentiated and graduated approach requires that each actor whose services are identified as media or as an intermediary or auxiliary activity benefit from both the appropriate form (differentiated) and the appropriate level (graduated) of protection and that responsibility also be delimited in conformity with Article 10 of the European Convention on Human Rights and other relevant standards developed by the Council of Europe.

8. It should also be recalled that newer or emerging modes of mass dissemination of and access to content, and the associated retention, processing and exploitation of data, may well affect the rights protected under Article 10 of the European Convention on Human Rights.

Part I

Media criteria and indicators

Preliminary remarks

9. Media policy makers are invited to take account of the following criteria when considering if particular activities, services or actors ought to be regarded as media.

10. Six criteria are set out below, each supplemented by a set of indicators, which should allow policy makers to identify media and media activities in the new ecosystem. The extent to which criteria are met will permit to recognise whether a new communication service amounts to media or will provide an indication of the bearing of intermediary or auxiliary activity on media services. Indicators should allow for establishing whether and to what extent a particular criterion is met. Not all indicators need to be met to fulfil a particular criterion. Some indicators, such as those relating to professional standards and media ethics, relate to more than one criterion.

11. Similarly, not all criteria carry equal weight. The absence of certain criteria such as purpose (criterion 2), editorial control (criterion 3) or outreach and dissemination (criterion 5) would tend to disqualify a service from being regarded as media. Certain criteria may not be met, such as intent (criterion 1) or public expectation (criterion 6) or not be immediately apparent, which should not automatically disqualify a service from being considered media, but may carry considerable weight if they are present.

12. When considering criteria, account should be taken of the service provider’s own characteristics and idiosyncrasy, as well as the service provider’s maturing process as media, which may have a bearing on the manner of displaying editorial

control (criterion 3) or on self-perceived professionalism (criterion 4). Consequently, all criteria (and indicators) should be applied in a flexible manner, interpreting them in the context of specific situations or realities. In the new communication environments, continuous attention is called for, as an actor's role and operation can easily change and evolve fluidly and seamlessly, which might affect the extent to which one or more criteria are met and thus its potential classification as media.

13. A commonly accepted feature of media is its role in society and its impact on society or bearing on democratic processes. Impact can be seen as part of several of the criteria below. However, given that assessing impact is highly subjective, it should not be considered as a determining factor. All content provided by media has a potential impact on society, whatever the size of the segment of population concerned, and regardless of the value attributed to it by society as a whole.

14. The result of this analysis should be taken into account when shaping media-related policy and when graduating its application, always subject to the caveats of strict necessity and minimum intervention. It will also have a bearing on the extent to which Council of Europe media-related standards apply and the modalities of its application. This entails a need for a flexible response, tailored to a concrete case (namely differentiated) and graduated for the purpose. The response should also take account of the service provider's own characteristics and idiosyncrasy, as well as that service provider's maturing process as media.

15. Intermediaries and auxiliaries in the media ecosystem can be distinguished from media as they may meet certain of the criteria or indicators below, but they usually do not meet some of the core criteria such as editorial control (criterion 3) or purpose (criterion 2). However, they often play an essential role, which can give them considerable power as regards outreach and control or oversight over content. As a result, intermediaries and auxiliaries can easily assume an active role in mass communication editorial processes. Member states should therefore consider them carefully in media-related policy making and should be particularly attentive to their own positive and negative obligations stemming from Article 10 of the European Convention on Human Rights. This may call for a differentiated policy response in their respect (adapted to particular intermediaries or auxiliaries) having regard to the specificities of the situation (for example when their action can have a bearing on pluralism or on the ability of media served by the intermediaries or auxiliaries in question to fulfil their purpose, to function normally or to continue delivering their services).

Criterion 1 – Intent to act as media

Indicators
Self-labelling as media
Working methods which are typical for media
Commitment to professional media standards
Practical arrangements for mass communication

16. The volition of an actor is an important factor in assessing whether the actor itself or some or all of its services and products should be regarded as media. It also

allows for a first instance in policy differentiation on the basis of different actors' own perceptions as regards their activities and services.

17. Intent to act as media can be expressed by subjective means (for example by self-declaration as media, self-labelling, brand, declaring a purpose, mission statement or business plan that avow media or journalistic goals) and may be explicit or even formally recorded (as in the case of business registration, purpose stated in a company's articles of association). These subjective indicators can refer to other criteria, such as purpose (for example resolve to provide regularly updated news), editorial control or professional standards.

18. More particularly, intent can be revealed by the adoption of an editorial policy or commitment to professional and ethical standards which are typical for media. An editorial policy or commitment can also be expressed in the terms and conditions of use which provide explanations to users of a service about the types of content or behaviour that are, or are not, accepted by the operator.

19. Membership in professional media organisations or professional organisations which promote or enforce codes of ethics or good practice or engage in other forms of self-regulation which are typical for media may also be relevant, together with the choice of staff (for example journalists) for certain functions, job descriptions of staff, the training or even the choice of professional insurance (for example against defamation) offered to them.

20. Intent can also be inferred from action taken (for example setting up a business or platform and hiring staff, etc.) to produce or disseminate to a wide audience typical media content (for example information, analysis, comment, opinion, education, culture, art and entertainment in text, audio, visual, audiovisual form).

21. In a new communications environment, this extends to action taken to arrange, aggregate or select (for example by means of algorithms) and to disseminate the above-mentioned content to potentially large numbers of people through means of mass communication. It also extends to operating applications for collective online shared spaces which are designed to facilitate interactive mass communication (or mass communication in aggregate) or other content-based large-scale interactive experiences. It can, in particular, be evidenced by the means, arrangements or structures put in place for mass communication (for example platform or bandwidth enabling mass outreach).

22. While intent is in itself an important criterion, by itself it is not sufficient for considering or treating an actor or any of its services or products as media.

Criterion 2 – Purpose and underlying objectives of media

Indicators **Produce, aggregate or disseminate media content** **Operate applications or platforms designed to facilitate interactive mass communication or mass communication in aggregate** (for example social

networks) **and/or to provide content-based large-scale interactive experiences** (for example online games)

With underlying media objective(s) (animate and provide a space for public debate and political dialogue, shape and influence public opinion, promote values, facilitate scrutiny and increase transparency and accountability, provide education, entertainment, cultural and artistic expression, create jobs, generate income – or most frequently, a combination of the above)

Periodic renewal and update of content

23. In spite of the changes in the media ecosystem, the purpose and underlying objective(s) of the media remains on the whole unchanged, namely the provision or dissemination of content to a broad public and the provision of a space for different interactive experiences. Media are the most important tool for freedom of expression.

24. Media's purpose and underlying objectives remain a determining factor, especially as regards its role in and impact on society. They have been features of choice for identifying media and are highly relevant for media-related policy-making and regulatory processes. They will therefore be an important tool when considering a differentiated and graduated response.

25. A desire to influence public opinion, which has traditionally been one of the key indicators for identifying media or media-related activities, manifests itself in devoting content to matters of public debate and interest and in efforts to reach a large public. Evidence of such influence and impact on society can be derived from research on media's credibility and trustworthiness and on their ability to achieve those underlying objectives which are relevant for democratic processes (see in this context criteria 5 and 6, relating to outreach and dissemination and to public expectation).

26. However, value judgements in respect of content should not be a determining factor to disqualify services, activities or actors as media. Attention should in particular be paid to the risk of excluding certain activities from consideration as media because of their innovative modalities rather than their essential features. Arranging, aggregating, selecting or, on occasion, even promoting content for its broad dissemination are relevant. Depending on the degree to which criteria are met, the notion of producer may need to be distinguished from media (for example in respect of content-sharing platforms subject to light touch editorial control or *ex post* moderation). In this respect, reference to traditional media's interactive or user generated content (for example collaborative, audience participation, call-in, quiz or talk show formats) may be useful. This may bear on the extent and modalities of application of media-related policies to them.

27. New business models have been, and will no doubt continue to be, developed for associating revenue-generating activities to the dissemination of content. This is sometimes at the centre of media activities and can therefore be useful to identify and categorise the underlying media services and activities and to consider the policy and regulatory consequences.

28. The periodic or regular renewal or updating of content should also be given due consideration. This indicator of media has to be applied with precaution given the importance of constant or occasional renewal. Moreover, in a new communications environment where users exercise considerable control over the shaping and the timing of access to content, updating or renewal may well relate more closely to user experience than to timing or to the content itself. This is particularly the case for services involving collective online shared spaces designed to facilitate content-based interactive mass communication in aggregate or other large-scale interactive experiences.

Criterion 3 – Editorial control

Indicators
Editorial policy **Editorial process** **Moderation** **Editorial staff**

29. Editorial freedom or independence is an essential requirement for media and a direct corollary of freedom of expression and the right to hold opinions and to receive and impart information, guaranteed under Article 10 of the European Convention on Human Rights. A number of existing Council of Europe standards provide guidance designed to preserve and promote editorial freedom or independence. The reverse of the medal is media's own editorial control or oversight over content and responsibility for editorial decisions.

30. Editorial control can be evidenced by the actors' own policy decisions on the content to make available or to promote, and on the manner in which to present or arrange it. Legacy media sometimes publicise explicitly written editorial policies, but they can also be found in internal instructions or criteria for selecting or processing (for example verifying or validating) content. In the new communications environments, editorial policies can be embedded in mission statements or in terms and conditions of use (which may contain very detailed provisions on content), or may be expressed informally as a commitment to certain principles (for example netiquette, motto).

31. The absence of an outward assertion of editorial control by the media should not, by itself, be considered as an indication of its absence. Editorial process involves a set of routines and conventions that inform decision making as regards content. In an evolving media environment, there are many examples of the gradual development and consolidation of editorial process as media mature. As has been the case for legacy media, there may be varying degrees or intensity of control over content, which may be perceived only as regards a small part of it.

32. Editorial process can involve users (for example peer review and take down requests) with ultimate decisions taken according to an internally defined process and having regard to specified criteria (reactive moderation). New media often resort to *ex post* moderation (often referred to as post-moderation) in respect of user generated content, which may at first sight be imperceptible. Editorial processes may also be

automated (for example in the case of algorithms *ex ante* selecting content or comparing content with copyrighted material).

33. In certain cases, editorial control can be more apparent in respect of selected or promoted content or content associated to revenue-generating activities (for example advertising) than as regards other content (for example user generated material). In turn, part of the content (for example advertising) can be under direct control of a third party by virtue of an agency agreement. Legacy media tend to resort to *ex ante* editorial control (or pre-moderation) in respect of certain services or activities (for example print media or some broadcasts) but not others (for example collaborative, audience participation, call-in or talk show formats).

34. Staff entrusted with producing, commissioning, collecting, examining, processing or validating content will serve as a reliable indicator of editorial control or oversight. The existence of editorial boards, designated controllers or supervisors with editorial powers, or arrangements for responding to or dealing with users requests or complaints as regards content, will be particularly helpful in this respect.

35 Again, it should be noted that different levels of editorial control go along with different levels of editorial responsibility. Different levels of editorial control or editorial modalities (for example *ex ante* as compared with *ex post* moderation) call for differentiated responses and will almost certainly permit best to graduate the response.

36. Consequently, a provider of an intermediary or auxiliary service which contributes to the functioning or accessing of a media but does not – or should not – itself exercise editorial control, and therefore has limited or no editorial responsibility, should not be considered to be media. However, their action may be relevant in a media context. Nonetheless, action taken by providers of intermediary or auxiliary services as a result of legal obligations (for example take down of content in response to a judicial order) should not be considered as editorial control in the sense of the above.

Criterion 4 – Professional standards

Indicators **Commitment** **Compliance procedures** **Complaints procedures** **Asserting prerogatives, rights or privileges**

37. Media have built trust over time through competence and professionalism of their staff, in particular journalists. Collectively, they have expressed their commitment to preserve their values in a wide range of declarations, charters and codes which they seek to promote throughout the sector and transmit to their peers, in particular to newcomers to the profession. Specific media have reinforced this through their own internal codes of practice, staff regulations or instructions and norms as to procedure and style. Self-regulation also speaks of the importance of media and journalism for our societies, especially for democracy.

38. However it is expressed, adhesion to the profession's own ethics, deontology and standards is a strong media indicator; standards frequently mentioned in this context are truthfulness, responsibility, freedom of expression and of the media, equality, fairness, and journalistic independence. In new media, evidence of this criterion can be less apparent, but may be found in mission statements, in staff regulations or in terms and conditions of use. The selection of staff, the tasks entrusted to them, guidance for their performance, or their professional background or competence could also be relevant.

39. Media (and journalists') ethics, deontology and standards are the basis of media accountability systems. There is a wide range of media accountability systems; they include media or press councils, ombudspersons (including in-house users' advocates), informal peer (media) review, and a range of formal or informal processes that permit to hold media to account for their performance or to conduct ethical audits.

40. Media accountability systems extend to complaint procedures and to the existence of bodies tasked with examining complaints and deciding on compliance with professional standards. In this connection, attention should be paid to the availability of remedies typical of media (for example reply, correction, apology) or other means of providing satisfaction in response to complaints about the content disseminated.

41. As regards in particular new media, codes of conduct or ethical standards for bloggers have already been accepted by at least part of the online journalism community. Nonetheless, bloggers should only be considered media if they fulfil the criteria to a sufficient degree. In the absence of self-regulation, national and international decisions or case law (for example of national judges or data protection authorities and international bodies, including the European Court of Human Rights) are also contributing to the shaping of standards (for example as regards privacy or the protection of personal data, or the protection of children from harmful content).

42. Seeking to benefit from protection or privileges offered to media can be very revealing. Prerogatives, rights and privileges which can be asserted by media or by journalists, subject to relevant legal provisions, include: the protection of sources; privileged communications and protection against seizure of journalistic material; freedom of movement and access to information; the right to accreditation; protection against misuse of libel and defamation laws (for example defences as regards the truthfulness and accuracy of information, good faith public interest).

Criterion 5 – Outreach and dissemination

Indicators
Actual dissemination
Mass-communication in aggregate
Resources for outreach

43. In order to achieve the purposes described above, media seek outreach to a large number of people. Media or mass communication has traditionally been defined

as mediated public communication addressed to a large audience and open to all. Outreach or actual dissemination (number of copies, viewers or users) is therefore an important indicator in identifying media and in distinguishing it from private communication, including private communication taking place in a public space (which is not, in itself media, but could be incorporated into media or mass communication in aggregate). However, there is no single or common understanding of what is mass or large audience; it can easily range from a territorial, interest or other community (for example the target of local, professional or community media) to potentially global audiences (in the case of satellite television or certain Internet services).

44. Technologies making possible non-linear or on-demand delivery of content, conditional access, unbundling of electronically delivered content, personalisation of content or unicasting, bring a different dimension to the term and have brought a new dimension to mass communication. So has the capacity of the Internet to support the full range of public (one-to-many, many-to-many) communication, as well as group (few-to-few) and private communication (one-to-one); the fact that such communication takes place on the internet (a public space) does not necessarily imply that it is media.

45. For an assessment of outreach, attention should be paid to the aggregated audience, namely all those sharing the platform or common features of the service and who can be reached by the content produced, arranged, selected, aggregated or distributed by the operator, including when the delivery of or access to content is not simultaneous. It may be useful to consider separately the question of content sought by the user and that directly or indirectly related to the revenue-generating activity of the operator of the service. The number of registered users is therefore relevant.

46. The above is consistent with emerging case law which suggests a fine line between private and public communication; as a result, publishing content in social networks has attracted consequences proper to public communication. However, this does not entail categorising the users as media (which would have given them access to media or journalists' prerogatives or privileges). To meet this criterion, a content provider has to take concrete steps to power or project content to a mass-communication dimension; this outreach could be evidenced by recourse to sufficient bandwidth or developing suitable distribution platforms. Attention should be paid to the possibility of rapid developments in this respect.

47. The new fluid ecosystem allows for media to operate easily within other media or for different operators to overlap, sometimes blurring the boundaries between them. It is therefore important to distinguish their respective roles, so as to discern their respective responsibilities. This process may be facilitated by exploring the degree to which the guest, separately, meets the media criteria. This is also important in order not to overstretch the notion of media to unduly include users who produce or contribute to generating content.

48. Together with other criteria, the dimension of entirely closed collective online shared spaces designed to facilitate interactive communication should permit to determine whether they are media. However, the mere fact of restricted access should

not automatically disqualify them (this is comparable to media services only available by subscription).

49. The level of outreach and dissemination is an important criterion which, clearly, has an impact on a differentiated and graduated approach. If outreach and dissemination are low, a service should not be considered media. However, this should be considered having regard to the size of the market or potential audience or user base and also potential impact. The absence of sufficiently large outreach and dissemination does not preclude something from being considered to be media but, in all such cases, those circumstances will have a bearing on differentiation and graduation.

Criterion 6 – Public expectation

Indicators

Availability
Pluralism and diversity
Reliability
Respect of professional and ethical standards
Accountability and transparency

50. People's expectations follow largely the preceding criteria (and the related indicators). They expect that media be available and will be there for them when they wish to turn their attention to it. Without prejudice to discontinuation or temporary suspension, media services are therefore presumed ongoing and broadly accessible (this does not rule out services for consideration, by subscription or subject to membership arrangements).

51. In general, people recognise media and rely to a large extent on media for information and other content. They expect that content will be produced according to relevant professional standards. In a democratic society, they count on the availability of a range of sources of information and expect their content to be diverse, responding to the interests of different segments in society.

52. Depending on the purpose and nature of specific media, public expectation may vary. Expectations in respect of public service media are higher than in respect of certain other media. News media will naturally be expected to be regularly updated and disseminated periodically. People even have expectations as regards content of a commercial nature, which are higher in respect of media or media content designed for minors.

53. In order to be able to fulfil their role and achieve their purpose, media have to earn the trust of the public. Depending on the expressed or perceived purpose, editorial policy, financing model and impact, the trust accorded by the public to media varies. The development of professional and ethical standards to a large extent reflects people's expectations. However, self-regulation may not always be regarded as sufficient and people look to public authorities to ensure that minima are guaranteed. There are also expectations as to transparency and accountability. Higher levels of

expected trustworthiness, standards, transparency and accountability does not necessarily bring about higher outreach, dissemination or impact.

54. Public expectation in a given society may, to some extent, be revealed by law makers' interest on and attention to the subject, and by existing regulation (including co-regulation). In a global society where media know no borders, there is an expectation of some degree of harmonisation also in the understanding of what media is. Comparative solutions may therefore be relevant.

55. The level and nature of public expectation can change rapidly both as regards the media themselves and the part to be played by policy makers, depending on whether and the extent to which other criteria and indicators are met.

Part II

Standards applied to media in the new ecosystem

Preliminary remarks

56. The objective of this part is to offer guidance to policy makers on how to apply media standards to new media activities, services or actors in a graduated and differentiated manner. Further, it provides a substantive basis for implementing the recommendation that member states engage in dialogue with all actors in the media ecosystem in order for them to be properly apprised of the applicable legal framework. It should also assist media actors in any self-regulatory exercise in which they may engage.

57. While the Recommendation on a new notion of media and Part I of this appendix are expected to stand the test of time because of their broad nature, this part, which is of a more pragmatic nature, may need to be further developed, adapted or revised periodically in light of changes in the media ecosystem.

58. Media and journalists are subject to general legal provisions (namely those that are not specific to the media, whether civil, commercial, corporate, tax or penal law). However, given media's needs and role in society, certain general provisions may need to be interpreted specifically for the media (for example in respect of defamation, surveillance, stop and search, state secrets or corporate confidentiality) or their application be scrutinised to avoid their misuse to covertly impinge on media freedom.

59. Subject to the principle that, as a form of interference, media regulation should comply with the requirements of strict necessity and minimum intervention, specific regulatory frameworks should respond to the need to protect media from interference (recognising prerogatives, rights and privileges beyond general law, or providing a framework for their exercise), to manage scarce resources (to ensure media pluralism and diversity of content – cf. Article 10, paragraph 1 *in fine*, of the European Convention on Human Rights) or to address media responsibilities (within the strict boundaries set out in Article 10, paragraph 2, of the Convention and the related case law of the European Court of Human Rights). These considerations inspired the structure of this part of the appendix.

60. In each case, an indication is given of existing Council of Europe standards, and their application in a new media environment is briefly explained. There is no attempt to set out standards in an exhaustive manner. Those selected should be seen as examples which can provide some inspiration for the application of other relevant Council of Europe standards. Given the nature and scope of this instrument, guidance is presented in very broad terms; more precise guidance will have to be deduced from related Committee of Ministers standard-setting instruments (a proposed list is set out at the end of the section). The application of standards will be subject to and evolve in line with developments as regards media actors, services and activities.

A. Rights, privileges and prerogatives

Indicators **Media freedom and editorial independence** **Freedom from censorship** **Protection against misuse of defamation laws and risk of chilling effect**

61. There is no genuine democracy without independent media. Media freedom should be understood in broad terms. It comprises freedom of expression and the right to disseminate content. As stipulated in Article 10 of the European Convention on Human Rights, this right has to be guaranteed regardless of frontiers. Actors should be able to initiate media activities or to evolve without undue difficulty from private or semi-private communication in a public space into mass communication. In particular, there should be no prior authorisation processes; if required, declaration of media activities should pursue the objective of enhancing their protection against interference, without creating unwarranted obstacles to their operation.

62. There are many examples of interference or attempts to interfere with the independence of media in the new ecosystem. There have been reports of direct pressure by politicians on media to withhold or withdraw content and also calls on intermediaries to exclude media actors from their hosting services. Respect of editorial independence requires absence of censorship or *ex ante* control of content. Media should be free from blocking and filtering measures. Public disclosure of all such incidents should be welcome.

63. The importance of the role of intermediaries should be underlined. They offer alternative and complementary means or channels for the dissemination of media content, thus broadening outreach and enhancing effectiveness in media's achievements of its purposes and objectives. In a competitive intermediaries and auxiliaries market, they may significantly reduce the risk of interference by authorities. However, given the degree to which media have to rely on them in the new ecosystem, there is also a risk of censorship operated through intermediaries and auxiliaries. Certain situations may also pose a risk of private censorship (by intermediaries and auxiliaries in respect of media to which they provide services or content they carry).

64. There is growing concern about denial of service attacks against media in the digital environment. Smaller media operators, which are a key component of a plural

and diverse media landscape, are most vulnerable. As a result, they may also be refused hosting services. Claims have also been made of indirect action against media by obstructing their funding arrangements; tax or competition procedures could be misused in a similar way.

65. In the new ecosystem, all media should be preserved from pressure, including that which is politically motivated or stemming from economic interests. Media should be free from censorship and preserved from self-censorship. Editorial independence requires effective and manifest separation between ownership or control over media and decision making as regards content. This is an important factor in the maturing process of media. Persons who exercise political authority or influence should refrain from participating in media's editorial decisions. This is particularly relevant as regards media in the new ecosystem which carry content capable of shaping opinion or informing the electorate's political decisions. These considerations apply equally to content creators and distributors.

66. Libel and defamation laws can be misused to interfere with, or by way of reprisal against, media. They can have a strong chilling effect. According to the case law of the European Court of Human Rights, expressions (or content) which disturb, shock or offend must be tolerated. Subject to the respect or clearing of pertinent intellectual property rights, media should be able to rely on prior media reports or published material without risk. However, in the new ecosystem, consideration needs to be given to the accumulated or multiplied impact and the possible need to apportion responsibility in case of damage (for example resulting from dissemination by a first outlet as compared to the enhanced or multiplied impact when the same content is disseminated by other, including mainstream, media).

67. All media in the new ecosystem should be entitled to use the defences of truthfulness and accuracy of information, good faith or public interest (in particular in the context of scrutiny of the conduct of public or political figures and public officials, and also in respect of matters a priori covered by state secrets or by corporate confidentiality rules). Media should be confident that, when assessing content, fact will be treated differently from opinion (the latter allowing for greater freedom). Media should also be able to rely on freedom of satire and the right to exaggeration.

68. Any action sought against media in respect of content should respect strictly applicable laws; above all international human rights law, in particular the provisions of the European Convention on Human Rights, and comply with procedural safeguards. There should be a presumption in favour of freedom of expression and information and in favour of media freedom. Due account should be taken of the role of users and of the nature of user generated content.

69. Whether in the form of negative obligations (not to interfere) or positive obligations (to facilitate the exercise of freedom of expression and the right to impart and receive information regardless of frontiers, including by ensuring the availability of effective remedies in case of interference by other actors) the duty bearer of these rights, privileges and prerogatives is the state. This should be graduated depending on the circumstances of each case and the realistic possibilities for the state to take necessary preventive or remedial measures. State responsibility should, in no case, be interpreted as allowing for any control, inspection or interference, or indeed any other

action, capable of obstructing the legitimate exercise of the right to freedom of expression and the right to impart and receive information regardless of frontiers.

Indicators

Right to investigate
Protection of journalists and journalistic sources

70. Media's right to investigate is essential for democracy; it should therefore be recognised, preserved and promoted in the new media ecosystem. Journalists' right to investigate may be facilitated by accreditation; where applicable, media professionals in the new ecosystem should be offered accreditation without discrimination and without undue delay or impediment. The rights to freedom of movement (for example access to crisis zones) and access to information are highly relevant for all media professionals. Where appropriate, they should be offered protection without discrimination.

71. The above may extend, in certain cases, to providing protection or some form of support (for example guidance or training so that they do not put their own lives at risk) to actors who, while meeting certain of the criteria and indicators set out in Part I of this appendix, may not fully qualify as media (for example individual bloggers). A graduated response should take account of the extent to which such actors can be considered part of the media ecosystem and contributors to the functions and role of media in a democratic society.

72. Other essential components of the right to investigate are privacy of communications and the protection against seizure of professional material. Any form of surveillance of media professionals, including the tracking of their movements through electronic means, should be considered with great circumspection and be made the subject of reinforced safeguards.

73. The protection of sources is increasingly the subject of formal legal recognition. There is a need for robust protection of whistleblowers. In the new media ecosystem, the protection of sources should extend to the identity of users who make content of public interest available on collective online shared spaces which are designed to facilitate interactive mass communication (or mass communication in aggregate); this includes content-sharing platforms and social networking services. Arrangements may be needed to authorise the use of pseudonyms (for example in social networks) in cases where disclosure of identity might attract retaliation (for example as a consequence of political or human rights activism).

Indicators

Fair access to distribution channels
Intermediaries and auxiliaries

74. Media should have fair access to electronic communication networks (including hosting services) and should be able to rely on the principle of net neutrality. Interoperability and open standards may be useful tools for eliminating

technical barriers to the dissemination of media content. Consideration might be given to reinterpreting “must carry” rules in the new media ecosystem.

75. To the extent that their action or decisions can have an impact on media in the new ecosystem, intermediaries and auxiliaries should be free from pressure or influence intended to bear on media, its independence or its editorial decisions. Policy measures may be required to give effect to this requirement.

76. In case of legitimate action (for example resulting from understandable business decisions) by an intermediary, auxiliary or other actor bearing on essential conditions for the media’s operation, arrangements may be desirable to preserve the media’s ongoing functioning (for example to preserve pluralism and diversity in the public interest). This may call for additional safeguards (for example in the context of judicial procedures) or consideration by relevant authorities of possible means to prevent or mitigate the undesirable outcome. This may also be relevant, *mutatis mutandis*, as regards action by authorities (for example applying tax law) if such action can have a negative impact on media freedoms and pluralism and to the extent necessary in a democratic society.

B. Media pluralism and diversity of content

Indicators **Management of scarce resources** **Transparency of ownership** **Public service media**

77. As has already been indicated, actors in the new ecosystem should be able to initiate media activities or to evolve into media activities without undue difficulty. In particular, there should be no prior authorisation processes. In the new media ecosystem there is a plethora of actors, means and platforms for distribution and content; nonetheless, licensing may still be justified in exceptional cases by the need to manage scarce resources (for example the electromagnetic wavelength spectrum).

78. Limited to such exceptional cases, licensing or authorisation should pursue the public interest, namely to guarantee the existence of a wide range of independent and diverse media. Licensing and authorisation measures should respond to necessity, and persistence of the need for such measures should be reconsidered in light of developments.

79. Pluralism will not be automatically guaranteed by the existence of a large number of means of mass communication accessible to people. Moreover, in a situation of strong media concentration, the ability to shape or influence public opinion or people’s choices may lie with one or only a few actors. Misuse of this power can have adverse consequences for political pluralism and for democratic processes. In the new media ecosystem, some actors have already developed services or applications which have put them in a dominant position on a national or even at a global level. Even if there is no evidence of misuse, such a dominant position can pose a potential risk.

80. Monitoring trends and concentration in the media ecosystem will permit the competent authorities to keep abreast of developments and to assess risks. Regulatory measures may be required with a view to guaranteeing full transparency of media ownership. This will help identify suitable preventive or remedial action, if appropriate and having regard to the characteristics of each media market, with a view to preventing media concentration levels that could pose risks to democracy or the role of the media in democratic processes.

81. Public service media is essential in the European model, involving the coexistence of public service, commercial and community media. They should adhere to high professional standards and should, ideally, involve the public in its governance structures. Their objective should be to ensure universal delivery, quality, trustworthy and diverse content, and political pluralism in the media. Adequately equipped and funded public service media, enjoying genuine editorial independence and institutional autonomy, should contribute to counterbalancing the risk of misuse of the power of the media in a situation of strong media concentration.

82. Public service media should therefore have a distinct place in the new media ecosystem, and should be equipped to provide high-quality and innovative content and services in the digital environment, and should be able to resort to relevant tools (for example to facilitate interaction and engagement).

83. The new ecosystem offers an unprecedented opportunity to incorporate diversity into media governance, in particular as regards gender balanced participation in the production, editorial and distribution processes. The same is true as regards various ethnic and religious groups. This will be a key factor in ensuring balanced representation and coverage by media and in combating stereotypes in respect of all constituent groups of society.

C. Media responsibilities

Indicators

Editorial responsibility
Respect for dignity and privacy
Respect for the presumption of innocence and fair trial
Respect for the right of property
Remedies for third parties

84. The watchdog function, namely scrutiny of public and political affairs and private or business-related matters of public interest, contributes to justify media's broad freedom; however, it is counterpoised by a requirement of greater diligence in respect of factual information. Scrutiny should involve accurate, in-depth and critical reporting. It should be distinguished from journalistic practices which involve unduly probing into and exposing people's private and family lives in a way that would be incompatible with their fundamental rights. Media should exercise special care not to contribute to stereotypes about members of particular ethnic or religious groups and to sexist stereotypes. Representatives of all groups should be offered the opportunity to contribute to content, express their views and explain their understanding of facts; media should consider adopting a proactive approach in this respect.

85. Subject to accuracy of information, the right to the respect of one's honour and reputation finds its limits in the public interest. Professionalism requires verifying information and assessing credibility, but there is no requirement to inform a person of the intention to disseminate information in their respect prior to its dissemination. The exigency of accuracy is less pertinent for opinion, comment and entertainment, which also permit exaggeration. However, media should distinguish these forms of expression from factual information.

86. The above requirements should be graduated having regard to the editorial policies and processes adopted by the media concerned and their potential outreach and impact, and also public expectation in their respect. Media content creators, editors and distributors should adhere to relevant professional standards, including those designed to combat discrimination and stereotypes and to promote gender equality. They should exercise special care to ensure ethical coverage of minority and women's issues also by associating minorities and women to creation, editorial and distribution processes.

87. The role of media, whether new or legacy, in informing the public about criminal proceedings is important in a democratic society. In exercising their editorial responsibility, media should be attentive not to perturb the course of justice or undermine the correct functioning of the judiciary, the privacy and safety of all those involved and, in particular, the presumption of innocence of the suspect or accused. Particular attention should be paid to preserving the dignity of vulnerable persons, victims, witnesses and relatives of persons concerned by criminal proceedings. This should not preclude providing information in the public interest.

88. There is a vast amount of personal information and data in the new media ecosystem, including in online shared spaces designed to facilitate interactive mass communication (or mass communication in aggregate). The management, aggregation and use of such information and data should respect people's right to private and family life as protected by Article 8 of the European Convention on Human Rights, having regard also to the provisions of Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108). The persistence of content in digital environments and its potential for broad dissemination and re-use calls for special care and, in case of need, quick action with a view to mitigating damage. Media operating in the new ecosystem should also place high on their agenda the respect of human rights related standards in respect of profiling.

89. In the new ecosystem, considerable amounts of content are re-used or re-transmitted. In this connection, media should respect the intellectual property rights of others. Without prejudice to the private and collective private enjoyment of content, including in online shared spaces, and other forms of authorised use, attention should be paid to the modalities of application and respect of those rights in the context of user-generated or posted content.

90. Effective internal media accountability systems underpinned by appropriate professional standards often justify the absence of, or decrease the need for, external accountability. Actors in the new ecosystem should develop adequate complaints mechanisms and strive to offer remedies to third parties who consider that they have

suffered prejudice because of media activities or services (for example right to reply, correction, apology).

Indicators **Hate speech** **Rights of children** **Rights of women** **Rights of minorities**

91. Media should refrain from conveying hate speech and other content that incites violence or discrimination for whatever reason. Special attention is needed on the part of actors operating collective online shared spaces which are designed to facilitate interactive mass communication (or mass communication in aggregate). They should be attentive to the use of, and editorial response to, expressions motivated by racist, xenophobic, anti-Semitic, misogynist, sexist (including as regards LGBT people) or other bias. Actors in the new media ecosystem may be required (by law) to report to the competent authorities criminal threats of violence based on racial, ethnic, religious, gender or other grounds that come to their attention.

92. On the other hand, media can provide a balanced (or positive) image of the various groups that make up society and contribute to a culture of tolerance and dialogue. Other than in the cases prescribed by law with due respect to the provisions of the European Convention on Human Rights, no group in society should be discriminated from in the exercise of the right to association which, in the new media ecosystem, includes online association.

93. Particular attention should be paid to preserving the dignity, security and privacy of children. Content concerning them can be a source of present and future prejudice. Consequently, there should be no lasting or permanently accessible record of the content about or created by children, which challenges their dignity, security or privacy, or otherwise renders them vulnerable now or at a later stage in their lives.

94. Risk of harm may arise from a wide range of content and behaviour. Content intended only for adults should be clearly identifiable to facilitate rendering it inaccessible to children. Protection of children should not impinge on their freedom of expression and right to seek and receive information. Media can contribute to the development of safe spaces (walled gardens), as well as other tools facilitating access to websites and content appropriate for children, to the development and voluntary use of labels and trustmarks, to the development of skills among children, parents and educators to understand better and deal with content and behaviour that carries a risk of harm.

95. Harassment, bullying, intimidation and stalking can be facilitated in the new media ecosystem by collective online shared spaces, tracking applications or even search engines and profiling technology. Women are frequent victims of these forms of abuse, which can lead to physical (including sexual) abuse and violence which are unacceptable expressions of inequality. Attention should also be paid to the possible abusive use of technology in respect of members of minorities.

96. In the above-mentioned cases, the response will depend on the circumstances, including the nature and scope of the activity or service in question, as well as the actor's own editorial processes. A graduated approach should consider the possibilities of the actors concerned (for example those operating collective online shared spaces or offering search engine, tracking or profiling applications and technology) to address or mitigate the risks in question. Relevant stakeholders could be encouraged to explore together the feasibility of removing or deleting content in appropriate cases, to the extent that it is not inconsistent with the fundamental right to freedom of expression, including its traces (logs, records and processing), within a reasonably short period of time. Greater technical capabilities bring with them greater responsibility. Self-regulation could usefully be complemented by capacity building (for example enhancing intercultural competencies) and by sharing best or corrective practices developed within sectors of activity in the new media ecosystem.

Indicators

Advertising

97. Freedom of expression also applies to commercial and political advertising, tele-shopping and sponsorship. Limitations in this respect are only admissible within the conditions set out in Article 10 of the European Convention on Human Rights. Such limitations may be needed for the protection of consumers, minors, public health or democratic processes.

98. The potential for abusive, intrusive or surreptitious advertising is greater in the new media ecosystem than ever before. It calls for enhanced responsibility on the part of media actors. It may call for self- or co-regulation and, in certain cases, regulation.

D. Reference instruments

Convention and treaties of the Council of Europe in the media field

- Convention on Information and Legal Co-operation concerning "Information Society Services" (ETS No. 180, 2001)
- European Convention on the Legal Protection of Services based on, or consisting of, Conditional Access (ETS No. 178, 2000)
- European Convention on Transfrontier Television (ETS No. 132, 1989) and the Protocol amending the European Convention on Transfrontier Television (ETS No. 171, 1998)
- European Convention relating to questions on Copyright Law and Neighbouring Rights in the Framework of Transfrontier Broadcasting by Satellite (ETS No. 153, 1994)
- European Agreement concerning Programme Exchanges by means of Television Films (ETS No. 27, 1958)
- European Agreement on the Protection of Television Broadcasts (ETS No. 34, 1960)
- European Agreement for the Prevention of Broadcasts transmitted from Stations outside National Territories (ETS No. 53, 1965)

Other conventions with provisions relevant for the media

- Convention on Cybercrime (ETS No. 185, 2001) and Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189, 2003)
- Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108, 1981) and Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows (ETS No. 181, 2001)
- Framework Convention for the Protection of National Minorities (ETS No. 157, 1995)
- European Charter for Regional or Minority Languages (ETS No. 148, 1992)

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2010

- Recommendation CM/Rec(2010)13 on the protection of individuals with regard to automatic processing of personal data in the context of profiling
- Declaration on the management of the Internet protocol address resources in the public interest (29 September 2010)
- Declaration on network neutrality (29 September 2010)
- Declaration on the Digital Agenda for Europe (29 September 2010)
- 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) (26 May 2010)
- Declaration on measures to promote the respect of Article 10 of the European Convention on Human Rights (13 January 2010)

2009

- Recommendation CM/Rec(2009)5 on measures to protect children against harmful content and behaviour and to promote their active participation in the new information and communications environment
- Declaration on the role of community media in promoting social cohesion and intercultural dialogue (11 February 2009)

2008

- Recommendation CM/Rec(2008)6 on measures to promote the respect for freedom of expression and information with regard to Internet filters
- Declaration on the independence and functions of regulatory authorities for the broadcasting sector (26 March 2008)
- Declaration on protecting the dignity, security and privacy of children on the Internet (20 February 2008)
- Declaration on the allocation and management of the digital dividend and the public interest (20 February 2008)

2007

- Recommendation CM/Rec(2007)16 on measures to promote the public service value of the Internet
- Recommendation CM/Rec(2007)15 on measures concerning media coverage of election campaigns
- Recommendation CM/Rec(2007)11 on promoting freedom of expression and information in the new information and communications environment
- Recommendation Rec(2007)3 on the remit of public service media in the information society
- Recommendation Rec(2007)2 on media pluralism and diversity of media content
- Guidelines on protecting freedom of expression and information in times of crisis (26 September 2007)
- Declaration on the protection and promotion of investigative journalism (26 September 2007)
- Declaration on protecting the role of the media in democracy in the context of media concentration (31 January 2007)

2006

- Recommendation Rec(2006)12 on empowering children in the new information and communications environment
- Recommendation Rec(2006)3 on the UNESCO Convention on the protection and promotion of the diversity of cultural expressions
- Declaration on the guarantee of the independence of public service broadcasting in the member states (27 September 2006)

2005

- Declaration on human rights and the rule of law in the Information Society (13 May 2005)
- Declaration on freedom of expression and information in the media in the context of the fight against terrorism (2 March 2005)

2004

- Recommendation Rec(2004)16 of the Committee of Ministers to member states on the right of reply in the new media environment
- Declaration on freedom of political debate in the media (12 February 2004)

2003

- Recommendation Rec(2003)13 on the provision of information through the media in relation to criminal proceedings
- Recommendation Rec(2003)9 on measures to promote the democratic and social contribution of digital broadcasting
- Declaration on the provision of information through the media in relation to criminal proceedings (10 July 2003)
- Declaration on freedom of communication on the Internet (28 May 2003)

- Political message to the World Summit on the Information Society (WSIS) (19 June 2003)

2002

- Recommendation Rec(2002)7 on measures to enhance the protection of the neighbouring rights of broadcasting organisations
- Recommendation Rec(2002)2 on access to official documents

2001

- Recommendation Rec(2001)8 on self-regulation concerning cyber content (self-regulation and user protection against illegal or harmful content on new communications and information services)
- Recommendation Rec(2001)7 on measures to protect copyright and neighbouring rights and combat piracy, especially in the digital environment

2000

- Recommendation Rec(2000)23 on the independence and functions of regulatory authorities for the broadcasting sector
- Recommendation Rec(2000)7 on the right of journalists not to disclose their sources of information
- Declaration on cultural diversity (7 December 2000)

1999

- Recommendation Rec(99)15 on measures concerning media coverage of election campaigns
- Recommendation Rec(99)14 on universal community service concerning new communication and information services
- Recommendation Rec(99)5 for the protection of privacy on the Internet
- Recommendation Rec(99)1 on measures to promote media pluralism
- Declaration on the exploitation of protected radio and television productions held in the archives of broadcasting organisations (9 September 1999)
- Declaration on a European policy for new information technologies (7 May 1999)

1997

- Recommendation Rec(97)21 on the media and the promotion of a culture of tolerance
- Recommendation Rec(97)20 on “hate speech”
- Recommendation Rec (97)19 on the portrayal of violence in the electronic media

1996

- Recommendation Rec(96)10 on the guarantee of the independence of public service broadcasting

- Recommendation Rec(96)4 on the protection of journalists in situations of conflict and tension
- Declaration on the protection of journalists in situations of conflict and tension (3 May 1996)

1995

- Recommendation Rec(95)13 concerning problems of criminal procedural law connected with information technology
- Recommendation Rec(95)1 on measures against sound and audio-visual piracy

1994

- Recommendation Rec(94)13 on measures to promote media transparency
- Recommendation Rec(94)3 on the promotion of education and awareness in the area of copyright and neighbouring rights concerning creativity
- Declaration on neighbouring rights (17 February 1994)

1993

- Recommendation Rec(93)5 containing principles aimed at promoting the distribution and broadcasting of audiovisual works originated in countries or regions with a low audiovisual output or a limited geographic or linguistic coverage on the European television markets

1992

- Resolution Res(92)70 on establishing a European Audiovisual Observatory
- Recommendation Rec(92)19 on video games with a racist content
- Recommendation Rec(92)15 concerning teaching, research and training in the field of law and information technology

1991

- Recommendation Rec(91)14 on the legal protection of encrypted television services
- Recommendation Rec(91)5 on the right to short reporting on major events where exclusive rights for their television broadcast have been acquired in a transfrontier context

1990

- Recommendation Rec(90)11 on principles relating to copyright law questions in the field of reprography
- Recommendation Rec(90)10 on cinema for children and adolescents

1989

- Recommendation Rec(89)7 concerning principles on the distribution of videograms having a violent, brutal or pornographic content

1988

- Resolution Res(88)15 setting up a European support fund for the co-production and distribution of creative cinematographic and audiovisual works ("Eurimages")
- Recommendation Rec(88)2 on measures to combat piracy in the field of copyright and neighbouring rights
- Recommendation Rec(88)1 on sound and audiovisual private copying

1987

- Recommendation Rec(87)7 on film distribution in Europe

1986

- Recommendation Rec(86)14 on the drawing up of strategies to combat smoking, alcohol and drug dependence in co-operation with opinion-makers and the media
- Recommendation Rec(86)9 on copyright and cultural policy
- Recommendation Rec(86)3 on the promotion of audiovisual production in Europe
- Recommendation Rec(86)2 on principles relating to copyright law questions in the field of television by satellite and cable

1985

- Recommendation Rec(85)8 on the conservation of the European film heritage
- Recommendation Rec(85)6 on aid for artistic creation

1984

- Recommendation Rec(84)22 on the use of satellite capacity for television and sound radio
- Recommendation Rec(84)17 on equality between women and men in the media
- Recommendation Rec(84)3 on principles on television advertising

1982

- Declaration on the freedom of expression and information (29 April 1982)

1981

- Recommendation Rec(81)19 on the access to information held by public authorities

1980

- Recommendation Rec(80)1 on sport and television

1979

- Recommendation Rec(79)1 concerning consumer education of adults and consumer information

1974

- Resolution Res(74)43 on press concentrations
- Resolution Res(74)26 on the right of reply – Position of the individual in relation to the press

1970

- Resolution Res(70)19 on educational and cultural uses of radio and television in Europe and the relations in this respect between public authorities and broadcasting organisations

1967

- Resolution Res(67)13 on the press and the protection of youth

1961

- Resolution Res(61)23 on the exchange of television programmes

Parliamentary Assembly of the Council of Europe

- Recommendation 1950 (2011) "The protection of journalists' sources"
- Recommendation 1897 (2010) "Respect for media freedom"
- Recommendation 1882 (2009) "The promotion of Internet and online media services appropriate for minors"
- Recommendation 1878 (2009) "The funding of public service broadcasting"
- Recommendation 1855 (2009) "The regulation of audiovisual media services"
- Resolution 1636 and Recommendation 1848 (2008) "Indicators for media in a democracy"
- Recommendation 1836 (2008) "Realising the full potential of e-learning for education and training"
- Resolution 1577 and Recommendation 1814 (2007) "Towards decriminalisation of defamation"
- Recommendation 1805 (2007) "Blasphemy, religious insults and hate speech against persons on grounds of their religion"
- Resolution 1557 and Recommendation 1799 (2007) "The image of women in advertising"
- Recommendation 1789 (2007) "Professional education and training of journalists"
- Resolution 1535 and Recommendation 1783 (2007) "Threats to the lives and freedom of expression of journalists"
- Recommendation 1773 (2006) "The 2003 guidelines on the use of minority languages in the broadcast media and the Council of Europe standards: need to enhance co-operation and synergy with the OSCE"

- Recommendation 1768 (2006) “The image of asylum seekers, migrants and refugees in the media”
- Resolution 1510 (2006) “Freedom of expression and respect for religious beliefs”
- Recommendation 1706 (2005) “Media and terrorism”
- Resolution 1438 and Recommendation 1702 (2005) “Freedom of the press and the working conditions of journalists in conflict zones”
- Resolution 1387 (2004) “Monopolisation of the electronic media and possible abuse of power in Italy”
- Recommendation 1641 (2004) “Public service broadcasting”
- Recommendation 1589 (2003) “Freedom of expression in the media in Europe”
- Resolution 1313 (2003) “Cultural co-operation between Europe and the south Mediterranean countries”
- Recommendation 1586 (2002) “The digital divide and education”
- Recommendation 1555 (2002) “The image of women in the media”
- Recommendation 1543 (2001) “Racism and xenophobia in cyberspace”
- Recommendation 1506 (2001) “Freedom of expression and information in the media in Europe“
- Recommendation 1466 (2000) “Media education”
- Recommendation 1407 (1999) “Media and democratic culture”
- Resolution 1191 (1999) “The information society and a digital world”
- Resolution 1165 (1998) “The right to privacy”
- Resolution 1142 (1997) “Parliaments and the media”
- Recommendation 1332 (1997) “The scientific and technical aspects of the new information and communications technologies”
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- Recommendation 1277 (1995) “Migrants, ethnic minorities and media”
- Recommendation 1276 (1995) “The power of the visual image”
- Recommendation 1265 (1995) “Enlargement and European cultural co-operation”
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- Resolution 956 (1991) “Transfer of technology to countries of Central and Eastern Europe“
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- Resolution 937 (1990) “Telecommunications: the implications for Europe”
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- Recommendation 1096 (1989) “European Convention on Transfrontier Television”

- Recommendation 1077 (1988) "Access to transfrontier audiovisual media during election campaigns"
- Recommendation 1067 (1987) "The cultural dimension of broadcasting in Europe"
- Recommendation 1059 (1987) "The economics of culture"
- Recommendation 1047 (1986) "The dangers of boxing"
- Recommendation 1043 (1986) "Europe's linguistic and literary heritage"
- Recommendation 1037 (1986) "Data protection and freedom of information"
- Resolution 848 (1985) "Privacy of sound and individual freedom of musical choice"
- Recommendation 1011 (1985) "The situation of professional dance in Europe"
- Recommendation 996 (1984) "Council of Europe work relating to the media"
- Resolution 820 (1984) "Relations of national parliaments with the media"
- Recommendation 963 (1983) "Cultural and educational means of reducing violence"
- Recommendation 952 (1982) "International means to protect freedom of expression by regulating commercial advertising"
- Recommendation 926 (1981) "Questions raised by cable and television and by direct satellite broadcasts"
- Recommendation 862 (1979) "Cinema and the state"
- Recommendation 834 (1978) "Threats to the freedom of the press and television"
- Recommendation 815 (1977) "Freedom of expression and the role of the writer in Europe"
- Recommendation 749 (1975) "European broadcasting"
- Recommendation 748 (1975) "The role and management of national broadcasting"
- Recommendation 747 (1975) "Press concentrations"
- Recommendation 582 (1970) "Mass communication media and human rights"
- Resolution 428 (1970) "Declaration on mass communication media and human rights"

Council of Europe Conferences of Specialised Ministers

1st Council of Europe Conference of Ministers responsible for Media and New Communication Services
(28 and 29 May 2009, Reykjavik, Iceland)
A new notion of media?

7th European Ministerial Conference on Mass Media Policy
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Integration and diversity: the new frontiers of European media and communication policy

6th European Ministerial Conference on Mass Media Policy
(Cracow, Poland, 15 and 16 June 2000)
A media policy for tomorrow

5th European Ministerial Conference on Mass Media Policy

(Thessaloníki, Greece, 11 and 12 December 1997)
The Information Society: a challenge for Europe

4th European Ministerial Conference on Mass Media Policy
(Prague, Czech Republic, 7 and 8 December 1994)
The media in a democratic society

3rd European Ministerial Conference on Mass Media Policy
(Nicosia, Cyprus, 9 and 10 October 1991)
Which way forward for Europe's media in the 1990s?

2nd European Ministerial Conference on Mass Media Policy
(Stockholm, Sweden, 23 and 24 November 1988)
European Mass Media Policy in an international context

1st European Ministerial Conference on Mass Media Policy
(Vienna, Austria, 9 and 10 December 1986)
The future of television in Europe

Recommendation CM/Rec(2011)8 of the Committee of Ministers to member states on the protection and promotion of the universality, integrity and openness of the Internet

(Adopted by the Committee of Ministers on 21 September 2011 at the 1121st meeting of the Ministers' Deputies)

1. The member states of the Council of Europe, States Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, hereinafter "the Convention") have undertaken in Article 1 to secure to everyone within their jurisdiction the rights and freedoms defined in this Convention. They have particular roles and responsibilities in securing the protection and promotion of these rights and freedoms and can be held to account for violations of these rights and freedoms before the European Court of Human Rights.

2. The right to freedom of expression, which includes the freedom to hold opinions and to receive and impart information and ideas without interference, is essential for citizens' participation in democratic processes. This right to freedom of expression applies to both online and offline activities, regardless of frontiers. In a Council of Europe context, its protection should be ensured in accordance with Article 10 of the Convention and the relevant case law of the European Court of Human Rights.

3. The Internet enables people to have access to information and services, to connect and to communicate, as well as to share ideas and knowledge globally. It provides essential tools for participation and deliberation in political and other activities of public interest.

4. The individual's freedom to have access to information and to form and express opinions, and the ability of groups to communicate and share views on the Internet depend on actions related to the Internet's infrastructure and critical resources, and on decisions on information technology design and deployment. Governmental action may also have a bearing on the exercise of these freedoms.

5. In particular, access to and use of the Internet is exposed to risks of disruption of the stable and ongoing functioning of the network due to technical failures and is vulnerable to other acts of interference with its infrastructure. The question of the stability and resilience of the Internet is intrinsically related to the cross-border interconnectedness and interdependence of its infrastructure, as well as its decentralised and distributed nature. Actions that take place in one jurisdiction may affect the ability of users to have access to information on the Internet in another.

6. Moreover, decisions taken in the context of the technical co-ordination and management of resources that are critical for the functioning of the Internet, notably domain names and Internet protocol addresses, may have a direct bearing on users' access to information and on protection of personal data. These resources are distributed in different jurisdictions and are managed by various non-governmental entities with a regional or global remit.

7. Against this background, the protection of freedom of expression and access to information on the Internet and the promotion of the public service value of the Internet are part of a larger set of concerns about how to ensure the universality, integrity and openness of the Internet.

8. People increasingly rely on the Internet for their everyday activities and to ensure their rights as citizens. They have a reasonable expectation that Internet services will be accessible and affordable, secure, reliable and ongoing. The Internet is, similarly, a critical resource for numerous sectors of the economy and public administration.

9. These expectations give rise to state responsibility to preserve carefully the general public interest in Internet-related policy making. Indeed, many countries have recognised the public service value of the Internet, whether in their national policies or legislation or in the form of political declarations, including in international fora.

10. States have a duty to ensure the protection of fundamental rights and freedoms of their citizens and they are called upon to respond to their legitimate expectations regarding the critical role of the Internet. As a result, it is the role of states to ensure the protection of the public interest in international Internet-related public policy.

11. In addition, states have mutual expectations that best efforts will be made to preserve and promote the public service value of the Internet. In this context, it is necessary to acknowledge their shared and mutual responsibilities to take reasonable measures to protect and promote the universality, integrity and openness of the Internet as a means of safeguarding freedom of expression and access to information regardless of frontiers.

12. Therefore, the Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe, recommends member states to:

- be guided by the principles contained in the Committee of Ministers' Declaration on Internet governance principles, both in the context of developing national Internet-related policies and when participating in such endeavours within the international community;
- protect and promote the universality, integrity and openness of the Internet having regard to the principles and in accordance with the commitment set out in this recommendation, and ensure that they are reflected in practice and law;
- ensure the broad dissemination of this commitment to all public authorities and private entities, in particular those dealing with the management of resources that are critical for the functioning of the Internet, and to civil society organisations;
- encourage these actors to support and promote the implementation of the principles included in the present recommendation.

Commitment to protect and promote the universality, integrity and openness of the Internet

1. General principles

1.1. No harm

1.1.1. States have the responsibility to ensure, in compliance with the standards recognised in international human rights law and with the principles of international law, that their actions do not have an adverse transboundary impact on access to and use of the Internet.

1.1.2. This should include, in particular, the responsibility to ensure that their actions within their jurisdictions do not illegitimately interfere with access to content outside their territorial boundaries or negatively impact the transboundary flow of Internet traffic.

1.2. Co-operation

States should co-operate in good faith with each other and with relevant stakeholders at all stages of development and implementation of Internet-related public policies to avoid any adverse transboundary impact on access to and use of the Internet.

1.3. Due diligence

Within the limits of non-involvement in day-to-day technical and operational matters, states should, in co-operation with each other and with all relevant stakeholders, take all necessary measures to prevent, manage and respond to significant transboundary disruptions to, and interferences with, the infrastructure of the Internet, or, in any event, to minimise the risk and consequences arising from such events.

2. Integrity of the Internet

2.1. Preparedness

2.1.1. States should, jointly, and in consultation with relevant stakeholders, develop and implement emergency plans for managing and responding to disruptions to, and interferences with, the infrastructure of the Internet.

2.1.2. In particular, states should co-operate with a view to supporting the development and implementation of common standards, rules and practices aimed at preserving and strengthening the stability, robustness and resilience of the Internet.

2.1.3. States should create an environment that facilitates information sharing and response co-ordination among stakeholders, notably through the creation of public-private partnerships, in respect of activities involving a risk of causing significant transboundary disruptions to, and interferences with, the infrastructure of the Internet.

2.2. Response

2.2.1. Notification

States should, without delay, provide notification of any risk of significant transboundary disruptions to, and interferences with, the infrastructure of the Internet to potentially affected states.

2.2.2. Information sharing

States should, in a timely manner, provide potentially affected states with all available information relevant to responding to transboundary disruptions to, and interferences with, the infrastructure of the Internet.

2.2.3. Consultation

States should enter into consultation with each other without delay with a view to achieving mutually acceptable solutions regarding measures to be adopted to respond to significant transboundary disruptions to, and interferences with, the infrastructure of the Internet.

2.2.4. Mutual assistance

As appropriate, and with due regard to their capabilities, states should, in good faith, offer their assistance to other affected states with a view to mitigating the adverse effects of transboundary disruptions to, and interferences with, the infrastructure of the Internet.

2.3. Implementation

States should, in consultation with relevant stakeholders, within the limits of non-involvement in day-to-day technical and operational matters, develop reasonable legislative, administrative or other measures as appropriate to implement their due diligence commitments regarding the integrity of the Internet.

2.4. Responsibility

States should engage in dialogue and co-operation for the further development of international standards relating to responsibility and liability and to the settlement of related disputes.

3. Resources that are critical for the functioning of the Internet

States should take all reasonable measures to ensure that the development and application of standards, policies, procedures or practices in connection with the management of resources that are critical for the functioning of the Internet incorporate protection for human rights and fundamental freedoms of Internet users in compliance with the standards recognised in international human rights law.

Declaration by the Committee of Ministers on Internet governance principles

(Adopted by the Committee of Ministers on 21 September 2011
at the 1121st meeting of the Ministers' Deputies)

1. The Internet is an aggregate of a vast range of ideas, technologies, resources and policies developed on the assertion of freedom and through collective endeavours in the common interest. States, the private sector, civil society and individuals have all contributed to build the dynamic, inclusive and successful Internet that we know today. The Internet provides a space of freedom, facilitating the exercise and enjoyment of fundamental rights, participatory and democratic processes, and social and commercial activities.

2. The above has inspired a shared vision of Internet governance which was put on record in the Declaration of Principles enunciated in the Geneva phase of the World Summit on the Information Society in December 2003. The Tunis Agenda, adopted at the second phase of the World Summit on the Information Society in November 2005, defined Internet governance as 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.

3. The Internet governance discussions taking place in different national and international fora are a tangible result of this vision. They have fostered dialogue among state, private sector and civil society actors and contributed to shape common views on Internet policies and, more broadly, Internet governance. Seeking to preserve and consolidate this approach, Internet communities, international organisations and other actors have engaged in efforts to pronounce the core values of the Internet and have developed guidelines on various aspects of Internet governance.

4. The Council of Europe has participated in these processes and its 47 member states have supported, in a number of standard-setting instruments, measures aimed at ensuring a maximum of rights on the Internet subject to a minimum of restrictions, while offering the level of security that people are entitled to expect. This stems from the Council of Europe member states' undertaking to secure to everyone within their jurisdiction the rights and freedoms protected by the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5).

5. In order to ensure a sustainable, people-centred and rights-based approach to the Internet, it is necessary to affirm the principles of Internet governance which acknowledge human rights and fundamental freedoms, democracy and the rule of law, as well as the basic tenets of Internet communities as they have been developed in the processes mentioned above.

6. As a contribution to this ongoing, inclusive, collaborative and open process, the Committee of Ministers of the Council of Europe:

- affirms the principles set out below, which build on Internet governance principles progressively developed by stakeholders and Internet communities;

- declares its firm commitment to these principles and underlines that they should be upheld by all member states in the context of developing national and international Internet-related policies;

- encourages other stakeholders to embrace them in the exercise of their own responsibilities.

Internet governance principles

1. Human rights, democracy and the rule of law

Internet governance arrangements must ensure the protection of all fundamental rights and freedoms and affirm their universality, indivisibility, interdependence and interrelation in accordance with international human rights law. They must also ensure full respect for democracy and the rule of law and should promote sustainable development. All public and private actors should recognise and uphold human rights and fundamental freedoms in their operations and activities, as well as in the design of new technologies, services and applications. They should be aware of developments leading to the enhancement of, as well as threats to, fundamental rights and freedoms, and fully participate in efforts aimed at recognising newly emerging rights.

2. Multi-stakeholder governance

The development and implementation of Internet governance arrangements should ensure, in an open, transparent and accountable manner, the full participation of governments, the private sector, civil society, the technical community and users, taking into account their specific roles and responsibilities. The development of international Internet-related public policies and Internet governance arrangements should enable full and equal participation of all stakeholders from all countries.

3. Responsibilities of states

States have rights and responsibilities with regard to international Internet-related public policy issues. In the exercise of their sovereignty rights, states should, subject to international law, refrain from any action that would directly or indirectly harm persons or entities outside of their territorial jurisdiction. Furthermore, any national decision or action amounting to a restriction of fundamental rights should comply with international obligations and in particular be based on law, be necessary in a democratic society and fully respect the principles of proportionality and the right of independent appeal, surrounded by appropriate legal and due process safeguards.

4. Empowerment of Internet users

Users should be fully empowered to exercise their fundamental rights and freedoms, make informed decisions and participate in Internet governance arrangements, in particular in governance mechanisms and in the development of Internet-related public policy, in full confidence and freedom.

5. Universality of the Internet

Internet-related policies should recognise the global nature of the Internet and the objective of universal access. They should not adversely affect the unimpeded flow of transboundary Internet traffic.

6. Integrity of the Internet

The security, stability, robustness and resilience of the Internet as well as its ability to evolve should be the key objectives of Internet governance. In order to preserve the integrity and ongoing functioning of the Internet infrastructure, as well as users' trust and reliance on the Internet, it is necessary to promote national and international multi-stakeholder co-operation.

7. Decentralised management

The decentralised nature of the responsibility for the day-to-day management of the Internet should be preserved. The bodies responsible for the technical and management aspects of the Internet, as well as the private sector should retain their leading role in technical and operational matters while ensuring transparency and being accountable to the global community for those actions which have an impact on public policy.

8. Architectural principles

The open standards and the interoperability of the Internet as well as its end-to-end nature should be preserved. These principles should guide all stakeholders in their decisions related to Internet governance. There should be no unreasonable barriers to entry for new users or legitimate uses of the Internet, or unnecessary burdens which could affect the potential for innovation in respect of technologies and services.

9. Open network

Users should have the greatest possible access to Internet-based content, applications and services of their choice, whether or not they are offered free of charge, using suitable devices of their choice. Traffic management measures which have an impact on the enjoyment of fundamental rights and freedoms, in particular the right to freedom of expression and to impart and receive information regardless of frontiers, as well as the right to respect for private life, must meet the requirements of international law on the protection of freedom of expression and access to information, and the right to respect for private life.

10. Cultural and linguistic diversity

Preserving cultural and linguistic diversity and fostering the development of local content, regardless of language or script, should be key objectives of Internet-related policy and international co-operation, as well as in the development of new technologies.

Declaration by the Committee of Ministers on the protection of freedom of expression and information and freedom of assembly and association with regard to Internet domain names and name strings

(A*dopted by the Committee of Ministers on 21 September 2011 at the 1121st meeting of the Ministers' Deputies*)

1. Freedom of expression and the right to receive and impart information, and their corollary, the freedom of the media, are indispensable for genuine democracy and democratic processes, as is freedom of assembly and association. All Council of Europe member states have undertaken to secure these freedoms to everyone within their jurisdiction in accordance with Articles 10 and 11 of the European Convention on Human Rights (ETS No. 5).

2. The Internet offers significant opportunities to enhance the exercise and full enjoyment of human rights and freedoms. The Committee of Ministers affirmed the public service value of the Internet in Recommendation CM/Rec(2007)16 on measures to promote the public service value of the Internet and provided guidelines to member states on necessary measures that should be taken to promote this value. The United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has recently rightly stated that "by acting as a catalyst for individuals to exercise their right to freedom of opinion and expression, the Internet also facilitates the realisation of a range of other human rights".

3. Citizens' communication and interaction in online environments and their participation in activities that involve matters of public interest can bring positive, real-life, social change. When freedom of expression and the right to receive and impart information and freedom of assembly are not upheld online, their protection offline is likely to be undermined and democracy and the rule of law can also be compromised.

4. Action by a state that limits or forbids access to specific Internet content constitutes an interference with freedom of expression and the right to receive and impart information. In Europe, such an interference can only be justified if it fulfils the conditions of Article 10, paragraph 2, of the European Convention on Human Rights and the relevant case law of the European Court of Human Rights.

5. In particular, as specified in Principle 3 of the Declaration of the Committee of Ministers on freedom of communication on the Internet of 28 May 2003, states should not, through general blocking or filtering measures, exercise prior control of content made available on the Internet unless such measures are taken on the basis of a provisional or final decision on the illegality of such content by the competent national authorities and in full respect for the strict conditions of Article 10, paragraph 2, of the European Convention on Human Rights. These measures should concern clearly identifiable content and should be proportionate. This should not prevent the installation of filters for the protection of minors, in particular in places accessible to them, such as schools or libraries.

6. The Committee of Ministers has stated, in its Declaration on human rights and the rule of law in the Information Society of 13 May 2005, that member states should maintain and enhance legal and practical measures to prevent state and private censorship. In addition, 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 includes guidelines for using and controlling Internet filters in general, and more specifically in relation to the protection of children and young people.

7. Expressions contained in the names of Internet websites, such as domain names and name strings, should not, a priori, be excluded from the scope of application of legal standards on freedom of expression and the right to receive and impart information and should, therefore, benefit from a presumption in their favour. The addressing function of domain names and name strings and the forms of expressions that they comprise, as well as the content that they relate to, are inextricably intertwined. More specifically, individuals or operators of websites may choose to use a particular domain name or name string to identify and describe content hosted in their websites, to disseminate a particular point of view or to create spaces for communication, interaction, assembly and association for various societal groups or communities.

8. The need to provide safeguards for freedom of expression in legal frameworks related to the management of domain names which identify a country in the Internet addressing system has been affirmed by constitutional oversight bodies of specific Council of Europe member states.

9. On the other hand, instances of measures proposed in other Council of Europe member states to prohibit the use of certain words or characters in domain names and name strings are a source of concern. They may raise issues under Articles 10 and 11 of the European Convention on Human Rights within their own jurisdiction. In a cross-border context they may have an impact on content accessible in other states' territories. They may also set negative precedents which, if replicated and generalised, could thwart the vitality of Internet expression and have devastating effects on Internet freedom.

10. The protection of freedom of expression and the right to receive and impart information and freedom of assembly and association is relevant to policy development processes which are taking place in the Internet Corporation for Assigned Names and Numbers (ICANN) to expand the domain name space so as to include new top-level domain extensions that contain generic expressions. In this context, state and non-state stakeholders should be attentive to and uphold the guarantees in international law on freedom of expression and the right to receive and impart information and on freedom of assembly and association, to the extent that they apply to certain generic expressions that may be proposed in the future as top-level domain names. These considerations should guide relevant policy development and implementation processes.

11. Against this background, the Committee of Ministers:

– declares its support for the recognition by member states of the need to apply fundamental rights safeguards to the management of domain names;

– alerts to the risk which over-regulation of the domain name space and name strings entails for the exercise of freedom of expression and the right to receive and impart information and of freedom of assembly and association; as a form of interference, any regulation should meet the conditions of Articles 10 and 11 of the European Convention on Human Rights and the related case law of the European Court of Human Rights;

– undertakes to pursue further standard-setting work with a view to providing guidance to member states on this subject;

– recalls the Resolution on Internet governance and critical Internet resources adopted by the ministers of states participating in the 1st Council of Europe Conference of Ministers responsible for Media and New Communication Services held in Reykjavik on 28 and 29 May 2009, and invites the competent Council of Europe bodies to work with relevant corporations, agencies and other entities that manage or contribute to the management of the domain name space in order for decisions to take full account of international law, including international human rights law.