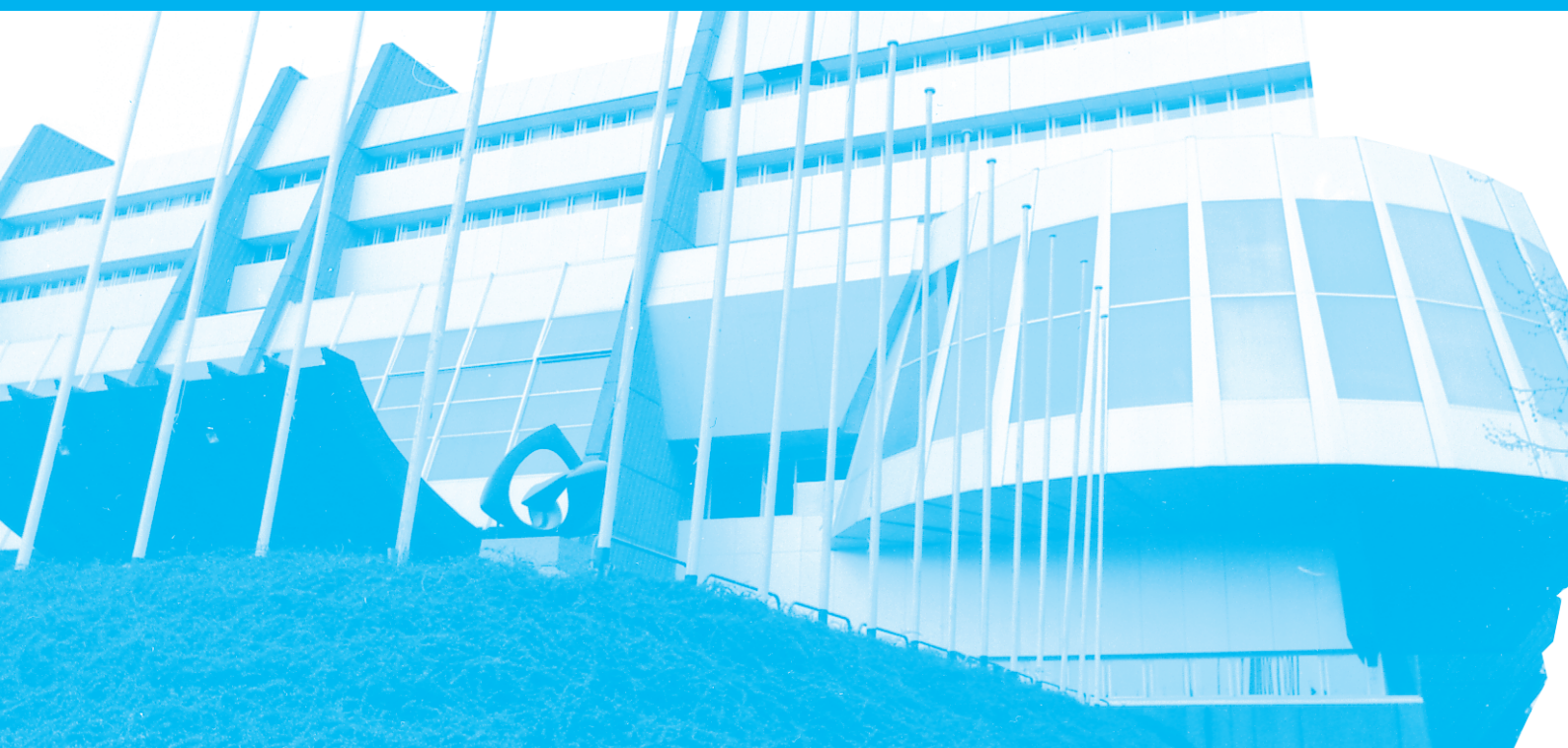


**Recommendations and declarations
of the Committee of Ministers
of the Council of Europe
in the field of media
and information society**



Strasbourg, 2016

**Recommendations and Declarations
of the Committee of Ministers
of the Council of Europe
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**Media and Internet Division
Directorate General of Human Rights and Rule of Law**

Strasbourg, July 2015

Recommendations and Declarations of the Committee of Ministers in the field of media and information society¹

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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.

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.

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 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.

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.

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 facts 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.

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 precipitate 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.

Recommendation No. R (81) 19 of the Committee of Ministers to member states on the access to information held by public authorities¹

*(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.

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.

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.

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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.

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 audio-visual 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.

Recommendation No. R (87) 7 of the Committee of Ministers to member states on film distribution in Europe¹

*(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;

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;

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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.

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 agreements²;

2. 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.

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;
 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.

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.

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.

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.

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.

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.

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.

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.

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).

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.

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.

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).

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.

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.

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.

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.

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.

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 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;

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
<p>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)</p> <p>Other Internet video - free access - conditional access (X-rated videos)</p>	<p>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</p> <p>Radio programmes news current affairs light entertainment, music sport religion youth advertising</p> <p>Other video-cassettes, trailers video games multimedia</p>	<p>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</p>

4. Context of portrayal of violence	5. Form in which violence is portrayed
<p>information education awareness-raising (charity) artistic expression entertainment social criticism, irony, humour audience attraction/sensational unintentional</p>	<p>realistic naturalistic hedonistic esthetic aggressive raw material picture and comment/value judgements positive/negative (violent act of the hero/anti-hero)</p>

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.

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.

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.

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.

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.

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.

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.

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.

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 *in audita 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).

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.

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.

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.

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.

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.

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.

Recommendation Rec (2004) 16¹ 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;

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,

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.

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.

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.

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 Cyber-crime (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.

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.

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 MEDIA IN 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.

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.

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.

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.

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.

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).

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.

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 apologies 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.

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, audio-visual 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)

Committee of Ministers

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"
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- 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”
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- Recommendation 1407 (1999) “Media and democratic culture”
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- 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”
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- Recommendation 926 (1981) “Questions raised by cable and television and by direct satellite broadcasts”

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- Recommendation 834 (1978) “Threats to the freedom of the press and television”
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- Recommendation 748 (1975) “The role and management of national broadcasting”
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Council of Europe Conferences of Specialised Ministers

1st Council of Europe Conference of Ministers responsible for Media and New Communication Services
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A media policy for tomorrow

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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.

Explanatory Memorandum to the draft Recommendation CM/Rec(2011)8 of the Committee of Ministers to member states on the protection and promotion of Internet's universality, integrity and openness

I. INTRODUCTION

1. The Internet plays an increasingly important role in people's lives and in all aspects of human society. It is continually evolving in technology and providing citizens with possibilities to access information and services, to connect, and to communicate as well as to share ideas and knowledge globally. The impact of the Internet on social, economic and cultural activities is also growing. Internet services and uses affect both Internet users and non-users. Moreover, as the events in certain Northern African countries in the beginning of 2011 have demonstrated "online connectivity can result in positive real-life change."¹

2. Internet accessibility and openness have become pre-conditions for most people's enjoyment of fundamental rights and freedoms, notably freedom of expression and the right to impart and receive information. Internet access also has increasing importance for the enjoyment of freedom of association. In some European countries, such as Finland and Switzerland, access to broadband Internet connection has been recognised as a legal right. Albeit not articulated as an enforceable right, universal broadband access is also a formally adopted policy in other countries such as Iceland.

3. Peoples' ability to have access to the Internet depends on the continuous and stable functioning of Internet's infrastructure. Given the interconnectedness and interdependencies of the Internet infrastructure, disruptions which may involve technical failures or incidents as well as interference with infrastructure may affect Internet access and the free flow of information across borders. Moreover, decisions made in the framework of the technical co-ordination and management of critical Internet resources by non-governmental entities with a regional or international remit may have a direct bearing on the exercise of freedom of expression and the right to impart and receive information of people in the global Internet community. The events at the end of 2010 in respect of hosting the whistleblower website WikiLeaks showed that Internet service providers are not immune from influence which may have an impact on availability of information on the web.

1. See comment of Council of Europe's Commissioner for Human Rights 'Social Networks: potential for social change – but privacy must be protected', available at http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=134. Also, the criticality of the Internet for society and economy was exemplified in the same region where the suspension of Internet services for an entire country has led to legal action and consequences.

4. The risks affecting the integrity of the Internet and the concomitant challenges to freedom of expression and access to information cannot be addressed through technical measures or private sector action alone. In addition, coordination of national approaches to network resilience and stability, which at the present stage is based on professional trust of technical bodies such as computer emergency response teams, does not extend to all European countries, and cross-border co-operation remains a challenge. Solutions should be based on strategies that prioritise the protection of peoples' rights and freedoms and the public interest. While technology and technical and professional solidarity are fundamental considerations, strategy development involves political commitment and resolve. European countries such as France, Germany, the Netherlands and the United Kingdom have developed comprehensive cybersecurity strategies. The United States of America has also recently launched its international strategy for cyberspace.

5. The Internet has no national boundaries and the threats that affect it are not limited to national borders either. Internet disruptions in one country may have an impact on Internet access in another. States have legitimate mutual expectations that they will exert their best efforts to ensure the universality, integrity and openness of the Internet. In the absence of an internationally agreed policy framework, national action on these important goals is tributary to the subjective understanding and gauging of cross-border risks to and consequences for the stability and resilience of the Internet. This may result in uncoordinated approaches as well as subjective interpretations of responsibilities and duties vis-à-vis other countries.

6. The solutions to these challenges should be addressed internationally, which necessitates the adoption of co-operation policy frameworks. This recommendation proposes responses to these challenges with due regard for the protection of fundamental rights and freedoms and the multi-stakeholder nature of Internet governance. The desirability of reinforcing the normative framework in relation to cross-border Internet should be considered in due course.

II. THE PREPARATORY WORK

7. The Steering Committee on the Media and New Communication Service (CDMC) proposed, at its 10th meeting on 27 May 2009, to set up an Ad-hoc Advisory Group on Cross-border Internet (MC-S-CI) and agreed its draft terms of reference. The CDMC's decision was taken having regard to the 1st Council of Europe Conference of Ministers responsible for the Media and New Communication Services "A new notion of media?" which took place in Reykjavik, on 28 and 29 May 2009.

8. In the Resolution on Internet governance and critical Internet resources, the Ministers participating in the conference:

"Call[ed] on all state and non-state actors to explore ways, building upon current arrangements, to ensure that critical Internet resources are managed in the public interest and as a public asset, ensuring the delivery of public service value, in full respect of international law, including human rights law;

Call[ed] also on these actors to ensure full compatibility and interoperability of TCP/IP so as to guarantee the ongoing universal nature and integrity of the Internet;

Invit[ed] the Council of Europe to explore the feasibility of elaborating an instrument designed to preserve or reinforce the protection of the cross-border flow of Internet traffic;"

Undert[ook] to explore further the relevance of Council of Europe values and, if necessary, ways in which to provide advice to the various corporations, agencies and entities that manage critical Internet resources that have a transnational function in order for decisions to take full account of international law including international human rights law and, if appropriate, to promote international supervision and accountability of the management of those resources."²

9. According to its terms of reference, the MC-S-CI was asked to:

"i. continue to examine the shared or mutual responsibilities of states in ensuring that critical Internet resources are managed in the public interest and as a public asset, ensuring delivery of the public service value to which all persons under their jurisdiction are entitled. Make proposals, in particular, relating to the prevention and management of events, including malicious acts, falling within member states' jurisdictions or territories, which could block or significantly impede Internet access to or within fellow members of the international community with the objective of guaranteeing the ongoing functioning and universal nature and integrity of the Internet;

ii. explore the feasibility of drafting an instrument designed to preserve or reinforce the protection of cross-border flow of Internet traffic openness and neutrality."

2. See MCM(2009)011 Adopted texts at the 1st Council of Europe conference of ministers responsible for media and new communication services (Reykjavik, 28-29 May 2009), Resolution on Internet governance and critical Internet resources, at page 9, available at [http://www.coe.int/t/dghl/standardsetting/media/MCM\(2009\)011_en_final_web.pdf](http://www.coe.int/t/dghl/standardsetting/media/MCM(2009)011_en_final_web.pdf).

10. Further to the CDMC's decisions, the Committee of Ministers approved the Terms of Reference at the 1063rd meeting of the Ministers' Deputies on 8 and 9 July 2009.³ At their 1068th meeting on 20 and 21 October 2009, the Ministers' Deputies "invited, in particular, the CDMC to seek to ensure multistakeholder participation in the implementation of relevant parts of its terms of reference and to give priority attention in that work to the elaboration of legal instruments designed (i) to preserve or reinforce the protection of the cross-border flow of Internet traffic and (ii) to protect resources which are critical for the ongoing functioning and borderless nature and integrity of the Internet (i.e. critical internet resources)."⁴

11. The MC-S-CI started its work in January 2010. During the same year it had two formal meetings and organised consultations with stakeholders at the European Dialogue on Internet Governance (EuroDIG, 29 and 30 April 2010 in Madrid) and the Internet Governance Forum (IGF, 14 to 17 September 2010 in Vilnius). In its report of activities for 2010, the MC-S-CI proposed to the CDMC to adopt, as a first step, a soft law approach while noting that the desirability of reinforcing standard-setting action in relation to cross-border Internet should be considered in due course.⁵ The MC-S-CI's initial terms of reference expired on 31 December 2010 but were extended until 31 December 2011 by decision of the Ministers' Deputies at their 1099th meeting on 23 November 2010.⁶

12. In 2011, the MC-S-CI had its third formal meeting on 21 and 22 February. It discussed its working proposals on Internet governance principles and state commitments on the universality, integrity and openness of the Internet with over 150 representatives of governments, the private sector, civil society and the technical community in a Council of Europe conference on Internet freedom which took place in Strasbourg on 18 and 19 April 2011. On the basis of its working proposals and taking into account the comments received from various stakeholder groups during and after the conference, the MC-S-CI agreed to propose to the CDMC a Committee of Ministers draft declaration on Internet governance principles and a Committee of Ministers draft recommendation to member states on the protection and promotion of the universality, integrity and openness of the Internet.

13. The CDMC, at its 14th meeting which was held from 14 to 17 June 2011, finalised a draft declaration on Internet governance principles and a draft recommendation to member states on the protection and promotion of the universality, integrity and openness of the Internet and decided to submit them to the Committee of Ministers for possible adoption.

III. THE RECOMMENDATION

14. The aim of this Recommendation is to establish and foster co-operation among the member states of the Council of Europe in respect of the preservation of the Internet as a means of safeguarding freedom of expression and the right to impart and receive information regardless of frontiers, thus contributing to the delivery of the public service value of the Internet to citizens.

15. The Recommendation sets out the general principles of inter-state co-operation for the protection and promotion of the universality, integrity and openness of the Internet. In that regard, it provides for specific commitments of states in the areas of prevention, management and response to significant transboundary disruptions to, and interference with, the infrastructure of the Internet as well as in connection with the management of critical Internet resources. The fulfilment of these commitments is intrinsically linked to the respect of the principles included in the [draft] Committee of Ministers declaration on Internet governance principles [adopted on ...].

IV. COMMENTARY ON THE RECOMMENDATION

The Preamble

16. The preamble sets out the reasons that have led the Committee of Ministers to make the recommendation to governments of member states.

17. The Committee of Ministers notes that Internet access and use are exposed to risks of disruption to the stable and ongoing functioning of the network due to technical failures and is vulnerable to other acts of

3. See CM/Del/Dec(2009)1063/5.1 of 13 July 2009.

4. See CM/Del/Dec(2009)1068/4.4 of 23 October 2009.

5. MC-S-CI(2010)006, available at <http://www.coe.int/t/dghl/standardsetting/media/MC-S-CI/Interim%20Report.pdf>.

6. See terms of reference at [http://www.coe.int/t/dghl/standardsetting/media/MC-S-CI/MC-S-CI\(2009\)Rev_mandat_en.asp](http://www.coe.int/t/dghl/standardsetting/media/MC-S-CI/MC-S-CI(2009)Rev_mandat_en.asp).

interference with the Internet's infrastructure. There is considerable specialised expertise on the question of challenges to the stability and resilience of the Internet⁷ and how that affects the accessibility and openness of the Internet.⁸

18. The Committee of Ministers further notes that decisions taken in the context of the technical coordination 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 the 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.

19. The Committee of Ministers recognises that states have the responsibility to preserve the public interest in national and international Internet-related public policy. They also have mutual expectations towards each other that they will exert their best efforts to preserve and promote the public service value of the Internet. In Recommendation CM/Rec(2007)16 of the Committee of Ministers to member states on measures to promote the public service value of the Internet, this is 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. In this context, states should acknowledge their shared and mutual responsibilities to take reasonable measures to protect and promote the universality, integrity and openness of the Internet.

The operational part

20. The question of the type of legal instrument that could define states' roles and responsibilities in respect of the protection of resources which are critical for the ongoing functioning and borderless nature and integrity of the Internet as required under the mandate of the MC-S-CI was analysed during the preparation of this recommendation and discussed extensively in consultations held with stakeholders on numerous occasions.

21. Cross-border co-operation on the security and stability of the Internet currently takes place in some countries as part of the co-operation among technical bodies such as computer emergency teams or within diplomatic circles. This has contributed to starting to build professional and trust-based relationships. However, fostering a greater and deeper level of co-operation, which could lead to sharing of information and best practice in such a way as to facilitate action at a national level remains a challenge.

22. A country's assessment of risks and threats to the Internet, involving transboundary effects, can be objective and respond to other countries legitimate expectations in relation to the security, stability, resilience and robustness of the Internet only if it is based on a mutually agreed framework that defines these expectations. In the absence of such a framework, definitions of risks and consequences involve subjective interpretations with regard to the roles and responsibilities of states. Therefore, an international regime on the universality, integrity and openness of the Internet should be rooted in explicit recognition of states' reciprocal legitimate expectations and commonly-accepted norms.

23. During consultations with representatives of different stakeholders it emerged that, given the multi-stakeholder nature of Internet governance, a determination of states' responsibilities on these matters should carefully preserve the balance of roles and responsibilities of all stakeholders. Defining the scope of state responsibility with regard to the universality, integrity and openness of the Internet as well as identifying supervisory mechanisms as part of an international legally binding framework is a complex exercise given the multi-stakeholder environment of the Internet. In the future, this may entail the elaboration of legal instruments with multi-stakeholder components.

24. Against this background, it is considered that, at this stage, a soft law approach is the best option for state action. This recommendation provides an explicit recognition of states' legitimate mutual expectations in relation to the universality, integrity and openness of the Internet through setting out a commitment which should help to develop an international regime of co-operation.

7. See in particular European Network and Information Security Agency (ENISA) Report of April 2011: Resilience of the Internet Interconnection System, Part I, sections 1.1-1.6, at page 12, available at <http://www.enisa.europa.eu/act/res/other-areas/inter-x/report/interx-report>.

8. See the Council of Europe Report 'Internet governance and critical Internet resources', a background text of the 1st Council of Europe conference of ministers responsible for media and new communication services (Reykjavik, 28-29 May 2009), available at http://www.coe.int/t/dghl/standardsetting/media/Doc/Internet%20governance_en.pdf.

25. Public-private partnerships are essential venues for the implementation of this recommendation. Consequently, the Committee of Ministers asks Council of Europe member states to disseminate the provisions of the commitment contained in the recommendation not only to public authorities but also to private entities, in particular those dealing with the management of resources that are critical for the functioning of the Internet as well as to civil society organisations. Member states should also encourage these actors to support and promote the implementation of the principles included in this commitment.

26. The exercise of states' responsibilities with respect to the universality, integrity and openness of the Internet should be inspired by the basic principles of Internet governance. The commonly-accepted definition of Internet governance is "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".⁹ [Because Internet governance is wider in scope than the question of states' mutual expectations, relationships and responsibilities, it was decided to address the latter in a separate document, namely the above-mentioned Committee of Ministers Declaration on Internet governance principles.]

[27. The Declaration builds on principles and guidelines on different aspects of Internet governance that have been elaborated by various international organisations, Internet communities and other actors. The Declaration of Principles "Building the Information Society: a global challenge in the new Millennium" which was adopted at the first phase of the World Summit on the Information Society, which took place in Geneva from 10 to 12 December 2003 (the Geneva Declaration of Principles) is a key document.¹⁰ The European Union (EU) promotes a set of Internet governance principles which it considers as enablers of the success of the Internet.¹¹ In the context of a high level meeting on the Internet economy of the Organisation for Economic Co-operation and Development (OECD) which took place on 28 and 29 June 2011, the representatives of the OECD members, Egypt, and of stakeholders, including the Business and Advisory Committee of the OECD (BIAC) and the Technical Internet Community (ITAC) agreed on a number of basic principles for Internet policy-making.¹²]

28. In a national context, examples of principle-based approaches to Internet governance matters include the Norwegian principles of network neutrality drawn up by the Norwegian Post and Telecommunications Authority¹³ and Principles for the Governance and Use of the Internet developed by the Brazilian Internet Steering Committee.¹⁴ Other stakeholders have engaged in bottom-up processes such as the Internet Rights and Principles Dynamic Coalition which has put together 10 Rights and Principles¹⁵ and fleshed-out a Charter of Human Rights and Principles for the Internet.¹⁶ The Association for Progressive Communications has also developed the Internet Rights Charter.¹⁷ The Council of Europe, the United Nations Economic Commission for Europe and the Association for Progressive Communications have developed the Code of Good Practice on Information, Participation and Transparency in Internet Governance.¹⁸

29. In order to ensure a sustainable, people-centred and rights-based approach to the Internet it is necessary to affirm in a Council of Europe context, while building on the initiatives mentioned above, the core values of the organisation as well as the basic tenets of the Internet communities. These principles should provide guidance to Council of Europe member states and be considered as basic constraints of governance in the context of developing national and international Internet-related policies. Given their importance for this recommendation an account thereof is included below.

9. This definition is included in the Tunis Agenda on the Information Society which was adopted in November 2005 by the heads of states and government participating in the second phase of the World Summit on the Information Society (WSIS), see WSIS-05/TUNIS/DOC/6(Rev.1)-E 18 November 2005, paragraph 34, available at <http://www.itu.int/wsis/docs2/tunis/off/6rev1.html>.

10. WSIS-03/GENEVA/DOC/4-E, 12 December 2003, available at <http://www.itu.int/wsis/docs/geneva/official/dop.html>.

11. Communication from the Commission to the European Parliament and the Council, Internet governance: next steps, COM (2009) 277 final, at page 6, available at http://ec.europa.eu/information_society/policy/internet_gov/docs/communication/comm2009_277_fin_en.pdf.

12. Communiqué on principles for Internet policy-making; OECD High Level Meeting on The Internet Economy: Generating Innovation and Growth, 28-29 June 2011, available at <http://www.oecd.org/dataoecd/40/21/48289796.pdf>.

13. See Guidelines for Network Neutrality; Guidelines for Internet Neutrality, version 1.0 of 24 February 2009, available at <http://www.npt.no/ikbViewer/Content/109604/Guidelines%20for%20network%20neutrality.pdf>.

14. Resolution CGI.br/RES/2009/003/P, available at <http://www.cgi.br/english/regulations/resolution2009-003.htm>.

15. Available at <http://internetrightsandprinciples.org/node/397>.

16. Draft 1.0 of the Charter of Human Rights and Principles for the Internet, September 2010 is available at <http://internetrightsandprinciples.org/node/367>.

17. See the APC Internet Rights Charter: Internet for Social Justice and Sustainable Development, available at http://www.apc.org/en/system/files/APC_charter_EN_0_1.pdf.

18. The Code is available at <http://www.apc.org/en/node/11199/>.

Internet governance principles

► Principle 1: Human rights, democracy and rule of law

30. This principle draws inspiration from key instruments of international human rights law, notably the Universal Declaration on Human Rights and the European Convention on Human Rights. Its purpose is to affirm that human rights and fundamental freedoms, democracy and rule of law are non-derogable values and basic constraints of Internet governance. They apply equally to offline and online activities and are regardless of frontiers in accordance with international law.

31. The Committee of Ministers has affirmed in numerous instruments that fundamental rights and Council of Europe standards and values apply to online information and communication services as much as they do to the offline world. This stems, *inter alia*, from Article 1 of the European Convention on Human Rights which lays out the obligation of the contracting parties to “secure to everyone within their jurisdiction” the rights and freedoms protected by the Convention (without the online/offline distinction).¹⁹

32. All actors, whether public or private, should make sure that their activities and operations ensure respect for fundamental rights and freedoms in accordance with international human rights law. In this context, it should be recalled that Article 4 of the Articles of Incorporation of the Internet Corporation for Assigned Names and Numbers (ICANN) states that “The Corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open

entry in Internet-related markets. To this effect, the Corporation shall co-operate as appropriate with relevant international organizations”.²⁰ Broadly speaking, the private sector should ensure that new technologies, services and applications uphold fundamental rights and freedoms.

33. In particular, there should be an increased awareness and full participation of all actors in efforts related to recognising newly-emerging rights. There are discussions in academic and other fora on rights such as the right to anonymity, the right to be forgotten and the right to virtual identity. The Charter of Human Rights and Principles for the Internet that is being drafted by the Rights and Principles Dynamic Coalition, a group of stakeholders’ representatives which was created within the framework of the IGF, states that everyone has a right to digital identity and that the virtual personality of human persons needs to be respected.²¹ Although there is no recognition at present of these rights in international law, Internet governance principles should adopt a future-looking approach.

► Principle 2: Multi-stakeholder governance

34. Building on the definition of Internet governance, this principle affirms the multi-stakeholder nature of Internet environments. It reflects the understanding of the Geneva Declaration of Principles which states that “[g]overnments, as well as private sector, civil society and the United Nations and other international organizations have an important role and responsibility in the development of the Information Society and, as appropriate, in decision-making processes. Building a people-centred Information Society is a joint effort which requires co-operation and partnership among all stakeholders”.²² It also underlines that the “[i]nternational management of the Internet should be multilateral, transparent and democratic, with the full involvement of governments, the private sector, civil society and international organizations”.²³

35. A similar reflection can be found in the EU context. The European Commission has stated that “[t]he multi-stakeholder process on Internet governance continues to provide an inclusive and effective mechanism for promoting global co-operation and needs to be further encouraged”.²⁴

19. See MCM(2009)011 at footnote 2 above. See also the Declaration on enhanced participation of member states in Internet governance matters – Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) was adopted by the Committee of Ministers on 26 May 2010 at the 1085th meeting of the Ministers’ Deputies and is available at <https://wcd.coe.int/ViewDoc.jsp?id=1627399>; the Declaration on the management of Internet protocol address resources in the public interest was adopted by the Committee of Ministers on 29 September 2010 at the 1094th meeting of the Ministers’ Deputies and is available at <https://wcd.coe.int/ViewDoc.jsp?id=1678299>; Declaration of the Committee of Ministers on the Digital Agenda for Europe adopted by the Committee of Ministers on 29 September 2010 at the 1094th meeting of the Ministers’ Deputies and is available at <https://wcd.coe.int/ViewDoc.jsp?id=1678251>.

20. The Articles of Incorporation as revised on 21 November 1998 are available at <http://www.icann.org/en/general/articles.htm>.

21. See footnote 16, section 9 (b) (c).

22. See footnote 10, paragraph 20.

23. *Id.*, see paragraph 48.

24. See footnote 11, at page 6.

36. The Working Group on Internet Governance (WGIG), which was composed of stakeholders' representatives, has analysed issues related to the scope of multi-stakeholder participation. The WGIG "[...] came to the conclusion that from an operational point of view, the WSIS criteria of multilateralism, transparency, democracy and full involvement of all stakeholder groups have somewhat different meanings, possibilities, and limits in relation to different types of governance mechanisms. They may therefore be regarded as having different shades of meaning in different contexts. For example, the WGIG recognised that "full involvement of all stakeholders" would not necessarily mean that every stakeholder group should have the same role in the development of policies, the preparation of decisions, the actual decisions and then the implementation of decisions".²⁵

37. In order to ensure the full participation of stakeholders in Internet governance arrangements, it is necessary to ensure that such participation takes place in an open, transparent and accountable manner. According to this principle, inclusiveness means not only participation of all countries in international Internet-related public policies and Internet governance arrangements but also participation of all stakeholders from all countries.

► Principle 3: Responsibilities of states

38. This principle is closely linked to the incumbent recommendation. It builds on the affirmations of the Tunis Agenda with regards to the roles of states in Internet governance. In this context, it was recognised that "[p]olicy authority for Internet-related public policy issues is the sovereign right of States. They have rights and responsibilities for international Internet-related public policy issues".²⁶ Governments should consult with all stakeholders in the development of public policy.²⁷ A similar affirmation on the role of states in Internet governance is noted in the EU contexts. The relevant principle states that "[g]overnments need to fully interact with such multi-stakeholder processes, with stakeholders accepting that it is governments alone who are ultimately responsible for the definition and implementation of public policies".²⁸

39. The exercise of sovereign rights should take account of the global nature of the Internet. Actions in one country may affect the rights and interests of persons and entities in another. States have legitimate expectations vis-à-vis each other that they will make their best efforts to ensure that actions which may harm the rights and interests of persons or entities outside their jurisdictions will be avoided or, in case of need, that remedial action will be taken promptly. The Council of Europe ministers responsible for media and new communication services have affirmed that "Council of Europe member states share the responsibility to take reasonable measures to ensure the ongoing functioning of the Internet and, in consequence, of the delivery of the public service value to which all persons under their jurisdiction are entitled. Interstate co-operation and solidarity is of paramount importance to the proper functioning, stability and universality of the Internet".²⁹

40. The principle on responsibilities of states is thus important for guiding the relationship between, on the one hand, local Internet-related policies and Internet management action and, on the other hand, the global Internet. It is in line with the Tunis Agenda which recognised "the need for enhanced cooperation in the future, to enable governments, on an equal footing, to carry out their roles and responsibilities, in international public policy issues pertaining to the Internet, but not in the day-to-day technical and operational matters, that do not impact on international public policy issues".³⁰ The Tunis Agenda also affirmed that "[u]sing relevant international organizations, such cooperation should include the development of globally-applicable principles on public policy issues associated with the coordination and management of critical Internet resources".³¹

41. The exercise of states rights and responsibilities should be in full compliance with international legal obligations. In a Council of Europe context, states have the duty to secure to everyone within their jurisdictions the rights and freedoms protected by the European Convention on Human Rights. Consequently, any action that amounts to a restriction of fundamental rights and freedoms should meet the conditions set out in the Convention as interpreted in the case law of the European Court of Human Rights; more particularly, any restriction must be based on law, necessary in a democratic society and proportionate. The necessary legal and due process safeguards should be in place.

25. The WGIG members were designated by the UN Secretary General "to investigate and make proposals for action, as appropriate, on the governance of Internet by 2005" and to present the result of its work in a report "for consideration and appropriate action for the second phase of the WSIS in Tunis 2005". The WGIG Background Report of June 2005 is available at <http://www.itu.int/wsis/wgig/docs/wgig-background-report.doc>, see paragraph 20.

26. See footnote 9, paragraph 35.

27. *Id.* paragraph 68.

28. See footnote 11, at page 6.

29. See footnote 2.

30. See footnote 9, paragraph 69.

31. *Id.* paragraph 70.

► Principle 4: Empowerment of Internet users

42. The empowerment of Internet users is essential for a free and open Internet and is considered important for promoting innovation. This principle affirms the role that users can and should play in Internet governance as well as in the realisation of their rights and freedoms in online environments and with regard to new communication technologies.

43. Internet and information society technologies increasingly create opportunities for data storage, processing, communication and pervasiveness in people's private lives. Therefore, users should have the information necessary to make informed decisions and the tools and knowledge to interact with new technologies. They should be able to design their privacy and participate in online activities in full confidence and freedom and according to their own values.

44. Users should be able not only to find the information they wish but also to block contents they do not wish to have access to; to disconnect from the online world, to make their political, commercial or other decisions, and to participate in the development of user-centred governance mechanisms. In this regard, the enhancement of users' capabilities such as computer and information literacy and the development and promotion of technologies of user empowerment are essential.

45. Everyone should be entitled to take advantage of the public service value of the Internet. The Committee of Ministers has recommended to member states to develop, in co-operation with the private sector and civil society, strategies which promote the integration of Information and Communication Technologies (ICTs) into education, media and information literacy and training in formal and non-formal education sectors for children and adults in order to empower them to use media technologies, to encourage them to exercise their democratic rights and civic responsibilities effectively as well as to make informed choices when using the Internet and other ICTs.³² In addition, the Council of Europe has developed a number of standards on media literacy, ongoing and lifelong education as well as on the protection and empowerment of children in online environments.³³

► Principle 5: Universality of the Internet

46. The Internet enables people to have access to information and services, and to connect and communicate, as well as to share ideas and knowledge on a global scale. Thus, the Internet has developed into a space of freedom for the Internet community worldwide. As a platform for the free flow of information, the Internet has become one of the driving forces for economic growth and innovation in our modern society.

47. The principle of universality of the Internet affirms this understanding. It recognises the global nature of the Internet and constitutes the basic premise for the free flow of information over the Internet and universal access. Also, it builds on the undertaking of the Council of Europe ministers participating in the ministerial conference in Reykjavik (28 and 29 May 2009) to "[c]ontinue to develop the notion of the public service value of the Internet. In this context, explore the extent to which universal access to the Internet should be developed as part of member states' provision of public services. This may include policies for redressing market failure where market forces are unable to satisfy all legitimate needs or aspirations, both in terms of infrastructure and the range and quality of available content and services".³⁴

48. The Internet infrastructure located within the jurisdiction of any country is part of the transnational communication network and it supports the free flows of Internet traffic across borders. Interference with

32. Recommendation CM/Rec(2007)16 of the Committee of Ministers to member states on measures to promote the public service value of the Internet, see part III.

33. 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; 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; Declaration 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, available at [https://wcd.coe.int/ViewDoc.jsp?Ref=Decl\(20.02.2008\)](https://wcd.coe.int/ViewDoc.jsp?Ref=Decl(20.02.2008)); Recommendation 1836 (2008) of the Parliamentary Assembly, Realising the full potential of e-learning for education and training, adopted by the Standing Committee acting on behalf of the Assembly on 29 May 2008, available at <http://assembly.coe.int/documents/AdoptedText/ta08/EREC1836.htm>; Recommendation 1466 (2000) of the Parliamentary Assembly on media education, adopted by the Assembly on 27 June 2000 (19th Sitting), available at <http://assembly.coe.int/documents/adoptedtext/ta00/erec1466.htm>; Recommendation 1111 (1989) of the Parliamentary Assembly on the European dimension of education, adopted by the Assembly on 22 September 1989 (12th Sitting), available at <http://assembly.coe.int/documents/adoptedtext/ta89/erec1111.htm>; Recommendation 1110 (1989) of the Parliamentary Assembly on distance teaching, adopted by the Standing Committee, acting on behalf of the Assembly, on 6 July 1989, available at <http://assembly.coe.int/documents/adoptedtext/ta89/erec1110.htm>.

34. See footnote 2, Action Plan, paragraph 7.

the free flow of information may have transboundary effects on people's access to information. To this extent, it can also engage member states' responsibility under Article 10 of the European Convention on Human Rights. In this connection, it is necessary to ensure that national Internet-related policies are developed in a manner that recognises the global nature of the Internet and in full respect for international human rights law. The Committee of Ministers, while acknowledging the public service value of the Internet, called on its member states to "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 [*inter alia*] by promoting freedom of communication and creation on the Internet, regardless of frontiers."³⁵

49. It is generally accepted that the free flow of information is essential for the global economy. The Seoul Declaration on the Future of the Internet Economy adopted at the OECD Ministerial Meeting on the Future of the Internet Economy, 17 and 18 June 2008, incorporates a commitment of the 39 signatory states and the European Community to "[f]oster creativity in the development, use and application of the Internet, through policies that, *inter alia*, maintain an open environment that supports the free flow of information, research, innovation, entrepreneurship and business transformation".³⁶ Also, as mentioned above, the representatives of OECD members and other stakeholders agreed on principles for Internet policy-making in June 2011.³⁷

► Principle 6: Integrity of the Internet

50. Security, stability, robustness and resilience are essential aspects of the integrity of the Internet. The security and stability of the Internet relate to the ability of the network not to be frequently affected by network failure as well as timely action taken to detect and adjust to network failure. In the Internet interconnection system, resilience is understood as "the ability to provide and maintain an acceptable level of service in the face of various faults and challenges to normal operation. That is the ability to adapt itself to recover from a serious failure, or more generally to its ability to survive in the face of threats".³⁸ Robustness is considered to be an important aspect of resilience. "A robust system will have the ability to resist assaults and insults, so that whatever some event is throwing at it, it will be unaffected, and no resilient response is required. While resilience is to do with coping with the impact of events, robustness is to do with reducing the impact in the first place."³⁹

51. The integrity of the Internet is a pre-condition for people's ability to exercise their rights and freedoms online, preserving their trust and reliance on the Internet as well as for promoting their participation in online environments. On a broader scale, the Internet is a critical resource for people, business enterprises, public administrations and society as a whole. Consequently, the integrity of the Internet, including key components such as security, stability, robustness and resilience, is an essential objective of Internet governance.

52. The cross-border interconnectedness and interdependencies of the Internet infrastructure are essential factors to be considered in efforts to ensure the integrity of the Internet. The management of critical resources which are distributed in different jurisdictions and are managed by various entities with a global or regional remit is also important in this context. It is therefore necessary to promote international and multi-stakeholder co-operation.

53. States have a duty to live up to people's legitimate expectation that Internet policy will reflect the public interest and deliver on the public service value of the Internet, which, as mentioned above, is understood as people's significant reliance on the Internet as an essential tool for their everyday activities and the resulting legitimate expectation that Internet services be accessible and affordable, secure, reliable and ongoing.⁴⁰ States should play an active role in preserving peoples' trust and reliance on the Internet stability and ongoing functioning. The Tunis Agenda recognised that the Internet has evolved into a global facility available to the public included a commitment to the stability and security of the Internet.⁴¹ It further acknowledged "that all governments should have an equal role and responsibility for international Internet governance and for ensuring the stability, security and continuity of the Internet" as well as "the need for development of public policy by governments in consultation with all stakeholders".⁴²

35. See footnote 32.

36. The Seoul Declaration on the Future of Economy, 18 June 2008, available at <http://www.oecd.org/dataoecd/49/28/40839436.pdf>.

37. See footnote 12.

38. See footnote 7, Part I, section 1.2, page 15, available at <http://www.enisa.europa.eu/act/res/other-areas/inter-x/report/interx-report>.

39. *Id.*

40. The concept of public service value of the Internet is given in Committee of Ministers' Recommendation CM/Rec(2007)16, see footnote 32.

41. See footnote 9, paragraphs 30 and 31.

42. *Id.* paragraph 68.

54. The integrity of the Internet is not a matter of exclusive state or any other stakeholder competence. The technical community, Internet management entities and the private sector in general should make efforts to preserve the security, stability, robustness and resilience of the Internet and to preserve the global public interest in the management of critical Internet resources. It is nevertheless understood that in international law the legally binding obligation to guarantee the protection of human rights, including freedom of expression and the right to receive and impart information regardless of frontiers, lies with states only (cf. Article 1 and Article 10 of the European Convention on Human Rights).

► **Principle 7: Decentralised management**

55. The Internet is a distributed network of networks which are owned and administered by private entities, including telecommunication companies, Internet service providers and other enterprises. The core standards and practices for the networking protocols are developed by an open and broad technical community which involves both organisational forms such as the Internet Architecture Board (IAB), the Internet Engineering Task Force, the World Wide Web Consortium (W3C) as well as numerous technical experts working independently in the profit and non-for-profit sectors. Critical Internet resources are administered by non-governmental entities with global remit such as ICANN in respect of domain names or with regional remit such as the Regional Internet Registries in respect of Internet protocol addresses.

56. As a result, there is decentralised responsibility for management of networks, software applications, services and content. This model has been successful in enabling communication, public access to information, adaptation to changing conditions, and making efficient use of available infrastructure. Its preservation should therefore be a guiding principle for Internet-related policy making.

57. The principle of decentralised management affirms that states have a limited role to play in the day-to-day management of the Internet. This is in line with the Tunis Agenda which affirms the need for enhanced co-operation among governments on international public policy issues pertaining to the Internet but not in the day-to-day technical and operational matters.⁴³

58. However, this principle does not exclude entirely states' involvement in processes or decisions related to the management and evolution of the Internet. The private sector should acknowledge that the global public interest needs to be preserved in Internet governance with states having the main responsibility in this regard.

59. As the Committee of Ministers has stated in its Recommendation on the public service value of the Internet, people rely on the Internet for their every day activities and have a legitimate expectation that Internet services should be accessible and affordable, secure, reliable and ongoing.⁴⁴ These expectations concern general public interests and hence give rise to state responsibility to preserve such interests in Internet-related policy-making and Internet governance in general. In order to enable states to discharge their responsibilities, it is necessary to ensure transparency and accountability of the private sector for its actions that have an impact on public policy. Nonetheless, this may entail positive obligations for member states to the extent that the enjoyment of human rights may be affected, notably as regards freedom of expression and the right to receive and impart information regardless of frontiers.

60. Transparency is a central feature of many of the affirmations of the Tunis Agenda. It is described as a basic premise of the governance of the Internet in general⁴⁵ and is embodied in a number of other affirmations on specific topics and issues such as the development of strategies for global connectivity and equitable access,⁴⁶ multilingualism⁴⁷ and development of regulatory frameworks.⁴⁸

► **Principle 8: Architectural principles**

61. The Internet architecture is based on open, non-proprietary and globally applicable standards which can be used by anyone.⁴⁹ They are developed in the framework of pluralistic, transparent and co-ordinated collaborative processes involving a widely distributed community of technical experts. A key architectural principle of the Internet is its end-to-end nature which refers to a function of the network in which "the

43. See footnote 9, paragraph 69.

44. See footnote 32.

45. See footnote 9, paragraph 29: "[t]he international management of the Internet should be multilateral, transparent and democratic, with the full involvement of governments, the private sector, civil society and international organizations".

46. *Id.* paragraph 50 (b).

47. *Id.* paragraph 53.

48. *Id.* paragraphs 19, 90(b) and 96.

49. RFC 1958 of the Internet Engineering Task Force, Internet Architecture Board, June 1996, available at <http://www.ietf.org/rfc/rfc1958.txt>, see section 2.4.

intelligence is at the endpoints rather than hidden in the network".⁵⁰ In other words, the network provides basic data transport only while leaving applications and other forms of information processing to devices or hardware of users, application operators and service providers standing at the endpoints of the network.⁵¹

62. These design principles have contributed to the current success of the Internet; a platform for access to information, services and applications as well as for innovation, competition and economic growth. These principles should serve as normative guides for Internet-related policy making.

63. The architecture of the Internet and its governance evolve as technological innovation emerges. The number of Internet uses also increases by the day, including mobile Internet and diverse terminals and devices. These provide new opportunities for people, society and economy. It is therefore necessary that there are no barriers to entry for both new users and uses of the Internet or unnecessary burdens which could affect the potential for innovation in respect of technologies and services.

► Principle 9: Open network

64. The network provides the inter-networking layer that enables communication of diverse devices and hardware. It is not optimised for any particular use, service or application but serves as an open, neutral and transparent platform for a wide variety of services and applications including new unforeseen ones.

65. Certain network and traffic management practices may involve blocking access to Internet resources in order to achieve a competitive advantage or blocking or filtering access to Internet content in order to implement governmental policy, thus affecting users' capacity to access information, content, service or application of his or her choice. To deal with these issues the concept of network neutrality has been advanced in different contexts and by different communities and actors. The Brazilian Principles for the Governance and Use of the Internet give the following formulation in respect of the principle of neutrality of the network - "[f]iltering or traffic privileges must meet ethical and technical criteria only, excluding any political, commercial, religious and cultural factors or any other form of discrimination or preferential treatment".⁵²

66. Principle nine adopts an access-oriented and openness-based approach to open network. Its purpose is to preserve the ability of all Internet users to connect to the network and have access to any lawful content, services or applications. This principle is not concerned with specific methods of network or traffic management or different business models for the offering of services in the supply chain but with preserving universal and non-discriminatory access. It builds on the Committee of Ministers' Declaration on network neutrality which states that "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 infra-structure or the network used for Internet connectivity. Access to infrastructure is a prerequisite for the realisation of this objective".⁵³

67. The Declaration also states that "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."

68. In addition, "[u]sers 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."

► Principle 10: Cultural and linguistic diversity

69. The preservation of cultural and linguistic diversity is central to the full realisation of the public service value of the Internet on a global level. In particular, multilingualism in cyberspace is a basic condition for

50. *Id.* section 2.1.

51. *Id.* sections 2.2 and 2.3.

52. See footnote 14, principles 6 and 7.

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

cultural diversity and participation of all linguistic groups in the information society. The Internet should be a space for expression, exchange and interaction of all cultures and languages. The ability of Internet users to have access to websites, which offer content in their own language, is an important element of access to the Internet and user empowerment. Internet-related public policies should promote and facilitate capacity building on the production of local language content and availability of translation technology.

70. International standards, notably the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 20 October 2005,⁵⁴ provide guidance on the protection of multilingualism and cultural diversity. The protection of the common cultural heritage of Europe as well as the promotion of inter-cultural dialogue are part of Council of Europe conventional and other standards.⁵⁵

COMMENTARY ON THE PROVISIONS OF THE RECOMMENDATION

General principles

71. The principles included in this part of the recommendation are intended to provide the basic foundation for the other proposed state commitments in respect of the preservation of Internet's infrastructure and the cross-border flow of the Internet traffic.

► 1.1 No harm

72. This provision lays down a commitment for member states not to cause harm to access and use of the Internet beyond their own jurisdictions. The exercise of this commitment is subject to ensuring compliance with international standards on the protection of human rights and freedoms, notably the European Convention on Human Rights, as well as principles of international law.

73. During the preparation of this recommendation, it was deemed necessary to affirm this principle as a basic foundation of an international framework of co-operation and collaboration on the universality, integrity and openness of the Internet. The no-harm principle is based on customary and international law according to which states are under an obligation not to inflict damage on or violate the rights of other states.⁵⁶

74. The no-harm customary law principle has entered international law and extends to almost all interstate relationships, with a more explicit articulation in the field of environment protection.⁵⁷ The United Nations Framework Convention on Climate Change says in its preamble that "[s]tates have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."⁵⁸

54. The text of this convention is available at http://portal.unesco.org/en/ev.php-URL_ID=31038&URL_DO=DO_TOPIC&URL_SECTION=201.html.

55. European Cultural Convention (ETS No. 018) and the Framework Convention on the Value of Cultural Heritage for Society (ETS No. 199); the European Charter for Regional or Minority Languages (ETS No. 148); the Framework Convention for the Protection of National Minorities (ETS No. 157); the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106); the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144) The Committee of Ministers and the Parliamentary Assembly have also adopted a panoply of recommendations on different aspect of intercultural dialogue. Notably, in the 1999 Declaration on a European policy for new information technologies, the Committee of Ministers urged member states to promote the full use by all, including minorities, of the opportunities for exchange of opinion and self-expression offered by the new information technologies as well as to encourage the provision of cultural, educational and other products and services in an appropriate variety of languages.

56. The duty of a state to ensure that activities within its territory or under its jurisdiction do not cause damage to other states has been affirmed in the 1938 Trail Smelter Arbitration (*United States v. Canada*) UNRIAA, vol. III (Sales No. 1949.V.2), p. 1905 (1938, 1941); the 1949 Corfu Channel case (*United Kingdom v. Albania* in which the International Court of Justice stated the obligation of a state not to knowingly allow its territory to be used contrary to the rights of other states) I.C.J. Reports 1949, p. 4.; the 1957 Lac Lanoux Arbitration (*France v. Spain*) stated the obligation of a state to take all necessary measures to prevent transboundary damage UNRIAA, vol. XII (Sales No. 63.V.3), p. 281.

57. See also Principle 21 of the 1972 Declaration of the United Nations Conference on Human Environment (Stockholm 5-16 June 1972) which affirms, on the one hand, states' sovereign rights relating to the exploitation of resources pursuant to their national environmental policies and, on the other hand, the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction, see UN Doc. A/Conf.48/14/Rev. 1 (1973); 11 ILM 1416 (1972) available at <http://www.unep.org/Documents.Multilingual/Default.Print.asp?documentid=97&articleid=1503>. Principle 2 of the Rio Declaration on Environment and Development affirms that "[s]tates have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction." UN Doc A/CONF.151/26 (1992), available at <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>.

58. See 1771 UNTS 107.

75. It was also deemed necessary that, in the context of ensuring the openness and universality of the Internet, states should ensure that their actions within their jurisdictions do not interfere with access to content outside their territorial boundaries or negatively impact the transboundary flow of Internet traffic.

► **Co-operation**

76. This principle sets forth a general requirement of co-operation among states and stakeholders at all stages of policy development and implementation of Internet-related policies to the extent that this is necessary to avoid any adverse transboundary impact on access to, and use of, the Internet. The modalities of co-operation are stated more specifically in the subsequent sections of the recommendation. They envisage co-operation of states in the prevention and management of, as well as response to, risks and threats to critical Internet resources. A multi-stakeholder approach is considered crucial to the success of such action.

77. Under this principle, states are required to co-operate in good faith. This requirement is in line with international law. The Vienna Convention on the Law of Treaties, 23 May 1969, declares that the principle of good faith is universally recognised and affirms its central importance in respect of the observance, application and interpretation of the treaties.⁵⁹

► **Due diligence**

78. This principle states that, within the limits of non-involvement in the 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 at any event minimise the risk and consequences arising from such events.

79. It is understood that “significant” in this context involves detrimental consequences for people’s or other actors’ ability to have access to Internet information, services, applications or resources. Whether a particular disruption or interference with the Internet should be considered as significant or not should be subject to factual assessment to be made in each specific case. A specification of a list of cases or situations of disruptions or interferences that would fall under this category does not seem to be feasible in the light of the scale, complexity and dynamic nature of the interconnection system, the multitude uses of Internet services and applications’ uses or when considering the speed with which technology evolves. The most important element that would determine whether certain situations would fall within the scope of this recommendation is the transboundary effect on the security, stability, robustness and resilience of the Internet, to which preventive and response measures and policies should be applicable.

80. This principle sets forth a standard of care or due diligence for the protection and promotion of integrity and universality of the Internet which is integrated in the specific commitments contained in the other provisions of the recommendation. Under such a standard, states are required to take reasonable measures to prevent, manage and respond to significant transboundary disruptions to or interferences with the infrastructure or critical resources of the Internet. Where this is not fully possible, a state is required to exert best efforts to minimise the risks and consequences arising from such events.

81. In international law, a requirement to act with due care or an obligation of due diligence imposes on a state a duty to exert its best possible efforts to prevent and minimise foreseeable significant transboundary harm.⁶⁰ The standard of due diligence is a standard of conduct rather than a standard of result; it is the conduct of the state in question that would determine whether a state has fulfilled its commitment by means of taking reasonable measures. Moreover, the response has to be measured against actual possibilities or means available rather than against an ideal situation.

82. In the context of the universality and integrity of the Internet, due diligence would be manifested in reasonable efforts by a state to inform itself of factual and legal elements that involve risks of transboundary disruptions to or interferences with the Internet’s infrastructure and to take reasonable measures in a timely fashion to address these issues. Such measures may include development and implementation of policies to promote enhanced awareness in the public and private sectors about network vulnerabilities and incidents, facilitate multi-stakeholder co-operation and provide incentives for research in various aspects of Internet integrity.

59. 1155 UNTS 331, see the preamble and articles 26 and 31 (1).

60. For example, the United Nations Convention on the Law of the Sea, 1833 UNTS 3, see article 194; the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1046 UNTS, see article 1; the Vienna Convention for the Protection of the Ozone Layer, 1513 UNTS 293, see article 2; the Convention on Environmental Impact Assessment in a Transboundary Context, 1989 UNTS 309, see article 2 (1); the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1936 UNTS 269, see article 2 (1); the Convention on Long-Range Transboundary Air Pollution, 1302 UNTS 217, see article 2.

83. The required degree of care should be proportional to the degree of risk involved and the consequences incurred. The disruption and interference should be foreseeable and the state concerned must know or should have known under the circumstances specific to each case that there was a risk of significant transboundary consequences. A state should not bear the risk of unforeseeable consequences vis-à-vis states likely to be affected by activities taking place within its jurisdiction. The commitment “to take all reasonable measures” to prevent and respond to disruptions or interference, or to minimise risks and consequences thereof, should be of a continuous nature. It is understood that the implementation of those measures should be commensurate to the overall capabilities of the country concerned to address the risks to the integrity of the Internet.

84. In the exercise of due diligence commitments states should not be involved in day-to-day technical and operational matters. This is fully in line with the Tunis Agenda which recognised “the need for enhanced cooperation in the future, to enable governments, on an equal footing, to carry out their roles and responsibilities, in international public policy issues pertaining to the Internet, but not in the day-to-day technical and operational matters, that do not impact on international public policy issues”.⁶¹

Integrity of the Internet

85. The commitments set out in this part of the recommendation are concerned with risk management with regard to the universality, integrity and openness of the Internet. States should engage in co-operation with each other in enabling the creation of a system of prevention, management and response to commonly shared risks by means of information sharing, consultation and mutual assistance. The commitments included in this recommendation are different from rules dealing with responsibility for internationally wrongful acts. Therefore, they should be considered as primary in nature.⁶²

► Preparedness

86. An effective system for dealing with disruptions to and interference with the network necessitates emergency planning and preparedness in view of the limited time available to deliberate, co-ordinate and act upon threats when they emerge. Thus, it is important that such action be based on strategies of anticipatory action and not left only to technologies or reactive technical measures. The development of such strategies involves policy decisions on priorities, resources and other matters.

87. Because of the cross-border interconnectedness and interdependencies of the network, national strategic approaches should be co-ordinated. The recommendation, therefore, provides that 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.

88. In the context of preparedness, it is important to have in place standards, rules and practices on Internet security, stability, resilience and robustness, such as those on information sharing and incident reporting. States should play an enabling role in respect of their development and implementation in the public and private sector. For instance, in conjunction with the private sector, states can promote and facilitate the development of common standards on Internet resilience or practices for deploying relevant technologies. States also have the possibility to provide market incentives for wide take-up of resilience technologies as well as to fund and promote research in this context. The cross-border nature of risks of and threats to the integrity of the Internet calls for close co-operation among public authorities.

89. States’ enabling role should extend beyond support for standard development. Co-ordination, co-operation and confidence-building among stakeholders are key to the identification and assessment of vulnerabilities of or threats to the integrity of the Internet. A major obstacle in creating resilient networks is the reluctance of certain operators to disclose and share data about vulnerabilities of information systems due to concerns about protection of reputation or for competitive advantage reasons. The European Network of Information Security Agencies states “[t]here remains a lack of a clear framework for effective and timely exchange of information on critical infra-structure protection including responsible and timely disclosure of vulnerabilities”.⁶³

61. See footnote 9, paragraph 69.

62. According to the International Law Commission, primary rules define the content of a state obligation under international law; whereas secondary rules of state responsibility deal with the consequences which flow from the commission of an internationally wrongful act, see Draft Articles on State Responsibility for Internationally Wrongful Acts with commentaries as they appear in the *Yearbook of the International Law Commission*, 1973, vol. II, general comments at page 169. See also Articles on State Responsibility annexed to the UN General Assembly Resolution “Responsibility of States for Internationally Wrongful Acts”, GA Res. 56/83, UN Doc. A/RES/56/83 (12 December 2001).

63. ENISA Work Programme 2010, available at <http://www.enisa.europa.eu/media/key-documents/enisa-work-programme-2010>, see page 14.

90. It is therefore important that states create an environment that facilitates risk management and response co-ordination among stakeholders with regards to vulnerabilities and threats to the integrity of the Internet. States should promote an enhanced awareness on society's dependencies on the Internet. In this connection, they should facilitate the identification of critical sectors benefiting from Internet infrastructures (e.g. energy, health, security) or other dependencies of the society on the Internet.

91. More particularly, states should play an active role in creating public-private co-operation platforms with regard to awareness-raising, information sharing, incident investigation and reporting as well as management and response. In this context states should promote the identification, collection and sharing of data and information on risks to the security, stability, robustness and resilience of the network as well as risks emerging from technologies and applications.

92. Risk management and response co-ordination entails a common understanding of the roles and responsibilities of stakeholders in relation to the consequences of their actions on the security, stability, robustness and resilience of the Internet. In this regard, states should engage in dialogue with private sector and civil society stakeholders with a view to building closer relationships.

► Response

93. This section sets forth specific actions that are expected of a state to implement the due diligence principle which requires continuous efforts. These actions include notification, information sharing, consultation and mutual assistance.

94. States should provide timely notification of risks of transboundary disruption or interference with the Internet's infrastructure to potentially affected states. This is an indispensable part of any system of preparedness, prevention of and response to transboundary harm. Comparable notification duties are embodied in a number of international agreements, decisions of international courts and tribunals, and declarations and resolutions adopted by intergovernmental organisations.⁶⁴ According to the present recommendation, states should act "without delay" when providing notification of an emergency which, in practice, means immediately upon a state becomes aware of a risk or a situation of emergency so that there will be sufficient time for the states concerned to consult on appropriate management measures and to take appropriate remedial action.

95. A requirement of notification incorporates a precautionary approach. It entails identification of risks to the security, stability, robustness and resilience of the Internet that may have transboundary effects as well as an assessment thereof. Furthermore, the exchange of information that is relevant to responding to these effects in a timely manner is essential for the management of emergency situations. The information that is required to be exchanged is whatever would be deemed useful for the purpose of responding to a significant transboundary disruption to or interference with the Internet's infrastructure. States should be free to choose or construct the means of communication in the spirit of co-operation.

96. States should also engage in mutual consultation in order to agree on measures to manage or respond to situations of significant transboundary disruption or interference with the Internet's infrastructure. Such consultation is needed in order to maintain a balance between the legitimate interests of the states concerned as regards the utilisation of Internet infrastructure and resources located in their particular jurisdictions. The purpose of this is to enable the states concerned to achieve mutually acceptable solutions regarding response measures, which means those measures that are accepted by those states and based on an equitable balance of interests.

97. With a view to mitigating adverse consequences on the integrity of the Internet, states should engage in mutual assistance. Generally, in international law, as for example in the field of environment protection, obligations of prevention, management and mitigation go hand-in-hand. In the context of the Internet, commitments on these matters are considered to be mutually reinforcing with regards to the preservation of the integrity and universality of the Internet. The requirements of solidarity and good faith are an integral part of any international co-operation procedure, and are therefore included in this part of the recommendation.

98. The level or degree of care that is expected in providing assistance to countries affected by transboundary disruptions to or interferences with the Internet's infrastructure is understood as being proportional to and commensurate with the capabilities of each country.

64. See footnote 59, Convention on the Law of the Sea, see footnote articles 142, 198, Convention on Environmental Impact Assessment in a Transboundary Context, article 3; Rio Declaration, Principle 19; Convention on the Transboundary Effects of Industrial Accidents, 2105 UNTS 457, see article 10; OECD Council Recommendation of 14 November 1974 on "Some principles concerning transfrontier pollution C (74) 224, see Title E.

► Implementation

99. This provision may, at first sight, be considered as redundant as it states in general terms the specific commitments detailed in the previous provisions. However, during the preparation of this recommendation it was deemed necessary in order to stress the continuous character of the due diligence commitments contained in this recommendation.

100. Legislative and administrative measures are mentioned specifically with a view to providing guidance to member states in respect of the implementation of this recommendation. However, the purpose of this recommendation is not to restrict states' possibilities for action but to enable them to pursue the ways, and utilise the means, that they deem appropriate for implementing this recommendation. This explains the use of the expression 'other measures'. Depending on the specific situation, legislative action may be necessary in order to overcome barriers to international co-operation. Such barriers may flow from differences in legal environments, operational standards and practices or levels of organisational, political or financial support for computer emergency teams. Although not specifically provided for in this recommendation, other measures may include the mechanisms that are suitable for monitoring the implementation of their preparedness and prevention commitments in respect of transboundary disruptions to and interference with the Internet's infrastructure.

101. The provision on implementation should not be interpreted as an assertion of exclusive competence by state authorities in dealing with the integrity of the Internet. The specific actions set out in almost all the provisions of this recommendation require close co-operation with stakeholders either in the context of public-private partnerships or otherwise. The requirement of non-involvement of states in the day-to-day administration of the network or operational matters also sets an important limit for the implementation measures. This is fully in line with the Tunis Agenda which affirms that the private sector takes the lead in the day-to-day operations of the Internet⁶⁵ and "recognise[s] the need for enhanced co-operation in the future, to enable governments, on an equal footing, to carry out their roles and responsibilities, in international public policy issues pertaining to the Internet, but not in the day-to-day technical and operational matters, that do not impact on international public policy issues".⁶⁶

► Responsibility

102. As specified in the commentaries to the due diligence principle, the commitments included in this recommendation are primary in nature. It is clear from the provision on responsibility that it is not the purpose of the recommendation to establish secondary rules on liability and reparation in respect of adverse consequences for or damage to the stability, security and resilience of the Internet or to address the issue of settlement of disputes arising from the interpretation or implementation of the commitments on international co-operation.

103. While a regime of liability for adverse consequences to the universality and integrity of the Internet may have a deterrent effect on disruptions to or interferences with the stability, security, resilience and robustness of the Internet, it is considered that a preparedness and response approach can have an even more direct and effective deterrent effect. Consequently, the focus of this recommendation is on co-operation in the prevention of and response to disruptions of and interference with the Internet.

104. This thinking mirrors the legal concepts underlying international law on environmental protection. Because of inherent limitations of compensatory liability regimes, mostly related to litigation and dispute settlement, the international regulation on common natural resources, including that on marine, international rivers and lakes and atmospheric pollution as well as on protection and conservation of fauna and flora, places emphasis on preventive, management and mitigation measures rather than reparation.

105. States nevertheless should engage in dialogue to develop further international standards relating to the responsibility and liability for the assessment of and compensation for damage as well as the settlement of related disputes. The use of the term 'further' is intended to refer to existing principles of international law which provide guidance on the responsibilities of states for internationally wrongful acts, notably those included in the International Law Commission Articles on State Responsibility.⁶⁷

106. This recommendation is not concerned with determining whether activities which involve disruption to or interference with the Internet's infrastructure constitute breaches of obligations recognised in international law, particularly those in respect of the maintenance of peace which are set forth in the United Nations Charter. It is also understood that commitments on prevention, management and response to Internet

65. See footnote 9, paragraph 55.

66. *Id.* paragraph 69.

67. See footnote 62 above.

disruptions or interferences should not have any bearing upon international co-operation to fight cyber-crime in accordance with the Budapest Convention. Indeed, the implementation of the Budapest convention is one means for states to fulfil certain commitments under this recommendation.

Resources that are critical for the functioning of the Internet

107. Decisions made in the framework of the technical co-ordination and management of critical Internet resources, such as the Internet Protocol addresses resources and the domain name space, may have a direct bearing on access to information and freedom of expression as well as respect for data protection. In a recent decision, the French Constitutional Council acknowledged that freedom of expression may be at stake in the context of the management of the French domain name system and that the relevant regulatory framework should include safeguards for freedom of expression.⁶⁸

108. Policy development and implementation in the context of non-governmental entities with a global or regional remit should also include safeguards for freedom of expression and data protection. As bearers of the duty to ensure the protection of human rights and fundamental freedoms under article 1 of the European Convention on Human Rights, Council of Europe member 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 protections for the human rights and fundamental freedoms of Internet users in compliance with the standards recognised in international human rights law.

109. This commitment applies to policy-making and implementation on critical Internet resources both at the national and international level. With regards to the latter, one of the ways in which member states can fulfil this commitment is by participating actively in the Governmental Advisory Committee of ICANN. As recalled earlier, article 4 of ICANN's Articles of Incorporation states that "The Corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets. To this effect, the Corporation shall co-operate as appropriate with relevant international organizations".⁶⁹

110. Similar to other commitments provided for in this recommendation, this is a due diligence standard. Member states are required to exert their best possible efforts to ensure that activities conducted by non-governmental entities respect human rights and fundamental freedoms in accordance with international standards. Council of Europe member states are under an obligation not only to refrain from acts violating the rights and freedoms guaranteed by the European Convention on Human Rights but also to take positive action to protect these rights and freedoms. The notion of positive obligations, requiring that the state concerned adopt reasonable measures to prevent, or provide effective remedies for, violations of rights and freedoms guaranteed by the European Convention on Human Rights has been articulated clearly in the case-law of the European Court of Human Rights; such positive obligations arise irrespective of whether the violation is committed by state or non-state actors.⁷⁰

68. Decision No. 2010-45 QPC of 06 October 2010, available at <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/download/cc-201045qpc.pdf>.

69. The Articles of Incorporation as revised on 21 November 1998 are available at <http://www.icann.org/en/general/articles.htm>.

70. *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports 1998-VIII*, p. 3164, paragraph 128; *A. v. the United Kingdom*, judgment of 23 September 1998, *Reports of Judgments and Decisions 1998-VI*, p. 2699, paragraph 22; *Z and Others v. the United Kingdom [GC]*, no. 29392/95, §§ 73-75, *ECHR Reports of Judgments and Decisions 2001-V*; and *E. and Others v. the United Kingdom*, no. 33218/96, 26 November 2002; *Calvelli and Ciglio v. Italy [GC]*, no. 32967/96, ECHR 2002-IX and *Y v. the Netherlands*, judgment of 26 March 1985, Series A no. 91, pp. 11-13, paragraphs 23-24 and 27, and *August v. the United Kingdom (dec.)*, no. 36505/02, 21 January 2003; *M.C. v. Bulgaria*, no. 39272/98, § 151, *ECHR Reports of Judgments and Decisions 2003-XII*; paragraph 151.

Recommendation CM/Rec(2012)1 of the Committee of Ministers to member states on public service media governance

*(Adopted by the Committee of Ministers
on 15 February 2012 at the 1134th meeting
of the Ministers' Deputies)*

Freedom of expression and the right to seek and receive information are fundamental for the functioning of a genuine democracy. As stated in the Committee of Ministers' Declaration on public service media governance, adopted on the same day, media are the most important tool for freedom of expression in the public sphere, enabling people to exercise the right to seek and receive information.

Public service media play a specific role with regard to the respect of this right and the provision of a varied and high-quality content, contributing to the reinforcement of democracy and social cohesion, and promoting intercultural dialogue and mutual understanding.

Public service media need to operate and evolve within a sustainable governance framework which secures both the necessary editorial independence and public accountability. In the above-mentioned declaration, the Committee of Ministers alerts to the risks to pluralism and diversity in the media and, in consequence, to democratic debate and commitment, if the current model, which includes public service, commercial and community media, is not preserved.

The transition from state to public service and from broadcasting to public service media has yet to be successfully completed in many Council of Europe member states. Rethinking and reconstructing their governance systems will be a decisive factor in public service media organisations' ability to address this and other challenges they are confronted with.

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe, recommends that member states further strengthen and, where necessary, enhance the appropriate legal and financial environment, including the external governance arrangements for public service media organisations, by drawing inspiration from the appended guiding principles, thereby guaranteeing the independence and sustainable development of public service media and empowering them to take up the challenges of technological progress and editorial competition, in particular by:

- including, where they have not already done so, provisions in their legislation/regulations for the remit of public service media, particularly with regard to the new communication services, thereby enabling these media to make full use of their potential and, especially, promote broader democratic, social and cultural participation, *inter alia*, with the help of new interactive technologies;
- encouraging public service media and providing them with the necessary resources and tools to review and develop their internal governance arrangements, regardless of where they stand in the transformation into fully-fledged public service media, by drawing inspiration from the appended guiding principles;
- encouraging public service media to co-operate actively on a pan-European scale and to exchange ideas on best practice and best content, in order to create a vibrant European public sphere and foster democratic citizenship within the wider Europe;

- ensuring wide distribution of the specifically designed guiding principles, appended hereto, to the public authorities in order to allow public service media to reinforce their essential position in the media system and improve their functioning in the digital environment to fulfil their democratic mission;
- encouraging the public authorities to support and promote the implementation of these guiding principles.

APPENDIX TO RECOMMENDATION CM/REC(2012)1

GUIDING PRINCIPLES FOR PUBLIC SERVICE MEDIA GOVERNANCE

I. The context: challenges facing public service media

1. Public service media¹ across Europe face an unprecedented range of significant challenges.

► **The challenge of securing the right level of independence from the state**

2. The first priority for public service media must be to ensure that their culture, policies, processes and programming reflect and ensure editorial and operational independence.

3. For some organisations, the shift is from being the state broadcaster – with strong links to the government, and weaker accountability to the wider audience or civil society – to becoming genuine public service media, with editorial and operational independence from the state. For many public service media organisations, this shift requires a significant raising of quality standards and editorial ambition.

4. However, even in countries with more strongly developed and deeply rooted systems of public service broadcasting, the relationship between the public service media and the government, which sets their overall remit and secures their funding, is one that needs constant vigilance. Recent changes in certain member states to the funding arrangements or decisions to use the licence fee to fund services delivered by commercial media have once more focused attention on the relationship between public service media and the State.

► **The challenge of transformation from public service broadcasting to public service media**

5. The traditional model of public service broadcasting is increasingly impacted by the emergence of alternative ways of creating and distributing content and engaging with audiences. While broadcasting relies on linear transmission of programmes, emerging digital media give traditional broadcasters, and other content creators and providers, new and exciting possibilities of reaching audiences with a greater degree of interactivity and personalised choice. Public service media organisations must therefore look afresh at their public purpose and determine, within their remit, the correct balance of broadcast and other services that will best match audience need with available resources.

6. Public service media organisations across Europe are responding at a different pace, depending on the maturity of their market and the extent to which their resources and the freedom they enjoy within their remit permit them to diversify. But even where public service media organisations are less well placed to take advantage of new means of production and distribution, they are nevertheless aware that their audiences are increasingly accustomed to greater levels of choice and control over the services available to them from others in the market. It therefore follows that, no matter at what speed, or to what depth, public service media organisations need nevertheless to be actively encouraged to respond positively and effectively to these changing audience expectations.

► **The challenge of justifying the “dual system” in today’s market**

7. All public service media organisations now operate within a wider, potentially global, market, characterised by increasing competition and the disruptive power of new business models which are now competing directly for revenue with previously established players. Against this background, apparently settled systems of funding for public service broadcasting are under increasing scrutiny, such that all public service

1. The use of the term “public service media” throughout these guiding principles reflects the fact that, for all public service broadcasters, the transition to a more diverse range of content and services is both inevitable and welcome, even if it happens at different speeds, and responds to different opportunities in different countries. By adopting “public service media” as its generic term, the Committee of Ministers of the Council of Europe has recognised the need for public service broadcasters to embrace these changes: the focus of the guiding principles is to help such institutions embrace the need for change and to deliver on these new goals.

media organisations, and not only those already offering a more diverse range of services, are challenged to justify both the level and the allocation of their spending.

8. The requirements imposed upon European Union member states to put in place some form of *ex-ante* test before public service media organisations can launch new services is an example of the increased scrutiny that these organisations are now subject to, driven not least by the determination of market players to ensure that public funds are not used to stifle legitimate private enterprises. Public service media organisations therefore have to be responsive in how they define their goals, how they justify them within their overall remit, and how they define the public benefit they will be able to deliver.

► **The wider context of public service provision**

9. Public service media organisations are typically institutions with obligations to meet a wide range of content objectives, funded primarily by public financing (even if supplemented by commercially generated revenue).

10. Consideration is sometimes given to the possibility of a “distributed” approach to public funding where the public service media might share public resources with other media companies who enter into some form of contract with the state to deliver specific content outcomes. In certain circumstances, such approaches might be appropriate, but they are currently remote from the experience of most countries, and are therefore not specifically addressed in these guiding principles.

11. The guiding principles are designed to operate at the level of the public service media themselves, but they could also provide some guidance in cases where a public service media organisation may be charged with distributing public funding to a range of other organisations.

► **Conclusion**

12. Taken together, these challenges – technological, societal, cultural and financial – explain why established policy concerning public service media should be re-assessed, and also why public service media organisations themselves can no longer take comfort in easy assumptions about their role and status.

II. The role of governance in meeting these challenges

13. It is vitally important that member states review, and where necessary strengthen, the external governance arrangements for public service media designed to guarantee editorial and operational independence as well as appropriate funding. This should be accompanied by a matching obligation for public service media themselves to assess the adequacy of their internal governance arrangements. The current guiding principles are significantly based on best practice in governance, and should help both governments and public service media organisations to identify and determine their own response to needs.

► **A new framework for governance**

14. Traditional definitions of governance are insufficient to take full account of the new and more complex media environment. Narrow definitions typically focus on the precise legal and administrative steps taken to ensure the appropriate composition of boards and managing structures. They tend to concentrate on the detail of appointment procedures, the terms of tenure and permissible grounds for dismissal, conflicts of interest and methods by which the organisation will be held accountable. While these issues are all of fundamental importance in a proper and well-functioning governance system, they must be placed in a broader context.

15. A properly functioning governance system will be the way in which the organisation:

- defines, within the public service remit, the vision and overall purpose of the organisation and ensures that it is best equipped to fulfil its remit;
- sets and monitors delivery of its objectives;
- secures the endorsement of its key stakeholders;
- secures and protects the appropriate level of independence;
- structures its relations with stakeholders;
- ensures that the management priorities are properly aligned with the organisation’s overall purpose;
- ensures that its decisions are consistent with its remit, are appropriately informed and fully followed through.

16. This framework recognises:

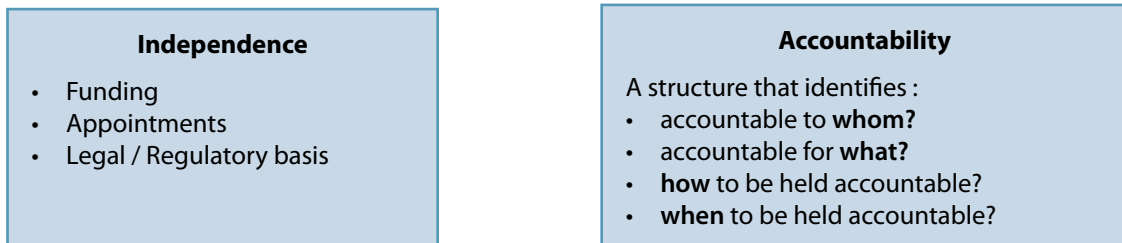
- that all public service media organisations face the same need for robust governance systems;
- that this need is universal and is not dependent on the degree of development within individual countries or markets;
- that good governance is a self-reinforcing system – and that action taken in any part of the governance system should therefore serve to influence and reinforce best practice across the whole system;
- that both governments and public service media organisations themselves should review their own governance system and determine where change and improvement are needed.

17. An interlocking set of criteria that public service media organisations can use to assess their system of governance is proposed in the current guiding principles. The criteria are designed to operate at every level within the organisation: they relate to the highest decision-making level of the media organisation, but they are also directly related to structures, processes and behaviours operating throughout the organisation. They relate respectively to the principles of independence, accountability, effective management, transparency and openness as well as responsiveness and responsibility.

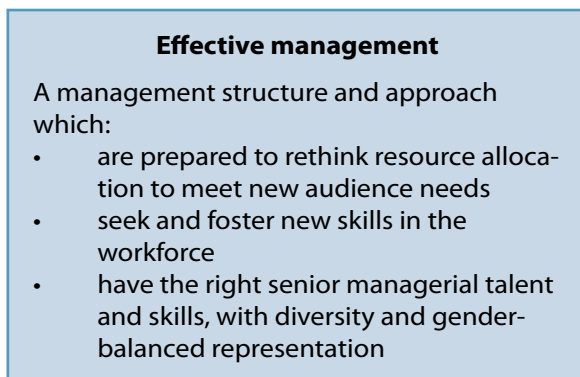
This approach is set out in Figure 1 below.

Figure 1

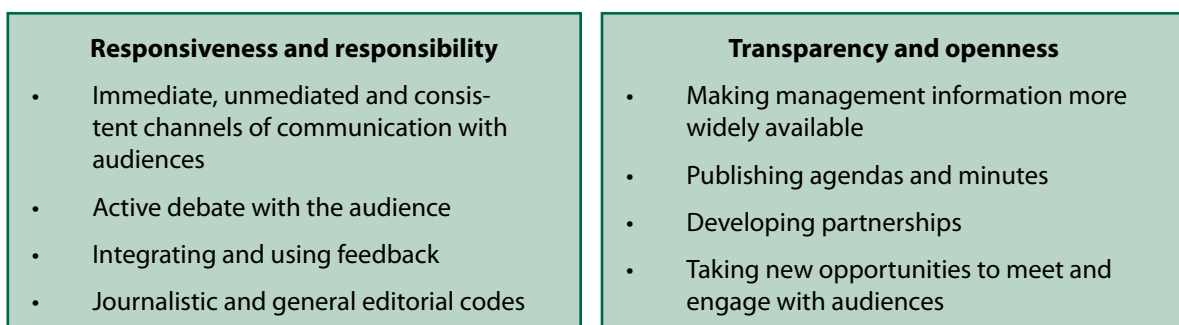
Tier 1 – Structures



Tier 2 – Management



Tier 3 – Culture



► Overview of the model

18. The model operates at three levels:

A. The first tier is concerned with the formal structures and processes that, between them, make the essential features of the governance framework:

- a. the steps taken to secure **independence** – the primary goal of any public service media governance framework, since without independence the public service media cannot be guaranteed to operate effectively or deliver against its wide set of public purposes and maintain its focus as purely to serve the public interest;
- b. the **accountability** framework – the way in which a public service media organisation identifies its stakeholders and the mechanisms through which it is held to account, and which ensures that the independence of the organisation is focused on meeting the needs of its stakeholders.

These two aspects of the organisation effectively balance each other: the independence granted to the public service media to protect them from undue influence from the state or any other party is balanced by the public service media organisations' obligation to be fully accountable to the State and to its many stakeholders.

B. The second tier deals with the effective **management** of the organisation: the processes by which the goals and purposes of the organisation are turned into practical and outcome-oriented activities. In this context, a key goal is to ensure that the resources and capacity of the organisation are effectively brought to bear upon the changing demands of the audience and able to respond effectively to innovation in content and delivery. This bears on the choice of staff and calls for minority and gender representativeness at all levels of the workforce.

C. The third tier comprises interdependent systems and behaviours which, taken together, define the operational **culture** of the organisation. The following systems and behaviours are likely to enhance the capacity of the organisation to connect with audiences and stakeholders, to win political support and to ensure that it is best placed to identify audience need, understand the scope for change and be best placed to implement it:

- a. **transparency**: the ways in which the public service media make their processes and decisions open to audiences and stakeholders, thus supporting the formal approaches to accountability;
- b. **openness**: the extent to which the public service media are open to new ways to engage and interact with audiences and explore new partnerships with other organisations;
- c. **responsiveness**: the ways in which the public service media respond to audience and stakeholder feedback, and integrate the results of an active and meaningful dialogue with audiences into their future approach;
- d. **responsibility**: the ways in which public service media guarantee high journalistic and other production standards and set the criteria by which their output should be judged.

19. The guiding principles contain characteristics, rather than precise mechanisms, which will inevitably vary from organisation to organisation. These variations will be driven by different legal systems and by different political cultures, and will reflect different social systems and levels of engagement by groups in society. But the outcome of such a framework would be a system of governance that is outward focused, robust, capable of taking well-informed and future facing decisions, and one that is best placed to command the support of all relevant stakeholders.

20. The following sections deal with these characteristics, describing their importance and their contribution to the wider system of governance.

► Tier 1 – Structures

Independence

21. Independence is the core requirement for every public service media organisation. Without demonstrable independence of action and initiative, from government as well as from any other vested interest or institution, public service media organisations cannot sustain their credibility and will lose (or never gain) popular support as a forum for carrying forward the national debate and holding power to account.

22. Securing and safeguarding independence is therefore a primary role of any framework of public service media governance, and this is why independence has been at the heart of all of the relevant Council of Europe standards.

23. The fundamental requirement is that the editorial autonomy of the public service media should be guaranteed, and the structures necessary to ensure independence of editorial action clearly and unambiguously set out.

The guiding principles can be summarised under three key headings:

Regulatory and policy framework

24. Public service media organisations operate within a statutory and policy framework which sets out the responsibilities of the different parties involved: government, parliament, regulatory authorities (including auditing and other inspectorates) and the public service media themselves, as well as any specified engagement from designated third parties (civil society, market representatives, etc.).

25. The framework should, regardless of its configuration, be such that:

- there is explicit recognition of the scope and reach of the public service media remit, and absolute clarity about whose role it is to set it and review it;
- the policy goals for public intervention are clearly and consistently laid out, including unambiguous support for the principles of freedom of expression and journalistic enquiry;
- there is clarity about the responsibility of the regulator in relation to the public service media;
- the regulator is required to operate openly and transparently in respect of regulatory action, and is itself guaranteed independence from the State in its decision-making powers.

Funding

26. While it inevitably remains the state's responsibility to set both the method and the level of funding, it is nevertheless imperative that the system should be so designed that:

- it cannot be used to exert editorial influence or threaten institutional autonomy – either of which would undermine the operational independence of the public service media;
- the public service media is consulted over the level of funding required to meet their mission and purposes, and their views are taken into account when setting the level of funding;
- the funding provided is adequate to meet the agreed role and remit of the public service media, including offering sufficient security for the future as to allow reasonable future planning;
- the process for deciding the level of funding should not be able to interfere with the public service media's editorial autonomy.

Appointments

27. As public institutions, it is legitimate for the state to be involved in the appointment of the highest supervisory or decision-making authority within the public service media. To avoid doubt, this involvement should not normally extend to appointments at executive or editorial management level. Furthermore, any such appointment processes should be designed so that:

- there are clear criteria for the appointments that are limited, and directly related, to the role and remit of the public service media;
- the appointments cannot be used to exert political or other influence over the operation of the public service media;
- the appointments are made for a specified term that can only be shortened in limited and legally defined circumstances – which should not include differences over editorial positions or decisions;
- in line with Council of Europe standards, representation of men and women in decision-making bodies should be balanced.²

2. See Committee of Ministers' Recommendation Rec(2003)3 on balanced participation of women and men in political and public decision making.

Accountability

28. Public service media are ultimately, and fundamentally, accountable to the public. However, the public is composed of an increasingly complex range of institutional and other stakeholders:

- the public as represented by the **state** – through government and parliament, as well as other independent regulatory and supervisory bodies;
- the **public** directly as audience and as citizens and participants;
- the public as represented by **civil society** groups as well as wider communities of interest.

29. The precise nature of this accountability will necessarily differ between countries, determined by the political systems, cultural and civil society traditions and the wider development of the market. It is not the purpose, however, of the guiding principles to define exactly to whom public service media organisations should be held accountable or the precise mechanisms for doing so. Instead, the guiding principles set out the characteristics that any system of accountability should display if it is to give both the public service media and its stakeholders confidence that it is fit for the purpose.

30. Any accountability framework should offer clear answers to four questions:

- **Accountable to whom?** Public service media organisations should operate within a framework that clearly establishes the bodies to whom they are to be held accountable. They should also identify those organisations and representatives to whom, even if they are not covered by a formal relationship, public service media organisations should nevertheless be prepared to give account of themselves: this should include, *inter alia*, youth and women's organisations, minority and ethnic groups, unions and other specific interest groups. Public service media organisations should include their own staff among the groups to whom they should consider themselves accountable.
- **Accountable for what?** The accountability framework should make clear the public purposes and wider responsibilities for which the public service media are to be held accountable. These will include the purposes set out in the remit, but may also go wider to embrace issues of value for money and efficiency. Where the public service media are charged with collaboration with other market players – for instance, through requirements to commission work from independent third parties, or through their wider responsibility to share its research and development or training – these responsibilities should be clearly set out. The outcomes for which the public service media will be held accountable should also be clearly set out.
- **Held accountable how?** The framework should set out clearly the information that the public service media are required to supply, and the access that they should offer to their stakeholders.
- **Held accountable when?** In addition to establishing a clear timetable for annual reports and other audit processes, the framework should set out the terms on which the public service media are required to consult with stakeholders ahead of their key decisions.

► Tier 2 – Management

Effective management

31. The purpose of the guiding principles is not to attempt to explain how public service media organisations should manage themselves. Nevertheless, if the focus is on ensuring that public service media organisations have a governance framework that can meet the challenges outlined in the first section of the guiding principles, then it is essential that the way they manage themselves and their resources should be focused on how to achieve change and should allow them to adapt to rapidly transforming conditions.

32. Above all, it is essential that the public service media organisation can feel confident that the decisions it takes have been properly considered and weighed, with the appropriate mix of skills and perspectives brought to bear and the right level of engagement across the organisation.

Internal management and resource allocation

33. Public service media organisations, coming from a tradition of stable schedules and linear services, comprising more or less fixed volumes of a known asset (namely their programmes), have a tendency to become fixed in their internal management systems. Audiences' demands for different kinds of content, delivered in different ways and with far greater levels of interactivity and engagement will require public service media organisations to re-examine their organisation and processes. If they are to thrive and prosper in the future, they need to be able not only to sustain their existing services, but also to develop new

ways of meeting and serving their audiences, which are increasingly used to accessing and participating in media in more direct and interactive ways:

- they must use the new opportunities afforded by the Internet and other new and more interactive distribution platforms to find new ways of expressing enduring public service goals reinterpreting them as technology enables wider user choice;
- they must strive to use their brand to enable all parts of society to participate in the richness of content and experience that new media make available, thus giving real energy and drive to a media literacy and digital empowerment agenda which, in the long run, will contribute to a better functioning of democratic societies.

34. Public service media organisations should therefore be prepared:

- to **innovate in the way they allocate resources** to allow for new media or different ways of serving audiences to receive the necessary levels of funding and management time and focus;
- to ensure that all staff resources are managed in such a way that the changing needs of audiences are being met, including through: making progress towards a more balanced participation of women and men in decision-making processes; providing training opportunities that enhance the participation of staff in the delivery of services (including **gender-awareness and cultural diversity training** at all levels of the organisation and for all media professionals); and establishing appropriately transparent recruitment policies that leads to the creation of a diverse workforce **with the necessary skills** to produce and deliver services that meet the changing patterns of consumer behaviour;
- to focus on how best to meet **senior management challenges**, recognising that the best editorial leaders may not have learnt the most appropriate general and strategic management skills during their editorial career, and devising ways to fill these gaps either through training or specific external recruitment; and also to recognise the value of getting fresh thinking into the senior management team by more diverse recruitment at the top;
- to ensure that workplace practices and policies are in place to secure that all employees in the organisation can work in an environment free from discrimination and harassment.

► **Tier 3 – Culture – Transparency and openness, responsiveness and responsibility**

35. The formal structures described above are those that comprise any governance system: the legal framework, the protection for independence and the way that operational decisions are aligned with the overall remit. These need to be given life within the organisation by the way that it chooses to operate: the systems it has for engaging with audiences, the behaviours it inculcates across its staff; in short, its **culture**.

36. In future, public service media organisations will need to adopt a new set of relationships with the public, relationships that are based on the linked values of **transparency** (how the public service media let the audience see what they are doing) and **openness** (how the public service media opens up to new ideas and influences, while seeking new partners and creative opportunities to work collaboratively).

37. Public service media organisations will also need to demonstrate high levels of both **responsiveness** (actively engaging in debate and dialogue with their audience); and **responsibility** (creating and reinforcing a culture of journalistic and production standards against which stakeholders are invited to judge them).

38. These characteristics should also underpin the way in which the public service media deal internally with their own staff and suppliers.

Transparency

39. The section on “accountability” describes the range of structured relationships that public service media organisations need if they are to ensure that their decisions are appropriately informed and their actions properly supported. This will be importantly underpinning if public service media organisations also operate to a high degree of transparency. Among other things, this implies that:

- groups who may not have been formally consulted on the policy and content can nevertheless feel engaged with the way in which the public service media operate;
- operational decisions that have not been subject to formal consultation are nevertheless more likely to be open to public scrutiny; and
- the information that the public service media rely on to take their decisions will be widely available and understood.

40. Among the approaches to transparency that public service media could consider are the following:
- making financial and audience performance information available on a more regular and open basis;
 - opening up the work of the board and key decision-making bodies by publishing agendas and minutes where possible;
 - disseminating the results of thorough scrutiny of content (including news, education, entertainment and, if applicable, advertising) reflecting its diversity objective.

Openness

41. While “transparency” ensures that the operation of the public service media themselves is more widely understood, public service media also need to be receptive to new ideas and influences. This is particularly important at times when, as now, the nature of audience engagement and the ways in which media services are reaching them is changing so rapidly.

42. Public service media must therefore operate with a culture in which, not only their content, but also their whole operation reflects an openness based upon participation and engagement, whilst maintaining the requisite quality and standards within the scope of the public service remit, actively seeking out new ideas and approaches to identifying and serving public need.

43. This could typically include:

- exploiting the widest range of opportunities to meet and engage with audiences, especially using interactivity and participation, and not confined to broadcast or distributed content, but also making use of engagement beyond the content itself;
- exploring the widest diversity of sources, representing a broad spectrum of views consulted in the stories covered;
- exploring ways to involve the audience more in shaping the editorial offer (including youth, women, minorities and other groups), not least by using new technologies to seek richer opportunities for access;
- exploring the widest possible range of partnerships with other providers – public and commercial – to deliver the greatest benefit to the audience;
- exploring ways in which content created using public funds can be made available and put to enduring use by future audiences;
- exploring, in particular, ways in which younger audiences can be attracted to public service content by using a wider range of techniques and ways of interacting with them, while undertaking steps to ensure that senior members of the audience are not excluded from the opportunities offered by new media.

Responsiveness

44. As well as making themselves as transparent as possible and open to new ideas and influences, public service media need to be responsive to the concerns and issues raised by audiences and other stakeholders.

45. At the highest levels, these may well be picked up through the formal processes and structures of accountability, but on a day-to-day basis, public service media organisations need to demonstrate that they are actively seeking the views and opinions of their stakeholders, and are committed to responding and engaging with them.

46. To this end, public service media organisations will need to consider how they can:

- develop channels of communication with audiences and stakeholders that are immediate, unmediated and consistently and universally available;
- encourage active debate with a broad range of audiences, reflecting the diversity in society, about editorial standards and journalistic ethics through structured as well as informal processes;
- develop ways in which audience feedback can be demonstrably integrated into editorial decision making.

Responsibility

47. Public service media organisations occupy a uniquely privileged place in public debate and democratic processes. Their independence is prized precisely because of the expectation that public service media

organisations will reflect and promote open and public debate, to underpin wider democratic goals. Public service media organisations need to be confident that they can hold power to account on behalf of the public whose interests they serve without political interference.

48. However, this role carries with it great responsibility, and public service media should ensure that they operate to the highest editorial and journalistic standards.

49. These will be fostered by the interplay of culture and codes:

- public service media should actively promote a culture of responsible, tough journalism that seeks the truth. There should be a culture of rigorous enquiry and debate, characterised by even-handed treatment of conflicting views and an appetite for internal challenge and review;
- this will be reinforced and protected by the existence of clear and publicly available codes of journalistic and production conduct, which will set out the rules that the public service media intend to operate, and against which their output should be judged;
- the codes of conduct should include the highest diversity and equality standards;
- public service media should ensure that there are clear and widely publicised processes of internal editorial control and the handling of complaints, with the duties and responsibilities of the editor-in-chief clearly set out;
- these codes should not be limited to journalistic behaviour, but should also embrace wider issues of editorial standards and ethical behaviour.

Recommendation CM/Rec(2012)3 of the Committee of Ministers to member states on the protection of human rights with regard to search engines

*(Adopted by the Committee of Ministers on 4 April 2012
at the 1139th meeting of the Ministers' Deputies)*

SEARCH ENGINES PLAY A PIVOTAL ROLE IN THE INFORMATION SOCIETY

1. Search engines enable a worldwide public to seek, receive and impart information and ideas and other content in particular to acquire knowledge, engage in debate and participate in democratic processes.
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 emphasises the importance of access to information on the Internet and stresses that the Internet and other information and communication technologies (ICTs) have high public service value in that they serve to promote the effective exercise and enjoyment of human rights and fundamental freedoms for all who use them. The Committee of Ministers is convinced of the importance of search engines for rendering content on the Internet accessible and the World Wide Web useful for the public and therefore considers it essential that search engines be allowed to freely crawl and index the information that is openly available on the Web and intended for mass outreach.
3. Suitable regulatory frameworks, compliant with human rights requirements, should be able to give adequate responses to legitimate concerns in relation to referencing by search engines of content created by others. Further consideration is necessary as to the extent and the modalities of application of national legislation, including on copyright, to search engines as well as related legal remedies.

HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS CAN BE THREATENED BY THE OPERATION OF SEARCH ENGINES

4. The action of search engines can affect freedom of expression and, given their role in facilitating access to information, can bear even more on the right to seek, receive and impart information; similarly, their action has an impact on the right to private life and the protection of personal data. Such challenges may stem, *inter alia* from the design of algorithms, de-indexing and/or partial treatment or biased results, market concentration and lack of transparency about both the selection process and ranking of results.
5. The impact on private life may result from the pervasiveness of search engines or their ability to penetrate and index content which, although in the public space, was not intended for mass communication (or mass communication in aggregate), and from data processing generally and data retention periods. Moreover, search engines generate new kinds of personal data, such as individual search histories and behaviour profiles.

6. There is a need to protect and promote access, diversity, impartial treatment, security and transparency in the context of search engines. Media literacy and the development of skills that enable users to have informed access to the greatest possible variety of information, content and services should be promoted having regard to Recommendation CM/Rec(2011)7 on a new notion of media.

7. The Committee of Ministers therefore, under the terms of Article 15.b of the Statute of the Council of Europe, recommends that member states, in consultation with private sector actors and civil society, develop and promote coherent strategies to protect freedom of expression, access to information and other human rights and fundamental freedoms in relation to search engines in line with the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, hereinafter referred to as the "Convention"), especially Article 8 (Right to respect for private and family life) and Article 10 (Freedom of expression) and with the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108, hereinafter referred to as "Convention No. 108"), in particular by engaging with search engine providers to carry out the following actions:

- enhance transparency regarding the way in which access to information is provided, in order to ensure access to, and pluralism and diversity of, information and services, in particular the criteria according to which search results are selected, ranked or removed;
- review search ranking and indexing of content which, although in the public space, is not intended for mass communication (or for mass communication in aggregate). This could include listing content sufficiently low in search results so as to strike a balance between the accessibility of the content in question and the intentions or wishes of its producer (for example having different accessibility levels to content which is published seeking broad dissemination as compared to content which is merely available in a public space). Default settings should be conceived taking account of this objective;
- enhance transparency in the collection of personal data and the legitimate purposes for which they are being processed;
- enable users to access easily, and, where appropriate, to correct or delete their personal data processed by search engine providers;
- develop tools to minimise the collection and processing of personal data, including enforcing limited retention periods, adequate irreversible anonymisation, as well as tools for the deletion of data;
- ensure accessibility to their services to people with disabilities, thereby enhancing their integration and full participation in society.

8. In addition, member states should:

- ensure that suitable legal safeguards are in place when access to users' personal data is granted to any public or private entity, thus securing the full enjoyment of the rights and freedoms enshrined in the Convention;
- encourage search engine providers to discard search results only in accordance with Article 10, paragraph 2, of the Convention. In this event, the user should be informed as to the origin of the request to discard the results subject to respect for the right to private life and protection of personal data;
- promote media literacy with regard to the functioning of search engines, in particular on the processes of selecting, ranking and prioritising of search results and on the implications of the use of search engines on users' right to private life and the protection of their personal data;
- consider offering users a choice of search engines, in particular with regard to search outputs based on public value criteria;
- promote transparent self- and co-regulatory mechanisms for search engines, in particular with regard to the accessibility of content declared illegal by a court or competent authority, as well as of harmful content, bearing in mind the Council of Europe's standards on freedom of expression and due process rights;
- take measures with regard to search engines in line with the objectives set out in the appendix to this recommendation;
- bring this recommendation and its appendix to the attention of all relevant public authorities and private actors.

I. Helping the public make informed choices when using search engines

► Context and challenges

1. Search engines play a crucial role as one of the first points of contact on the Internet in exercising the right to seek and access information, opinions, facts and ideas, as well as other content, including entertainment. Such access to information is essential to building one's personal opinion and participating in social, political, cultural and economic life. Search engines are also an important portal for citizens' access to mass media, including electronic newspapers and audiovisual media services.
2. There is some concern that users tend to use a very limited number of dominant search engines. This may raise questions regarding the access to and diversity of the sources of information, especially if one considers that the ranking of information by search engines is not exhaustive or neutral. In this regard, certain types of content or services may be unduly favoured.
3. The process of searching for information is strongly influenced by the way that information is arranged; this includes the selection and ranking of search results and, as applicable, the de-indexing of content. Most search engines provide very little or only general information about these matters, in particular regarding the criteria used to qualify a given result as the "best" answer to a particular query.

► Action

4. While recognising that full disclosure of business models and methods or business-related decisions may not be appropriate because algorithms are highly relevant for competition and that related information might also result in increased vulnerability of search engine services (for example in the form of search manipulation), member States, in co-operation with the private sector and civil society, should:
 - encourage search engine providers to enhance transparency as regards general criteria and processes applied to the selection and ranking of results. This should include information about search bias, such as in presenting results based on apparent geographic location or on earlier searches;
 - encourage search engine providers to clearly differentiate between search results and any form of commercial communication, advertisement or sponsored output, including "own content" offers;
 - promote research on the dynamic market for search engines, to address issues including the public value dimension of search engine services, the increasing concentration of the search engine market and the risk of abuse, manipulation and restriction of search results.

II. Right to private life and to the protection of personal data

► Context and challenges

5. Search engines process large amounts of personal data on the search behaviour of individuals, varying from cookies and IP addresses to individual search histories, as highlighted by a number of relevant texts already adopted at both European and international levels.¹
6. An individual's search history contains a footprint which may reveal the person's beliefs, interests, relations or intentions. Individual search histories may also disclose sensitive data (revealing racial origin, political opinions or religious or other beliefs, or data concerning health, sexual life or relating to criminal convictions) that warrant special protection under Article 6 of Convention No. 108.
7. The processing of personal data by search engines acquires an additional dimension due to the proliferation of audiovisual data (digital images, audio and video content) and the increasing popularity of mobile Internet access. Specialised search engines that allow users to find information on individuals, location-based services, the inclusion of user-generated images into general-purpose search indexes and increasingly accurate face-recognition technologies are some of the developments that raise concerns about the future impact of search engines on fundamental rights such as the right to private life, and its potential bearing on the exercise of freedom of expression or the right to seek, receive and impart information of one's choice.

1. Article 29 Working Party Opinion 1/2008 (adopted on 4 April 2008) on data protection issues related to search engines; the 28th International Data Protection and Privacy Commissioners' Conference Resolution on Privacy Protection and Search Engines (London, 2-3 November 2006).

8. By combining different kinds of information on an individual, search engines create an image of a person that does not necessarily correspond to reality or to the image that a person would want to give of her- or himself. The combination of search results creates a much higher risk for that person than if all the data related to her on the Internet remained separate. Even long-forgotten personal data can resurface as a result of the operation of search engines. As an element of media literacy, users should be informed about their right to remove incorrect or excessive personal data from original web pages, with due respect for the right to freedom of expression. Search engines should promptly respond to users' requests to delete their personal data from (extracts of) copies of web pages that search engine providers may still store (in their "cache" or as "snippets") after the original content has been deleted.

9. Overall, it is vital to ensure compliance with applicable privacy and data protection principles, starting with Article 8 of the Convention and Article 9 of Convention No. 108, that foresee strict conditions to ensure that individuals are protected from unlawful interference in their private life and abusive processing of their personal data.

► **Action**

10. Member states (through the designated authorities) should enforce compliance with the applicable data protection principles, in particular by engaging with search engine providers to carry out the following actions:

- ensure that the collection of personal data by search engine providers is minimised. No user's IP address should be stored when it is not necessary for the pursuit of a legitimate purpose and when the same results can be achieved by sampling or surveying, or by anonymising personal data. Innovative approaches promoting anonymous searches should also be encouraged;
- ensure that retention periods are not longer than strictly necessary for the legitimate and specified purposes of the processing. Search engine providers should be in a position to justify with demonstrable reasons the collection and the retention of personal data. Information in this connection should be made publicly available and easily accessible;
- ensure that search engine providers apply the most appropriate security measures to protect personal data against unlawful access by third parties and that appropriate data breach notification schemes are in place. Measures should include "end-to-end" encryption of the communication between the user and the search engine provider;
- ensure that individuals are informed with regard to the processing of their personal data and the exercise of their rights, in an intelligible form, using clear and plain language, adapted to the data subject. Search engines should clearly inform users up front of all intended uses of their data (emphasising that the initial purpose of such processing is to better respond to their search requests) and respect the user's right with regard to their personal data. They should inform individuals if their personal data has been compromised;
- ensure that the cross-correlation of data originating from different services/platforms belonging to the search engine provider is performed only if unambiguous consent has been granted by the user for that specific service. The same applies to user profile enrichment exercises as also stated in Recommendation CM/Rec(2010)13 on the protection of individuals with regard to automatic processing of personal data in the context of profiling.

11. In addition, member states should:

- encourage search engine providers further to develop tools that allow users to gain access to, and to correct and delete, data related to themselves that have been collected in the course of the use of services, including any profile created, for example for direct marketing purposes;
- ensure that requests from law-enforcement authorities to search engine providers for users' data are based on appropriate legal and judicial procedures, and that transparent mechanisms of co-operation are in place. This should include strong legal safeguards and the observance of due process requirements before individuals' data and search records are disclosed to public authorities or private parties. The above-mentioned procedures should not represent an undue burden for the providers in question.

III. Filtering and de-indexing

► Context and challenges

12. A prerequisite for the existence of effective search engines is the freedom to crawl and index the information available on the Web. The filtering and blocking of Internet content by search engine providers entails the risk of violation of freedom of expression guaranteed by Article 10 of the Convention in respect to the rights of providers and users to distribute and access information.

13. Search engine providers should not be obliged to monitor their networks and services proactively in order to detect possibly illegal content, nor should they conduct any *ex ante* filtering or blocking activity, unless mandated by court order or by a competent authority. However, there may be legitimate requests to remove specific sources from their index, for example in cases where other rights outweigh the right to freedom of expression and information; the right to information cannot be understood as extending the access to content beyond the intention of the person who exercises her or his freedom of expression.

14. In many countries, search engine providers de-index or filter specific websites at the request of public authorities or private parties in order to comply with legal obligations or at their own initiative (for example in cases not related to the content of websites, but to technical dangers such as malware). Any such de-indexing or filtering should be transparent, narrowly tailored and reviewed regularly subject to compliance with due process requirements.

► Action

15. Member states should:

- ensure that any law, policy or individual request on de-indexing or filtering is enacted with full respect for relevant legal provisions, the right to freedom of expression and the right to seek, receive and impart information. The principles of due process and access to independent and accountable redress mechanisms should also be respected in this context.

16. In addition, member states should work with search engine providers so that they:

- ensure that any necessary filtering or blocking is transparent to the user. The blocking of all search results for certain keywords should not be included or promoted in self- and co-regulatory frameworks for search engines. Self- and co-regulatory regimes should not hinder individuals' freedom of expression and right to seek, receive and impart information, ideas and content through any media. As regards the content that has been defined in a democratic process as harmful for certain categories of users, member States should avoid general de-indexation which renders such content inaccessible to other categories of users. In many cases, encouraging search engines to offer adequate voluntary individual filter mechanisms may suffice to protect those groups;
- explore the possibility of allowing de-indexation of content which, while in the public domain, was not intended for mass communication (or mass communication in aggregate).

IV. Self- and co-regulation

► Context and challenges

17. Self-regulatory initiatives by search engine providers aiming at protecting individuals' fundamental rights should be welcomed. It is important to recall that all self- and co-regulation may amount to interference with the rights of others and should therefore be transparent, independent, accountable and effective, in line with Article 10 of the Convention. A productive interaction between different stakeholders, such as State actors, private actors and civil society, can significantly contribute to the setting up of standards protecting human rights.

18. Member states should:

- take actions to promote the protection of individuals' fundamental rights meeting the Convention's standards, in particular the right to due process, the right to freedom of expression and the right to private life, through the development of co-regulation with search engine providers, when such measures are found appropriate;
- encourage the industry to develop self-regulatory codes of conduct guaranteeing the protection of individuals' fundamental rights, in the due respect of the Convention, in particular the right to due process, the right to freedom of expression and the right to privacy.

V. Media literacy

► Context and challenges

19. Users should be informed and educated about the functioning of different search engines (search engine literacy) in order to make informed choices about the sources of information provided, in particular that a high ranking search does not necessarily reflect the importance, relevance or trustworthiness of the source. As search engines play an increasingly important role with regard to the accessibility of media and information online, media and information literacy strategies should be adapted accordingly. Users should be made aware of the implications of the use of search engines, both with regard to personalised search results, as well as to the impact on their image and reputation of combined search results about them, and of the available tools to exercise their rights.

► Action

20. Member states should:

- take appropriate steps to include the topic of search engine literacy in their national media literacy strategies;
- take appropriate actions to enable users to be aware of and to manage their online identity, in particular with respect to the impact that search results can have on their image and reputation and to the effective tools to exercise their rights.

Recommendation CM/Rec(2012)4 of the Committee of Ministers to member states on the protection of human rights with regard to social networking services

*(Adopted by the Committee of Ministers on 4 April 2012
at the 1139th meeting of the Ministers' Deputies)*

SOCIAL NETWORKS AS HUMAN RIGHTS ENABLERS AND CATALYSTS FOR DEMOCRACY

1. Social networking services are an important part of a growing number of people's daily lives. They are a tool for expression and communication between individuals, and also for direct mass communication or mass communication in aggregate. This complexity gives operators of social networking services or platforms a great potential to promote the exercise and enjoyment of human rights and fundamental freedoms, in particular the freedom to express, to create and to exchange content and ideas, and the freedom of assembly. Social networking services can assist the wider public to receive and impart information.
2. The increasingly prominent role of social networking services and other social media services also offer great possibilities for enhancing the potential for the participation of individuals in political, social and cultural life. The Committee of Ministers has acknowledged the public service value of the Internet in that, together with other information and communication technologies (ICTs), it serves to promote the exercise and enjoyment of human rights and fundamental freedoms for all who use it. As part of the public service value of the Internet, these social networking services can facilitate democracy and social cohesion.

HUMAN RIGHTS MAY BE THREATENED ON SOCIAL NETWORKS

3. The right to freedom of expression and information, as well as the right to private life and human dignity may also be threatened on social networking services, which can also shelter discriminatory practices. Threats may, in particular, arise from lack of legal, and procedural, safeguards surrounding processes that can lead to the exclusion of users; inadequate protection of children and young people against harmful content or behaviours; lack of respect for others' rights; lack of privacy-friendly default settings; lack of transparency about the purposes for which personal data are collected and processed.
4. Users of social networking services should respect other people's rights and freedoms. Media literacy is particularly important in the context of social networking services in order to make the users aware of their rights when using these tools, and also help them acquire or reinforce human rights values and develop the behaviour necessary to respect other people's rights and freedoms.

SOCIAL NETWORKING PROVIDERS SHOULD RESPECT HUMAN RIGHTS AND THE RULE OF LAW

5. A number of self- and co-regulatory mechanisms have already been set up in some Council of Europe member States in connection with standards for the use of social networking. It is important that procedural safeguards are respected by these mechanisms, in line with the right to be heard and to review or appeal against decisions, including in appropriate cases the right to a fair trial, within a reasonable time, and starting with the presumption of innocence.

6. The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe, recommends that member states, in consultation with private sector actors and civil society, develop and promote coherent strategies to protect and promote respect for human rights with regard to social networking services, in line with the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, hereinafter referred to as “the European Convention on Human Rights”), especially Article 8 (Right to respect for private and family life), Article 10 (Freedom of expression) and Article 11 (Freedom of assembly and association) and with the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), in particular by engaging with social networking providers to carry out the following actions:

- provide an environment for users of social networks that allows them further to exercise their rights and freedoms;
- raise users’ awareness, by means of clear and understandable language, of the possible challenges to their human rights and the ways to avoid having a negative impact on other people’s rights when using these services;
- protect users from harm without limiting freedom of expression and access to information;
- enhance transparency about data processing, and refraining from illegitimate processing of personal data;
- set up self- and co-regulatory mechanisms where appropriate, in order to contribute to the respect of the objectives set out in the appendix to this recommendation;
- ensure accessibility to their services to people with disabilities, thereby enhancing their integration and full participation in society.

7. Member states should:

- take measures in line with the objectives set out in the appendix to this recommendation;
- bring this recommendation and its appendix to the attention of all relevant public authorities and private sector actors, in particular social networking providers and civil society.

APPENDIX TO RECOMMENDATION CM/REC(2012)4

I. Essential information and measures needed to help users deal with social networks

► Context and challenges

1. Social networking services offer the possibility both to receive and to impart information. Users can invite recipients on an individual basis, but in most cases the recipients are a dynamic group of people, sometimes even a “mass” of unknown people (all the members of the social network). In cases where users’ profiles are indexed by search engines, there is potentially unlimited access to parts of or all information published on their profiles.

2. It is important for users to be able to feel confident that the information they share will be processed appropriately. They should know whether this information has a public or private character and be aware of the implications that follow from choosing to make information public. In particular, children, especially teenagers, and other categories of vulnerable people, need guidance in order to be able to manage their profiles and understand the impact that the publication of information of a private nature could have, in order to prevent harm to themselves and others.

► **Action**

3. Member states should co-operate with the private sector and civil society with a view to upholding users' right to freedom of expression, in particular by committing themselves, along with social networking providers, to carry out the following actions:

- help users understand the default settings of their profiles. The default setting for users should limit access by third parties to self-selected contacts identified by the user.¹ Users should be able to make an informed decision to grant wider public access to their data, in particular with regard to indexability by external search engines. In this connection, the social networking service should:
- inform users of the consequences of open access (in time and geographically) to their profiles and communications, in particular explaining the differences between private and public communication, and the consequences of making information publicly available, including unrestricted access to, and collection of, data by third parties;
- make it clear to the users – offering accessible tools – that they retain the right to limit access to their data, including the right to remove data from archives and search engine caches;
- offer adequate, refined possibilities of enabling the user to “opt in” in order to consent to wider access by third parties;
- enable users to control their information. This implies that users must be informed about the following: the need to obtain the prior consent of other people before they publish their personal data, including audio and video content, in cases where they have widened access beyond self-selected contacts; how to completely delete their profiles and all data stored about and from them in a social networking service, and how to use a pseudonym. Users should always be able to withdraw consent to the processing of their personal data. Before terminating their account, users should be able to easily and freely move the data they have uploaded to another service or device, in a usable format. Upon termination, all data from and about the users should be permanently eliminated from the storage media of the social networking service. When allowing third party applications to access users' personal data, the services should provide sufficiently multi-layered access to allow users to specifically consent to access to different kinds of data;
- help users make informed choices about their online identity. The practice of using pseudonymous profiles offers both opportunities and challenges for human rights. In its Declaration on Freedom of Communication on the Internet (adopted on 28 May 2003), the Committee of Ministers stressed that “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”. The right to use a pseudonym should be guaranteed both from the perspective of free expression and the right to impart and receive information and ideas and from the perspective of the right to private life. In the event that a social networking service requires real identity registration, the publication of that real identity on the Internet should be optional for users. This does not prevent law-enforcement authorities from gaining access to the user's real identity when necessary and subject to appropriate legal safeguards guaranteeing the respect of fundamental rights and freedoms;
- provide users with concise explanations of the terms and conditions of social networking services in a form and language that is geared to, and easily understandable by, the target groups of the social networking services;
- provide users with clear information about the editorial policy of the social networking service provider in respect of how it deals with apparently illegal content and what he considers inappropriate content and behaviour on the network.

4. In addition, member states should:

- foster awareness initiatives for parents, carers and educators to supplement information provided by the social networking service, in particular in respect of much younger children when they participate in social networks.

1. See Article 29 Data Protection Working Party Opinion 5/2009 on online social networking (12 June 2009); 30th International Conference of Data Protection and Privacy Commissioners, Resolution on Privacy Protection in Social Network Services (Strasbourg, 17 October 2008); International Working Group on data Protection in Telecommunications (IWGDPT) “Rome Memorandum” (Rome, 3-4 March 2008).

II. Protection of children and young people against harmful content and behaviour

► Context and challenges

5. Freedom of expression includes the freedom to impart and receive information which may be shocking, disturbing and offensive. Content that is unsuitable for particular age groups may well also be protected under Article 10 of the European Convention on Human Rights, albeit subject to conditions as to its distribution.
6. Social networking services play an increasingly important role in the life of children and young people, as part of the development of their own personality and identity, and as part of their participation in debates and social activities.
7. Against this background, children and young people should be protected because of the inherent vulnerability that their age implies. Parents, carers and educators should play a primary role in working with children and young people to ensure that they use these services in an appropriate manner.
8. While not being required to control, supervise and/or rate all content uploaded by its users, social networking service providers may be required to adopt certain precautionary measures (for example, comparable to “adult content” rules applicable in certain member States) or take diligent action in response to complaints (ex-post moderation).
9. Age verification systems are often referred to as a possible solution for protecting children and young people from content that may be harmful to them. However, at present there is no single technical solution for online age verification that does not infringe on other human rights and/or is not exposed to age falsification.

► Action

10. In co-operation with the private sector and civil society, member states should take appropriate measures to ensure children and young people’s safety and protect their dignity while also guaranteeing procedural safeguards and the right to freedom of expression and access to information, in particular by engaging with social networking providers to carry out the following actions:
 - provide clear information about the kinds of content or content-sharing or conduct that may be contrary to applicable legal provisions;
 - develop editorial policies so that relevant content or behaviour can be defined as “inappropriate” in the terms and conditions of use of the social networking service, while ensuring that this approach does not restrict the right to freedom of expression and information in the terms guaranteed by the European Convention on Human Rights;
 - set up easily accessible mechanisms for reporting inappropriate or apparently illegal content or behaviour posted on social networks;
 - share best practices on ways to prevent cyber-bullying and cyber-grooming. In this connection, age-differentiated access should be treated carefully where age is provided by children and young people themselves. Social networking providers should take diligent action in response to complaints of cyber-bullying and cyber-grooming.
11. In addition, member states should:
 - encourage the establishment of transparent co-operation mechanisms for law-enforcement authorities and social networking services. This should include respect for the procedural safeguards required under Article 8, Article 10 and Article 11 of the European Convention on Human Rights;
 - ensure respect for Article 10, paragraph 2, of the European Convention on Human Rights. This includes refraining from the general blocking and filtering of offensive or harmful content in a way that would hamper its access by users. In this connection, the Committee of Ministers’ Recommendation CM/Rec(2008)6 on measures to promote the respect for freedom of expression and information with regard to Internet filters should be implemented with a view to ensuring that any decision to block or delete content is taken in accordance with such principles. Transparent voluntary individual filtering mechanisms are also to be encouraged.

III. Personal data and trust in social networks

► Context and challenges

12. Social networking services process large amounts of personal data, including users’ profiling data and data on their Internet use. Publishing personal data in a profile can lead to access by third parties, including, amongst others, employers, insurance companies, law enforcement authorities and security services.

13. Social networking services should not process personal data beyond the legitimate and specified purposes for which they have collected it. They should limit processing only to that data which is strictly necessary for the agreed purpose, and for as short a time as possible.

14. Social networking services should seek the informed consent of users if they wish to process new data about them, share their data with other categories of people or companies and/or use their data in ways other than those necessary for the specified purposes they were originally collected for. As stated in Recommendation CM/Rec(2010)13 on the protection of individuals with regard to automatic processing of personal data in the context of profiling, users should be informed where their personal data is used in the context of profiling. The user's decision (refusal or consent) should not have any effect on the continued availability of the service to him or her. When allowing third party applications to access users' personal data, the services should provide sufficiently multi-layered access to allow users to specifically consent to different kinds of data being accessed.

► **Action**

15. In co-operation with the private sector and civil society, member states, in addition to the measures stated in section I of this appendix, should take appropriate measures to ensure that users' right to private life is protected, in particular by engaging with social networking providers to carry out the following actions:

- promote best practices for users. This includes default privacy-friendly settings that limit access to contacts selected by users themselves, the application of the most appropriate security measures, informed consent of users before personal data is disseminated, the sharing of personal data with other categories of people or companies and/or the use of their data in other new ways;
- ensure that users are able to effectively exercise their rights by offering, amongst other things, a clear user interface, and sufficiently multi-layered access to allow users to specifically consent to different kinds of data being accessed by third parties;
- ensure that sensitive data have enhanced protection. The use of techniques that may have a significant impact on users' privacy – where for instance processing involves sensitive or biometric data (such as facial recognition) – requires enhanced protection and should not be activated by default;
- ensure that the most appropriate security measures are applied to protect personal data against unlawful access by third parties. This should include measures for the end-to-end encryption of communication between the user and the social networking services website. In the absence of applicable legislation relating to the security of personal data and foreseeing the obligation to report data breaches, social networking services should nevertheless inform their users of breaches, to enable them to take preventive measures, such as changing their password and/or keeping a close eye on their financial transactions (where the providers are in possession of bank or credit card details);
- implement "privacy by design". Social networking services should be encouraged to address data protection needs at the stage of conception of their services or products and continuously assess the privacy impact of changes to existing services with a view to strengthening security and users' control of their personal data;
- protect third parties who are associated with the users of social networks. Non-users of the social network may also be affected by the disclosures of users of social networking services or by use of their data by the social networking service itself. They should have effective means of exercising their rights without having to become a member of the service in question and/or otherwise providing excessive personal data. Social networking service providers should refrain from collecting and processing personal data about non-users, for example e-mail addresses and biometric data (such as photographs). Users should be made aware of the obligations they have towards other individuals and, in particular, that the publication of personal data related to other people should respect the rights of those individuals;
- ensure that processing of personal data stemming from social networks for law enforcement purposes respects Article 8 of the European Convention on Human Rights. Enforcing applicable data protection standards is essential. This includes ensuring that the processing of personal data stemming from the use of social networking services for law enforcement purposes is carried out only within an appropriate legal framework, or following specific orders or instructions from the competent public authority made in accordance with the law;
- provide clear information about applicable law and jurisdiction. Users should be informed as to what law is applicable in the execution of the social networking services and the related processing of their

personal data. Provisions contained in the terms and conditions of use or service involving a choice of forums or applicable jurisdictions made for opportunistic or convenience reasons should be regarded as void if there is no reasonable link to the forum or jurisdiction in question; the user's forum or jurisdiction would be preferable in cases where a significant number of users are present in a particular territory;

- ensure that users are aware of the threats to their human rights and able to seek redress when their rights have been adversely affected. Users should be informed about possible risks to their right to private life, not only in the social networking services' core conditions (including when changes are made to general terms of service), but every time such a challenge may arise, for example, when the users make information on their profile available to new (groups of) users or when they install a third party application.

Users should be informed about the processing of their personal data, including the existence of, and means of exercising their rights (such as access, rectification, deletion), in a clear and understandable manner and in language geared to the target audience.

In addition to applicable legal provisions, appropriate complaint handling mechanisms should be guaranteed against abusive behaviour of users, in particular with regard to identity theft.

Recommendation CM/Rec(2013)1 of the Committee of Ministers to member states on gender equality and media¹

*(Adopted by the Committee of Ministers on 10 July 2013
at the 1176th meeting of the Ministers' Deputies)*

Gender equality is an indispensable condition for the full enjoyment of human rights. The enjoyment of the rights as granted by the European Convention on Human Rights (ETS No. 5) and in its protocols shall be safeguarded without any discrimination, including on grounds of sex. This requirement is strengthened by Protocol No. 12 to the Convention (ETS No. 177), which guarantees the enjoyment of any right recognised by law without discrimination.

Genuine democracy requires the equal participation of women and men in society. Democracy and gender equality are interdependent and mutually reinforcing. The inclusion of women and men, with respect for equal rights and opportunities, is an essential condition for democratic governance and sound decision making. Gender equality means equal visibility, empowerment, responsibility and participation of both women and men in all spheres of public life, including the media. The achievement of gender equality is a prerequisite for the achievement of social justice. This is not of interest to women only, but it concerns society as a whole. The Council of Europe has accorded much importance to these matters over the last few decades, demonstrated, *inter alia*, by the 1988 Committee of Ministers' Declaration on equality of women and men and by the 2009 Committee of Ministers' Declaration on making gender equality a reality.

Media freedom (including editorial freedom) and gender equality are intrinsically inter-related. Gender equality is an integral part of human rights. Freedom of expression, as a fundamental right, goes hand-in-hand with gender equality. Furthermore, the exercise of freedom of expression can advance gender equality.

There is a gender dimension to media pluralism and diversity of media content. The Recommendation CM/Rec(2007)2 on media pluralism and diversity of media content reaffirms that pluralism and diversity are essential for the functioning of a democratic society, for fostering public debate, political pluralism and awareness of diverse opinions by different groups in society. The media are centrally placed to shape society's perceptions, ideas, attitudes and behaviour. They should reflect the reality of women and men, in all their diversity.

The media can either hinder or hasten structural change towards gender equality. Inequalities in society are reproduced in the media. This is true in respect of women's under-representation in media ownership, in information production and journalism, in newsrooms and management posts. It is even more blatant as regards women's low visibility, both in terms of quality and quantity, in media content, the rare use of women as experts and the relative absence of women's viewpoints and opinions in the media. Media coverage of political events and election campaigns is particularly telling in this respect, as are the persistence of sexist stereotypes and the scarcity of counter-stereotypes. Furthermore, women, as media professionals, often encounter pay inequalities, the "glass ceiling" and precarious conditions of employment.

1. The term "media" in this recommendation refers to the terminology of Recommendation CM/Rec (2011)7 on a new notion of media, adopted on 21 September 2011.

Media in modern societies hold an immense potential for social change. The potential of media to promote and protect the fundamental rights and freedoms of women and to contribute to their advancement was acknowledged at the UN's Fourth World Conference on Women (Beijing, 1995). Ten years later, the UN Commission on the Status of Women recognised that the objectives agreed there had not been fully achieved. To facilitate the implementation of these objectives, in December 2012 UNESCO published the useful "Gender-Sensitive Indicators for Media" (GSIM).

Public service media are to be the vanguard of the modern media system and have to serve all communities in society. This calls for particular attention to gender equality both in terms of participation and access to public service media as well as content and the manner in which it is treated and presented. Public service media is, or should be, a reference for social cohesion and integration of all individuals, and has an important role in furthering gender equality within the media and through the media. There is also a considerable potential for community media to promote open and direct dialogue between all social groups, including via digital platforms (see the Recommendation CM/Rec(2007)3 on the remit of public service media in the information society, the Declaration of the Committee of Ministers on the role of community media in promoting social cohesion and intercultural dialogue adopted on 11 February 2009, and Recommendation CM/Rec(2012)1 on public service media governance, adopted on 15 February 2012).

Measures for the effective implementation of the standards adopted can contribute to gender equality and combat inequality. In its Recommendation CM/Rec(2007)17 on gender equality standards and mechanisms, the Committee of Ministers underlined that States should encourage effective measures to ensure that gender equality, as a principle of human rights, is respected in the media, in accordance with the social responsibility that is linked to the power they hold in modern societies. In its 2009 Declaration on making gender equality a reality, the Committee of Ministers called for measures to encourage media professionals, and the communication sector generally, to convey a non-stereotyped image of women and men. The gender perspective is emphasised in many instruments of the Council of Europe and is particularly accentuated in relation to the new media ecosystem in Recommendation CM/Rec(2011)7 on a new notion of media.

In view of the above, and recognising the need to provide a gender equality perspective while implementing its established standards in the field of media, the Committee of Ministers – under the terms of Article 15.b of the Statute of the Council of Europe – recommends that the governments of member States:

1. adopt adequate policies in line with the appended guidelines which can create the appropriate conditions under which the media can promote gender equality as a fundamental principle of their activities and institutional organisation in the new multidimensional media environment;
2. widely disseminate this recommendation and its guidelines and raise awareness among the relevant stakeholders and the media, in particular about the central role of gender equality for democracy and the full enjoyment of human rights;
3. bring the recommendation to the attention of the media sector, journalists and other actors and their respective organisations, as well as the regulatory authorities for the media and new communications and information services for the preparation or revision of their regulatory and self-regulatory strategies and codes of conduct, in conformity with the guidelines below.

APPENDIX TO RECOMMENDATION CM/REC(2013)1

GUIDELINES

A. Member states

1. Unless already in place, member states should adopt an appropriate legal framework intended to ensure that there is respect for the principle of human dignity and the prohibition of all discrimination on grounds of sex, as well as of incitement to hatred and to any form of gender-based violence within the media.
2. Member states should particularly ensure, through appropriate means, that media regulators respect gender equality principles in their decision making and practice.
3. Member states should support awareness-raising initiatives and campaigns on combating gender stereotypes in the media.

B. Media organisations

4. Media organisations should be encouraged to adopt self-regulatory measures, internal codes of conduct/ethics and internal supervision, and develop standards in media coverage that promotes gender equality, in order to promote a consistent internal policy and working conditions aimed at:

- equal access to, and representation in, media work for women and men, including in the areas where women are underrepresented;
- a balanced participation of women and men in management posts, in bodies with an advisory, regulatory or internal supervisory role, and generally in the decision-making process;
- a non-stereotyped image, role and visibility of women and men, avoidance of sexist advertising, language and content which could lead to discrimination on grounds of sex, incitement to hatred and gender-based violence.

C. Measures for implementation

5. The following mechanisms for the implementation of strategies and policies to achieve gender equality goals in the media should be considered:

► Review and evaluation of gender equality policy and legislation

- i. Review and update the legal framework on media from a gender equality perspective on a regular basis.
- ii. Mandate media regulators and require the public service media to include an assessment of the implementation of gender equality policy in the media in their annual reports.

► Adoption and implementation of national indicators for gender equality in the media

- iii. Discuss with relevant stakeholders the opportunity for and adoption of, if appropriate, national indicators based on international standards and good practices; holding public hearings and discussions in connection with this.
- iv. Carry out regular monitoring and evaluation of the situation of gender equality in the media at national level, based on the adopted indicators.
- v. Update gender equality indicators regularly.

► Provision of information and promotion of good practices

- vi. Encourage the media to provide information to the public in a clear way (e.g. online) on the complaints procedure in relation to media content which they consider contrary to the principles of gender equality.
- vii. Support and promote good practices through the development of networks and partnerships between various media outlets to further gender equality in the various activity areas of the new media ecosystem.

► Accountability channels

- viii. Encourage non-governmental organisations, media associations, individuals and other relevant stakeholders to consistently defend gender equality by bringing their concerns to self-regulatory bodies or other specialised bodies (e.g. press councils, ethical commissions, advertising councils, anti-discrimination commissions).
- ix. Encourage the updating of existing media accountability mechanisms and their effective use in cases of violation of gender equality in the media.
- x. Encourage the establishment of new mechanisms for media accountability and civic responsibility, for example, fora for public debate and platforms opened online and offline, making direct exchanges possible between citizens.

► Research and publication

- xi. Promote active research into the issues of gender equality and media, particularly relating to media access, representation, participation (quantitative and qualitative profile) and working conditions in the media; research focused not only on women, but also on the relationship between genders; regularly publicising the outcomes of such projects.

xii. Promote active research from a gender equality perspective on media coverage of certain areas of particular concern in a pluralist democracy, such as reporting on politics and media coverage of election campaigns and publishing the results; organising discussions with a view to improving policy and legislation.

xiii. Promote research on the impact of the media in the shaping of values, attitudes, needs and interests of women and men.

► **Media literacy and active citizenship**

xiv. Promote gender sensitive media literacy for the young generation, prepare young people to approach different forms of media content responsibly and enable them to acquire a critical view of media representations of gender and to decode sexist stereotypes; enhance the gender equality perspective in the media literacy programmes for young people of different ages as a factor for broad human rights education and active involvement in the democratic processes.

xv. Develop specific awareness-raising tools through and about the media for adults, including parents and teachers, as important factors for developing gender education and active citizenship in the information society.

xvi. Raise the awareness and strengthening the capacities of media professionals and media students by offering regular educational and vocational training programmes geared to the acquisition of in-depth knowledge of gender equality and its crucial role in a democratic society.

Reference instruments

► **Committee of Ministers of Council of Europe**

Recommendation Rec(84)17 on equality between women and men in the media

Recommendation Rec(90)4 on the elimination of sexism from language

Recommendation Rec(98)14 on gender mainstreaming

Recommendation CM/Rec(2003)3 on balanced participation of women and men in political and public decision making

Recommendation CM/Rec(2007)2 on media pluralism and diversity of media content

Recommendation CM/Rec(2007)3 on the remit of public service media in the information society

Recommendation CM/Rec(2007)11 on promoting freedom of expression and information in the new information and communications environment

Recommendation CM/Rec(2007)13 on gender mainstreaming in education

Recommendation CM/Rec(2007)16 on measures to promote the public service value of the Internet

Recommendation CM/Rec(2007)17 on gender equality standards and mechanisms

Declaration of the Committee of Ministers on the role of community media in promoting social cohesion and intercultural dialogue, adopted on 11 February 2009

Recommendation CM/Rec(2011)7 on a new notion of media

Declaration and Committee of Ministers' Recommendation CM/Rec(2012)1 on public service media governance, adopted on 15 February 2012

► **Parliamentary Assembly of Council of Europe**

Resolution 1557 (2007) and Recommendation 1799 (2007) on the "Image of women in advertising"

Recommendation 1555 (2002) on the "Image of women in the media"

Resolution 1751 (2010) and Recommendation 1931 (2010) on "Combating sexist stereotypes in the media"

Recommendation 1899 (2010) on "Increasing women's representation in politics through the electoral system"

Resolution 1860 (2012) on "Advancing women's rights worldwide"

Recommendation CM/Rec(2014)6 of the Committee of Ministers to member states on a Guide to human rights for Internet users

*(Adopted by the Committee of Ministers on 16 April 2014
at the 1197th meeting of the Ministers' Deputies)*

1. Council of Europe member states have the obligation to secure for everyone within their jurisdiction the human rights and fundamental freedoms enshrined in the European Convention on Human Rights (ETS No. 5, the Convention). This obligation is also valid in the context of Internet use. Other Council of Europe conventions and instruments, which deal with the protection of the right to freedom of expression, access to information, the right to freedom of assembly, protection from cybercrime and of the right to private life and to the protection of personal data, are also applicable.
2. The obligations of states to respect, protect and promote human rights include the oversight of private companies. Human rights, which are universal and indivisible, and related standards, prevail over the general terms and conditions imposed on Internet users by any private sector actor.
3. The Internet has a public service value. People, communities, public authorities and private entities rely on the Internet for their activities and have a legitimate expectation that its services are accessible, provided without discrimination, affordable, secure, reliable and ongoing. Furthermore, no one should be subjected to unlawful, unnecessary or disproportionate interference with the exercise of their human rights and fundamental freedoms when using the Internet.
4. Users should receive support to understand and effectively exercise their human rights online when their rights and freedoms have been restricted or interfered with. This support should include guidance on access to effective remedies. In light of the opportunities that the Internet provides for transparency and accountability in the conduct of public affairs, users should be empowered to use the Internet to participate in democratic life.
5. To ensure that existing human rights and fundamental freedoms apply equally offline and online, the Committee of Ministers recommends under the terms of Article 15.b of the Statute of the Council of Europe that member States:
 - 5.1. actively promote the Guide to human rights for Internet users, as set out in the Appendix, among citizens, public authorities and private sector actors and take specific action regarding its application in order to enable users to fully exercise their human rights and fundamental freedoms online;
 - 5.2. assess, regularly review and, as appropriate, remove restrictions regarding the exercise of rights and freedoms on the Internet, especially when they are not in conformity with the Convention in the light of the relevant case law of the European Court of Human Rights. Any restriction must be prescribed by law, necessary in a democratic society to pursue a legitimate aim and proportionate to the legitimate aim pursued;

5.3. ensure that Internet users have access to effective remedies when their rights and freedoms have been restricted or when they believe that their rights have been violated. This requires enhancing co-ordination and co-operation among relevant institutions, entities and communities. It also necessitates the engagement of and effective co-operation with private sector actors and civil society organisations. Depending on the national context, this may include redress mechanisms such as those provided by data protection authorities, national human rights institutions (such as ombudspersons), court procedures and hotlines;

5.4. promote co-ordination with other state and non-State actors, within and beyond the Council of Europe, with regard to the standards and procedures which have an impact on the protection of human rights and fundamental freedoms on the Internet;

5.5. encourage the private sector to engage in genuine dialogue with relevant state authorities and civil society in the exercise of their corporate social responsibility, in particular their transparency and accountability, in line with the “Guiding Principles on Business and Human Rights: implementing the United Nations ‘Protect, Respect and Remedy’ Framework”. The private sector should also be encouraged to contribute to the dissemination of the guide;

5.6. encourage civil society to support the dissemination and application of the guide so that it provides an effective tool for Internet users.

APPENDIX TO RECOMMENDATION CM/REC(2014)6

Introduction

1. This guide is a tool for you, the Internet user, to learn about your human rights online, their possible limitations, and available remedies for such limitations. Human rights and fundamental freedoms apply equally offline and online. This principle includes respect for the rights and freedoms of other Internet users. The guide provides you with information about what rights and freedoms mean in practice in the context of the Internet, how they can be relied and acted upon, as well as how to access remedies. It is an evolving document, open to periodic updating.

2. This guide is based on the European Convention on Human Rights and other Council of Europe conventions and instruments that deal with various aspects of human rights protection. All Council of Europe member states have a duty to respect, protect and fulfil the rights and freedoms contained in the instruments that they have ratified. The guide is also inspired by the continuous interpretation of these rights and freedoms by the European Court of Human Rights and by other relevant legal instruments of the Council of Europe.

3. The guide does not establish new human rights and fundamental freedoms. It builds on existing human rights standards and enforcement mechanisms.¹

Access and non-discrimination

1. Access to the Internet is an important means for you to exercise your rights and freedoms and to participate in democracy. You should therefore not be disconnected from the Internet against your will, except when it is decided by a court. In certain cases, contractual arrangements may also lead to discontinuation of service but this should be a measure of last resort.

2. Your access should be affordable and non-discriminatory. You should have the greatest possible access to Internet content, applications and services using the devices of your choice.

3. You should expect public authorities to make reasonable efforts and to take specific measures to facilitate your access to the Internet if you live in rural and geographically remote areas, are on a low income and/or have special needs or disabilities.

4. In your interactions with public authorities, Internet service providers and providers of online content and services, or with other users or groups of users, you must not be discriminated against on any grounds such as gender, race, colour, language, religion or belief, political or other opinion, national or social origin, association with a national minority, property, birth or other status, including ethnicity, age or sexual orientation.

1. This guide is part of a recommendation adopted by the Committee of Ministers of the 47 member states of the Council of Europe. More detailed information explaining the guide can be found in the explanatory memorandum to the recommendation.

Freedom of expression and information

You have the right to seek, receive and impart information and ideas of your choice, without interference and regardless of frontiers. This means:

1. you have the freedom to express yourself online and to access information and the opinions and expressions of others. This includes political speech, views on religion, opinions and expressions that are favourably received or regarded as inoffensive, but also those that may offend, shock or disturb others. You should have due regard to the reputation or rights of others, including their right to privacy;
2. restrictions may apply to expressions which incite discrimination, hatred or violence. These restrictions must be lawful, narrowly tailored and executed with court oversight;
3. you are free to create, re-use and distribute content respecting the right to protection of intellectual property, including copyright;
4. public authorities have a duty to respect and protect your freedom of expression and your freedom of information. Any restrictions to this freedom must not be arbitrary, must pursue a legitimate aim in accordance with the European Convention on Human Rights such as, among others, the protection of national security or public order, public health or morals, and must comply with human rights law. Moreover, they must be made known to you, coupled with information on ways to seek guidance and redress, and not be broader or maintained for longer than is strictly necessary to achieve a legitimate aim;
5. your Internet service provider and your provider of online content and services have corporate responsibilities to respect your human rights and provide mechanisms to respond to your claims. You should be aware, however, that online service providers, such as social networks, may restrict certain types of content and behaviour due to their content policies. You should be informed of possible restrictions so that you are able to take an informed decision as to whether to use the service or not. This includes specific information on what the online service provider considers as illegal or inappropriate content and behaviour when using the service and how it is dealt with by the provider;
6. you may choose not to disclose your identity online, for instance by using a pseudonym. However, you should be aware that measures can be taken, by national authorities, which might lead to your identity being revealed.

Assembly, association and participation

You have the right to peacefully assemble and associate with others using the Internet. In practice, this means:

1. you have the freedom to choose any website, application or other service in order to form, join, mobilise and participate in social groups and assemblies whether or not they are formally recognised by public authorities. You should also be able to use the Internet to exercise your right to form and join trade unions;
2. you have the right to protest peacefully online. However, you should be aware that, if your online protest leads to blockages, the disruption of services and/or damage to the property of others, you may face legal consequences;
3. you have the freedom to use available online tools to participate in local, national and global public policy debates, legislative initiatives and public scrutiny of decision-making processes, including the right to sign petitions and to participate in policy making relating to how the Internet is governed.

Privacy and data protection

You have the right to private and family life on the Internet which includes the protection of your personal data and respect for the confidentiality of your correspondence and communications. This means:

1. you should be aware that, in using the Internet your personal data is regularly processed. This happens when you use services such as browsers, e-mail, instant messages, voice-over Internet protocols, social networks and search engines and cloud data storage services;
2. public authorities and private companies have an obligation to respect specific rules and procedures when they process your personal data;
3. your personal data should only be processed when laid down by law or when you have consented to it. You should be informed of what personal data are processed and/or transferred to third parties, when, by

whom and for what purpose. Generally, you should be able to exercise control over your personal data (check its accuracy, request a correction, a deletion or that personal data is kept for no longer than necessary);

4. you must not be subjected to general surveillance or interception measures. In exceptional circumstances, which are prescribed by law, your privacy with regard to your personal data may be interfered with, such as for a criminal investigation. Accessible, clear and precise information about the relevant law or policy and your rights in this regard should be made available to you;
5. your privacy must also be respected in the workplace. This includes the confidentiality of your private online correspondence and communications. Your employer must inform you of any surveillance and/or monitoring carried out;
6. you can be assisted by data protection authorities, which exist in a vast majority of European countries, to ensure that data protection laws and principles are upheld.

Education and literacy

You have the right to education, including access to knowledge. This means:

1. you should have online access to education and to cultural, scientific, scholarly and other content in official languages. Conditions might apply to such access in order to remunerate rights' holders for their work. You should also be able to freely access publicly funded research and cultural works in the public domain on the Internet, where available;
2. as part of Internet and media literacy you should have access to digital education and knowledge in order to exercise your rights and freedoms on the Internet. This includes skills to understand, use, and work with a broad range of Internet tools. This should enable you to critically analyse the accuracy and trustworthiness of content, applications and services that you access or wish to access.

Children and young people

As a child or young person, you have all the rights and freedoms outlined in this guide. In particular, because of your age, you are entitled to special protection and guidance when using the Internet. This means:

1. you have the right to freely express your views and participate in society, to be heard and to contribute to decision making on matters affecting you. Your views must be given due weight in accordance with your age and maturity and without discrimination;
2. you can expect to receive information in a language appropriate for your age and training from your teachers, educators and parents or guardians about safe use of the Internet, including about how to preserve your privacy;
3. you should be aware that content you create on the Internet or content concerning you created by other Internet users may be accessible worldwide and could compromise your dignity, security and privacy or be otherwise detrimental to you or your rights now or at a later stage in your life. Upon your request, this should be removed or deleted within a reasonably short period of time;
4. you can expect clear information about online content and behaviour that is illegal (for example online harassment) as well as the possibility to report alleged illegal content. This information should be adapted to your age and circumstances and you should be provided with advice and support with due respect for your confidentiality and anonymity;
5. you should be afforded special protection from interference with your physical, mental and moral welfare, in particular regarding sexual exploitation and abuse on the Internet and other forms of cybercrime. In particular, you have the right to education to protect yourself from such threats.

Effective remedies

1. You have the right to an effective remedy when your human rights and fundamental freedoms are restricted or violated. To obtain a remedy, you should not necessarily have to pursue legal action straight away. The avenues for seeking remedies should be available, known, accessible, affordable and capable of providing appropriate redress. Effective remedies can be obtained directly from Internet service providers, public authorities and/or national human rights institutions. Effective remedies can – depending on the violation in question – include inquiry, explanation, reply, correction, apology, reinstatement, reconnection and compensation. In practice, this means:

1.1. your Internet service provider, providers of access to online content and services, or other company and/or public authority should inform you about your rights, freedoms and possible remedies and how to obtain them. This includes easily accessible information on how to report and complain about interferences with your rights and how to seek redress;

1.2. additional information and guidance should be made available from public authorities, national human rights institutions (such as ombudspersons), data protection authorities, citizens' advice offices, human rights or digital rights associations or consumer organisations;

1.3. national authorities have an obligation to protect you from criminal activity or criminal offences committed on or using the Internet, in particular when this concerns illegal access, interference, forgery or other fraudulent manipulation of your digital identity, computer and data contained therein. The relevant law-enforcement authorities have an obligation to investigate and take appropriate action, including seeking sanctions, if you complain of damage to, or interference with, your personal identity and your property online.

2. In the determination of your rights and obligations or of any criminal charge against you with regard to the Internet:

2.1. you have the right to a fair trial within a reasonable time by an independent and impartial court;

2.2. you have the right to an individual application to the European Court of Human Rights after exhausting all available domestic remedies.

Recommendation CM/Rec(2014)6 of the Committee of Ministers to member states on a guide to human rights for Internet users – Explanatory memorandum

INTRODUCTION

1. The Internet plays an important role in people's daily life and in all aspects of human society. It is continually evolving and providing citizens with possibilities to access information and services, to connect and to communicate, as well as to share ideas and knowledge globally. The impact of the Internet on social, economic and cultural activities is also growing.

2. There is an increasing number of cases which relate to the Internet before the European Court of Human Rights ("the Court").¹ The Court has affirmed that "[t]he Internet has now become one of the principal means by which individuals exercise their right to freedom of expression and information, providing as it does essential tools for participation in activities and discussions concerning political issues and issues of general interest."²

3. The Council of Europe's Internet Governance Strategy 2012-2015 attaches importance to the rights of Internet users. The chapter 'Maximising Rights and Freedoms for Internet Users', which aims at promoting access to and best use of the Internet includes as a line of action: "drawing up a compendium of existing human rights for Internet users to help them in communicating with and seeking effective recourse to key Internet actors and government agencies when they consider their rights and freedoms have been adversely affected: to report an incident, lodge a complaint or seek a right to reply, redress or other form of recourse".

BACKGROUND AND CONTEXT

4. The Steering Committee on Media and Information Society (CDMSI), at its 1st meeting on 27-30 April 2012, proposed to the Committee of Ministers to set up a Committee of Experts on Rights of Internet Users (MSI-DUI) and agreed to its draft terms of reference. Further to the CDMSI's proposal, the Committee of Ministers approved the terms of reference at the 1147th meeting of the Ministers' Deputies on 6 July 2012.³ The expected result of the MSI-DUI, according to its terms of reference, is:

"A compendium of existing human rights for Internet users is prepared to help them understand and exercise their rights when, considering their rights and freedoms have been adversely affected, they communicate with and seek effective recourse from key Internet actors and government agencies (2013)" (hereinafter the Compendium).

5. The MSI-DUI held its first meeting on 13 and 14 September 2012, in Strasbourg. It was agreed that the objective of the MSI-DUI work should not be to create new human rights but to examine the application of existing rights with regard to the Internet. The MSI-DUI decided to collect information, by means of a questionnaire sent to their networks and communities, on practical problems experienced by users, and thereby on possible violations of their human rights as well as available remedies.

1. For an overview of the European Court of Human Rights' case-law relating to the Internet please visit the factsheet on new technologies, October 2013.
2. See *Yildirim v. Turkey*, no 3111/10 § 54.
3. See CM(2012)91.

6. Consultations with stakeholders were held at the Internet Governance Forum (6 to 9 November 2012, Baku) in the workshop “Empowerment of Internet Users – which tools?”. The participating MSI-DUI members used the outreach opportunities that this event offered to seek stakeholders’ feedback on various topics relevant to the Compendium. Workshop discussions highlighted problems encountered by Internet users such as removal of user generated content without due process, issues related to personal data protection and the lack of effective remedies.

7. The MSI-DUI held its second meeting on 13 and 14 December 2012, in Strasbourg. It considered the replies received by different stakeholders on its questionnaire and discussed the information collected through its outreach to stakeholders. The MSI-DUI decided to complete the preliminary analytical phase of its work and, on this basis, to start drafting the Compendium; a first draft was outlined during this meeting.

8. At its third meeting, which took place on 20 and 21 March 2013 in Strasbourg, the MSI-DUI examined in detail issues related to the right to freedom of expression, the right to private life, freedom of assembly and association, online security, the right to education, the rights of the child, non-discrimination and the right to an effective remedy. This examination was based on relevant Council of Europe binding and non-binding standards and the case law of the Court. The MSI-DUI also discussed the type of instrument which the Council of Europe could adopt to endorse the Compendium, such as a Committee of Ministers’ declaration or recommendation. The instrument should meet the twofold objective of providing Internet users with simple and clear guidance on their human rights online and ensuring adoption by member States of a text that is in line with their obligations under the European Convention on Human Rights (ECHR) and other Council of Europe standards.

9. The CDMSI at its third meeting, which took place from 23 to 26 April 2013, in Strasbourg, took the view that the Compendium should combine formal and simplified language, while paying due attention to avoiding over-simplification of existing human rights standards and jurisprudence of the Court. Discussions highlighted also the desirability to update the Compendium regularly in order to reflect the rapidly evolving Internet policies. The CDMSI also decided to submit comments on the draft Compendium, as it stood at the time of the consultations, noting that it was a ‘work-in-progress’ document, in order to provide overarching guidance and orientation. The replies received supported the approach taken by the MSI-DUI to prepare a user-friendly awareness-raising document that gave special attention to the right to freedom of expression, the right to private life, the right to education, the rights of the child and protection from cybercrime.

10. The draft Compendium was presented to and discussed with stakeholders at the European Dialogue on Internet Governance (EuroDIG, 20-21 June 2013 in Lisbon) notably in the workshop “Towards a Human Internet? Rules, Rights and Responsibilities for our Online Future”. An informal meeting was held in Lisbon among MSI-DUI members who attended the workshop. It was considered that the draft Compendium should be shortened with a view to being more accessible by Internet users. Following these discussions, as well as inter-sessional work of MSI-DUI members, an ad hoc meeting of available MSI-DUI members was held on 10 September 2013, in Strasbourg. The MSI-DUI examined a draft Committee of Ministers’ recommendation on human rights for Internet users, which included in its appendix a draft Compendium of human rights and fundamental freedoms for Internet users. The draft Compendium adopted an approach which addresses the user directly. In view of this approach, it was decided to re-entitle the Compendium as a “Guide on Human Rights for Internet Users”.

11. At its last meeting, held on 1 and 2 October 2013, in Strasbourg, the MSI-DUI examined and finalised its proposals to the CDMSI for a draft Committee of Ministers recommendation on a Guide to Human Rights for Internet Users (hereinafter the Guide). It agreed to hold multi-stakeholder consultations, including a Council of Europe Open Forum on the Guide during the Internet Governance Forum (22-25 October 2013, Indonesia). A number of selected stakeholders, representing the private sector, civil society, the technical community and academia were asked to provide their comments and suggestions on the Guide. In addition, informal comments and feedback on the draft recommendation were invited from other relevant Council of Europe steering committees, including the Steering Committee for Human Rights (CDDH), the European Committee on Legal Cooperation (CDCJ), the European Committee on Crime Problems (CDPC), as well as conventional committees including the Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD), the Cybercrime Convention Committee (T-CY), the Committee of Experts on Terrorism (CODEXTER) and the Committee of Parties to the Convention on the protection of children against sexual exploitation and sexual abuse (T-ES). In response, the CDDH, the CDCJ, and members of the T-PD Bureau all provided comments that were then taken into consideration and integrated into the draft Recommendation and draft Explanatory memorandum by the CDMSI.

12. In addition, around 30 contributions were received from representatives of the private sector (telecommunications companies, online service providers), key civil society organisations, the technical community

as well as academicians from different parts of the world. They generally welcomed the Council of Europe's work on the draft Guide and provided numerous comments and proposals for changes thereto.

13. The CDMSI, during its 4th meeting which was held from 3 to 6 December 2013, examined the proposals of the MSI-DUI for a draft Committee of Ministers recommendation on a Guide on human rights for Internet users. It took note of the multi-stakeholder consultations mentioned above and finalised the draft recommendation on the basis of final comments which were sent by e-mail.

COMMENTS ON RECOMMENDATION CM/REC(2014)6 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON A GUIDE TO HUMAN RIGHTS FOR INTERNET USERS

14. The aim of this recommendation is to foster the exercise and protection of human rights and fundamental freedoms on the Internet in all Council of Europe member States. Individuals' and communities' access to the Internet and best use of it necessitate efforts to inform and empower them to exercise their rights and freedoms in online environments. This approach had been affirmed by the Committee of Ministers in its Declaration on Internet Governance Principles, of 2011, in which it underlined its vision of a people-centred and human rights based approach to the Internet which empowered Internet users to exercise their rights and freedoms on the Internet as a principle of Internet governance.

15. The Guide, which is annexed to this recommendation, offers some basic information on selected human rights in the ECHR and from other relevant Council of Europe standards. It focuses on particular rights and freedoms and related international law standards, in particular regarding the right to freedom of expression, freedom of assembly and association, the right to privacy and protection of personal data, children's rights, and the right to an effective remedy. It has been drafted in a language that is easy for users to understand. To keep the text as simple as possible, the MSI-DUI decided not to refer to the strict legal wording of member States' obligations in international law, including the case law of the Court.

16. Human rights and fundamental freedoms are guaranteed in various Council of Europe instruments which are applicable both to offline and online environments, thus not exclusively to the Internet. Notably, human rights and fundamental freedoms are enshrined in the ECHR which is interpreted by the Court in its case law. A number of Council of Europe conventions and other non-binding instruments offer additional explanation and orientation for Internet users. The MSI-DUI considered that in order for Internet users to understand their rights and freedoms there was a need to explain in simple wording relevant international law standards of the Council of Europe and the United Nations.

Preamble

17. The preamble sets out the reasons that led the Committee of Ministers to adopt the recommendation to its member states. The premise for the recommendations is that the responsibility to safeguard human rights and fundamental freedoms lies with the Council of Europe member States. This must be done in compliance with the ECHR as interpreted by the Court. Other legally binding instruments of the Council of Europe are also relevant, notably the Convention on Cybercrime (hereinafter the 'Budapest Convention'), the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, hereinafter the 'Lanzarote Convention'), and the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (ETS No.108, hereinafter 'Convention 108').

18. Other non-binding standards adopted by the Committee of Ministers provide guidance to member states on Internet related matters, including: Recommendation CM/Rec(2007)16 of the Committee of Ministers to member states on measures to promote the public service value of the Internet; Recommendation CM/Rec(2008)6 of the Committee of Ministers to member states on measures to promote the respect for freedom of expression and information with regard to Internet filters; Recommendation CM/Rec(2010)13 of the Committee of Ministers to member states on the protection of individuals with regard to automatic processing of personal data in the context of profiling; Recommendation CM/Rec (2011)7 of the Committee of Ministers to member states on a new notion of media; Recommendation CM/Rec(2012)4 of the Committee of Ministers to member states on the protection of human rights with regard to social networking services; and Recommendation CM/Rec(2012)3 of the Committee of Ministers to member states on the protection of human rights with regard to search engines.

19. The second paragraph of the preamble specifies that the obligations of states to respect, protect and promote human rights engender the oversight of private companies. This statement is derived from Article

1 of the ECHR according to which states shall secure to everyone within their jurisdiction the rights and freedoms set forth in the Convention. This includes protection against human rights violations by non-state actors and requires taking appropriate steps to prevent, investigate, punish and redress violations through effective legislation and measures. The Court has affirmed in its judgments that states have positive obligations to protect the fundamental rights and freedoms of individuals on the Internet, notably as regards freedom of expression⁴, the protection of children and young people⁵, the protection of morals and the rights of others⁶, combating racist or xenophobic discourse, and in addressing discrimination and racial hatred⁷. In addition, the Court has held states accountable for failing to protect their citizens from adverse effects on their rights and freedoms resulting from actions of private companies.⁸ The second paragraph also echoes the principle of universality and indivisibility of human rights, which is based on the Vienna Declaration issued at the Summit conference of Heads of state and Government of the member states of the Council of Europe, which took place on 9 October 1993.

20. The third paragraph of the preamble reaffirms the public service value of the Internet as set out in the relevant Committee of Ministers' Recommendation CM/Rec(2007)16.⁹ Considering the important role that the Internet plays in users' everyday activities and the need to ensure the protection of their human rights on the Internet, the recommendation emphasises that people must not be subject to unlawful, unnecessary and disproportionate interferences with the exercise of their rights and freedoms.

21. The fourth paragraph of the preamble defines the objective of the recommendation to foster users' understanding and promote the effective exercise of human rights online, including access to effective remedies. Informing users about the risks to their fundamental rights and freedoms and the possibilities for redress are therefore important. The statement regarding the opportunities provided by the Internet for transparency and accountability in public affairs explains an element of the rationale of the recommendation that is empowering individuals and communities to participate in democratic life.

Operative part of the recommendation

22. Paragraph 5, states a key principle of the Council of Europe's Internet-related standards, that is fundamental rights and freedoms apply equally to online and offline environments¹⁰. This approach has also been affirmed by the United Nations Human Rights Council in its Resolution of 2012 on "The Promotion, Protection and Enjoyment of Human Rights on the Internet". Promoting the application of the Guide will reinforce the protection of human rights and fundamental freedoms in compliance with existing human rights standards.

23. Sub-paragraph 5.1, recommends to member states that the Guide should be promoted not only by public authorities but also via the private sector. This could include its publication and dissemination in printed formats or adaptations in electronic formats. Relevant public authorities could also make it available on their websites. The private sector could be encouraged to do the same.

24. Sub-paragraph 5.2, reaffirms that the exercise of human rights and fundamental freedoms on the Internet may be subject to restrictions which pursue legitimate aims and are necessary in a democratic society as stipulated in the relevant articles of ECHR. In order to ensure compliance with these conditions the Committee of Ministers recommended to its member States to assess, regularly review and where appropriate remove restrictions with human rights and fundamental freedoms on the Internet.

25. Sub-paragraph 5.3, calls on member states to enhance their efforts to guaranteeing the right to an effective remedy, *inter alia*, by ensuring enhanced co-ordination and co-operation among existing relevant institutions, entities (including regulators for electronic communications) and communities which offer redress mechanisms, such as in the context of processing complaints lodged by Internet users. The recommendation also acknowledges that there is a diversity of redress mechanisms available in different member States, such as data protection authorities, ombudspersons, court procedures, or hotlines. Member States could also

4. See *Özgür Gündem v. Turkey*, no. 23144/93, §§ 42-46.

5. *K.U. v. UK*, no 2872/02.

6. *Pay v. UK*, no. 32792/05.

7. *Féret v. Belgium* no.15615/07.

8. *López Ostra v. Spain*, no. 16798/90, § 44-58; *Taşkin and Others v. Turkey*; *Fadeyeva v. the Russian Federation*. In *Khurshid Mustafa and Tarzibachi v. Sweden* no 23883/06 the Court found that a domestic court's interpretation of a private act (contract) engaged the responsibility of the respondent state, thus broadening the scope of Article 10 protection to restrictions imposed by private persons.

9. Recommendation CM/Rec(2007)16 of the Committee of Ministers to member states on measures to promote the public service value of the Internet.

10. See Committee of Ministers Declaration on Internet Governance Principles, principle 1 "Human Rights, Democracy and Rule of law"

conduct an audit of existing redress mechanisms in their jurisdictions and compile the relevant information in a user-friendly inventory of redress mechanisms. Such information could be disseminated together with the Guide, for example in the form of an appendix. This is one of the follow-up actions which may be taken further to the adoption of the recommendation.

26. By its very nature, the Internet operates by sending and receiving requests for information across borders and therefore regardless of frontiers. This means that human rights and fundamental freedoms on the Internet in member states may be exposed to action by state or non-state actors beyond the Council of Europe's borders; for example freedom of expression and access to information, as well as privacy with regard to personal data can be interfered with. Therefore, sub-paragraph 5.4, recommends co-ordination between Council of Europe member states and non-Council of Europe member states as well as non-state actors.

27. Sub-paragraph 5.5, recommends to member states to encourage genuine dialogue between the private sector and relevant state authorities as well as civil society as regards the exercise of the latter's social responsibility. A foundational principle of the Guiding Principles on Business and Human Rights¹¹ is that business enterprises should respect human rights, which means that they should avoid infringing on the human rights of others and address adverse human rights impact with which they are involved. The transparency and accountability of private sector actors is emphasised as an important means of demonstrating their responsibility as is actively promoting and disseminating it. For example, Internet service providers and content access providers could make references to the Guide in the terms and conditions of use of their services.

28. Sub-paragraph 5.6, acknowledges the key contribution that the civil society can give in promoting the Guide and compliance with it. Therefore, it is recommended that member States encourage civil society organisations and activists to help in the dissemination and application of the Guide and rely on it when advocating for the implementation of human rights standards and compliance with them.

APPENDIX

GUIDE TO HUMAN RIGHTS FOR INTERNET USERS

Introduction

29. The Guide addresses the user directly. It is a tool for the Internet user who is any individual who does not have specialised knowledge about the Internet which is based on education or training. In particular, it focuses on the user's ability to manage their activities on the Internet (e.g. their identity, their personal data). They should be fully informed about the different choices they make on the Internet which may affect their rights and freedoms and the consequences of giving their consent to such choices. They should understand the limitations of their rights. They should be aware of the redress mechanisms available to them.

30. The Guide is based on the ECHR and the relevant jurisprudence of the Court. It also draws from other legally-binding Council of Europe instruments. Other instruments are also relied upon, in particular certain declarations and recommendations of the Committee of Ministers. The Guide is without prejudice to the enforceability of existing human rights standards on the basis of which it has been elaborated. The rights and freedoms in the Guide are enforceable under the legal instruments on the basis of which they are elaborated. The Guide refers to existing human rights standards and the relevant mechanisms for their enforcement, and does not establish new rights and freedoms. The Guide is neither an exhaustive nor a prescriptive explanation of human rights standards. For example, further clarifications on possible restrictions and interferences with human rights, and guidance on helping users deal with violence and abuse on the Internet, could merit further attention in order to help users understand their rights and to protect themselves and others. However, the Guide remains open to updating in order to keep pace with new standards of the Council of Europe and the case law of the Court as technology develops.

11. Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (A/HRC/17/31) endorsed by the Human Rights Council by Resolution Human rights and transnational corporations and other business enterprises A/HRC/RES/17/4. In particular the Guiding Principles provide that states should enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps; ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights; provide effective guidance to business enterprises on how to respect human rights throughout their operations; encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.

Access and non-discrimination

31. The Guide emphasises principles and considerations which are deemed to be intrinsically linked and generally applicable to all the human rights and fundamental freedoms contained in it, including access to the Internet and the principle of non-discrimination.

32. Although access to the Internet is not yet formally recognised as a human right (noting differences in national contexts including domestic law and policy), it is considered as a condition and an enabler for freedom of expression and other rights and freedoms¹². Consequently, the disconnection of an Internet user could adversely affect the exercise of her/his rights and freedoms and could even amount to a restriction of the right to freedom of expression, including the right to receive and impart information. The Court has stated that the Internet has become today one of the principal means for the exercise of the right to freedom of expression and information by individuals. Freedom of expression applies not only to the content of information but also to the means of its dissemination, since any restriction imposed on the latter necessarily interferes with the right to receive and impart information. Such interferences can only be accepted if they meet the conditions stated in Article 10, paragraph 2 of the ECHR as interpreted by the Court.¹³ A measure that is bound to have an influence on the individuals' accessibility of the Internet engages the responsibility of the state under Article 10.¹⁴

33. Against this background, the Guide states that Internet users should not be disconnected against their will except when it is decided by a court. This, however, should not be understood as pre-empting legitimate disconnection measures such as in the context of obligations stemming from contractual obligations. Internet consumers who do not pay for their service may be disconnected from the Internet. However this should be a measure of last resort. Moreover, children can be subjected to discontinuation of access to the Internet in the context of exercise of parental control over Internet usage of the Internet, depending on the child's age and maturity.

34. Internet users should have effective remedies against measures of disconnection from the Internet when this is not decided by a court. This includes Internet service providers informing Internet users about the grounds and legal basis for the disconnection measure and the procedures for objecting to it and requesting reinstatement of full access to the Internet. Such requests should be treated within reasonable time limits. Moreover, every Internet user, in the exercise of his right to fair trial, should be able to request a review of the disconnection measure by a competent administrative and/or judicial authority. These due process aspects are summarised in the last section of the Guide, which is entitled "Effective Remedies".

35. Positive action or measures taken by state authorities to ensure that everyone is connected to the Internet is another dimension of the issue of access to the Internet. The Committee of Ministers of the Council of Europe has recommended to its member states to promote the public service value of the Internet.¹⁵ This is 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." This section informs the user that she/he should have Internet access which is affordable and non-discriminatory.

36. The right to access Internet content is linked to the right to receive and impart information on the Internet as referred to in Article 10 of the ECHR.¹⁶ The Council of Europe's Committee of Ministers has affirmed that every Internet user should have the greatest possible access to Internet-based content, applications and services of his/her choice, whether or not they are offered free of charge, using suitable devices of his/her

12. The United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue has emphasised that "the Internet has become an indispensable tool for realising a range of human rights, combating inequality, and accelerating development and human progress, ensuring universal access to the Internet should be a priority for all States. Each state should thus develop a concrete and effective policy, in consultation with individuals from all sections of society, including the private sector and relevant Government ministries, to make the Internet widely available, accessible and affordable to all segments of population." "[B]y acting as a catalyst for individuals to exercise their right to freedom of opinion and expression the Internet also enables the realisation of a range of other human rights" http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/a.hrc.17.27_en.pdf.

13. See note 2 above, § 50. See also *Autronic AG v Switzerland* (No. 12726/87). In *Khurshid Mustafa and Tarzibachi v. Sweden* no 23883/06 the Court found that a domestic court's interpretation of a private act (contract) engaged the responsibility of the respondent state, thus broadening the scope of Article 10 protection to restrictions imposed by private persons.

14. See note 2 above, § 53.

15. See note 9 above, CM/Rec(2007)16, section II.

16. See note 2 above, § 50.

choice. This is a general principle commonly referred to as 'network neutrality' which should apply irrespective of the infrastructure or the network used for Internet connectivity.¹⁷

37. Public authorities should make reasonable efforts to facilitate access to the Internet for specific categories of individuals such as those living in remote areas and people with disabilities. This is based on the principle of universal community service which is laid down in Recommendation No.R(99)14 of the Committee of Ministers concerning new communication and information services.¹⁸ It emphasises that individuals living in rural or geographically remote areas or those with low income or special needs or disabilities can expect specific measures from public authorities in relation to their Internet access.

38. The expectations of people with disabilities to have equivalent and non-discriminatory access to the Internet as enjoyed by other Internet users is derived from instruments of the Council of Europe which recommend to member states to take action to foster the provision of adequate facilities for the access to the Internet and ICTs by disabled users.¹⁹ Member states should promote affordable access bearing in mind the importance of design, 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.²⁰

39. The principle of non-discrimination should apply to user interactions with public authorities, Internet service providers, content access providers and other companies, users, or other groups of users. The fourth paragraph is a paraphrasing of Article 14 of the ECHR and Article 1 of Protocol 12 of the ECHR, both concerning the prohibition on discrimination.

Freedom of expression and information

40. This section concerns the right to freedom of expression as enshrined in Article 10 of the ECHR. The Court has affirmed in its jurisprudence that Article 10 is fully applicable to the Internet.²¹ The right to freedom of expression includes the right to freely express opinions, views, ideas and to seek, receive and impart information regardless of frontiers. Internet users should be free to express their political convictions as well as their religious and non-religious views. The latter concerns the exercise of the right to freedom of thought, conscience and religion as enshrined in Article 9 of the ECHR. Freedom of expression is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb.²²

41. The exercise of the right to freedom of expression by Internet users' must be balanced with the right to protection of reputation. The Court has held in a number of cases that this is a right which is protected by Article 8 of the ECHR concerning the respect for private life.²³ The Court has found that, as a matter of principle, the rights guaranteed under Articles 8 and 10 deserve equal respect. It considers that where the right to freedom of expression is being balanced with the right to respect for private life, the relevant criteria in the balancing exercise include the following elements: contribution to a debate of general interest, how well known the person concerned is, the subject of the report, the prior conduct of the person concerned, the method of obtaining the information and its veracity, the content, form and consequences of the publication, and the severity of the sanction imposed.²⁴ Therefore, the Guide specifies that the Internet user should have due regard to the reputation of others, including their right to privacy.

42. There is expression that does not qualify for protection under Article 10 of the ECHR such as hate speech. The Court has found that certain forms of expression which amount to hate speech or which negate the fundamental values of the ECHR are excluded from the protections afforded by Article 10 of the Court.²⁵ In this connection the Court applies Article 17 of the ECHR. Although there is no universally acceptable defi-

17. Declaration of the Committee of Ministers on Network Neutrality, adopted by the Committee of Ministers on 29 September 2010. See also, Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, article 8(4) g.

18. See note 9 above, CM/Rec(2007)16, appendix section II; Recommendation No. R (99)14 of the Committee of Ministers to member states on universal community service concerning new communication and information services, principle 1.

19. *Ibid.*

20. See note 9 above, CM/Rec(2007)16, Appendix, section II.

21. See note 2 above, §50.

22. *Handyside v. the United Kingdom*, judgment of 7 December 1976, Series A No. 24, para.49.

23. *Chauvy and Others*, no. 64915/01 § 70; *Pfeifer v. Austria*, no. 12556/03, § 35; and *Polanco Torres and Movilla Polanco v. Spain*, no. 34147/06, § 40.

24. *Delfi As v. Estonia*, no. 64569/09, § 78-81 (this case has been referred to the Grand Chamber of the Court); *Axel Springer AG v. Germany* no. 39954/08 § 89-95, and *Von Hannover v. Germany* (no. 2), nos. 40660/08 and 60641/08 §§ 108-113.

25. *Féret v. Belgium* no. 15615/07; *Garaudy v. France* no. 65831/01, 24.06.2003, admissibility decision; *Leroy v. France* no. 36109/03; *Jersild v. Denmark* no. 15890/89; *Vejdeland and Others v. Sweden* no. 1813/07.

inition of hate speech, the Council of Europe's Committee of Ministers has stated that the term "hate speech" shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism 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."²⁶ Paragraph 2 of the section on freedom of expression provides concise information which is formulated in simple language for the user with regard to the point that hate speech is not dealt with under Article 10 of the ECHR. This paragraph does not attempt to explain in legal terms the different ways in which article 10 and article 17 of the ECHR might apply to hate speech. Given the legal nature of this distinction it was considered that information on this point is more appropriate for the explanatory memorandum.

43. Users have the right to receive and impart information on the Internet, in particular to create, re-use and distribute content using the Internet. The Court has examined the relationship between intellectual property protection and freedom of expression in relation to cases of criminal conviction for copyright infringements. The Court has considered such convictions as interferences with the right to freedom of expression which in order to be justified must prescribed by law, pursue the legitimate aim of protecting the rights of others, and be considered necessary in a democratic society.²⁷ The sharing or allowing others to share files on the Internet, even copyright-protected material and for profit-making purposes, is covered by the right to receive and impart information as provided in Article 10 of the ECHR.²⁸ This is a right which is not absolute and so there is a need to weigh, on the one hand, the interest of sharing information with, on the other hand, the interest in protecting the rights of copyright holders. The Court has stressed that intellectual property benefits from the protection afforded by Article 1 of Protocol to the ECHR. Thus, it is a question of balancing two competing interests which are both protected by the ECHR.

44. The Committee of Ministers recommendation to its member states to promote the public service value of the Internet includes specific guidance on measures and strategies regarding freedom of communication and creation on the Internet regardless of frontiers. In particular, measures should be taken to facilitate, where appropriate, "re-uses" of Internet content, which means the use of existing digital content resources to create future content or services done in a manner that is compatible with respect for intellectual property rights.²⁹

45. Paragraph 4 provides a general overview of the requirements that restrictions of the right to freedom of expression should meet. Member states have a primary duty, pursuant to Article 10 ECHR not to interfere with the communication of information between individuals, be they legal or natural persons. The Court has affirmed that the effective exercise of the right to freedom of expression may also require positive measures of protection, even in the sphere of relations between individuals. The responsibility of the state may be engaged as a result of failing to enact appropriate domestic legislation³⁰. A violation of the ECHR can also be established where a national court's interpretation of a legal act, be it a private contract, a public document, a statutory provision or an administrative practice, appears unreasonable, arbitrary, discriminatory or, more broadly, inconsistent with the underlying principles of the ECHR.³¹

46. Freedom of expression is not an absolute right and can be subjected to restrictions. Interferences with freedom of expression must be seen as any form of restriction coming from any authority exercising public power and duties or acting in the public service, such as courts, prosecutors' offices, police, any law-enforcement body, intelligence services, central or local councils, government departments, army decision-making bodies, and public professional structures.

47. In compliance with Article 10, paragraph 2, of the ECHR, any interference must be prescribed by law. This means that the law must be accessible, clear and sufficiently precise to enable individuals to regulate their behaviour. The law should provide for sufficient safeguards against abusive restrictive measures, including effective control by a court or other independent adjudicatory body.³² An interference must also pursue a legitimate aim 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. This list is exhaustive yet its interpretation and scope evolves with the case law

26. Recommendation No. R (97) 20 of the Committee of Ministers to member states on "Hate Speech".

27. Neij and Sunde Kolmisoppi v. Sweden no.40397/12. See also Ashby Donald and others v. France, no, 36769/08 § 34.

28. Ibid.

29. See note 9 above, CM/Rec(2007)16, Appendix, section III, second indent.

30. Vgt Verein gegen Tierfabriken v. Switzerland, no. 24699/94, § 45.

31. See Khurshid Mustafa and Tarzibachi v. Sweden no 23883/06 § 33; Plaand Puncernau v. Andorra, no. 69498/01, § 59, ECHR 2004-VIII.

32. See note 2 above, § 64.

of the Court. An interference must also be necessary in a democratic society which means that it should be proven that there is a pressing social need for it, that it pursues a legitimate aim, and that it is the least restrictive means for achieving that aim.³³ These requirements are summarised in a language that is accessible for the user i.e. any restrictions to the freedom of expression must not be arbitrary and must pursue a legitimate aim in accordance with the ECHR such as among others, the protection of national security or public order, public health or morals and must comply with human rights law.

48. More detailed information about guarantees that should be afforded to Internet users when there are restrictions to the right to freedom of expression online are contained in the following paragraphs of the explanatory memorandum. Blocking and filtering are examples of such restrictions which may amount to violations of freedom of expression. Some general principles with regard to blocking and filtering are based on the Court case law or other relevant standards adopted by the Committee of Ministers³⁴.

49. Nationwide general blocking or filtering measures might be taken by state authorities only if the filtering concerns specific and clearly identifiable content, based on a decision on its illegality by a competent national authority which can be reviewed by an independent and impartial tribunal or regulatory body in accordance with the requirements of Article 6 of the ECHR.³⁵ State authorities should ensure that all filters are assessed both before and during their implementation to ensure that their effects are proportionate to the purpose of the restriction and thus necessary in a democratic society, in order to avoid unjustified blocking of content.³⁶

50. Measures taken to block specific Internet content must not be arbitrarily used as a means of general blocking of information on the Internet. They must not have a collateral effect in rendering large quantities of information inaccessible, thereby substantially restricting the rights of Internet users.³⁷ They should be prescribed by law. There should be strict control of the scope of blocking and effective judicial review to prevent any abuse of power.³⁸ Judicial review of such a measure should weigh-up the competing interests at stake, strike a balance between them and determine whether there a less far-reaching measure could be taken to block access to specific Internet content.³⁹ The requirements and principles mentioned above do not prevent the installation of filters for the protection of minors in specific places where minors access the Internet such as schools or libraries.⁴⁰

51. Filtering and de-indexation of Internet content by search engines entails the risk of violating the freedom of expression of Internet users. Search engines have freedom to crawl and index information available on the World Wide Web. They should not be obliged to monitor their networks and services proactively in order to detect possibly illegal content and should not conduct any ex-ante filtering or blocking activity unless mandated by a court order or by a competent authority. De-indexation or filtering of specific websites at the requests of public authorities should be transparent, narrowly tailored and reviewed regularly subject to compliance with due process requirements.⁴¹

52. This section also identifies some of the guarantees that Internet users should be afforded when restrictions apply, focusing notably on information to the user and possibilities to challenge these restrictions. This is referred to in the Council of Europe's Committee of Ministers recommendation on filtering and blocking measures.⁴² Internet users should be given information about when filtering has been activated, why a specific type of content has been filtered and to understand how, and according to which criteria, the filtering operates (for example black lists, white lists, keyword blocking, content rating, de-indexation or filtering of specific websites or content by search engines). They should be given concise information and guidance regarding the manual overriding of an active filter, namely who to contact when it appears that content has been unjustifiably blocked and the means which may allow a filter to be overridden for a specific type of content or website. Users should be afforded effective and readily accessible means of recourse and remedy, including the suspension of filters, in cases where users claim that content has been blocked unjustifiably.

33. Ibid. § 66-70.

34. 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, see Appendix, part III, ii. See also, note 1 above.

35. Ibid. CM/Rec(2008)6, see Appendix, part III, iv.

36. Ibid.

37. See note 2 above, § 52; 66- 68 and Committee of Ministers Declaration on Freedom of Communication on the Internet

38. Ibid. note 2 above, § 64. Association Ekin v. France, n° 39288/98

39. Ibid. note 2 above § 64-66.

40. See Declaration on Freedom of Communication on the Internet, principle 3.

41. See Recommendation CM/Rec(2012)3 of the Committee of Ministers to member states on the protection of human rights with regard to search engines, Appendix, part III.

42. See note 34 above, CM/Rec(2008)6, see Appendix, part I; Ibid, CM/Rec(2012)3, Appendix, part III.

53. It is possible that companies, such as social networks, remove content created and made available by Internet users. These companies may also deactivate users' accounts (e.g. a user's profile or presence in social networks) justifying their action on non-compliance with their terms and conditions of use of the service. Such actions could constitute an interference with the right to freedom of expression and the right to receive and impart information unless the conditions of Article 10, paragraph 2 of the ECHR as interpreted by the Court, are met.⁴³

54. According to the United Nations Guiding Principles on Business and Human Rights Business (which are not a binding instrument) enterprises have a responsibility to respect human rights, which requires them to avoid causing or contributing to adverse impacts on human rights and to provide for or cooperate in the remediation of such impacts. The duty to protect and to provide access to effective remedy is essentially incumbent on States. This is echoed in paragraph 5 of the section freedom of expression. The corporate social responsibility of online service providers includes a commitment to combating hate speech and other content that incites violence or discrimination. Online service providers should be attentive to the use of, and editorial responses to, expressions motivated by racist, xenophobic, anti-Semitic, misogynist, sexist (including as regards Lesbian Gay Bisexual and Transgender people) or other bias.⁴⁴ These providers should also be ready to help Internet users report content or expression of views and/or behaviour that may be considered illegal.⁴⁵

55. The Guide alerts Internet users that online service providers that host user-created content are entitled to exercise different levels of editorial judgement over the content on their services.⁴⁶ Without prejudice to their editorial freedom, they should ensure that Internet users' right to seek, receive and impart information is not infringed upon in accordance with Article 10 of the ECHR.⁴⁷ This means that any restriction on user-generated content should be specific, justified for the purpose it is restricted, and communicated to the Internet user concerned.

56. The Internet user should be able to make an informed decision as to whether to use the online service or not. In practice, the Internet user should be fully informed about any foreseen measures to remove content created by her/him or to deactivate her/his account before these are taken.⁴⁸ Internet users should also be provided with accessible (in a language that the user understands), clear and precise information on the facts and grounds for taking measures on content removal and account deactivation. This includes the legal provisions on which they are based and other elements used to assess the proportionality and legitimacy of the aim pursued. They should also be able to request a review of the content removal and/or account deactivation, done within a reasonable time and subject to the possibility to complain against the decision to a competent administrative and/or judicial authority.

57. The sixth sub-paragraph concerns the issue of anonymity. This is based on the case law of the Court, the Budapest Convention and other instruments of the Committee of Ministers. The Court considered the issue of confidentiality of Internet communications in a case involving the failure of a Council of Europe member State to compel an Internet service provider to disclose the identity of a person who placed an indecent advertisement concerning a minor on an Internet dating website. The Court held that although freedom of expression and confidentiality of communications are primary considerations and users of telecommunications and Internet services must have a guarantee that their own privacy and freedom of expression will be respected, such guarantee cannot be absolute and must yield, on occasion, to other legitimate imperatives, such as the prevention of disorder or crime or the protection of the rights and freedoms of others. The State has a positive obligation to provide a framework which reconciles those competing interests.⁴⁹

58. The Budapest Convention does not criminalise the use of computer technology for purposes of anonymous communication. According to its Explanatory Report, "the modification of traffic data for the purpose of facilitating anonymous communications (e.g. activities of anonymous remailer systems) or the modification of data for the purposes of secure communications (e.g. encryption) should in principle be considered

43. Recommendation CM/Rec (2011)7 of the Committee of Ministers to member states on a new notion of media, § 7, Appendix, § 15; 44-47; 68-69; Recommendation CM/Rec(2012)4 of the Committee of Ministers to member states on the protection of human rights with regard to social networking services, § 3.

44. *Ibid.*, CM/Rec (2011)7, § 91.

45. *Ibid.*; CM/Rec(2012)4, II/10.

46. *Ibid.*, CM/Rec (2011)7, § 18; 30-31.

47. *Ibid.*, CM/Rec (2011)7, § 7, 2nd indent.

48. See Account Deactivation and Content Removal: Guiding Principles and Practices for Companies and Users, by Erica Newland, Caroline Nolan, Cynthia Wong, and Jillian York, available at: http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/Final_Report_on_Account_Deactivation_and_Content_Removal.pdf

49. K.U. v. Finland, no. 2872/02 § 49.

a legitimate protection of privacy, and, therefore, be considered as being undertaken with right. However, Parties [to the Budapest Convention] may wish to criminalise certain abuses related to anonymous communications, such as where the packet header information is altered in order to conceal the identity of the perpetrator in committing a crime.⁵⁰

59. The Council of Europe's Committee of Ministers affirmed the principle of anonymity in its Declaration on Freedom of Communication on the Internet.⁵¹ Accordingly, in order to ensure protection against online surveillance and to enhance freedom of expression, Council of Europe member states should respect the will of Internet users not to disclose their identity. However, respect for anonymity does not prevent member states from taking measures in order to trace those responsible for criminal acts, in accordance with national law, the ECHR and other international agreements in the fields of justice and the police.

Assembly, association and participation

60. The right to freedom of assembly and association is enshrined in Article 11 of the ECHR. It also relates to the principles established by the Court regarding the protection of political speech, in particular that there is little scope under Article 10, paragraph 2 of the ECHR for restrictions of political speech or debates of questions of public interest.⁵²

61. The user has the right to peacefully assemble and associate with others using the Internet. This includes forming, joining, mobilising and participating in societal groups and assemblies as well as in trade unions using Internet-based tools. This also includes for example the signing of a petition to participate in a campaign or other forms of civic action. The user should have the freedom to choose the tools for the exercise of the rights such as websites, applications or other services. The exercise of this right is not conditional upon any formal recognition of social groups and assemblies by public authorities.

62. The right to protest applies equally online and offline. Protests which have consequences for the general public, such as disruption or blocking of access to premises, fall within the limits of the exercise of freedom of assembly in accordance with Article 11 of the ECHR. However, this may not always be the case when such action gives rise to the disruption of online services, such as unauthorised access to a particular website or a restricted online space, or the handling of digital content without authorisation. Ultimately, it is important to apprise the user that the freedom and consequences of online protest, engendering disruption, may not be as freely accepted.

63. The Internet has become a tool for citizens to actively participate in building and strengthening democratic societies. The Committee of Ministers has recommended that its member states should develop and implement strategies for e-democracy, e-participation and e-government using information and communication technologies (ICTs) in democratic processes and debates, both in relationships between public authorities and civil society as well as in the provision of public services.⁵³

64. This includes the freedom to participate in local, national and global public policy debates, legislative initiatives as well as in the scrutiny of decision-making processes, including the right to sign petitions by means of using ICTs where they exist. This is based on Committee of Ministers' recommendations to its member states to encourage the use of ICTs by citizens (including online forums, weblogs, political chats, instant messaging and other forms of citizen-to-citizen communication) 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.

► Privacy and data protection

65. The right to respect for family and private life is enshrined in Article 8 of the ECHR. This right is further interpreted by the case-law of the Court and complemented and reinforced by the Council of Europe Convention 108.

66. Private life is a notion not susceptible to exhaustive definition. The Court has emphasised that Article 8 encompasses a wide range of interests, namely private and family life, home, and correspondence including mail, telephone communications⁵⁴ and e-mails in the workplace. Private life relates to a person's right to

50. Budapest Convention on Cybercrime, Article 2, Explanatory Report, §. 62.

51. See Declaration on Freedom of Communication on the Internet, Principle 7.

52. *Wingrove v. the United Kingdom*, 25 November 1996, § 58, Reports 1996-V.

53. See note 9 above, CM/Rec(2007)16, Appendix, part I.

54. *Klass and Others v. Germany*, no 5029/71, §41.

their image⁵⁵, for example by means of photographs and video-clips. It also concerns a person's identity and personal development, the right to establish and develop relationships with other human beings. Activities of a professional or business nature are also covered.⁵⁶

67. Many activities of users will involve some form of automatic processing of personal data; examples include the use of browsers, e-mail, instant messages, voice-over Internet protocols, social networks and search engines as well as cloud data storage services. Convention 108 covers all operations carried out in the Internet, such as collection, storage, alteration, erasure and retrieval or dissemination or personal data.⁵⁷

68. There are principles and rules that should be respected by public authorities and private companies which are engaged in the processing of personal data. It is necessary that a user is aware of and understands what and how her/his data is processed and whether action can be taken in this regard, for example to request correction or erasure of data. According to Convention 108, personal data must be obtained and processed fairly and lawfully, and stored for specified and legitimate purposes. It must be adequate, relevant and not excessive in relation to the purposes for which they are stored, accurate and, where necessary, kept up to date, preserved in a way which permits identification of the person whose personal data are processed and for no longer than is required for the purpose for which those data are stored.⁵⁸

69. Emphasis is placed on two specific principles of the processing of personal data: the lawfulness of the processing, and the user's consent. The user must be informed that data can be processed only when this is laid down by law and when she/he has consented to it, for example by agreeing to the terms and conditions of use of an Internet service.

70. A person's free, specific, informed and explicit (unambiguous) consent to the processing of personal data on the Internet is currently being discussed to be integrated in the Convention 108.⁵⁹ Informed consent is referred to in the Recommendation CM/Rec(2012)4 of the Committee of Ministers to member states on the protection of human rights with regard to social networking services. In particular, social networks should secure the informed consent of their users before their personal data is disseminated or shared with other categories of people or companies or used in ways other than those necessary for the specified purposes for which they were originally collected. In order to ensure users' consent, they should be able to "opt in" to a wider access to their personal data by third parties (e.g. when third party applications are operated on the social network). Equally, users should also be able to withdraw their consent.

71. It is important to note Recommendation CM/Rec(2010)13 of the Committee of Ministers to member states on the protection of individuals with regard to automatic processing of personal data in the context of profiling. This is understood as automatic data processing techniques that consist of applying a profile to an individual in order to take decisions concerning him or her or for purposes of analysing or predicting his or her personal preferences, behaviours and attitudes. For example, personal data of an Internet user may be collected and processed in the context of his/her interaction with a website or an application or in the context of Internet browsing activity over time and across different websites (e.g. by collecting information on pages and content visited, times of visits, what was searched for, what was clicked). 'Cookies' are one of the means used to track users' browsing activities; this is done by storing information in a user's equipment retrieving it later on. The Recommendation envisages the right of Internet users to consent to the use of personal data for the purposes of profiling and the right to withdraw such consent.⁶⁰

72. Internet users' rights to information with regard to the processing of his/her personal data are referred to in different Council of Europe instruments. Convention 108 provides that the data subject should be enabled to establish the existence of processing of his/her personal data by any natural or legal person, the main purposes of the processing as well as the identity and habitual residence or principal place of business of the processing entity and to obtain at reasonable intervals and without

55. Von Hannover v. Germany (no. 2), nos. 40660/08 and 60641/08 §§ 108-113. Sciacca v. Italy, no. 50774/99, § 29.

56. Rotaru v. Romania (no. 28341/95); P.G. and J.H. v. the UK (no. 44787/98); Peck v. UK (no. 44647/98); Perry v. UK (no. 63737/00); Amann v. Switzerland (no. 27798/95).

57. See Convention 108, Article 2.

58. Convention for the Protection of Individuals with Regards to Automatic Processing of Personal Data (ETS No.108).

59. The Consultative Committee of the Convention for the Protection of Individuals with Regards to Automatic Processing of Personal Data (ETS No.108) has made a number of proposals to modernise this convention (T-PD(2012)4Rev3_en). One of the proposals focuses on the consent of the person whose personal data are processed as a pre-condition for such processing "Each Party shall provide that data processing can be carried out on the basis of the free, specific, informed and [explicit, unambiguous] consent of the data subject or of some legitimate basis laid down by law."

60. Recommendation CM/Rec(2010)13 of the Committee of Ministers to member states on the protection of individuals with regard to automatic processing of personal data in the context of profiling, section 5.

excessive delay or expense confirmation of whether personal data relating to him/her is stored as well as communication to him/her of such data in an intelligible form.⁶¹

73. Information to users is also referred to in Recommendation CM/Rec(2012)4 of the Committee of Ministers to member states on the protection of human rights with regard to social networking services. Internet users on social networks should be informed in a clear and understandable manner about every change made to the providers' terms of service and conditions of use. This also includes other actions, such as the installation of third party applications which involve risks to users' privacy; the law that is applicable in the execution of the social networking services and the related processing of their personal data; the consequences of open access (in time and geographically) to their profiles and communications, in particular explaining the differences between private and public communication, and the consequences of making information publicly available, including unrestricted access to, and collection of, data by third parties; and the need to obtain the prior consent of other people before they publish their personal data, including audio and video content, in cases where they have widened access beyond self-selected contacts. Internet users should also be given specific information regarding the logic underpinning the processing of personal data that is used to attribute a profile to him/her and the purposes of profiling.

74. Internet users should be able to exercise control over their personal data as developed in Convention 108, notably the right to obtain rectification or erasure of data that has been processed contrary to the law and the right to a remedy if a request for confirmation or, as the case may be, communication, rectification or erasure as referred to above is not complied with.⁶²

75. The Committee of Ministers Recommendation CM/Rec(2012)3 of the Committee of Ministers to member states on the protection of human rights with regard to search engines, refers to a number of measures that providers can take to protect their users' privacy. This includes the protection of personal data against unlawful access by third parties and data breach notification schemes. Measures should also include "end-to-end" encryption of the communication between the user and the search engine provider. Cross-correlation of data originating from different services/platforms belonging to a search engine provider can take place only if unambiguous consent has been granted by the user for that specific service. Users should be able to access, correct and delete their data that is collected in the course of the use of such services, including any profile created, for example for direct marketing purposes.⁶³

76. Social networks should also assist users in the management and protection of their data in particular with:

- *default privacy-friendly settings*, to limit access to contacts identified and selected by the user. This includes adjustments to their privacy settings and to the selection of the level of public access to their data;
- *enhanced protection for sensitive data*, such as biometric data or facial recognition access which should not be activated by default;
- *data security against unlawful access to user's personal data*, by third parties, including end-to-end encryption of communication between the user and social networks. Users should be informed about breaches of their personal data security in order to be able to take preventive measures such as changing their passwords and being attentive to their financial transactions (for example when social networks are in possession of bank or credit card details);
- *privacy by design*, that is addressing data protection needs at the stage of conception of their services or products, and continuously assessing the privacy impact of changes to existing services;
- *protection for non-users of social networks* by refraining from collecting and processing their personal data, for example e-mail addresses and biometric data. Users should be made aware of the obligations they have towards other individuals and, in particular, that the publication of personal data related to other people should respect the rights of those individuals.⁶⁴

77. Before a social network user's account is terminated, he/she should be able to easily and freely move his/her data to another service or device, in a usable format. Upon termination, all data from and about the user should be permanently eliminated from the storage media of the social networking service. In addition, Internet users should be able to make informed choices about their online identity, including the use of a pseudonym. In the event that a social networking service requires real identity registration, the publication

61. Convention 108, Article 8.

62. See note 60 above, Article 8.

63. See CM/Rec(2012)3, in particular Appendix, part II.

64. Ibid.

of that real identity on the Internet should be optional for users. This does not prevent law-enforcement authorities from gaining access to the user's real identity when necessary and subject to appropriate legal safeguards guaranteeing the respect of fundamental rights and freedoms.

78. In the context of profiling, the user should also be able to object to the use of his/her personal data for the purpose of profiling and to object to a decision taken on the sole basis of profiling, which has legal effects concerning him/her or significantly affects him/her, unless this is provided by law which lays down measures to safeguard the users' legitimate interests, particularly by allowing him/her to put forward his point of view and unless the decision was taken in the course of the performance of a contract and provided that the measures for safeguarding the legitimate interests of the Internet user are in place.⁶⁵

79. The rights of the Internet user are not absolute hence the reference to the word 'generally' in the third sub-paragraph. Derogations are permissible when this is provided for by law and it 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; and (b) protecting the data subject or the rights and freedoms of others. Restrictions on the exercise of the rights foreseen may be provided by law with respect to automated personal data files used for statistics or for scientific research purposes when there is obviously no risk of an infringement of the privacy of the data subjects.⁶⁶

80. Interception relates to the listening to, monitoring or surveillance of content of communications, securing the content of data through the access and use of the computer system, or indirectly through the use of electronic eavesdropping or tapping devices. Interception may also involve recording.⁶⁷ The right to respect for the confidentiality of correspondence and communications is enshrined in Article 8 of the ECHR, which has been further interpreted by the Court. The concept of correspondence covers mail and telecommunications⁶⁸ as well as e-mails sent in a working context⁶⁹. It is expected that the interpretation of this concept will evolve to keep pace with the developments of technology which may bring other forms of communications on the Internet, such as email messages (in a broader context), instant messaging or others within the sphere of Article 8 protection.

81. Some of the general principles affirmed in the Court case-law with regard to interception and surveillance of communications in non-Internet cases and cases involving interferences by state authorities are given below. These principles provide general guidance and reference, for possible future application to Internet communications.

82. The interception of correspondence and telecommunications are interferences with the right to private life and subject to the conditions of Article 8 paragraph 2 of the ECHR. The very existence of legislation permitting surveillance of telecommunications may be considered as an interference with the right to private life. A law that institutes a system of surveillance, under which all persons in the country concerned can potentially have their mail and telecommunications monitored, directly affects all users or potential users of the postal and telecommunication services in that country. The Court has, therefore, accepted that an individual may, under certain conditions, claim to be the victim of a violation occasioned by the mere existence of secret measures or of legislation permitting them, without having to allege that such measures were in fact applied to him or her.⁷⁰

83. Interception must have a basis in law and be necessary in a democratic society in the interest of the national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others, as foreseen in Article 8 of the ECHR. The Court has developed the following general principles with particular reference to the requirements that the law, providing for covert measures of surveillance of correspondence and communications by public authorities, should meet.

- *Foreseeability* – the law must be accessible to the person concerned who must be able to foresee the consequences of its application to him/her. The law must also be formulated with sufficient clarity and precision to give citizens an adequate indication of the conditions and circumstances in which the

65. Recommendation CM/Rec(2010)13 of the Committee of Ministers to member states on the protection of individuals with regard to automatic processing of personal data in the context of profiling, section 5.

66. Convention 108, Article 9.

67. See Explanatory Report to the Budapest Convention, para.53.

68. Association for European Integration and Human Rights and Ekmidzhiev v. Bulgaria no. 62540/00 § 58; Klass and Others v. Germany no 5029/71, Malone v. the United Kingdom, no 8691/79 and Weber and Saravia v. Germany, no 54934/00.

69. See Copland v. UK, no 62617/00.

70. Klass and Others, no 5029/71 §§ 30-38; Malone v. the United Kingdom no 8691/79§ 64; and Weber and Saravia v. Germany no. 54934/00, §§ 78 and 79, Association for European Integration and Human Rights and Ekmidzhiev v. Bulgaria no. 62540/00 § 58, § 69-70.

authorities are empowered to resort to this secret and potentially dangerous interference with the right to respect for private life and correspondence.⁷¹

- *Minimum safeguards for the exercise of discretion by public authorities* – the law should have detailed rules on (i) the nature of the offences which may give rise to an interception order; (ii) the definition of the categories of people liable to have their communications monitored; (iii) the limit on the duration of such monitoring; (iv) the procedure to be followed for examining, using and storing the data obtained; and (v) the precautions to be taken when communicating the data to other parties; and the circumstances in which data obtained may or must be erased or the records destroyed.⁷²
- *Supervision and review by competent authorities* – the Court requires that there exist adequate and effective guarantees against abuse.⁷³

84. Court's case law on privacy in the workplace has found that telephone calls made by an employee in the premises of the enterprise are covered by the notions of private life and correspondence. Emails sent from work as well as information derived from the monitoring of personal Internet usage should be protected under Article 8 of the ECHR. In the absence of a warning that these would be liable to monitoring, the employee has a reasonable expectation that her/his privacy is respected with regard to phone calls, email and Internet usage in the workplace.⁷⁴ The user can be assisted by data protection authorities, or other competent authorities in member States.

85. Data protection authorities, existing in a vast majority of member states, play an important role in investigating, intervening, raising awareness or otherwise remedying interferences in the processing of personal data. This is notwithstanding the primary role of the state to assure the protection of personal data within the wider scope of their obligation to safeguard the right to private and family life.

Education and literacy

86. The right to education is enshrined in Article 2 of Protocol 1 to the ECHR. The Recommendation CM/Rec(2007)16 of the Committee of Ministers to member states on measures to promote the public service value of the Internet encourages 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.⁷⁵ Internet users should be able to freely access publicly funded research and cultural works on the Internet.⁷⁶ Access to digital heritage materials, which are in the public domain, should also be freely accessible within reasonable restrictions. Conditions on access to knowledge are permitted in specific cases in order to remunerate right holders for their work, within the limits of permissible exceptions to intellectual property protection.

87. Internet users should have the ability to acquire basic information, education, knowledge and skills in order to exercise their human rights and fundamental freedoms on the Internet. This is in line with the Council of Europe's Committee of Ministers standards which promote computer literacy as a fundamental prerequisite for access to information, the exercise of cultural rights and the right to education through ICTs.⁷⁷

88. Internet literacy programmes and initiatives enable Internet users to critically analyse the accuracy and trustworthiness of Internet content. The Committee of Ministers has recommended that Council of Europe 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 could be harmful to them.⁷⁸

71. *Malone v. the United Kingdom*, no 8691/79 § 67; *Valenzuela Contreras v. Spain*, judgment of 30 July 1998, Reports 1998-V, p. 1925, § 46 (iii); and *Khan v. the United Kingdom*, no.35394/97, § 26, *Association for European Integration and Human Rights and Ekmidzhiev v. Bulgaria*, no. 62540/00, §71.

72. See *Kruslin v France*, no. 11801/85 § 33; *Huvig v. France*, no 11105/84 § 32; *Amann v. Switzerland*, no27798/95 § 56; *Weber and Saravia v. Germany*, no 54934/00§ 93; *Association for European Integration and Human Rights and Ekmidzhiev v. Bulgaria*, no. 62540/00 § 76.

73. *Ibid.*, no. 62540/00) § 77.

74. *Copland v. UK*, no 62617/00, §41, 42.

75. See also note 8 above, *CM/Rec(2007)16* Section IV.

76. *Ibid.*

77. *Committee of Ministers Declaration on human rights and the rule of law in the Information Society*, CM(2005)56 final 13 May 2005.

78. *Ibid.*

Children and young people

89. Children and young person have the right to express their views, to participate in society as well as in the decisions affecting them by means of the Internet and other ICTs. This is based on Committee of Ministers standards which state that all children and young people under the age of 18 should have the right, the means, the space, the opportunity and, where necessary, the support to freely express their views, to be heard and to contribute to decision making on matters affecting them, their views being given due weight in accordance with their age, maturity and understanding. The right of the child and young people to participate applies fully to Internet environments without any discrimination on any grounds such as race, ethnicity, colour, sex, language, religion, political or other opinion, national or social origin, property, disability, birth, sexual orientation or other status.⁷⁹

90. Children and young people should be provided with information appropriate to their age and circumstances, including through social networking and other media, on the opportunities available to them to exercise their rights. They should be fully informed about the scope of their participation, including limitations of their involvement, the expected and actual outcomes of their participation and how their views were ultimately considered.⁸⁰ Where they consider their right to participate has been violated they should be provided with effective redress and remedies, such as child-friendly means of making complaints and judicial and administrative procedures including assistance and support in using them.⁸¹

91. Children and young users should be able to use the Internet in safety and with due regard for their privacy. They should receive training and information from teachers, educators and parents. Their information literacy is understood as meaning 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 well as training initiatives for children and their educators in order for them to use the Internet and information and communication technologies in a positive and responsible manner.⁸²

92. Children's right to private life has been the object of examination in cases brought before the Court. The physical and moral welfare of children are essential aspects of their right to private life. Member States have positive obligations to ensure effective respect for this right.⁸³ The Court considers that effective deterrence against grave acts where fundamental values and essential aspects of private life are at stake, requires efficient criminal law provisions and investigations.⁸⁴

93. It is important to understand that the content that children and young people create on or using the Internet or content others create in relation to them (e.g. pictures, videos, text or other content) or the traces of this content (logs, records and processing) may last or be permanently accessible. This may challenge their dignity, security and privacy or otherwise render them vulnerable now or at a later stage in their lives. They themselves, as well as their parents, guardians, teachers and carers, should be empowered to understand and cope with this reality as well as to protect their privacy online. To this end, it is important that practical advice is made available on how to have personal information erased. The Council of Europe's Committee of Ministers has provided guidance to its member states, by stating 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.⁸⁵ Therefore, member states were invited 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.⁸⁶ Sub-paragraph 3, however, does not apply to content regarding children or young people created by the press or publishers. The first sentence in this provision of the Guide specifies that it addresses situations relating to content created by children or young people or other Internet users about them.

79. Recommendation CM/Rec(2012)2 of the Committee of Ministers to member states on the participation of children and young people under the age of 18.

80. Ibid.

81. See Recommendation CM Rec(2011)12 of the Committee of Ministers to member states on children's rights and social services friendly to children and families, Council of Europe Guidelines on Child-Friendly Justice.

82. Recommendation Rec(2006)12 of the Committee of Ministers on empowering children in the new information and communications environment.

83. K.U. v. Finland - 2872/02 § 40, 41.

84. X and Y v. the Netherlands, §§ 23-24 and 27; August v. the United Kingdom no. 36505/02; and M.C. v. Bulgaria, no. 39272/98, § 150. K.U. v. Finland, no 2872/02 § 46.

85. Declaration of the Committee of Ministers on protecting the dignity, security and privacy of children on the Internet.

86. Ibid.

94. As regards harmful content and behaviour online, children are entitled to special care and assistance that is appropriate to their age and circumstances, in particular with regard to the risk of harm which may arise from online pornography, the degrading and stereotyped portrayal of women, the portrayal and glorification of violence and self-harm, in particular suicides, demeaning, discriminatory or racist expressions or apologia for such conduct, solicitation for sexual abuse purposes, 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.⁸⁷ Children and young Internet users should therefore be informed, in a way that is adapted to their age and any other particular circumstances, about the types of content and behaviour that are illegal.

95. Children and young people should also be able to report content and behaviour which poses a risk of harm, and to receive advice and support, with due regard to their confidentiality and anonymity. This is particularly relevant in the context of social networks. The Committee of Ministers has recommended to its member States to take action in this respect⁸⁸ in particular to protect children and young people from harmful content by:

- providing clear information about the kinds of content or content-sharing or conduct that may be contrary to applicable legal provisions;
- developing editorial policies so that relevant content or behaviour can be defined as “inappropriate” in the terms and conditions of use of the social networking service, while ensuring that this approach does not restrict the right to freedom of expression and information;
- setting up easily accessible mechanisms for reporting inappropriate or apparently illegal content or behaviour posted on social networks;
- providing due-diligence response to complaints of cyber-bullying and cyber-grooming.⁸⁹

96. Children and young users should also be informed about the risks of interference with their physical and moral welfare, including sexual exploitation and abuse in online environments which necessitates special protection. This is referred to in the Council of Europe’s Lanzarote Convention, and in the relevant case law of the Court which recognises that States have positive obligations to ensure the protection of children online.⁹⁰

97. According to the Lanzarote Convention, children should be protected from being recruited, caused or coerced into participating in pornographic performances made accessible or available on the Internet (for example through webcams, in chat rooms or online games).⁹¹ They must also be protected from solicitation through the use of the Internet or other ICTs for the purpose of engaging in sexual activities with the child (grooming) who, according to the relevant provisions of national law, has not reached the legal age for sexual activities and for the purpose of producing child pornography.⁹²

98. Children should be encouraged to participate in the development and implementation of State policies, programmes or others initiatives concerning the fight against sexual exploitation and sexual abuse of children in Internet environments.⁹³ They should be provided with child-friendly and accessible means of reporting alleged sexual abuse and exploitation on the Internet and making complaints through information services such as telephone and Internet helplines. They should be provided with advice and support in using these services with due regard to their confidentiality and anonymity.⁹⁴

Effective remedies

99. The right to an effective remedy is enshrined in Article 13 of the ECHR. Everyone whose rights and freedoms are restricted or violated on the Internet has the right to an effective remedy.

100. Article 13 of the ECHR guarantees the availability, at the national level, of a remedy to enforce the substance of ECHR rights and freedoms in whatever form they might happen to be secured in the domestic

87. 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.

88. See CM/Rec(2012)4, Appendix, II, §10.

89. Ibid.

90. K.U. v. Finland no. 2872/02.

91. Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse CETS No.: 201, Article 2; Article 21, see also Explanatory Report on these articles.

92. Ibid. Article 23.

93. Ibid. Article 9/1.

94. Ibid. Article 13. See also Recommendation CM/Rec(2011)12 of the Committee of Ministers to member states on children’s rights and social services friendly to children and families, Council of Europe Guidelines on Child-Friendly Justice.

legal order. It requires the provision of a domestic remedy to deal with the substance of a complaint under the ECHR and to grant appropriate relief.⁹⁵ States have a positive obligation to carry out an investigation of allegations of human rights infringement that is diligent, thorough and effective. The procedures followed must enable the competent body to decide on the merits of the complaint of violation of the Convention and to sanction any violation found but also to guarantee the execution of decisions taken.⁹⁶

101. There should be a national authority tasked with deciding on allegations of violations of the rights guaranteed in the ECHR.⁹⁷ There must be a specific legal avenue available whereby an individual can complain about the unreasonable length of proceedings in the determination of his/her rights.⁹⁸ The authority may not necessarily be a judicial authority if it presents guarantees of independence and impartiality. However, its powers and the procedural guarantees afforded should permit a determination whether a particular remedy is effective.⁹⁹

102. The procedure followed by the competent national authority should permit effective investigation of a violation. It should allow the competent authority to decide on the merits of the complaint of a violation of ECHR rights,¹⁰⁰ to sanction any violation and to guarantee the victim that the decision taken will be executed.¹⁰¹ The remedy must be effective in practice and in law and not conditional upon the certainty of a favourable outcome for the complainant.¹⁰² Although no single remedy may itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided in law may do so.¹⁰³

103. Effective remedies should be available, known, accessible, affordable and capable of providing appropriate redress. Effective remedies can also be obtained directly from Internet service providers (although they may not enjoy sufficient independence to be compatible with Article 13 of the ECHR), public authorities and/or other national human rights institutions. Possibilities for redress include an inquiry, an explanation by the service provider or online provider, the possibility to reply to a statement which is considered for example defamatory or offensive, reinstatement of user-created content that has been removed by an online service provider, and reconnection to the Internet when Internet users have been disconnected and related compensation.

104. States, as part of their positive obligations to protect individuals against violations of human rights by private companies, should take appropriate steps to ensure that when such violations occur those affected have access to judicial and non-judicial mechanisms.¹⁰⁴ The United Nations Guiding Principles on Business and Human Rights specify that companies should establish complaint mechanisms which are accessible, predictable (providing clear and known procedure with indication of time frames for each stage of the process, clarity on the types of process and outcomes available and the means for monitoring their implementation) equitable (access to sources of information, advice and expertise), transparent and capable to offer remedies which are in full compliance with international human rights standards directly to individuals.¹⁰⁵

105. Internet users should be offered clear and transparent information regarding the means of redress available to them. This information could be included in terms of use and/or service or in other guidelines and policies of Internet service/online providers. Internet users should be provided with practical and accessible tools to contact Internet service/online providers to report their concerns. They should be able to request information and seek remediation. Some examples of remedies which may be available to Internet users are helplines or hotlines run by Internet service providers or consumer protection associations to which Internet users can turn in the case of violation of their rights or the human rights of others. Guidance should be provided by public authorities and/or other national human rights institutions (ombudspersons), data

95. *Kaya v. Turkey*, no. 22729/93, §106.

96. *Smith and Grady v. UK*, no 33985/96 33986/96.

97. *Silver and Others v. UK*, no. 5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/75 §113; *Kaya v. Turkey*, no. 22729/93, §106.

98. *Kudla v. Poland*, no. 30210/96, §157.

99. *Silver and Others v. UK*, no. 5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/75 §113; *Kaya v. Turkey*, no. 22729/93, §106.

100. *Smith and Grady v. UK*, no 33985/96 33986/96, § 138.

101. *Iatridis v. Greece*, no. 31107/96, § 60.

102. *Kudla v. Poland*, no. 30210/96, §158.

103. *Silver and others v. UK*, no.5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/75 §113; *Kudla v. Poland*, no. 30210/96 §157.

104. The issue of corporate social responsibility and states positive obligations to protect human rights are explained in paragraphs 19 and 28 of the Explanatory Memorandum.

105. See Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (A/HRC/17/31) endorsed by the Human Rights Council by Resolution Human rights and transnational corporations and other business enterprises A/HRC/RES/17/4, chapter III, principles 28-31.

protection authorities, regulators for electronic communications, citizens' advice offices, human rights or digital rights associations or consumer organisations.

106. Internet users should be protected from cybercrime. States who are signatory parties to the Budapest Convention have undertaken obligations to protect citizens from criminal activities and offences on the Internet. Internet users have a reasonable expectation to be protected from criminal activity or criminal offences committed on or using the Internet.

107. The focus is on offences against confidentiality and integrity of computer data and systems and computer-related offences. Content-related offences (child pornography, copyright infringement) are not covered here as these are considered to be dealt with in the parts of the Guide relating to the rights of the child. The protection of right-holders is considered to implicate the interests of this particular group rather than those of Internet users. Also, interceptions and surveillance of communications are dealt with in the section on privacy and data protection.

108. Internet users have a legitimate interest to manage, operate and control their computer systems in an undisturbed and uninhibited manner. They should be protected from illegal access to the whole or parts of computer systems used by them including hardware, components, stored data of the system installed, directories, traffic and content-related data. This also includes protection from unauthorised intrusion into computer systems and data (hacking, cracking or other forms of computer trespass) which may lead to impediments to Internet users of systems and data such as access to confidential data (passwords, information and secrets etc).¹⁰⁶

109. Internet users should also be protected against computer data interference, such as malicious code (for example viruses and Trojan horses).¹⁰⁷ They should also be protected against interference with the functioning of computer or telecommunication systems by inputting, transmitting, damaging deleting, altering or suppressing computer data¹⁰⁸ as for example programmes that generate 'denial of service attacks, malicious codes such as viruses that prevent or substantially slow down the operation of the system, or programmes that send large quantities of electronic mail to a recipient in order to block communication functions of the system (spamming). This may be an administrative or criminal offence depending on domestic legislation.

110. Internet users should be protected against computer forgery which involves unauthorised creation or alteration of data so that they acquire a different evidentiary value in the course of legal transactions, which rely on the authenticity of information contained in the data.¹⁰⁹

111. Internet users have a legitimate interest in the protection of assets represented or administered in computer systems (electronic funds, deposit money). They should be protected against computer fraud manipulations which produce a direct economic or possessory loss of an Internet user's property (money, tangible and intangibles with an economic value) such as credit card fraud.¹¹⁰

112. Any security measure aimed at ensuring the protection of Internet users from cyber-crime must be in full compliance with the standards of the ECHR, in particular the right to private and family life and the right to freedom of expression.¹¹¹

113. Internet users have the right to fair trial, which is enshrined in Article 6 of the ECHR. This refers to the determination of civil rights and obligations or criminal charges with regard to activities of Internet users. In particular, this concerns key principles pronounced by the Court, namely the right to a fair and public hearing within a reasonable time by an independent and impartial court; the right to institute proceedings before courts, to a final determination of the dispute, to a reasoned judgment and to the execution of the judgment; the right to adversarial proceedings and equality of arms and others.

114. The Court, although not in Internet-related cases, has established general principles with regard to the quality of administration of justice (independence, impartiality, competence of the tribunal), the protection of right of the parties (fair hearing, equality of arms and public hearing) as well as with regard to the efficiency of justice administration (reasonable time).

115. The Internet user has the right to file an individual application to the Court after exhausting all domestic remedies that are available and effective, within six months¹¹² from the date on which a final decision was taken.

106. Budapest Convention on Cybercrime, Article 2, Explanatory Report, §.44-50.

107. Ibid. Article 4, Explanatory Report §, 60-61.

108. Ibid. Article 5, Explanatory Report § 65-69.

109. Ibid. Article 7, Explanatory Report § 81.

110. Ibid. Article 8, Explanatory Report § 86-88.

111. Ibid. Article 15.

112. This deadline will be four months once Protocol No. 15 to the ECHR has entered into force.

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;

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;

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.

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 FUND²

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 MANAGEMENT³

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 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 ACCOUNTS⁴

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.

2. 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.

3. 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. 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.

4. RESOURCES OF THE FUNDS

- 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.
- 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^{6, 7, 8, 9}

- 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.
- 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

6. ACCESSION AND WITHDRAWAL¹⁰

- 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. OPERATION¹¹

- 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.

10. 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.

11. 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.

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. ”

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.”

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.

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.

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.

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.

Declaration on neighbouring rights

(Adopted by the Committee of Ministers on 17 February 1994, at the 508th meeting of the Ministers' Deputies)

The Committee of Ministers of the Council of Europe:

1. Recognising the need for a general improvement in the protection of neighbouring rights;
2. Has decided in the first instance to meet the most urgent need, namely to harmonise and improve the level of protection of neighbouring rights in the context of transfrontier broadcasting by satellite, by opening to signature the European Convention relating to questions on copyright law and neighbouring rights in the framework of transfrontier broadcasting by satellite;
3. Notes that the adoption of this Convention shall in no way affect the economic benefits and advantages accruing to holders of neighbouring rights by virtue of contractual arrangements;
4. Notes that a number of other important issues still need to be considered concerning the protection of neighbouring rights, inter alia, in the context of transfrontier broadcasting;
5. Considers that priority should now be given to the study of, inter alia, the following issues: the rights of performers, producers of phonograms and broadcasting organisations with regard to cable retransmission; the right of performers and producers of phonograms to authorise the reproduction of their performances and phonograms; the moral rights of performers and the duration of protection of right holders;
6. Emphasises in this context the need for fair and equitable economic and other conditions for the use of performances included in phonograms or audio-visual works;
7. Stresses the importance of examining these issues within the framework of the Council of Europe, while bearing in mind work being carried out within other international and European fora, and taking account of technological developments and their financial implications for performers, producers of phonograms and broadcasting organisations;
8. Invites the Steering Committee on the Mass Media to proceed with its examination of these issues and to consider the appropriateness of drafting legal instruments on the subject.

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.

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 representative 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.

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.

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.

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.

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.

Declaration of the Committee of Ministers on human rights and the rule of law in the Information Society

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 sector 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 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

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 is made to the need to regulate the responsibility and supervision of public service broadcasting organisations and of their statutory organs,³ 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

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.
3. 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.

broadcasters.⁴ 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 their international obligations, the role, missions and responsibilities of public service broadcasters and to ensure their editorial independence against political and economic interference”.⁵

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 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.

4. As regards developments concerning the public service remit, see footnote 7.

5. 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”.

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.⁶

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.

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 independence⁷ and proscribes interference in the form of censorship or control of their activities.⁸

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

6. 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".

7. Particular reference is made to programme schedules, the conception and production of programmes, and the editing and presentation of news and current affairs programmes.

8. 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.

periods and campaigns is often highlighted; it is alleged that, during such periods, leverage over public broadcasters is used to ensure favourable coverage.⁹

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, 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) 10.¹⁰

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.^{11, 12} 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.

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.

9. See also, in this context, Recommendation No. R (99) 15 on measures concerning media coverage of election campaigns.

10. 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.

11. 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”.

12. 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.

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.¹³

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.

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.

13. 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.

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.

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.

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.

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 dividend¹ 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 contributing to overcome the digital divide, are taken into account when allocating and managing this valuable resource;

1. The radio spectrum freed as a result of the switchover from analogue to digital broadcasting.

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;

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.

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

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.

broadcasting regulator. Laws and 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 states 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.

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.

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.

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 Society² 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

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).

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 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.

Declaration of the Committee of Ministers on the Digital Agenda for Europe

(Adopted by the Committee of Ministers on 29 September 2010 at the 1094th meeting of the Ministers' Deputies)

Article 1 of the European Convention on Human Rights (“the Convention” – ETS No. 5) provides that the state parties shall “secure to everyone within their jurisdiction” the rights and freedoms protected by the Convention. Council of Europe standards and values apply to both offline and online environments.¹

Guaranteeing all human rights and fundamental freedoms in the online environment, including the right to respect for private life, the right to freedom of religion, the right to freedom of expression, the prohibition of discrimination, the protection of human dignity, the right to freedom of assembly and association, the right to the protection of property, the right to education and ensuring the openness and security of the Internet, are prerequisites for ensuring peoples’ full participation in online social and economic activities and for the effective exercise of democratic citizenship. The value of quality content, in particular that provided by professional media, should be underlined in this context.

Growing numbers of people rely on the Internet and information and communication technologies (ICTs) as essential tools for their everyday activities (communication, information, knowledge, commercial transactions). People therefore expect the Internet and the ICT infrastructure and services to be accessible, affordable, secure, reliable and ongoing. Consequently, the Internet and other ICTs have high public service value.²

The Council of Europe ministers responsible for media and new communication services agreed to continue to develop the notion of the public service value of the Internet and, in that context, to explore, *inter alia*, the extent to which universal access to the Internet should be developed as part of member states’ provision of public services.³

The ministers responsible for information society policy of the European Union member states and the European Economic Area agreed on the Granada Ministerial Declaration on the European Digital Agenda⁴ (Granada Ministerial Declaration). Subsequently, in the framework of its communication “A Digital Agenda for Europe”, the European Commission mapped out a number of action lines to boost the economic activity and deliver economic and social benefits to European citizens in the online environment.⁵

1. Resolution “Internet governance and critical Internet resources”, adopted at the 1st Council of Europe Conference of Ministers responsible for Media and New Communication Services (Reykjavik, Iceland, 28-29 May 2009).
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.
3. Political Declaration and Action Plan adopted at the 1st Council of Europe Conference of Ministers responsible for Media and New Communication Services (Reykjavik, Iceland, 28-29 May 2009).
4. The Granada Ministerial Declaration on the European Digital Agenda was agreed on the occasion of the Informal Ministerial Meeting in Granada, Spain, 18 and 19 April 2010.
5. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions: “A Digital Agenda for Europe”, COM(2010)245.

The Granada Ministerial Declaration and the Digital Agenda for Europe promote the public service value of the Internet by reaffirming and supporting related policy objectives. They set important benchmarks for its delivery to all citizens and seek also to bolster the digital economy for the benefit of both citizens and businesses alike, paving the way for the creation of a single market for online content and products in European Union member states. These texts also promote ICT research and innovation strategies in the provision of public services and in addressing education, environmental, energy, health and demographic challenges.

Emphasis is also placed on users as active participants in, and competent contributors to, the development of the digital society and innovation. Considerable importance is attached to empowering users to fully exploit the economic, social and cultural opportunities and benefits offered by the Internet and ICTs.

The Granada Ministerial Declaration and the Digital Agenda for Europe suggest developing further the creation, production and dissemination of creative content, including that of a cultural and journalistic nature in the online environment. In this respect, they signal, *inter alia*, the need to embrace innovative intellectual property-related business models. Furthermore, they confirm the relevance of public policies on the digitisation and dissemination of European cultural heritage for the promotion of the fundamental values of pluralism and of cultural and linguistic diversity.

A number of Council of Europe instruments on the protection and exercise of rights and fundamental freedoms on the Internet share the vision and the objectives of the action lines of the above-mentioned Granada Ministerial Declaration and the Digital Agenda for Europe. The commonality of goals pursued by the Council of Europe and the European Union on public policy issues related to Internet governance is also highlighted in the framework of the pan-European dialogue on Internet governance (EuroDIG), which the Council of Europe strongly supports.

The follow-up to Committee of Ministers' Recommendation CM/Rec(2007)16 to member states on measures to promote the public service value of the Internet is an important objective for Council of Europe member states. The member states' ministers responsible for media and new communication services have agreed to pursue co-operation on media and new communication services fields with a view to providing common responses to developments regarding the media and the provision of media-like services, in particular as regards the respect for freedom of expression and information, the right to private life and the dignity of human beings. They also agreed to explore a broader legal response to the need to protect the cross-border flow of media and media-like content and, more generally, Internet traffic.⁶

The Committee of Ministers therefore:

- welcomes the Granada Ministerial Declaration and the Digital Agenda for Europe, as well as the elaboration of policy initiatives aimed at implementing their forward-looking action lines;
- emphasises that the Council of Europe values of human rights, democracy and the rule of law are essential in the building of an inclusive and open pan-European digital society and declares that the Council of Europe will contribute to achieving this objective in the context of its work;
- encourages Council of Europe member states generally to promote the objectives of the Digital Agenda for Europe in their respective domestic activities as a means for promoting the public service value of the Internet and ICTs;
- invites the European Union to co-operate with the Council of Europe in this field.

6. Political Declaration, Action Plan and Resolution "Critical Internet Resources and Internet Governance", adopted at the 1st Council of Europe Conference of Ministers responsible for Media and New Communication Services (Reykjavik, Iceland, 28-29 May 2009).

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.

Declaration of the Committee of Ministers on the management of the Internet protocol address resources in the public interest

(Adopted by the Committee of Ministers on 29 September 2010 at the 1094th meeting of the Ministers' Deputies)

1. Fundamental rights and Council of Europe standards and values apply to online information and communication environments, and in particular to the Internet, as much as they do to the offline world. This stems, *inter alia*, from Article 1 of the European Convention on Human Rights ("the Convention" – ETS No. 5) whereby member states undertake to "secure to everyone within their jurisdiction" the rights and freedoms protected by the Convention (without online/offline distinction).¹
2. The right to respect for private life and the right to freedom of expression and access to information, guaranteed respectively by Articles 8 and 10 of the Convention, are fundamental requirements in a democratic society and are highly relevant to online environments.
3. Access to Internet resources is indeed crucial for the exercise and full enjoyment of the fundamental right to freedom of expression and for access to information. The lack of users' confidence in respect of their privacy may discourage full participation in online activities.
4. The Internet has public service value, understood as people's significant reliance on the Internet as an essential tool for their everyday activities and the resulting legitimate expectation that Internet services be accessible and affordable, secure, reliable and ongoing. In co-operation with relevant stakeholders, Council of Europe member states should take all necessary measures to promote the public service value of the Internet. They should, *inter alia*, encourage the private sector to contribute to promoting the delivery of the public service value of the Internet to everyone and develop public policies to supplement the operation of market forces where these are insufficient.²
5. Internet protocol addresses are essential for the functioning of the Internet. Their technical architecture and allocation have a bearing on the exercise of fundamental rights and freedoms. The identification features incorporated into the Internet protocol addresses of devices used to connect to the Internet allow for the profiling of users' activities and communications. Traffic data generated as a result of the use of mobile devices and other objects connected by means of Internet protocols may be misused or subjected to unwarranted supervision.

1. Resolution "Internet governance and critical Internet resources", adopted at the 1st Council of Europe Conference of Ministers responsible for Media and New Communication Services (Reykjavik, Iceland, 28-29 May 2009).

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.

6. To the extent that information on users' activities and communications, as well as traffic data, amount to personal data,³ they should be treated and used in full compliance with the requirements of the right to respect for private life guaranteed under Article 8 of the Convention and the related case law of the European Court of Human Rights. The principles enshrined in the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) are also relevant in this connection.

7. Internet protocol version 4 (IPv4) addresses are a scarce resource, nearing exhaustion. This poses challenges in respect of the continuing expansion of the Internet and to its ongoing functioning. It would be desirable that unallocated or unused IPv4 addresses are managed in the public interest. The objective should be to offer to everyone stable and ongoing access to Internet resources.

8. This scarcity of addresses will be resolved by the new Internet protocol version 6 (IPv6) which offers a far larger address space. In addition to its potential for triggering growth in Internet services and applications and improved built-in security, IPv6 offers an excellent opportunity to facilitate effective and equitable access for all persons to new communication services. It can also play an important part in improving access to education and knowledge. It is therefore important to support the least developed countries in building information technology infrastructures with a view to achieving an inclusive information society and bridging the digital divide.

9. However, IPv6 is not backwards compatible with IPv4. This issue should be addressed in an appropriate manner. It is important to prepare for the application of the technical parameters of IPv6 and to implement them in a timely and effective fashion in all sectors. All stakeholders, whether state authorities or non-state actors, should recognise the importance of interoperability requirements of the new protocol at both hardware and software level.

10. States can make a considerable contribution to the transition both in the context of their own responsibility for implementing IPv6 in the public sector and by fostering greater synergy among non-state actors in the adoption of IPv6 in their activities. States should, in particular, create an enabling environment for the private sector to play its growth-driving role and encourage the preparation for migration to and deployment of IPv6. This should build on existing positive institutional arrangements for Internet protocol address allocation.

11. The Committee of Ministers, therefore, declares that:

- Internet protocol address resources should be regarded as shared public resources and allocated and managed in the public interest by the entities entrusted with these tasks, taking into account the present and future needs of Internet users;
- timely and effective deployment of IPv6 in the public sector should be ensured and swift preparations for migration to and deployment of IPv6 in the private sector should be encouraged and promoted;
- as appropriate, identification features incorporated into Internet protocol addresses that are assigned to Internet users or devices connected to the Internet should be regarded and treated as personal data.

3. According to Article 2 of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) "personal data" means any information relating to an identified or identifiable individual.

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

(Adopted 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.

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 of the Committee of Ministers on the protection of freedom of expression and freedom of assembly and association with regard to privately operated Internet platforms and online service providers

(Adopted by the Committee of Ministers on 7 December 2011 at the 1129th meeting of the Ministers' Deputies)

1. Freedom of expression and the right to receive and impart information and its corollary, freedom of the media, are indispensable for genuine democracy and democratic processes. Through their scrutiny and in the exercise of their watchdog role, the media provide checks and balances to the exercise of authority. The right to freedom of expression and information as well as freedom of the media must be guaranteed in full respect of Article 10 of the European Convention on Human Rights (ETS No. 5, hereinafter "the Convention"). The right to freedom of assembly and association is equally essential for people's participation in the public debate and their exercise of democratic citizenship, and it must be guaranteed in full respect of Article 11 of the Convention. All Council of Europe member states have undertaken, in Article 1 of the Convention, to "secure to everyone within their jurisdiction the rights and freedoms" protected by the Convention (without any online/offline distinction).
2. People, notably civil society representatives, whistleblowers and human rights defenders, increasingly rely on social networks, blogging websites and other means of mass communication in aggregate to access and exchange information, publish content, interact, communicate and associate with each other. These platforms are becoming an integral part of the new media ecosystem. Although privately operated, they are a significant part of the public sphere through facilitating debate on issues of public interest; in some cases, they can fulfil, similar to traditional media, the role of a social "watchdog" and have demonstrated their usefulness in bringing positive real-life change.
3. In addition to opportunities, there are challenges to the effective exercise of freedom of expression and to the right to impart and receive information in the new media ecosystem. Direct or indirect political influence or pressure on new media actors may lead to interference with the exercise of freedom of expression, access to information and transparency, not only at a national level but, given their global reach, also in a broader international context. Decisions concerning content can also impinge on the right to freedom of assembly and association.

4. Distributed denial-of-service attacks against websites of independent media, human rights defenders, dissidents, whistleblowers and other new media actors are also a matter of growing concern. These attacks represent an interference with freedom of expression and the right to impart and receive information and, in certain cases, with the right to freedom of association. Companies that provide web hosting services lack the incentive to continue hosting those websites if they fear that the latter will come under attack or if their content may be regarded as sensitive. Furthermore, the companies concerned are not immune to undue interference; their decisions sometimes stem from direct political pressure or from politically motivated economic compulsion, invoking justification on the basis of compliance with their terms of service.

5. These developments illustrate that free speech online is challenged in new ways and may fall victim to action taken by privately owned Internet platforms and online service providers. It is therefore necessary to affirm the role of these actors as facilitators of the exercise of the right to freedom of expression and the right to freedom of assembly and association.

6. Interference with content that is released into the public domain through these means or attempts to make entire websites inaccessible should be judged against international standards designed to secure the protection of freedom of expression and the right to impart and receive information, in particular the provisions of Article 10 of the Convention and the related case law of the European Court of Human Rights. Furthermore, impediments to interactions of specific interest communities should be measured against international standards on the right to freedom of assembly and association, in particular the provisions of Article 11 of the Convention and the related case law of the European Court of Human Rights.

7. The Committee of Ministers, therefore:

- alerts member states to the gravity of violations of Articles 10 and 11 of the European Convention on Human Rights which might result from politically motivated pressure exerted on privately operated Internet platforms and online service providers, and of other attacks against websites of independent media, human rights defenders, dissidents, whistleblowers and new media actors;
- underlines, in this context, the necessity to reinforce policies that uphold freedom of expression and the right to impart and receive information, as well as the right to freedom of assembly and association, having regard to the provisions of Articles 10 and 11 of the Convention and the related case law of the European Court of Human Rights;
- confirms its commitment to continue to work to address the challenges that these matters pose for the protection of freedom of expression and access to information.

Declaration of the Committee of Ministers on public service media governance

(Adopted by the Committee of Ministers on 15 February 2012 at the 1134th meeting of the Ministers' Deputies)

I. AS REGARDS PUBLIC SERVICE MEDIA IN A DEMOCRATIC SOCIETY

1. Freedom of expression, and free and pluralist media, are indispensable to genuine democracy. Media are the most important tool for freedom of expression in the public sphere, enabling people to exercise the right to seek and receive information. 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 (ETS No. 5).
2. In a democratic society, people should be able to understand, contribute to and participate in the decision-making processes which concern them. Public service media play a fundamental part in sustaining this right through their mandate to ensure, via the relevant modes of delivery, universal access to impartial news and a diverse range of high-quality content which meets the needs of the wide variety of audiences.
3. The primary mission of public service media is to support general interest objectives such as social progress, public awareness of democratic processes, intercultural understanding and societal integration, and to achieve this through a varied and high-quality mix of content. As an important public source of unbiased information and diverse political opinions, public service media must remain independent from political or economic interference and achieve high editorial standards of impartiality, objectivity and fairness.
4. Public service media should be subject to constant public scrutiny and be accountable and transparent when performing their functions as they have the obligation to serve the public in all its diversity, including minority communities that would not be served in a purely commercial market. Public service media must also take into account the gender equality perspective in terms of both content and staff.
5. Editorially independent public service media help counterbalance the risk of misuse of power in a situation of excessive concentration of media, services and platforms.
6. For some public service media organisations, the transition from state broadcaster to public service media has yet to be completed. The challenge is both to secure independence from the state and also to earn the trust of the audience by using that independence to exercise genuine editorial autonomy. For all public service media, new skills and approaches will be needed to complement, or in some cases replace, long-established ways of functioning.
7. The Committee of Ministers has always provided unfaltering support for public service media, calling on member states to secure the necessary legal, political and organisational conditions for their independence and to provide adequate means for their functioning. In keeping with this, it has adopted Recommendation Rec(96)10 on the guarantee of the independence of public service broadcasting and Recommendation CM/Rec(2007)3 on the remit of public service media in the information society, as well as the Declaration on protecting the role of the media in democracy in the context of media concentration (31 January 2007), and has expressed its support for Parliamentary Assembly Recommendation 1878 (2009) on "The funding of public service broadcasting" (reply of 26 April 2010).

II. AS REGARDS PUBLIC SERVICE MEDIA IN A NEW MEDIA ENVIRONMENT

8. Media across Europe face rapid and profound change and, as a result, public service media find themselves in an unprecedented period of transition. The emergence of digital media brings about certain challenges to media as they strive to provide multimedia, interactive and non-linear services.

9. The development of new information and communication technologies gives public service media an unrivalled opportunity to fulfil their remit in new and more effective ways, allowing them to offer better-targeted and more interactive content and services. It also allows public service media to enter into a meaningful dialogue with their audiences, engaging them as stakeholders, participants and co-creators, rather than as simply passive recipients. This is particularly relevant to services aimed at youth, whose use of Internet-delivered, mobile and participatory media is significant. Successful adaptation and adoption of new platforms assist public service media in fulfilling additional purposes within their public service remit.

III. AS REGARDS THE NEED FOR AN EFFECTIVE NEW SYSTEM OF GOVERNANCE

10. A robust and forward-looking system of governance is essential for the successful transition of public service media to a new media environment. Public service media need to show that their own governance systems subject any decision to proper scrutiny, while ensuring that any external oversight (by governments or independent regulators) do not undermine the organisation's independence. As is also the case for public service media undergoing a transition from state to public institutions, it is essential to define the necessary levels of independence from the state. This should be balanced by accountability to a wide range of stakeholders and coupled with a culture that is open to new ideas and which demonstrates high levels of professional integrity. For public service media seeking to justify continuing levels of public funding, it is important to demonstrate that funding decisions and resource allocations are focused entirely on meeting public needs of all citizens, irrespective of their gender and background, and that the organisation's assessment of its future requirements is rooted in its public service remit.

11. An appropriate system of governance is a decisive factor in the ability of both member states and the public service media they support to meet these and future challenges, and take full advantage of the new opportunities offered by digital technologies and platforms. The effective governance of public service media, to the equal benefit of all members of the public, is an important element and a specific example of the larger concept of good governance in democratic society. In order to fulfil its role, governance should expand beyond the narrow understanding of the concept as related to appointment procedures and the composition of boards of public service media. Governance should therefore be broadly defined so as to include:

- the legal frameworks through which the state ensures an appropriate balance between the independence and accountability of public service media;
- the regulations and practices through which public service media ensure that their processes and culture are the most appropriate to fulfil their remit and best serve the public interest;
- an active and meaningful dialogue with its wider stakeholders including new levels of interaction, engagement and participation.

12. A properly functioning governance system depends on a number of conditions. These include the processes through which the support of the key stakeholders – including the state – is secured, the existence of an appropriate level of independence from government or other public and private interests, and the procedural guarantees ensuring that the decisions of public service media are consistent with their remit, are properly taken and fully implemented.

13. It is of great concern for all member states that public service media governance should be addressed, and where necessary rethought and reconstructed, so as to ensure that public service media can take advantage of the new possibilities to overcome present and future challenges and obstacles.

14. The Committee of Ministers therefore:

- declares that the duty of public service media to promote the values of democracy and diversity within and through their content and services remains of utmost importance in the new dynamic media environment. Public service media play a vital role in supporting such non-commercial objectives as social progress, public interest and ability to engage with democratic processes, gender equality, intercultural understanding and societal integration. These can be achieved through a

varied and high-quality mix of content and services adhering to the highest professional standards which public service media have offered and will continue to deliver;

- alerts member states to the risks to pluralism and diversity in the media and, in consequence, to democratic debate and engagement, should the current model which includes public service, commercial and community media not be preserved and if the transitions from State to public service and from broadcasting to public service media are not successfully completed;
- reiterates member states' commitment to firmly support the remit, funding, editorial and organisational independence of public service media operating on any relevant platform, and underlines the importance of this support which has not always been uniformly thorough and sufficiently timely;
- encourages the establishment of dialogue at different levels with all stakeholders, including civil society and the public at large.

Declaration of the Committee of Ministers on the desirability of international standards dealing with forum shopping in respect of defamation, “Libel Tourism”, to ensure freedom of expression

(Adopted by the Committee of Ministers on 4 July 2012 at the 1147th meeting of the Ministers’ Deputies)

1. The full respect for the right of all individuals to receive and impart information, ideas and opinions, without interference by public authorities and regardless of frontiers constitutes one of the fundamental principles upon which a democratic society is based. This is enshrined in the provisions of Article 10 of the European Convention on Human Rights (“the Convention”, ETS No. 5). Freedom of expression and information in the media is an essential requirement of democracy. Public participation in the democratic decision-making process requires the public to be well informed and to have the possibility of freely discussing different opinions.
2. Article 10 of the Convention also states that the right to freedom of expression “carries with it duties and responsibilities”. However, states may only limit the exercise of this right to protect the reputation or rights of others, as long as these limitations are “prescribed by law and are necessary in a democratic society”. In this respect, in its reply to Parliamentary Assembly Recommendation 1814 (2007) “Towards decriminalisation of defamation”, adopted on 7 October 2009, the Committee of Ministers endorsed the Parliamentary Assembly’s views and called on member states to take a proactive approach in respect of defamation by examining domestic legislation against the case law of the European Court of Human Rights (“the Court”) and, where appropriate, aligning criminal, administrative and civil legislation with those standards. Furthermore, the Committee of Ministers recalled Parliamentary Assembly Recommendation 1589 (2003) on “Freedom of expression in the media in Europe”.
3. The European Commission of Human Rights and the Court have, in several cases, reaffirmed a number of principles that stem from paragraphs 1 and 2 of Article 10. The media play an essential role in democratic societies, providing the public with information and acting as a watchdog,¹ exposing wrongdoing and inspiring political debate, and therefore have specific rights. The media’s purpose is to impart information and ideas on all matters of public interest.² Their impact and ability to put certain issues on the public agenda entails responsibilities and obligations. Among these is to respect the reputation and rights of others and their right to a private life. Furthermore, “subject to paragraph 2 of Article 10 (art. 10-2), [freedom of expression] is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population”³.

1. Goodwin v. United Kingdom, European Court of Human Rights, 27 March 1996, paragraph 39.

2. De Haes and Gijssels v. Belgium, European Court of Human Rights, 24 February 1997, paragraph 37.

3. Handyside v. United Kingdom, European Court of Human Rights, 7 December 1976, paragraph 49.

4. In defamation cases, a fine balance must be struck between guaranteeing the fundamental right to freedom of expression and protecting a person's honour and reputation. The proportionality of this balance is judged differently in different member states within the Council of Europe. This has led to substantial variations in the stringency of defamation law or case law, for example different degrees of attributed damages and procedural costs, varying definitions of first publication and the related statute of limitations or the reversal of the burden of proof in some jurisdictions. The Court has established case law in this respect: "In determining the length of any limitation period, the protection of the right to freedom of expression enjoyed by the press should be balanced against the rights of individuals to protect their reputations and, where necessary, to have access to a court in order to do so. It is, in principle, for Contracting states, in the exercise of their margin of appreciation, to set a limitation period which is appropriate and to provide for any cases in which an exception to the prescribed limitation period may be permitted".⁴

LIBEL TOURISM AND ITS RISKS

5. The existing differences between national defamation laws and the special jurisdiction rules in tort and criminal cases have given rise to the phenomenon known as "libel tourism". Libel tourism is a form of "forum shopping" when a complainant files a complaint with the court thought most likely to provide a favourable judgment (including in default cases) and where it is easy to sue. In some cases a jurisdiction is chosen by a complainant because the legal fees of the applicant are contingent on the outcome ("no win, no fee") and/or because the mere cost of the procedure could have a dissuasive effect on the defendant. The risk of forum shopping in cases of defamation has been exacerbated as a consequence of increased globalisation and the persistent accessibility of content and archives on the Internet.⁵

6. Anti-defamation laws can pursue legitimate aims when applied in line with the case law of the Court, including as far as criminal defamation is concerned. However, disproportionate application of these laws may have a chilling effect and restrict freedom of expression and information. The improper use of these laws affects all those who wish to avail themselves of the freedom of expression, especially journalists, other media professionals and academics. It can also have a detrimental effect, for example on the preservation of information, if content is withdrawn from the Internet due to threats of defamation procedures. In some cases libel tourism may be seen as the attempt to intimidate and silence critical or investigative media purely on the basis of the financial strength of the complainant ("inequality of arms"). In other cases the very existence of small media providers has been affected by the deliberate use of disproportionate damages by claimants through libel tourism. This shows that libel tourism can even have detrimental effects on media pluralism and diversity. Ultimately, the whole of society suffers the consequences of the pressure that may be placed on journalists and media service providers. The Court has developed a body of case law that advocates respect for the principle of proportionality in the use of fines payable in respect of damages and considers that a disproportionately large award constitutes a violation of Article 10 of the Convention.⁶ The Committee of Ministers also stated this in its Declaration on Freedom of Political Debate in the Media of 12 February 2004.⁷

7. Libel tourism is an issue of growing concern for Council of Europe member states as it challenges a number of essential rights protected by the Convention such as Article 10 (freedom of expression), Article 6 (right to a fair trial) and Article 8 (right to respect for private and family life).

8. Given the wide variety of defamation standards, court practices, freedom of speech standards and a readiness of courts to accept jurisdiction in libel cases, it is often impossible to predict where a defamation/libel claim will be filed. This is especially true for web-based publications. Libel tourism thereby also demonstrates elements of unfairness. There is a general need for increased predictability of jurisdiction, especially for journalists, academics and the media.

9. The situation described in the previous paragraph has been criticised in many instances. Further, in a 2011 Joint Declaration, the United Nations (UN) Special Rapporteur on the promotion and protection of the right to 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

4. Times Newspapers Ltd. (Nos. 1 and 2) v. United Kingdom, European Court of Human Rights, 10 March 2009, paragraph 46.

5. Times Newspapers Ltd. (Nos. 1 and 2) v. United Kingdom, European Court of Human Rights, paragraph 45.

6. Tolstoy Miloslavsky v. United Kingdom, European Court of Human Rights, 13 July 1995, paragraph 51.

7. "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."

Rapporteur on freedom of expression and access to information in Africa stated that jurisdiction in legal cases relating to Internet content should be restricted to states to which those cases have a real and substantial connection.

10. Procedural costs may discourage defendants from presenting a defence thus leading to default judgments. Compensations may be considered disproportionate in the member state where the claim is being enforced due to the failure to strike an appropriate balance between freedom of expression and protection of the honour and reputation of persons.

MEASURES TO PREVENT LIBEL TOURISM

11. The prevention of libel tourism should be part of the reform of the legislation on libel/defamation in member States in order to ensure better protection of the freedom of expression and information within a system that strikes a balance between competing human rights.

12. With a view to further strengthening the freedom of expression and information in member states, an “inventory” of the Court’s case law in respect of defamation could be established with a view to suggesting new action if need be. Further, if there is a lack of clear rules as to the applicable law and indicators for the determination of the personal and subject matter jurisdiction, such rules should be created to enhance legal predictability and certainty, in line with the requirements set out in the case law of the Court. Finally, clear rules as to the proportionality of damages in defamation cases are highly desirable.

13. Against this background, the Committee of Ministers:

- alerts member States to the fact that libel tourism constitutes a serious threat to the freedom of expression and information;
- acknowledges the necessity to provide appropriate legal guarantees against awards for damages and interest that are disproportionate to the actual injury, and to align national law provisions with the case law of the Court;
- undertakes to pursue further standard-setting work with a view to providing guidance to member States.

Declaration of the committee of Ministers on risks to fundamental rights stemming from digital tracking and other surveillance technologies

(Adopted by the Committee of Ministers on 11 June 2013 at the 1173rd meeting of the Ministers' Deputies)

1. The propensity to interfere with the right to private life has significantly increased as a result of rapid technological development and of legal frameworks which are slow to adapt.
2. Data processing in the information society which is carried out without the necessary safeguards and security can raise major human rights related concerns. Legislation allowing broad surveillance of citizens can be found contrary to the right to respect of private life. These capabilities and practices can have a chilling effect on citizen participation in social, cultural and political life and, in the longer term, could have damaging effects on democracy. They can also undermine the confidentiality rights associated to certain professions, such as the protection of journalists' sources, and even threaten the safety of the persons concerned. More generally, they can endanger the exercise of freedom of expression and the right to receive and impart information protected under Article 10 of the European Convention on Human Rights.
3. In this connection, it is recalled that, in accordance with Article 8 of the European Convention on Human Rights, Council of Europe member states have undertaken to secure to everyone within their jurisdiction the right to respect of private and family life, home and correspondence. Restrictions to this right can only be justified when it is necessary in a democratic society, in accordance with the law and for one of the limited purposes set out in Article 8, paragraph 2, of the Convention.
4. As a corollary to the Convention and relevant case law of the European Court of Human Rights, member states have negative obligations, that is, to refrain from interference with fundamental rights, and positive obligations, that is, to actively protect these rights. This includes the protection of individuals from action by non-state actors.
5. People nowadays rely on a growing range of both fixed-location and mobile electronic devices which enhance their possibilities to communicate, participate and manage their everyday lives. However, a growing number of these devices are equipped with software that are capable of collecting and storing data, including personal data (e.g. keystrokes that reveal passwords) and private information such as user generated content, websites visited, and geographical locations that potentially allow tracking and surveillance of people. This data can reveal delicate and/or sensitive personal information (such as financial, health, political, religious preferences, sexual habits) which can be aggregated to provide detailed and intimate profiles of them.
6. Tracking and surveillance technologies can be used in the pursuit of legitimate interests, for example to develop new services, improve user experience or facilitate network management, as well as law enforcement. On the other hand, they may also be used for unlawful purposes that lead to illegal access, data interception or interference, system surveillance, and misuse of devices or other forms of malpractice; for example, geo-location tracking could be used to stalk women and make them more vulnerable to gender-related abuse and violence.

7. In all cases, the modalities for processing personal data should comply with relevant Council of Europe standards. This implies ensuring that law enforcement's own tracking and surveillance measures respect the applicable human rights safeguards, which should provide for the adequate protection of human rights and liberties, including rights arising pursuant to obligations undertaken under the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, the 1966 United Nations International Covenant on Civil and Political Rights, and other applicable international human rights instruments, and which should incorporate the principle of proportionality. It also concerns strict respect for the limits, requirements and safeguards set out in the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and in its Additional Protocol as well as regard for other instruments such as Recommendation CM/Rec(2010)13 on the protection of personal data in the context of profiling.

8. Against this background, the Committee of Ministers:

- alerts member states to the risks of digital tracking and other surveillance technologies for human rights, democracy and the rule of law and recalls the need to guarantee their legitimate use which benefits individuals, the economy, society at large, and the needs of law enforcement;
- encourages member states to bear these risks in mind in their bilateral discussions with third countries, and, where necessary, consider the introduction of suitable export controls to prevent the misuse of technology to undermine those standards;
- welcomes steps taken by data protection authorities in some member states to raise awareness of the implications of tracking and surveillance technologies and to investigate these practices to ensure compliance with the provisions of Convention No. 108 and their national legislations;
- draws attention to the criminal law implications of unlawful surveillance and tracking activities in cyberspace and the relevance of the Budapest Convention in combating cybercrime;
- welcomes measures taken by both state and non-state actors to raise awareness among users, and, a fortiori, within the private sector and among technology developers about the potential impact of the use of such technologies on human rights and the steps which can be taken at the design stage to minimise the risks of interferences with these rights and freedoms (e.g. "privacy by design" and "privacy by default");
- recalls the Council of Europe Internet Governance Strategy 2012-2015 which includes a number of action lines relevant to the challenges identified in this Declaration and looks forward to the concrete results of the work of the competent Council of Europe bodies.

Declaration of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors¹

(Adopted by the Committee of Ministers on 30 April 2014 at the 1198th meeting of the Ministers' Deputies)

1. Journalists and other media actors in Europe are increasingly being harassed, intimidated, deprived of their liberty, physically attacked and even killed because of their investigative work, opinions or reporting. These abuses and crimes are often met with insufficient efforts by relevant State authorities to bring the perpetrators to justice, which leads to a culture of impunity.
2. This alarming situation is not exclusively limited to professional journalists and other traditional media actors. As many intergovernmental bodies have recognised, including the United Nations Human Rights Committee in its General comment No. 34,² the scope of media actors has enlarged as a result of new forms of media in the digital age.³ Those at risk also include others who contribute to inform the public debate and persons performing journalistic activity or public watchdog functions.
3. The right to freedom of expression, to receive and impart information, ideas and opinions without interference is guaranteed by Article 10 of the European Convention on Human Rights (ETS No. 5, the "Convention"); it constitutes one of the fundamental principles upon which a democratic society is based. The public watchdog functions of the media are crucial for upholding these rights and for the protection of all other human rights. Misuse of power, corruption, discrimination, criminal activity or human rights violations have come to light as a direct result of the work of investigative journalists and other media actors. Making the facts known to the public is essential for redressing such situations and holding to account those responsible.
4. Journalists and others who perform public watchdog functions through the media are often in a vulnerable position vis-à-vis the public authorities or powerful interests groups because of their role in informing the public and provoking debate on issues of public interest. Obstacles created in order to hinder access to information of public interest may not only discourage journalists and other media actors from fulfilling their public watchdog role,⁴ but may also have negative effects on their safety and security.
5. Attacks against journalists and other media actors constitute particularly serious violations of human rights because they target not only individuals, but deprive others of their right to receive information, thus restricting public debate, which is at the very heart of pluralist democracy.

1. The Russian Federation made a reservation concerning this Committee of Ministers' Declaration, specifically denying its application to "other media actors", as it considers this term to be unspecific and without any basis in binding international legal documents.

2. General Comment No. 34, point 44: "Journalism is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the Internet or elsewhere, and general State systems of registration or licensing of journalists are incompatible with paragraph 3. Limited accreditation schemes are permissible only where necessary to provide journalists with privileged access to certain places and/or events. Such schemes should be applied in a manner that is non-discriminatory and compatible with Article 19 and other provisions of the International Covenant on Civil and Political Rights, based on objective criteria and taking into account that journalism is a function shared by a wide range of actors."

3. See Committee of Ministers' Recommendation CM/Rec(2011)7 to member states on a new notion of media.

4. See in this regard *Társaság a Szabadságjogokért v. Hungary*, Application No. 37374/05, judgment of 14 April 2009, paragraph 38.

6. The European Court of Human Rights has held that the role played by journalists in a democratic society confers upon them certain increased protections under Article 10 of the Convention. The exercise of media freedom, including in relation to matters of serious public concern, also involves duties and responsibilities. The safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism.⁵

7. The European Court of Human Rights has established that states are required to create a favourable environment for participation in public debate by all persons, enabling them to express their opinions and ideas without fear.⁶ To do this, states must not only refrain from interference with individuals' freedom of expression, but are also under a positive obligation to protect their right to freedom of expression against the threat of attack, including from private individuals, by putting in place an effective system of protection.

8. Eradicating impunity is a crucial obligation upon states, as a matter of justice for the victims, as a deterrent with respect to future human rights violations and in order to uphold the rule of law and public trust in the justice system.⁷ All attacks on journalists and other media actors should be vigorously investigated in a timely fashion and the perpetrators prosecuted. The effective investigation of such attacks requires that any possible link to journalistic activities be duly taken into account in a transparent manner.

9. A favourable environment for public debate requires states to refrain from judicial intimidation by restricting the right of individuals to disclose information of public interest through arbitrary or disproportionate application of the law, in particular the criminal law provisions relating to defamation, national security or terrorism. The arbitrary use of laws creates a chilling effect on the exercise of the right to impart information and ideas, and leads to self-censorship. Furthermore, prompt and free access to information as the general rule and strong protection of journalists' sources are essential for the proper exercise of journalism, in particular in respect of investigative journalism.⁸

10. Surveillance of journalists and other media actors, and the tracking of their online activities, can endanger the legitimate exercise of freedom of expression if carried out without the necessary safeguards and can even threaten the safety of the persons concerned. It can also undermine the protection of journalists' sources.

11. In view of the foregoing, the Committee of Ministers:

- alerts member states to the increasing number of reports of attacks on journalists and other media actors in several parts of Europe, including specific dangers that female journalists face. These constitute attacks on the right to freedom of expression, to hold opinions and to receive and impart information and ideas and to other fundamental rights provided for in the European Convention on Human Rights;
- decides to facilitate the development of an Internet-based platform drawing on information supplied by interested media freedom organisations to record and publicise possible infringements of the rights guaranteed by Article 10 of the European Convention on Human Rights;
- urges member states to fulfil their positive obligations to protect journalists and other media actors from any form of attack and to end impunity in compliance with the European Convention on Human Rights and in the light of the case law of the European Court of Human Rights; and invites member States to review at least once every two years the conformity of domestic laws and practices with these obligations on the part of member states;
- encourages member states to contribute to the concerted international efforts to enhance the protection of journalists and other media actors by ensuring that legal frameworks and law-enforcement practices are fully in accord with international human rights standards. The implementation of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity is an urgent and vital necessity;

5. See, for example, *Standard Verlagsgesellschaft mbH (No. 2) v. Austria*, Application No. 37464/02, judgment of 22 February 2007, paragraph 38.

6. *Dink v. Turkey*, Application Nos. 2668/07, 6102/08, 30079/08, 7072/09, 7124/09, judgment of 14 September 2010, paragraph 137.

7. See the Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations, adopted on 30 March 2011.

8. See, for example, the Council of Europe Convention on Access to Official Documents (CETS No. 205) and Committee of Ministers Recommendation Rec(2000)7 on the right of journalists not to disclose their sources of information.

- will intensify its standard-setting and co-operation activities for the protection of journalism and the safety of journalists and other media actors as a priority and contribute expertise to other international organisations with regard to the particular competence of the Council of Europe;
- will consider further measures to ensure the protection of journalists from threats and acts of violence, as well as measures to eradicate impunity, and the alignment of laws and practices concerning defamation, anti-terrorism and protection of journalists' sources with the European Convention on Human Rights;
- will address the specific challenges and threats that women journalists are confronted with in the course of their work.

Since its creation, the Council of Europe has developed a number of standards detailing the scope and limits of freedom of expression in its numerous manifestations in the media, in particular in the light of Article 10 of the European Convention on Human Rights.

This compilation presents all of the Committee of Ministers' resolutions, recommendations and declarations in the field of media and information society up to 2014.

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. "

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.