

Steering Committee on Media and Information Society

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

6th meeting

CDMSI (2014)007

20 May 2014 – 14h00 to 18h00
21 May 2014 – 09h30 to 18h00
22 May 2014 – 09h30 to 18h30
23 May 2014 – 09h00 to 13h15
(Strasbourg, Agora building, Room G03)

Abridged meeting report
(23/05/2014)

The Steering Committee on Media and Information Society (CDMSI) held its 6th meeting chaired by Ms Maja Rakovic (Serbia) from 20 to 23 May 2014.

Gender distribution: 74 attendants, 25 women (34%), 49 men (66%).

The CDMSI adopted the agenda as it is set out in Appendix I. The list of participants appears in Appendix II.

During the meeting, the CDMSI:

For Committee of Ministers' consideration

- finalised and, subject to no objections being raised by members by 23 June 2014 and subject also to changes required in light of comments received by that date, decided to submit to the Committee of Ministers for adoption a Draft Recommendation on protecting and promoting the right to freedom of expression and the right to private life with regard to network neutrality (Appendix III);
- in light of PACE Recommendation 2036(2014), held an exchange on the European Convention on Transfrontier Television with a representative of the EU Commission, and noted with regret the persistent deadlock which, in its opinion, should be overcome at a political level before considering further the PACE recommendations about drafting a new convention or guidelines in this context;

For Committee of Ministers' information

- agreed that the draft recommendation on network neutrality be transmitted to the CDDH, CDPC, TP-D and T-CY for information and
- underlined the human rights approach to network neutrality which should inspire current legislative processes in the European Union and elsewhere, notably at Netmundial (Multi-stakeholder statement of 24 April 2014) and IGF.
- agreed that work on safety of journalists should be pursued as a matter of priority; in this connection, welcomed the work of the Committee of experts on protection of

- journalism and safety of journalists (MSI-JO), and expects to be able to discuss, at its next meeting, the preliminary elements of the draft recommendation foreseen in MSI-JO Terms of Reference; noted information on the Round Table on safety of journalists (19 May 2014), and agreed to discuss implementation of standards on "Safety of journalists" at its next meeting on the basis of concrete information provided by members under the new item "*Follow up of the implementation of Council of Europe adopted standards in member states*" in the format as proposed by the Secretariat, based on Bureau discussions;
- welcomed the work of the Committee of Experts on cross-border flow of Internet traffic and Internet freedom (MSI-INT) and expects to be able to discuss, at its next meeting, the preliminary elements of draft recommendations foreseen in the MSI-INT Terms of Reference;
 - took note of the adoption on 16 April of Committee of Ministers Recommendation CM/Rec(2014)6 on a Guide to human rights for Internet users, and invited member states' governments to translate, disseminate and raise awareness about it also using their official government websites; positive feedback on some already started promotional actions for the Guide was given by Bulgaria, Greece, Netherlands, Russia, Poland, Austria;
 - as regards implementation of existing standards more generally, noted the Secretary General's Report on the State of Democracy, Human Rights and the Rule of Law in Europe and his proposition that there is a need to monitor Articles 10 and 11 ECHR; stressed the importance of assistance activities in the media and information society fields and of CDMSI being more included in those activities; welcomed the immediate measures package for Ukraine which included monitoring of media coverage of the presidential election campaign (25 May 2014), and underlined that the CDMSI's accumulated expertise in the field of hate speech should be taken into account transversally when new initiatives or instruments are considered;
 - took note of the state of implementation of Council of Europe Internet Governance Strategy 2012-2015 and expressed concern about lack of action in respect of some items; invited members to make suggestions for the future Strategy to be prepared with the help of the Thematic Co-ordinator on Information Policy (TC-INF) and in view of proposals in the summing of the Conference on "Shaping the Digital Environment – Ensuring our Rights on the Internet" organised in the framework of the Austrian Chairmanship of the Committee of Ministers (Graz, 13-14 March 2014);
 - as regards other Council of Europe bodies, it agreed on the desirability of having more regular exchanges of information and co-operation with members and the secretary of the PACE Sub-Committee on Media and Information Society, took note of the Declaration on the UN Guiding Principles on business and human rights prepared by the CDDH and adopted by the Committee of Ministers on 16 April 2014, and agreed to take part at the invitation by CODEXTER in their work on the revision of the Recommendation Rec(2005)10 on special investigation techniques in relation to serious crimes including acts of terrorism;
 - agreed to postpone its decision regarding the request for observer status of the Internet Watch Foundation until additional information is provided by the applicant;
 - agreed to include in its next meeting's agenda (18-21 November 2014, following a Bureau meeting on 24-25 September 2014): transparency of media ownership (having regard to upcoming PACE work and a European Commission event); public service media (in light of concern expressed by the European Broadcasting Union about difficulties in some member states); priorities for CDMSI's own work (including in light of the SG Report on the Belgrade Conference of Ministers responsible for Media and Information Society (7-8 November 2013, CM (2013)162) and working methods; follow up to the World Summit on the Information Society (WSIS+10).

APPENDIX I
AGENDA

1. Opening of the meeting
2. Adoption of the agenda
3. Information by the Chair and the Secretariat
 - 3.1 *Committee of Ministers Declaration on the protection of journalism and safety of journalists and other media actors*
 - 3.2 *Recommendation CM/Rec(2014)6 of the Committee of Ministers to member states on a Guide to human rights for Internet users*
 - 3.3 *Committee of Ministers Thematic debate on "Safety of journalists - further steps for the better implementation of human rights standards" (12/12/2013)*
 - 3.4 *EU Human Rights Guidelines on Freedom of Expression Online and Offline*
4. Implementation of Council of Europe adopted standards in member states
5. Media
 - 5.1. *Standard setting activities*
 - 5.1.1 *Committee of experts on protection of journalism and safety of journalists (MSI-JO)*
 - 5.1.2. *Round Table on safety of journalists (19 May 2014)*
 - 5.1.3 *Report of the Secretary General of the Council of Europe on the State of Democracy, Human Rights and the Rule of Law in Europe*
 - 5.1.4. *Gender equality and the media*
 - 5.1.5 *Hate speech*
 - 5.1.6 *Transparency of media ownership*
 - 5.2 *Cooperation and outreach*
 - 5.2.1 *On-going and future activities*
6. Information Society
 - 6.1. *Standard setting activities*
 - 6.1.1 *Committee of Experts on cross-border flow of Internet traffic and Internet freedom (MSI-INT)*
 - 6.1.2 *Draft Recommendation CM/Rec(2014)___ of the Committee of Ministers to member States on protecting and promoting the right to freedom of expression and the right to private life with regard to network neutrality*
 - 6.1.3 *Council of Europe Internet Governance Strategy 2012-2015 and new Internet Governance Strategy 2015-2019*

6.2. *Other Internet Governance activities*

6.2.1 *European Dialogue on Internet Governance (EuroDIG – 12-13 June 2014, Berlin)*

6.2.2 *Internet Governance Forum (IGF, Istanbul, 25 September 2014)*

6.2.3 *ICANN*

6.2.4 *On-going and future activities*

7. Data protection - Standard setting activities

8. Information about work of other organisations and other CoE bodies

8.1 Participation of CDMSI in events and meetings

8.2 Parliamentary Assembly of the Council of Europe (PACE)

8.3 European Committee on Legal Co-operation (CDCJ)

8.4 Consultative Council of European Prosecutors (CCPE)

8.5 Steering Committee for Human Rights (CDDH)

8.6 European Broadcasting Union (EBU)

8.7 CODEXTER

9. Budget and administrative matters

10. Priorities of CDMSI work and working methods

11. Other questions

Internet Watch Foundation – application to observer statutes

12. Adoption of the abridged report of the meeting

General reference documents:

Recent meeting reports:

APPENDIX II

LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

Total number of participants: 74

Gender distribution – 49 men (66%) / 25 women (34%)

Parité entre hommes / femmes - 49 hommes (66%) / 25 femmes (34%)

ALBANIA/ALBANI E

Mr Glevin Dervishi (Excused)

Albanian Ministry of Foreign Affairs

ARMENIA/ARMENI E

Ms Lusine Harutyunyan

Department for Relations with the European Court on Human Rights, Ministry of Justice of the Republic of Armenia

AUSTRIA/AUTRICHE

Mr Matthias Traimer

Federal Chancellery, Head of Department, Media Affairs and Information Society, Federal Chancellery, Constitutional Service

AZERBAIJAN

Ms Jeyran Amiraslanova

Senior Consultant for Public and Political Issues, Office of the President of the Republic of Azerbaijan

BELGIUM/BELGIQUE

Mr Johan Bouciqué

Media Advisor, Flemish Government, Department of Culture, Youth, Sports and Media

BOSNIA AND HERZEGOVINA/BOSNIE-HERZEGOVINE

Mr Emir Powlakic

Head of Division for Licensing, Digitalization and Coordination in Broadcasting, Communications Regulatory

BULGARIA/BULGARI E

Ms Bissera Zankova, Media Expert / Consultant

Ministry of Transport, IT and Communications

CROATIA/CROATIE

Mr Milan F. Zivkovic

Head Advisor for Communication Policy, Ministry of Culture

CYPRUS/CHYPRE

Ms Eleonora Gavrielides

Ministry of Interior

CZECH REPUBLIC/REPUBLIQUE TCHEQUE

Mr Artuš Rejent

Media and Audio-Visual Department, Ministry of Culture

DENMARK/DANEMARK

Ms Katja Just Maarbjerg

Ministry of Culture

ESTONIA/ESTONI E

Mr Indrek Ibrus
Senior specialist of audiovisual affairs, Estonian Ministry of Culture

Mr Tanel Tang
Permanent Representation of Estonia, Deputy to the Permanent Representative

FINLAND/FINLANDE

Ms Nina Paakkonen
Communications Policy Department, Ministry of Transport and Communications

FRANCE

Ms Joanna Chansel
Ministère de la Culture et de la Communication

Ms Catherine Souyri-Desrosier
Ministère des Affaires étrangères, Direction de la coopération culturelle, universitaire et de la recherche, Pôle de l'audiovisuel extérieur

GEORGIA/GEORGIE

Ms Irine Bartaia
Deputy Director, Department of International Law, Ministry of Foreign Affairs of Georgia

GERMANY/ALLEMAGNE

Mr Oliver Schenk (20-21 May)
Division K 31, International Media Cooperation, Federal Government Commissioner for Culture and the Media

Ms Annick Kuhl
EU Representation of the Free State of Bavaria to the EU

GREECE/GRECE

Ms Christina Lamprou
Head of the Department of Audiovisual Affairs, Directorate of Mass Media - General Secretariat of Information and Communication, Hellenic Republic

HUNGARY/HONGRIE

Mr György Ocskó
International Legal Adviser, National Media and Infocommunications Authority

Mr János Auer
Member of the Media Council of the National Media and Infocommunications Authority

ICELAND/ISLANDE

Ms Margrét Magnúsdóttir
Legal Adviser, Ministry of Education, Science and Culture

IRELAND/IRLANDE

Mr Éanna O'Conghaile
Principal Officer, Broadcasting Policy Division, Department of Communications, Energy & Natural Resources

Mr Richard Browne, Department of Communications, Energy & Natural Resources

ITALY/ITALIE

Mr Pierluigi Mazzella
Director General, Agency for the right to university education, Professor of Information and Communication, University of Rome

LATVIA/LETTONIE

Mr Andris Mellakauls
Information Space Integration, Ministry of Culture

LI ECHTENSTEIN
Mr Philipp Mittelberger
Data Protection Commissioner of the Principality of Liechtenstein

MONACO
M. Serge Robillard, Chef de Division, Direction des Communications Électroniques, Principauté de Monaco

MONTENEGRO
Mr Ranko Vujovic, Executive Director, UNEM

REPUBLIC OF MOLDOVA

Ms Ana Taban, Head of Information and Media Outreach Office, Ministry of Foreign Affairs and European Integration

Ms Mariana Onceanu Hadrica
Member of Coordinating Council of Audiovisual

THE NETHERLANDS/PAYS-BAS
Mr Nol Reijnders
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Assistant Director General, Departement of Media Policy and Copyright, Ministry of Culture

Mr Anders Huitfeldt
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POLAND/POLOGNE
Mr Maciej Gron Director of the Department of Information Society, Ministry of Administration and Digitization

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PORTUGAL
Mr Pedro Ruivo (GMCS, Portugal, Cabinet pour les Medias ("Gabinete para os Meios de Comunicação Social"))

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Ms Delia Mucica, Ministry of Culture and National Heritage

RUSSIAN FEDERATION / FEDERATION RUSSIE
Mr Alexander Surikov
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Mr Özgür Fatih Akpınar, Head of Department, Information and Communications Technologies Authority (ICTA)

Mr Mustafa Özdemir, ICT Expert, Information and Communications Technologies Authority (ICTA)

UKRAINE
Mrs Larysa Mudrak
Deputy Chairman of the National Television and Radio Broadcasting Council

Ms Larysa Vasylenko
Head of International Relations Division of the National Television and Radio Broadcasting Council

UNITED KINGDOM/ROYAUME-UNI
Ms Katharina Ribbe (20-21 May)
Head of Broadcasting Content Regulation

Mr Mark Carvell (22-23 May)
Media Team, Department for Culture, Media and Sport

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BELARUS

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EUROPEAN UNION/UNION EUROPEENNE

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EUROPEAN BROADCASTING UNION (EBU) / UNION EUROPEENNE DE RADIO-TELEVISION (UER)

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EuroISPA
Mr Michael Rotert
Honorary Spokesman

ASSOCIATION OF EUROPEAN JOURNALISTS (AEJ) / MEDIA FREEDOM REPRESENTATIVE

Mr William Horsley

EUROPEAN DIGITAL RIGHTS (EDRI)

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Mr Guy Berger, Director of the Division for Freedom of Expression and Media Development (Excused/excuse)

ICANN

Mr Nigel Hickson

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INTERNET WATCH FOUNDATION
Mr Kristof Claesen, Press and Public Affairs Manager

MEXICO / MEXIQUE
Deputy Juan Pablo Adame Alemán
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Amb. Santiago Oñate Laborde, Permanent Observer of Mexico.

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INTERPRETERS / INTERPRETES

Ms Amanda Beddows
Ms Angela Brewer
Ms Monique Palmier
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* * *

SECRETARIAT

Mr Jan Kleijssen, Director of Information Society and Action against Crime, Directorate General Human Rights and Rule of Law
Mr Jan Malinowski, Head of Information Society Department, Directorate General Human Rights and Rule of Law
Ms Silvia Grundmann, Head of Media Division, Directorate General of Human Rights and Rule of Law, Secretary to the Steering Committee on Media and Information Society
Ms Onur Andreotti, Administrator, Media Division, Directorate General Human Rights and Rule of Law
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Ms Loreta Vioiu, Administrator, Information Society Unit, Directorate General Human Rights and Rule of Law
Ms Sophie Kwasny, Administrator, Data Protection Unit, Directorate General Human Rights and Rule of Law
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Ms Sonya Folca, Assistant, Directorate General Human Rights and Rule of Law
Ms Elisabeth Maetz, Assistant, Directorate General Human Rights and Rule of Law

APPENDIX III

Draft Recommendation CM/Rec(2014)___of the Committee of Ministers to member States on protecting and promoting the right to freedom of expression and the right to private life with regard to network neutrality

1. The European Convention on Human Rights (ETS No. 5, hereinafter the Convention), the International Covenant on Civil and Political Rights as well relevant international instruments apply equally to the Internet as they do to offline activities. Council of Europe member states have an obligation to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention and interpreted by the European Court of Human Rights.

2. Article 10 of the Convention guarantees the right to freedom of expression to everyone. It applies not only to the content of the information but also to the means of dissemination, since any restriction imposed on the means necessarily interferes with the right to receive and impart information. Any interference must meet the requirements of legality, necessity in a democratic society which includes proportionality, in compliance with Article 10 of the Convention in order to be justified. The right to freedom of expression is both a right on its own and an enabler of other fundamental rights and freedoms, including the right to freedom of association and the right to private life.

3. The right to private life, which is protected by Article 8 of the Convention, is not only an individual right but also an essential condition for democratic societies. The protection of personal data is intrinsic to the right to private life and it should be guaranteed in full compliance with the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108).

4. The Internet offers an unprecedented opportunity for the realisation of freedom of expression and the right to receive and impart information of people's choice. This should not depend on the ownership or exploitation of means of mass communication or channels of distribution. The Committee of Ministers in its Declaration on Network Neutrality has stated that individuals 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. This is also reinforced by Recommendation CM/Rec(2014)6 to member States on a Guide to human rights for Internet users. The open network principle is also important for the overall governance of the Internet as set out in the Committee of Ministers Declaration on Internet governance principles.

5. The Internet has public service value as it provides people with an essential tool for their everyday activities, including communication, information, knowledge, access to culture, and commercial transactions as well as a space for engagement in and contribution to political processes and democratic governance. Recommendation CM/Rec(2007)16 of the Committee of Ministers to member states on measures to promote the public service value of the Internet proposes policy and regulatory measures and offers guidelines on how to ensure the protection and promotion of human rights and fundamental freedoms on the Internet, promote Internet access, diversity, openness and security.

6. The growth and success of the Internet as a global public resource is based on its distributed nature and management by multiple stakeholders. Its creative and innovative power is the result of the openness that the Internet technical standards and architecture have offered to specialists and network end-users at large. The Committee of Ministers Declaration on Internet Governance Principles has emphasised that the preservation of open standards, the interoperability of the Internet, its end-to-end nature and the Internet's potential for innovation are founding principles for the governance of the Internet.

7. Providers of Internet access services have the ability to manage information and data flows (traffic) transiting through the Internet networks that they operate. They may engage in practices of traffic management for different legitimate purposes such as to preserve the integrity and security of the network. However, they also have the ability to block, downgrade or prioritise specific types of content, applications or services. Some of the techniques used in this context permit inspection or monitoring of the content of end-users' communications,

which in turn may have implications for the fundamental right to respect for private life, respect for correspondence as well as for personal data protection.

8. Measures that block and filter Internet content and services are bound to have an impact on Internet accessibility and accordingly engage the responsibility of a state under Article 10 of the Convention. 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 provides relevant guidelines in connection with the full exercise and enjoyment of the right to freedom of expression and the right to private life.

9. In the modern information society, the ability to freely receive and impart information and ideas and to fully participate in democratic life is increasingly reliant upon the quality of one's Internet connection. The users' experience on the Internet will determine which information they will ultimately have access to. Slow connections or prioritised services affect users' experience. Moreover, fear about inspection or monitoring of individuals' communications over the Internet can fundamentally undermine the trust of people in the Internet. Surveillance which does not meet the requirements of Article 8 of the Convention is incompatible with a free Internet.

10. Access to diverse and pluralistic information and public service media content on the Internet is important for the general interest, media pluralism and cultural diversity as set out in Recommendation CM/Rec (2007)3 of the Committee of Ministers to member states on the remit of public service media in the information society. Discriminatory and/or preferential treatment of traffic, especially in terms of favouring specific content, has a negative impact on users' right to freedom of expression and to receive and impart information as well as on accessibility of diverse and pluralistic information.

11. The principle of network neutrality reinforces the full exercise and enjoyment of the right to freedom of expression, the right to private life and supports technological innovation and economic growth. The implementation of this principle should be put in place through an appropriate policy framework which guarantees the right to have access to diverse and pluralistic information. It should also provide guidelines with regard to the evaluation of the legality, necessity and proportionality of limitations to access as well as the implementation of the principle by public authorities.

12. Therefore, with a view to protecting and promoting the right to freedom of expression in compliance with Article 10 of the Convention, the right to private life in compliance with Article 8 of the Convention and to promote full delivery of the public service value of the Internet, the Committee of Ministers recommends that, member states in co-operation with all relevant stakeholders, take all the necessary measures to safeguard the principle of network neutrality having regard to the guidelines on network neutrality as set out in the appendix to this recommendation. The Committee of Ministers invites Member States to promote these guidelines in other international and regional fora that deal with the issue of network neutrality.

Appendix to Recommendation CM/Rec(2014)____

Guidelines on network neutrality

General principles

1. In the exercise of their right to freedom of expression, in compliance with Article 10 of the Convention, Internet end-users have the right to access and distribute information, applications, services and to use devices of their choice. This right must be enjoyed 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.
2. Internet traffic should be treated equally, without discrimination, restriction or interference irrespective of the sender, receiver, content, application, service or device. This is understood as the network neutrality principle.
3. Internet users' freedom of choice should not be restricted by favouring or hindering the transmission of Internet traffic associated with particular content, services, applications or devices or traffic associated with services provided on the basis of exclusive arrangements.
4. The network neutrality principle should be applied to all services that provide Internet connectivity to Internet users (Internet access services) irrespective of the infrastructure or the network used for Internet connectivity and regardless of the underlying technology used to transmit signals.

Traffic management

1. Providers of Internet access services should not restrict Internet users' freedom of choice by blocking, slowing down, altering, degrading or discriminating against specific content, applications or services.
2. Internet traffic management measures, if necessary, should be non-discriminatory, transparent and proportionate to:
 - give effect to a court order;
 - preserve the integrity and security of the network, services provided via the network and end-users' terminal equipment;
 - minimise the effects of temporary or exceptional network congestion, provided that equivalent types of traffic are treated equally.
3. Internet traffic management measures should not be maintained longer than strictly necessary and traffic management policies should be subject to periodic review by competent authorities within each member state.

Pluralism and diversity of information

1. Internet service providers should not discriminate against traffic from other providers of content, applications and services which compete with their own content, applications and services. This requires that traffic management decisions be strictly dissociated from content-related decision-making processes of the operator [in the spirit of the 2007 Committee of Ministers Declaration on protecting the role of the media in democracy in the context of media concentration].

2. Preferential treatment of traffic on the basis of arrangements between Internet service providers and providers of content, applications and services should not have a negative impact on users' ability to access and use information, applications and services of their choice.
3. In order to enable end-users to receive radio and audiovisual media services of their choice through the Internet, states may consider imposing reasonable, transparent and proportionate obligations to carry content which meets general interest objectives.

Privacy

1. Traffic management measures should involve processing of personal data only to the extent that is necessary and proportionate to achieve the purposes set out in the second section and should be in accordance with applicable legislation the right private life and personal data protection.
2. The use of techniques for the purpose of Internet traffic management, which are capable of assessing the content of communications, is an interference with the right to private life. Therefore, such use must be fully in line with Article 8 of the Convention, be tested against applicable legislation on the right to private life and personal data protection and reviewed by a competent authority within each member state in order to assess compliance with legislation.

Transparency

1. Internet service providers should provide users with clear, complete and publicly available information with regard to any traffic management practices that they have applied which might affect users' access to and distribution of content, applications or services. Internet users should be enabled to obtain information from Internet service providers about Internet traffic management and Internet speeds.
2. Competent authorities within each member state should monitor and report on Internet traffic management practices. Reports should be prepared in an open and transparent manner and made available to the public for free.

Accountability

1. Internet service providers should put in place appropriate, clear, open and efficient procedures to respond within reasonable time limits to complaints of Internet users alleging breaches of the principles included in the foregoing provisions. Internet users should be enabled to refer the matter to competent authorities within each member state.
2. States should ensure in their policy frameworks the accountability of Internet service providers with regard to respect for the principle of network neutrality. Accountability also includes that appropriate mechanisms are in place to respond to network neutrality complaints.