

*Committee of experts on cross-border  
flow of Internet traffic and Internet  
freedom (MSI-INT)*

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

MSI-INT (2014)14  
11 December 2014

Report of the working meeting of the MSI-INT  
23-24 October 2014  
(Strasbourg, Palais de l'Europe, Room 2)

#### Opening of the meeting and information by the Secretariat

1. Mr Jan Kleijssen, Director of Information Society and Action Against Crime Directorate, opened the meeting and informed participants on the priorities and agenda of the Council of Europe's Secretary General after his re-election in June 2014 for a second mandate. Mr Kleijssen underlined the initiative of the Secretary General to prepare a comparative study of laws and practices regarding blocking and filtering of illegal Internet content in 47 member States. He also invited the MSI-INT to reflect on the idea of a Magna Carta for the Internet, which is advocated by Sir Tim Berners-Lee, the inventor of the World Wide Web. This idea is also related to discussions which have started in the Italian Chamber of Deputies on a Declaration of Internet Rights.

2. The MSI-INT was also informed about the consideration by the Bureau of the Steering Committee on Media and Information Society (CDMSI) of the proposal by the MSI-INT in respect of the draft recommendation CM/Rec(2014)\_\_\_ of the Committee of Ministers to member states on free flow of information on the Internet. The Bureau welcomed this draft recommendation and decided to transmit it to the CDMSI for approval at its next plenary meeting (18-21 November 2014).

3. The MSI-INT took note of the fact that Mr Johan Hallenborg (Sweden) was no longer a member of the committee due to a change of his functions. The CDMSI will be invited at its 7<sup>th</sup> plenary meeting (18-21 November 2014) to designate a new member.

4. The agenda was adopted without any changes as it appears in Appendix 1. The list of participants appears in Appendix 2. The gender distribution of the 29 participants was 16 women (55%) and 13 men (45%).

#### Draft recommendation on Internet freedom

5. The MSI-INT Chair Mr Oliver Schenk, Ms Karmen Turk, Ms Gabrielle Guillemin and the Secretariat reported about an informal meeting they had in the margins of the Internet Governance Forum (IGF, 2-5 September, Istanbul). They agreed to propose a set of elements for a draft Recommendation CM/Rec ....of the Committee of Ministers to member states on Internet freedom (Appendix 3). This proposal builds on the preliminary elements

for a draft recommendation prepared by Dr Michael Kogler (rapporteur) as well as discussions during the second meeting the MSI-INT (3-4 July 2014).

6. The MSI-INT validated the general approach taken in the draft recommendation as regards periodical reviews of the state of Internet freedom at a national level on the basis of the indicators set out in the draft recommendation. The objective is to promote an enabling environment in Council of Europe member states for the exercise and enjoyment of fundamental rights and freedoms online. The Internet freedom indicators should be geared towards facilitating an effective implementation of human rights standards. Participants from the private sector considered that the draft recommendation would be able to give guidance to civil society and citizens to strengthen their observatory role on Internet freedom.

7. The question how to incentivise an effective review by member states was considered as key to the strategic approach of the draft recommendation. In this connection, the MSI-INT agreed to reflect further on stakeholders' participation in the process of developing national reports and a possible role of the Council of Europe to receive voluntary submission of national reports by member states or to publish a report on Internet freedom in Europe on their basis.

8. The MSI-INT had an extensive discussion about the Internet freedom indicators included in the proposed elements for a draft recommendation. In respect of the structure of the indicators the MSI-INT agreed that they should be streamlined in an order which permits to first identify the law addressing a particular human right issue, the protection afforded by law to that issue, the process whereby the law was developed and finally how the indicators are implemented.

9. In respect of sources of information and the means of verification of indicators the MSI-INT agreed that these elements should be shortened in order to avoid repetition. They could be envisaged as explanations to be included in one pager how to use the indicators that is separate from the indicators themselves.

10. On the basis of these discussions the rapporteur together with other members of the working group will prepare a revised draft recommendation for possible finalisation at the upcoming meeting of the MSI-INT.

#### Report on freedom of assembly, expression and access to content on the Internet

11. The Secretariat presented a preliminary structure of the report prepared at the request of the MSI-INT during its 2<sup>nd</sup> meeting (Appendix 4). The MSI-INT agreed with the proposal and focused its discussion on some of the most controversial aspects and new dimensions of assembly and association online such as anonymity and protest online. In this context, it was underlined that there is a need to ensure balance between the freedom to protest online and the security on the Internet which may be a legitimate reason for restricting these freedoms. The MSI-INT tasked the Secretariat to prepare the report in line with the action plan it had agreed in its previous meetings.

12. MSI-INT agreed to hold its next on 5 and 6 March 2014. No other business was discussed.

## Appendix 1 Annotated agenda\*

### Draft Annotated Agenda

#### 1. Opening of the meeting

Mr Jan Kleijssen, Director of the Information Society and Action Against Crime Directorate will address the meeting.

#### 2. Adoption of the agenda

#### 3. Information by the Secretariat

The MSI-INT will be informed about the meeting of the Bureau of the Steering Committee on Media and Information Society (CDMSI, 19-20 September 2014) and about other information of relevance to the work of MSI-INT.

#### 4. Stock-taking of progress made on expected results

The MSI-INT will examine and work on elements for a draft recommendation on Internet Freedom which are proposed by the MSI-INT Working Group on the basis of preliminary work carried out by Dr Michael Kogler (the Rapporteur). The Committee will also discuss on the report on freedom of assembly, expression and access to content on the Internet and proposals for further action on the basis of a structure elaborated by the Secretariat. The MSI-INT will prepare for reporting on the progress of its work to the upcoming meeting of the CDMSI (18-21 November 2014).

#### Working documents:

Preliminary elements for a draft recommendation on Internet freedom, prepared by Dr Michael Kogler, the Rapporteur (*MSI-INT(2014)07*)

Elements for a draft Recommendation CM/Rec ...of the Committee of Ministers to member states on Internet freedom, prepared by the MSI-INT Working Group (*MSI-INT(2014)13*)

Report on freedom of assembly, expression and access to content on the Internet and proposals for further action – elements for structure prepared by the Secretariat (*MSI-INT(2014)08*)

Draft Work Plan (*MSI-INT(2014)03 Rev3*)

#### Background documents

#### [MSI-INT Terms of Reference](#)

Report of the 2<sup>nd</sup> MSI-INT meeting, 3-4 July 2014 (*MSI-INT(2014)10*)

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\*As contained in document MSI-INT (2014)12 of 2 October 2014

Council of Europe Conference of Ministers responsible for Media and Information Society (Belgrade, 7-8 November 2013) – [Resolution no.1 Internet Freedom](#) and [decision by the Committee of Ministers](#), adopted at the 1187<sup>th</sup> meeting of the Deputies (11-12 December 2013)

Online freedom of expression, assembly, association and the media in Europe, report by Ian Brown, Oxford University, [MCM\(2013\)07](#)

Internet freedom and the right to private life, protection of personal data and due process of law, report by AccessNow, Raegan MacDonald, Jochai Ben-Avie and Fabiola Carrion, [MCM\(2013\)008](#)

Necessary & proportionate: International principles on the application of human rights to communications surveillance – Background and supporting international legal analysis, Article 19 and Electronic Frontier Foundation (*printed version only*)

5. Multi-stakeholder outreach (interactions, consultations, participation in events)

The MSI-INT will be invited to take stock of participation in the Internet Governance Forum (2-5 September 2014, Istanbul) and to discuss possible participation in other multi-stakeholder events.

6. Dates of next meeting

The MSI-INT will be invited to agree on the dates of the next meeting, noting the need that it should take place in advance of the Bureau of the CDMSI.

7. Other business

The MSI-INT will be invited to consider any other business not dealt with above.

## Appendix 2 List of participants

### MSI -INT MEMBERS

Mr Garegin CHUGASZIAN, Executive Director, Information Technologies Foundation (ITF), Yerevan (Armenia)

Dr Michael KOGLER, Deputy Head of Department for Media Law, Constitutional Service of the Federal Chancellery (Austria)

Ms Zlatina NIKOLOVA, Chief Expert, European Programmes and Projects Department, Ministry of Transport, Information and Communications Technology (Bulgaria)

Mr Oliver SCHENK, Legal Adviser, International Media Cooperation Division, Office of the Federal Government Commissioner for Culture and the Media (BKM) (Germany) (Chair)

Ms Margrét MAGNÚSDÓTTIR, Legal Advisor in the field of Media, Ministry of Education, Science and Culture (Iceland) (Vice-Chair)

Mr Johan HALLENBORG, Deputy Director, Department for International Law, Human Rights and Treaty Law, Ministry for Foreign Affairs (Sweden) *(apologised)*

Mr Thomas SCHNEIDER, Deputy Head of International Relations Service, Coordinator international Information Society, International Affairs, Federation Office of Communication, Federal Department for the environment, transport, energy and communication (Switzerland)

Mr Yaman AKDENIZ, Professor of Law (Faculty of law), Pro-Rector for the Istanbul Bilgi University *(apologised)*

Mr Alexander BORISOV, Professor, Moscow State Institute of International Relations

Ms Maeve DION, Swedish Law and Informatics Research Institute, Faculty of Law, Stockholm University

Ms Gabrielle GUILLEMIN, Legal officer - Freedom of Expression, Media Regulation, Freedom of Information - Article 19, London

Dr Monica HORTEN, Visiting Fellow, London School of Economics and Political Science

Ms Karmen TURK, Advocate, Triniti Tallinn

## PARTICIPANTS

## Council of Europe Member States

Mr Bakhtiyar MAMMADOV, Head of Legal and Human Resources Department, Ministry of Communications and High Technologies (Republic of Azerbaijan) *(apologised)*

Ms Khayala PASHAZADEH, Legal and Human Resources Department, Ministry of Communications and High Technologies (Republic of Azerbaijan)

Mr Tanel TANG, Deputy to the Permanent Representative of Estonia to the Council of Europe (Strasbourg)

Mr Mikhail MEDRISH, Chairman of the Council (Board) of the Coordination Center for the Russian ccTLD (Russian Federation)

Dr Simona KRALJ-ZATLER, Under-Secretary, Information Society Directorate, Ministry of Education, Science and Sport (Slovenia)

M. Enrique FERNÁNDEZ PICAZO, Technicien Supérieur, Cabinet du Secrétaire d'Etat des Télécommunications et pour la Société de l'Information (Spain) *(apologised)*

Mr Nicolas ROLLIER, International Relations Service Federation Office of Communication, Federal Department for the environment, transport, energy and communication (Switzerland / Suisse)

## International Organisations

Mr Mario OETHEIMER, European Union Agency for Fundamental Rights, Vienna *(apologised)*

Ms Xianhong HU, Programme Specialist, Section for Freedom of Expression, Division for Freedom of Expression, Democracy and Peace - Communication and Information Sector, UNESCO

Mr Maciej TOMASZEWSKI, European Commission, DG-CONNECT (Unit G1 on Converging Media) *(apologised)*

Mr Oluf NIELSEN, European Commission, DG-CONNECT (Unit G1 on Converging Media) *(apologised)*

Mr Michael UNLAND, Organisation for Security and Cooperation in Europe *(apologised)*

## Civil society, private sector and other communities

Mr Bertrand de la CHAPELLE, Director, Internet & Jurisdiction Project

Mr Paul FEHLINGER, Manager, Internet & Jurisdiction Project

Mr Marc VAN DER HAM, Google Public Policy

Mr Marco PANCINI, Google Public Policy *(apologised)*

Ms Siobhan CUMMISKEY, Policy Manager EMEA, Facebook

Ms Sinéad McSWEENEY, Director of Public Policy/EMEA, Twitter International Company  
(*apologised*)

Ms Patricia Cartes ANDRES, Twitter International Company  
(*apologised*)

Ms Cornelia KUTTERER, Microsoft Public Policy  
(*apologised*)

Mr Holger ROSENDAL, Member of the European Newspaper Publishers' Association (ENPA),  
Chefjurist at the Danish Newspaper Publishers' Association (*Danske Dagblades Forening -  
DDF*) Copenhagen, Denmark  
(*apologised*)

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

Council of Europe Secretariat

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

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

Ms Elvana THAÇI, Secretary to the MSI-INT Committee, Administrator, Media Division,  
Information Society Department

Ms Maria MICHAELIDOU, Programme Advisor, Data Protection Unit, Information Society  
Department

Simon TONELLI, Head of Division, Secretariat of the European Committee on Legal Co-  
operation (CDCJ), Council of Europe

Ms Stefanie MIHAIL, trainee, Division for Legal Co-operation, Council of Europe

Ms Ana GASCON-MARCEN, Administrator, Media Division, Information Society Department

Ms Elisabeth MAETZ, Assistant, Media Division, Information Society Department

## Appendix 3

## Elements for a draft Recommendation CM/Rec ....of the Committee of Ministers to member states on Internet freedom\*

- Internet freedom is understood for purposes of this [draft] recommendation as the exercise and enjoyment on the Internet of the right to freedom of expression, including its corollary freedom of the media, the right to freedom of assembly and association and the right to private life in full compliance with the relevant provisions of the ECHR.
- Statement of the justification for the [draft] recommendation – Council of Europe member states need to:
  - (1) create an enabling environment within which Internet freedom can advance;
  - (2) reinforce and renew their commitment to human rights on the Internet;
  - (3) ensure implementation of human rights standards with regard to the Internet;
  - (4) be aware that any regulatory or other action they take with regard to a specific area in relation to Internet should be considered in the broader context of Internet freedom.
- Self-evaluation/self-assessment by Council of Europe member states of Internet freedom at a national level can contribute to the strengthening of member states action to respond to these needs.
- The Internet freedom indicators set out in this [draft] recommendation are based on Council of Europe standards. They are designed as a means to enable member states to measure and evaluate the development of Internet freedom in their countries. They can be used as a diagnostic tool to identify the conditions necessary for Internet freedom to exist and develop, as an analytical framework to measure the impact of state intervention with regard to the Internet freedom and as a reference for developing international policy and approaches on the Internet. The indicators set out in this [draft] recommendation should not be considered as a means for comparing countries to each other.
- Therefore, the Committee of Ministers recommends to member states to:
  - periodically evaluate the state of Internet freedom in their own jurisdictions using the indicators included in this [draft] recommendation, with a view to producing reports, wherever appropriate;

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\* As contained in document MSI-INT (2014)13 of 6 October 2014

- assess the need for state intervention in relation to the Internet in terms of policy or any other action by using as a basis the indicators;
- be guided by these indicators when participating in international dialogues and international policy-making on Internet freedom;
- promote Internet freedom development programmes and to invite stakeholders to contribute to this goal on the basis of the indicators.

## INTERNET FREEDOM INDICATORS

## I- FREEDOM OF EXPRESSION

Key indicators	Means of verification	Sources of information
<b>1. Freedom of Expression is guaranteed in law</b>		
Constitutional or any other national law guarantees the protection of the right to freedom of expression on the Internet (regardless of the medium).	- All constitutional provisions, laws, policies that are in line with international standards on freedom of expression.	ECHR (Art.10) + jurisprudence, ICCPR (Art.19); Website of the Human Rights Commissioner.
The country has signed and ratified international treaty obligations with no significant exemptions.	- Reports by independent media actors or civil society organisations about freedom of expression.	Resources from the UN Special Rapporteur on Freedom of Expression website.
There are no specific laws or policies criminalising expression online. Legislation on the protection of children online and fight against cybercrime pursue legitimate aims and are proportional to them.	- Court cases on freedom of expression online. - Reports by independent national and international organisations;	
<b>2. The regulatory system</b>		
Laws and policies on the Internet are developed by state authorities in an open and participatory process.	- Policies of public bodies about modes of participation of non-state stakeholders in their policy, standards, coordination and administration processes + Evidence of participation, including online remote participation.	- Jurisprudence of the ECtHR on Internet cases. - Committee of Ministers Declaration on Internet Governance.
Laws and policies on the Internet are assessed at their development stage with regard to impact that their implementation has on exercise of freedom of expression (necessity & proportionality of each possible restriction that is	- Explanatory or other reports of proposed laws or policies prepared by state bodies developing	- <a href="#">CoE-APC Code of Good Practice</a> on Information.

Key indicators	Means of verification	Sources of information
foreseen in the law).	legislation or policy.	Participation and Transparency in Internet Governance.
The law providing restrictions to freedom of expression is accessible, clear, unambiguous, and sufficiently precise to enable individuals to foresee whether their actions are unlawful.	- Any law that provides for or can indirectly result in restrictions to freedom of expression online.	-Websites of legislative bodies.
Any regulatory body charged with overseeing Internet and other ICTs is independent of political or commercial interference and instituted on the basis of transparent procedures.	Any law or regulation defining the process of appointing members of the regulatory body.	
Legal discretion granted to executive authorities or regulatory bodies to implement the law/policy provides with sufficient clarity and precision the scope and manner of exercise of such discretion.	- Reports by independent international organisation. -Reports by NGOs.	
Law provides for effective judicial review to prevent abuse of power by the executive.	- Judgment of Constitutional Courts or High Courts or any other legal cases that demonstrate an effective oversight of restrictive laws.	
<b>3. Freedom to connect</b>		
Blanket prohibitions on computer use or Internet access are not permitted by law. States ensure that Internet access is maintained at all times, including during political unrest.	Any law that explicitly forbids blanket prohibitions on Internet access.  Any evidence or technical report that the Internet access is prohibited for the population of a country.	- ECtHR jurisprudence on Article 10 (Yildirim v. Turkey(2013), etc).
Universal access to the Internet is part of state policy. Internet is widely available, accessible and affordable to all sectors of the	Any law or policy on universal access.	Recommendation <a href="#">CM/Rec(2007)16</a> of the Committee of

Key indicators	Means of verification	Sources of information
population.	Any report about the state of Internet's accessibility in a country.  Any initiative, programme or investment on Internet infrastructure.	Ministers to member states on measures to promote and protect the public service value of the Internet.
The state seeks to secure equal access to the Internet without discrimination on any grounds.	Any initiative or programme in support of access to the Internet for persons with disabilities, linguistic minorities etc.	
State recognises in policy and practice that disconnection from Internet access is always a disproportionate restriction on the right to freedom of expression.	Documented cases of Internet users being subject to sanctions of disconnection from the Internet.  Legal cases brought by users to challenge restrictions;  Reports by NGOs.	Human Rights Council website.  UN SR on Freedom of Expression website.  Websites of Article 19, Freedom House, Index on Censorship.
The state does not exercise unnecessary pressure on Internet service providers about individuals' Internet access.	Any transparency reports by ISPs.	
<b>4. Freedom to access Internet content</b>		
The state does not block, filter, remove or use other technical limitations of Internet content that is deemed sensitive or detrimental.	Any report by national or international NGOs on cases of filtering and blocking Internet content.  Transparency reports by Internet companies.	ECtHR jurisprudence. Recommendation CM/Rec(2008)6 of the Committee of Ministers to member states on measures to promote the

Key indicators	Means of verification	Sources of information
The state does not block access to or usage of social media or other social networking websites, instant messaging applications, blogging websites or any other ICT tools (applications) which enable communications permanently or during specific events.	Documented cases of platforms being blocked.	respect for freedom of expression and information with regard to Internet filters; Human Rights Council website;
The conditions justifying blocking and filtering are specifically established in law in a clear and precise way, including necessity and proportionality to the purported aim.	Any law, regulation or policy that addresses the conditions for blocking and filtering Internet content.	UN SR on Freedom of Expression website.
Determinations of what content is blocked/filtered are undertaken by a competent judicial authority or a body that is independent of political or commercial influences.		Websites of Article 19, Freedom House, Index on Censorship.
A blocking order is the least restrictive means available to achieve a legitimate aim and is assessed for any adverse impact on the right to freedom of expression.		
A blocking/filtering order does not risk wholesale banning of access to Internet content but is as targeted as possible.		
The overall effectiveness of blocking and filtering measures, their risks of over-blocking, duration is assessed regularly.		
There is oversight and review by an independent and impartial tribunal or regulatory body over the blocking and filtering measures.		
States provide information about list of blocked websites, details about the necessity and justification for blocking each specific website.		
<b>5. Internet intermediaries</b>		
The state does not impose deletion/removal of Internet content prior or after its publication on providers of Internet access or	Any report by national or international NGOs on cases of	Recommendation CM/Rec(2011)7 of

Key indicators	Means of verification	Sources of information
<p>content hosts. They are not are not coerced or pressured to follow a particular editorial direction.</p>	<p>filtering and blocking Internet content.</p> <p>Transparency reports by Internet companies.</p>	<p>the Committee of Ministers to member states on a new notion of media; 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.</p>
<p>Laws and policies guarantee that access providers and content hosts are not held responsible for the information transmitted via the technology they supply except when they have knowledge of illegal content and activity and do not act expeditiously to remove it.</p> <p>In particular, they are not required to censor content access, transmitted or generated by Internet users. They are not prosecuted for opinions expressed by users via the technology that they supply.</p>		
<p>Internet intermediaries do not restrict freedom of expression of their users. Their policies comply with international human rights law. They assess the impact of their services and technologies on the right to freedom of expression.</p>		
<p>They implement restrictions only on the basis of a judicial decision. Internet intermediaries provide information to</p>		

Key indicators	Means of verification	Sources of information
concerned users on the restrictive measures that they take. They ensure transparency for the wider public about their policies, practices and activities to implement restrictions on freedom of expression. They ensure the possibility of appeal for concerned users through procedures that they put in place.		
Internet users have access to an appeal procedure before a judicial authority.		

### Freedom of the media

Indicators	Means of verification	Sources
<b>1. Self-regulation and editorial independence</b>		
Editorial independence of media outlets and new media actors is guaranteed in regulation and/or policy and in practice.	Any law or policy that guarantees freedom of media and new media actors to produce, disseminate content and information without interference.  Any report by civil society, independent organisations documented cases of interference with editorial decision making.  Any court cases against online media outlets and new media actors.	ECtHR jurisprudence. Recommendation CM/Rec(2011)7 of the Committee of Ministers to member states on a new notion of media.
New media actors and blogging websites are not subjected to registration and licensing requirements.		
Online news outlets and new media actors are not subjected to pressure by political, commercial or any other actors to include or exclude information from their reporting or to follow a particular editorial direction. Self-censorship is not a practice among		

Indicators	Means of verification	Sources
journalists, commentators and citizen journalists.		
<b>2. Safety of journalists and other new media actors</b>		
Journalists, bloggers and other new media actors are not subject to threats or harassment.	Documented cases of online threats and harassment. Documented cases of investigations and prosecutions of journalists in relation to the exercise of their activity online.	Reports of IGOs; Reports of int'l NGOs e.g. Int'l Federation of Journalists, Reporters Without Borders.
The confidentiality of journalists' sources is guaranteed by law. Journalists are not subjected to illegitimate surveillance of their activities on the Internet.	Any law or policy that guarantees the confidentiality of journalistic sources. Documented cases of journalists' communications and work products being monitored.	
Websites of online news outlets, new media actors or bloggers are not subjected to cyber attacks or other action disrupting their functioning.	Documented cases of denial of service attacks, hacking, defacement, phishing attacks, compromised accounts etc.	
Crimes against journalists, bloggers and other new media actors are prosecuted in due course. There is no climate of impunity.	Reports analysing failure of states to investigate or prosecute crimes against journalists.	
<b>3. Media pluralism</b>		
Network neutrality is guaranteed in law/policies and practice. Press, radio, broadcasters and new media actors content that is made available online is not subjected to discrimination by means of Internet traffic management.		

## II. FREEDOM OF ASSEMBLY AND ASSOCIATION

Indicators	Means of verification	Sources of information
1. Freedom of assembly and association online is guaranteed in		Human Rights Council website.
Constitutional or other national law guarantee the protection of the right to freedom of expression on the Internet (regardless of the medium).	- All constitutional provisions, laws, policies that are in line with international standards on freedom of assembly and association.	UN SR on Freedom of Expression website.
The country has signed and ratified international treaty obligations with no significant exemptions.		Websites of Article 19, Freedom House, Index on Censorship
Individuals and online communities are free to use online communication tools, social networking sites, mobile phone applications and other ICTs as a means to organise politically, including for real-life activities.		
The state does not block access to or usage of social media or other social networking websites, instant messaging applications, blogging websites or any other ICT tools (applications) which enable communications in relation to specific events of assembly and association.		

### III - THE RIGHT TO PRIVATE LIFE

Indicators	Means of verification	Sources of information
Constitutional or other national law guarantee the protection of the right to private life, including protection of personal data.		
The country has signed and ratified international treaty obligations with no significant exemptions.		
<b>1. Freedom from state surveillance</b>		
Any type of monitoring, interception, collection, analysis, usage, preservation, retention, access information that includes or relates persons' communications is done on the basis of a law.	Any law which regulations surveillance. Any report about monitoring websites, blogs, chat rooms, or the content of e-mail and mobile text message.	ECtHR jurisprudence (notably Malone v. UK; Marper v. UK)  ECtHR jurisprudence (notably Klass v. Germany; Kopp v. Switzerland).
<p>The law guarantees that all information regarding a person's private communications (metadata/communications data and the content of communications) is given legal protection whether or not subsequent use is made of the information.</p> <p>The law defines with sufficient clarity and precision:</p> <ul style="list-style-type: none"> <li>- the offences and activities in relation to which surveillance can be ordered and which categories of people may be subject to surveillance.</li> <li>- the procedures for ordering the examination, use and storage of data obtained through surveillance.</li> <li>- the scope and manner of exercise of any discretion by executive authorities or specialised state agencies;</li> <li>- the rules on the destruction and erasure of surveillance data;</li> <li>- supervision by independent bodies responsible for supervising</li> </ul>		<p>ECtHR jurisprudence (notably Klass v. Germany).</p> <p>Convention 108 for the Protection of Individuals with Regard to the Processing of Personal Data. Recommendation CM/Rec(2010)13 of the Committee of Ministers to member states on the</p>

Indicators	Means of verification	Sources of information
the use of surveillance powers.		protection of individuals with regard to automatic processing of personal data in the context of profiling.
State surveillance pursues a legitimate including national security, public safety or the economic well-being of the country, prevention of disorder or crime, protection of health and morals, protection of rights and freedoms of others. Surveillance measures have to be justified by evidence of concrete threat related to these aims.		
State surveillance meets a demonstrated pressing social need and it is proportionate to the legitimate aim it pursues. Surveillance measures are evaluated for their appropriateness to achieve the legitimate aim, for their least intrusive nature compared to other measures that can be employed to achieve the desirable result. Blanket and indiscriminate collection, retention of information about individuals' communications (content and metadata) without any form of targeting or reasonable suspicion is prohibited by law. Blanket and indiscriminate interference with the integrity of communications (decryption of communications) by the state is subject to sufficient legal safeguards to avoid abuse or arbitrariness/is prohibited by law (which test is more accurate?).	Any law or policy prohibiting Internet users to use encryption software to protect their communications. Any law or policy restricting the use of encryption or other security software or enabling the government agencies to have access to encryption keys and algorithms.	
Surveillance measures are implemented only on the basis of a judicial order or order by an authority sufficiently independent of the authorities carrying the surveillance. In all events there is judicial supervision of surveillance measures.		
There are adequate controls on the sharing of information collected by means of surveillance between government agencies as well as between different countries.		
Individuals concerned by surveillance are notified of this fact at the earliest possible opportunity so that they can pursue legal		

Indicators	Means of verification	Sources of information
action to obtain remedies.		
The state provides sufficient, clear and precise information to the public on surveillance to enable the public to assess the necessity and proportionality of exercise of surveillance powers.		
The state does not require website owners, bloggers to register with the government agencies. The state does not mandate a real-name policy for posting comments online, or uploading or downloading content.		
<b>2. Profiling of Internet users respects the right to private life, including personal data protection</b>		
A legal or policy framework is in place to address the protection of the right to private life and personal data protection in the context of profiling (the use of personal data processing techniques which 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, behaviour and attitudes).	Any law, regulation or other policy framework which covers this.	Convention 108 for the Protection of Individuals with Regard to the Processing of Personal Data. 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.
The law or the policy framework is sufficiently clear and precise with regard to the conditions for the collection and processing of personal data in the context of profiling, including lawfulness, data quality and information to Internet users.		
There are effective tools for Internet users to consent to or withdraw from profiling.		
There are effective tools and recourses for Internet users to object to the use of personal data for purposes of profiling and to secure correction, deletion or blocking of their personal data.		

## Appendix 4

Report on freedom of assembly, expression and access to content on the Internet and proposals for further action

*Discussion elements for a structure – proposal prepared by the Secretariat\**

I - Introduction – Freedom of Assembly and Association in the international law context

Universal Declaration on Human Rights Article 20; International Covenant on Civil and Political Rights Articles 21 and 22; European Convention on Human Rights Articles 11 and relevant jurisprudence of the European Court of Human Rights. This section will also take stock of international instruments which have looked specifically at the application of these norms online.<sup>1</sup> This part will underscore the validity and applicability of these norms online as a basis for further development of international law in this area.

II - Internet: The public square of the 21<sup>st</sup> century<sup>2</sup>

This part will focus on the potential of the Internet for the exercise and enjoyment of the right to freedom of assembly and association online, with particular reference to:

- Actual trends and examples in which the Internet is being used as a medium/space for assembly and association.
- Opportunities offered to citizens to participate in democratic debate, other initiatives relating to petitions, etc.
- The link between the right to freedom of assembly and association and other rights, notably freedom of expression and privacy.
- The blurring boundaries between the exercise of the right to freedom of expression and the right to freedom of assembly and association online (distinguishing between an act of communication from an act of association or an act of assembly online and considering whether such act falls under one or another or both rights and may involve examination from the angle of all these rights and freedoms).

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\* As contained in document MSI-INT(2014)08 of 15 October 2014.

<sup>1</sup> Notably the 2011 Committee of Ministers Declaration on the protection of freedom of expression and freedom of assembly and association with regard to privately operated Internet platforms and online service providers, Recommendation CM/Rec(2014)6 of Committee of Ministers to member states on a Guide to human rights for Internet users; HRC Res. 21/16 and 24/5 "The rights to freedom of peaceful assembly and of association"; reports of the UN Special rapporteur on Freedom of Assembly and Association; UN General Assembly Resolution A/RES/68/167 "The right to privacy in the digital age".

<sup>2</sup> Inspired by the speech of Mrs Hillary Clinton "[Internet Rights and Wrongs: Choices and Challenges in a Networked World](#)" – delivered on 5 February 2011: "The internet has become the public space of the 21st century".

### III - Challenges to the exercise and enjoyment of freedom of assembly and association online

This part will identify challenges by analysing the following issues and providing an overview of related cases:

- How do the traditional legal requirements/conditions for assembly and association (e.g. permission from or information and notice of intent to assemble to authorities) apply to the online world? What would be the functional equivalents of these requirements/conditions in the online world (e.g. real name registrations to be able to communicate via the Internet)?
- The Internet's infrastructure is privately owned, what impact does this have on assembly and association online?
- Internet access as a prerequisite for exercising the right to assembly and association online (Internet switch-offs Egypt, Syria, Libya in 2011).
- Censorship and blocking access to specific websites or social media during times of political or social unrest (real-time/just-in-time blocking).
- Prosecution of bloggers and other individuals for their online activities.

This part will also explore controversial or new dimensions of assembly and association online, with particular regard to:

- Hate-speech and incitement to violence, notably terrorist recruitment on the Internet (recent legislative initiatives in European countries to tackle use of social media by terrorist organisations).
- Communications surveillance and other challenges to privacy arising in the context of law enforcement and national security (noting the case *Big Brother and others v. U.K* pending before the ECtHR).
- Anonymity as an important feature in some cases, like vulnerable groups (e.g. women suffering abuse, LGBTI persons, dissidents, etc).
- Protest online – does a right to protest online exist? What are its boundaries? Are virtual sit-ins, disruptions (similar to disruptive yet lawful action in the offline environment) and other cases of civil disobedience (various forms of hacktivism) included?<sup>3</sup>

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<sup>3</sup> Cases identified from a preliminary research: British hacker entered about 300 websites and replaced their home pages with anti-nuclear text and imagery (1998). Cyber activists identifying themselves as the Electronic Disturbance Theatre sent mass amounts of page requests to the server of the Mexican Government allegedly with political motivation (1998). In Vogel case the Frankfurt Higher Regional Court recognised that the attempted collective blockade of a corporate website in the context of a political event is not violence or coercion but legitimate to influence public opinion (2006).

#### IV- Possible responses to these challenges/conclusions

This part will include proposals for possible responses, notably identifying policy objectives and instruments how to achieve them. Preliminary research results reveal the following elements:

- Internet access as an enabler for freedom of assembly and association, obligations of states;
- Internet literacy and states' role and obligations;
- International recognition that disconnection from the Internet is a violation of freedom of expression, the right to information, the right to assembly and association (it would appear that disconnection from the Internet would, in most cases, fail to meet the criterion of proportionality of interferences with these rights);
- Defining more precisely the conditions for blocking a website. Special safeguards when they are used for assembly and association activities.
- Identifying the boundaries of electronic civil disobedience as political protest and the interplay with activities of law enforcement authorities especially in the context of combatting cybercrime and formulating policy recommendations.
- Identifying roles and responsibilities of private companies (ISPs) and of states.