

**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.