

Appendix 9

(item 5.1c)

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.