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**Contribution of the Council of Europe
(Media and Information Society Division,
Directorate General of Human Rights and Legal Affairs)
for the 2009 Internet Governance Forum**

Background and context

The (47 member states) Council of Europe (CoE) has made written contributions for each Internet Governance Forum (IGF) all of which remain very relevant for this year's IGF¹. This contribution therefore builds upon past CoE contributions to the IGF and should be considered together. The CoE welcomes the holding of the 2009 IGF and plans to participate actively in it, not only as regards the themes dealt with in this contribution but also on more specific themes in which separate submissions may also be made.

Access and diversity

Access to Internet services concerns the enjoyment of human rights and fundamental freedoms, as well as the exercise of democratic citizenship. This was underlined by the ministers participating in the 1st CoE Conference of Ministers responsible for media and new communication services, held in Reykjavik on 28 and 29 May 2009. In particular, the ministers declared:

“Growing numbers of people rely on the Internet as an essential tool for everyday activities (communication, information, knowledge, commercial transactions, leisure), ultimately improving their quality of life and well-being. People therefore expect Internet services to be accessible and affordable, secure, reliable and ongoing.”²

Plurality and the public service value of Internet content

Access and diversity are not an aim in itself. Access and diversity are important for democracy and human rights because they ensure the individual's right to information and participation in political, social, cultural and economic life. This information therefore has to be trustworthy. In the Resolution *Towards a new notion of media*, adopted at the above-mentioned conference, the ministers identified a number of risks to access and diversity of trustworthy content:

“Individuals' right to receive information can be challenged and democracy can be threatened by negative and significant market distortion as a result of media concentration; lack of diversity and pluralism; manipulative messages; new forms of content aggregation; the management and

¹ See CoE written submission to the 2007 IGF : [http://www.coe.int/t/information/society/documents/h-inf\(2008\)2_en.pdf](http://www.coe.int/t/information/society/documents/h-inf(2008)2_en.pdf) and to the 2008 IGF : [http://www.coe.int/t/information/society/documents/SG-Inf\(2008\)14_en.pdf](http://www.coe.int/t/information/society/documents/SG-Inf(2008)14_en.pdf)

² For this and other references to the various documents adopted at the 1st Council of Europe Conference of Ministers responsible for Media and New Communication Services A new notion of media? (28 and 29 May 2009, Reykjavik, Iceland) *Political declaration and resolutions* see: [http://www.coe.int/t/dghl/standardsetting/media/MCM\(2009\)011_en_final_web.pdf](http://www.coe.int/t/dghl/standardsetting/media/MCM(2009)011_en_final_web.pdf) and www.ministerialconference.is

prioritisation of flow of content and of access and limited connectivity, or lack of access, to broadband services.”

These risks can be mitigated by states through recognition of the public service value of the Internet and promotion of genuine, independent and adequately resourced public service media as a means of providing trustworthy and diverse information to all segments of society.³ As a result, exploring new approaches to the governance of public service media (on- and offline) to ensure people’s full participation in political, social and cultural life⁴ and examining to which extent universal access to the Internet should be developed as part of member states’ provision of public services⁵ is a priority for the CoE.

Security, openness and privacy

Freedom of expression and freedom of the media on the Internet

The Internet is having a significant impact on the way in which information is gathered, content is created as well as on the methods by which both are made available and sought. This was a central theme of the abovementioned Conference. The ministers stated (in their Resolution *Towards a new notion of media*) that new media and media-like mass communication services fulfil some of the functions so far carried out by ‘traditional media’. They underlined that fundamental rights and freedoms, including the freedom of the media, have to be promoted and protected regardless of these changes.

The CoE has therefore started to review the concept of media itself and is examining criteria to distinguish media or media-like services from new forms of personal communication. This is because the exercise of freedom of expression and information also carries with it duties and responsibilities. The ministers underlined that media and media-like providers have to respect certain benchmarks and should be adequately informed of their responsibilities. The CoE will continue to develop such benchmarks together with all relevant stakeholders.

For many people, the right and freedom to receive and impart information and ideas on the Internet is becoming a necessity rather than a choice for economic, financial and social reasons. As reliance and dependency on the Internet grows, this right and freedom becomes even more important. Fostering trust and confidence on the Internet is therefore central to the Internet’s openness.

To foster children’s trust and confidence in the Internet, in July 2009, the CoE Committee of Ministers adopted a new policy framework protecting children against harmful content and behaviour⁶ which encourages public-private partnerships to:

- create and facilitate confidence building environments (walled gardens) for children to safely explore the Internet,

³ In this context see Recommendation CM/Rec(2007)16 of the Committee of Ministers to member states on measures to promote the public service value of the Internet: available at: <https://wcd.coe.int/ViewDoc.jsp?id=1207291&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>

⁴ For the Terms of Reference of the Ad-hoc Advisory Group on Public Service Media Governance, consult http://www.coe.int/t/dghl/standardsetting/media/MC-S-PG/MC-S-PG_mandat_en.asp#TopOfPage

⁵ This may include policies for redressing market failure where market forces are unable to satisfy all legitimate needs or aspirations, both in terms of infrastructure and the range and quality of available content and services.

⁶ Recommendation (2009)5 on measures to protect children against harmful content and behaviour and to promote their active participation in the new information and communications environment available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec\(2009\)5&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec(2009)5&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75)

- create a human rights based pan-European trustmark which harnesses new and existing online content labelling systems,
- improve children's media literacy.

In this connection, the CoE is examining ways to protect the dignity of children and other groups with special needs or characteristics who are exposed to or affected by media or media-like services. The dignity, security and privacy of children on the Internet and the removal of their online traces that could bring them prejudice are also a priority for the CoE.

Human rights co-operation and capacity building with the private sector

Raising awareness of and promoting respect for human rights in the creation, development and provision of Internet services and technologies is also central to discussions regarding security, openness and privacy. The CoE is currently working on standards concerning the rights and responsibilities of users with regard to data retention, the processing of personal data and profiling techniques or practices.

For Internet service providers and online games providers in Europe, the CoE's human rights guidelines for internet service providers and for online games providers⁷ are acknowledged by the industry bodies – European Internet Services Providers Association (EuroISPA) and the Interactive Software Federation of Europe (ISFE) – as being more effective than (government) rules and regulations. They believe that the guidelines provide a flexible and dynamic means of establishing co-operation and dialogue between different stakeholder groups including the private sector and governments. They also consider the guidelines to be a source of reference or inspiration in the process of content creation or distribution, and a unique tool for awareness raising⁸.

Managing critical Internet resources

The ministers participating in the abovementioned Conference adopted a *Resolution on Internet governance and critical Internet resources* which recalls the obligation and commitment of member states to secure to everyone within their jurisdiction their fundamental rights and freedoms contained in the European Convention on Human Rights (ECHR). In this context, they underlined the importance of freedom of expression and information regardless of frontiers while at the same time stressing that access to the Internet is an important means by which large numbers of users are able to fully exercise and benefit from this right. They added that acts or events which block or significantly impede Internet access to or within fellow members of the international community may have significant implications under Article 10 of the ECHR, guaranteeing the right to freedom of expression and information.

The Resolution refers to a shared responsibility by states to take reasonable measures through multi-lateral cooperation to ensure the ongoing functioning of the Internet and, in consequence, the delivery of the public service to which all persons under their jurisdiction are entitled. On this basis, the participating ministers called on all state and non-state actors to explore ways to ensure that critical Internet resources are managed in the public interest, and as a public asset, in full respect

⁷ Human rights guidelines for online games providers available at:
[http://www.coe.int/t/dghl/standardsetting/media/Doc/H-Inf\(2008\)008_en.pdf](http://www.coe.int/t/dghl/standardsetting/media/Doc/H-Inf(2008)008_en.pdf);

Human rights guidelines for Internet service providers available at:
[http://www.coe.int/t/dghl/standardsetting/media/Doc/H-Inf\(2008\)009_en.pdf](http://www.coe.int/t/dghl/standardsetting/media/Doc/H-Inf(2008)009_en.pdf)

These guidelines were prepared and launched in 2008 in close cooperation with the European Internet Service Providers Association (EuroISPA) and the Interactive Software Federation of Europe (ISFE).

⁸ A joint CoE, EuroISPA, ISFE workshop on the implementation of the human rights guidelines took place on 6 May 2009, the details and results of which are available at :

http://www.coe.int/t/dghl/standardsetting/media/News/6MAY2009_en.asp

of international law, including human rights law. This could include, if appropriate, international supervision and accountability of the management of those resources.

The Resolution also invites the CoE to explore the feasibility of developing a broad legal response to the need to protect the cross-border flow of media and media-like content and, more generally, Internet traffic having regard to Article 10 of the ECHR.

Internet governance in the light of the World summit on the information society (WSIS) principles - Ensuring a multi-stakeholder, rights-based approach to internet governance

In their Resolution *Internet governance and critical Internet resources*, the participating ministers in the abovementioned Conference confirmed that pan-European efforts to enhance cooperation on Internet governance should have due regard to the CoE's values and standards on human rights, democracy and the rule of law, and the need for a multi-stakeholder approach. They acknowledged efforts to foster pan-European discussions on Internet governance bringing together state representatives and other stakeholders, such as the European Dialogue on Internet Governance (EuroDIG) which is supported by the CoE. In conclusion, the ministers asked the CoE to make more lasting arrangements in this respect.

Ministers declared that, in their standard-setting work, member states are inspired by the Tunis Agenda for the information society and the United Nations-led Internet Governance Forum (IGF).

In the planning of the 2009 European Dialogue on Internet Governance (EuroDIG)⁹, the CoE Secretariat has made considerable efforts, including in budgetary terms, to facilitate balanced stakeholder participation in order to maximise open and inclusive dialogue.

CoE action and next steps in the media and information society field

The ministers further adopted an Action Plan (appended to this submission) which maps out the CoE's standard setting and cooperation work to come regarding the media, media-like mass communication services, as well as internet governance and critical Internet resources. This includes reference to a panoply of issues such as new forms of content aggregation, the management and prioritisation of flow of content and of access and limited connectivity, or lack of access, to broadband services, public service media, user generated content, media literacy, and children's dignity, security and privacy. The ministers have therefore provided the CoE with a blueprint for action and expected results in the years ahead, one which is based on values, rights and freedoms. Sharing the fruits of this work with and through the IGF will be of the utmost importance.

⁹ www.eurodig.org

Appendix

“Action Plan adopted by the ministers participating in the 1st Council of Europe Conference of Ministers responsible for media and new communication services:

I. Towards a new notion of media and its consequences

1. Examine whether our understanding of media and mass-communication services remains valid in the new information and communications environment. If appropriate, elaborate a policy document reviewing the concept of media itself to include relevant new media and media-like mass communication services and service providers.
2. Having regard to the results from this review, establish criteria for distinguishing media or media-like services from other forms of personal communication.
3. Examine whether and how the requirements of journalistic professionalism, editorial independence and editorial responsibility apply or should apply to operators of new media and media-like mass-communication services and service providers.
4. In consultation with relevant stakeholders, examine the need for, the modalities (such as self-regulation, co-regulation or regulation) and the subject of regulatory activities required to ensure respect for Council of Europe values in the framework of new media and media-like mass communication services. If appropriate, provide guidance as to the application of existing Council of Europe standards to these new services.

II. Public service

5. Pursue work on the role of public service media in a democratic society. In particular, examine the modalities for delivery to the widest possible public, including young audiences, of trustworthy, diverse and pluralistic media and media-like services, paying attention to the way in which information and media or media-like services are sought and received and to the challenges of obtaining quality or trustworthy content.
6. In this connection, explore and, if appropriate, elaborate a policy document containing guidance for member states on governance approaches for public service media that will contribute to achieving the above objectives. This could extend to reflecting on other (organisational, financial and technical) features of the public service provision of media and media-like services.
7. Continue to develop the notion of the public service value of the Internet. In this context, explore the extent to which universal access to the Internet should be developed as part of member states' provision of public services. This may include policies for redressing market failure where market forces are unable to satisfy all legitimate needs or aspirations, both in terms of infrastructure and the range and quality of available content and services.

III. The individual and the media and media-like mass-communication services

8. Explore how newer or emerging modes of mass dissemination of and access to content, and the associated retention, processing and exploitation of data, affect the rights protected under Article 10 of the European Convention on Human Rights. If necessary, give guidance on how to strengthen the protection of those rights.
9. Examine how the status and rights of creators or providers of content can change, in particular when others associate that content to their own media or media-like services or income-generating activities (for example, advertising) in a mass-communication environment. If appropriate, elaborate guidance on the matter, including on the legal control of creators and providers over their

content and the attribution of responsibility (such as when legal liability arises from the broad dissemination of such content).

10. Pursue reflection on possible means of ensuring the effective, transparent, independent and accountable operation and functioning of complaints bodies and procedures for media and media-like mass-communication services.

11. In consultation with relevant stakeholders, including education specialists, pursue work on media literacy with the aim of making users, creators and distributors of content (in particular children and young people) responsible, informed and critical participants in the information society. Attention should be paid, as appropriate, to non-formal education as well as to the role of media themselves.

12. Continue to address other challenges to individuals' (in particular children's and young people's) rights to freedom of expression and information, privacy and other fundamental rights, as well as to their dignity and security on the Internet. In particular, explore possibilities for the removal of content that children create or place on the Internet. Pursue standard-setting work on the processing of personal data and profiling techniques or practices, explore common standards on privacy settings and examine the threats that could derive from systems designed to identify and track objects. In consultation with relevant stakeholders, develop appropriate guidance, benchmarks and tools to protect users' rights.

13. Explore the question of the possible use of newer or emerging services of mass communication to shape opinion and consumption of different groups in society in a surreptitious, subliminal or otherwise manipulative manner and, with due regard to Articles 8 and 10 of the European Convention on Human Rights, explore ways in which to protect the users or public from such use."