Dear FOI Officer,

I would be grateful if you could supply the following information under the auspices of the FOI Acts.

All correspondence between the Department of Communications, Energy and Natural Resources and the Office of the Minister Alex White, and RTE between 11/07/14 - 24/06/15 - to include correspondence between the Department, the Minister and all levels in RTE, including the board and the Office of the Director General, Noel Curran.

Please email me the information in digital .doc or .pdf formats, (i.e. not scanned documents where possible).

All the best,


Private, Confidential and Privileged. This e-mail and any files and attachments transmitted with it are confidential and/or privileged. They are intended solely for the use of the intended recipient. The content of this e-mail and any file or attachment transmitted with it may have been changed or altered without the consent of the author. If you are not the intended recipient, please note that any review, dissemination, disclosure, alteration, printing, circulation or transmission of this e-mail and/or any file or attachment transmitted with it, is prohibited and may be unlawful. If you have received this e-mail or any file or attachment transmitted with it in error please notify the sender.
23rd July 2015

Re: FOI request: FOI/2015/67

Dear

I refer to the request which you made under the Freedom of Information Act 2014 for the following records held by this body:

'All correspondence between the Department of Communications, Energy & Natural Resources and the Office of the Minister Alex White, and RTÉ between 01/01/15 – 24/06/15 to include correspondence between the Department, the Minister and all levels including the Board and the Office of the Director General, Noel Curran.'

I have now made a final decision to part grant your request on 23rd July 2015.

The purpose of this letter is to explain that decision. This explanation has the following parts:

1. a schedule of all of the records covered by your request;
2. an explanation of the relevant findings concerning the records to which access is denied, and
3. a statement of how you can appeal this decision should you wish to do so.

This letter addresses each of these three parts in turn.
1. Schedule of records

A schedule is enclosed with this letter, which shows the documents that this body considers relevant to your request and, as agreed, excludes records deemed administrative. It describes each document and refers to the sections of the FOI Act which apply to prevent release, where applicable. The schedule also refers you to sections of the detailed explanation given under heading 2 below, which are relevant to the document in question. It also gives you a summary and overview of the decision as a whole.

2. Findings, particulars and reasons for decisions to deny access

Access to records 1, 4, 6, 7, 8, 9, 15, 16, 26, 30 and 32 has been granted. Access to records 10, 13, 19, 21, 24, 25, 29 and 31 has been partly granted. Access to records 2, 3, 5, 11, 12, 14, 17, 18, 20, 22, 23, 27 and 28 has been refused.

The sections of the Act which can apply to deny access to documents are known as its exemption provisions. As you can see from the attached schedule, it is my view that:

An exemption under Section 29 (Deliberations of FOI Bodies) applies to records: 2, 3, 5, 12, 14, 17, 20, 21 and 23.

An exemption under Section 36 (Commercially Sensitive Information) applies to records: 2, 3, 5, 10, 11, 12, 13, 14, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29 and 31.

An exemption under Section 35 (Information Obtained in Confidence) applies to records: 2, 3, 11, 12, 17, 21, 22, 23, 27 and 28.

Records 10, 13, 19, 24, 25 and 29 have been edited to remove personal details under Section 37.

Section 29 of the Act allows for refusal of records where they relate to the deliberative processes of the Department. In my view, the records in question relate to decision making processes which are ongoing.

Section 36 of the Act provides mandatory protection for trade secrets, financial, commercial, technical or other information which could reasonably be expected to result in a material financial loss or prejudice the commercial position of that person or prejudice the outcome of contractual negotiations.

These Sections require that a public interest test be undertaken to consider whether these records are released in the public interest. Essentially this means that we need to consider whether the public interest would be better served by the release of this information then the withholding of this information.

My view is that the public interest would be on balance be better served by partly granting your request in the case of these particular records than granting it.
Section 35 provides mandatory protection for a record which has been given in confidence and on the understanding that it would be treated as confidential, where its disclosure would be likely to prejudice the provision of similar information and it is important that such information should continue to be given.

3. Rights of appeal

In the event that you are unhappy with this decision you may appeal. In the event that you need to make such an appeal, you can do so by writing to the Freedom of Information Unit, Department of Communications, Energy and Natural Resources, Elm House, Earlsvale Rd, Cavan, Co. Cavan or by e-mail to FOI.UNIT@dcenr.gov.ie. Your correspondence should include a fee of €30 for processing the appeal. Payment should be made by way of bank draft, money order, postal order or personal cheque made payable to the Department of Communications, Energy & Natural Resources. If you wish to make payment by electronic means, please contact the FOI Unit directly. You should make your appeal within 4 weeks from the date of this notification, where a day is defined as a working day excluding, the weekend and public holidays. However, the making of a late appeal may be permitted in appropriate circumstances. The appeal will involve a complete reconsideration of the matter by a more senior member of the staff of this body.

Should you have any questions or concerns regarding the above, please contact me by telephone on 01 678 3093.

Yours sincerely

[Signature]

Brendan O'Reilly
Broadcasting Policy Division
FOI Request Reference: FOI/2015/67

Schedule of Records: Summary of Decision Making

Description of request: All correspondence between the Department of Communications, Energy & Natural Resources and the Office of the Minister Alex White, and RTÉ between 01/01/15 – 24/06/15 to include correspondence between the Department, the Minister and all levels including the Board and the Office of the Director General, Noel Curran.

<table>
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<tr>
<th>Record No.</th>
<th>Brief Description &amp; Date of Record</th>
<th>File Ref.</th>
<th>No. of Pages</th>
<th>Relevant facts</th>
<th>Findings/ conclusions (Public Interest Considerations, If applicable)</th>
<th>Grant/refuse/ part-grant</th>
<th>Basis of Refusal: Section of Act</th>
<th>Record edited/Identify deletions</th>
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Éanna Ó Conghaile,
Department of Communications,
Energy and Natural Resources
29-31 Adelaide Road
Dublin 2

09 January 2015

Re: 2015 RTÉ Statement of Strategy and Public Service Statement

Dear Ó Conghaile,

The Broadcasting Act 2009 ("the Act") requires RTÉ to prepare a Statement of Strategy and Public Service Statement every five years, and the next iteration of these statements are due this year.

RTÉ's costing strategy Today, Tomorrow, Together 2013-2017 was one of the principal inputs into the recent 5-year review of public funding. This strategy, prepared following rigorous analysis and consideration, and approved by the RTÉ Board, was reviewed in-depth by the BAI and their consultants, Crowe Horwath. The strategy was accepted by DCENR and RTÉ is pursuing the plans it set out, albeit in the context of significantly diminished financial resources.

It is likely that RTÉ's 2015 Statement of Strategy will be a high level update of the 2013 costing strategy, having regard to current and potential resources available to the organisation over the five years to 2020.

In line with the recommendations of the recently completed 5-year review, there has been major revision of RTÉ's Annual Statements of Performance Commitments and of the annual public funding review process conducted by the BAI. There has been extensive consultation between RTÉ and BAI to agree a more efficient framework. RTÉ's commitments provide a high-level overview of how it will deliver on its costing strategy for the year ahead. The review process will focus on more streamlined information of greater regulatory value. RTÉ intends, as per the requirements of the Act, to submit this year's commitments in February 2015. Again, commitments will be fully aligned with RTÉ's 2013-2017 costing strategy.

RTÉ has previously suggested that the sequencing of the above Statements, and how those timings link with the 5-year reviews (S124(8)) might be revised to better align inter-related statutory processes. We are of the view that the Public Service Statement, informed by a public consultation, should precede and inform the next Statement of Strategy. We suggest this would increase the strategy's relevance to audiences by allowing for the public's view to
be incorporated. On that basis, RTÉ proposes to conduct these activities in that order, and to complete both by the end of the summer of 2015.

This timeline would also allow RTÉ’s newly appointed Board some time to consider the strategic direction of the organisation, the results of the consultation and the new Statements. As you will be aware the Board is currently in a transitional phase where some new members have been appointed but the remainder are not due for appointment until February 2015.

We would very much welcome your views on these planned timings.

Yours sincerely,

Cillian DePaor,
RTÉ Group Secretary.
Re: 2015 RTÉ Statement of Strategy and Public Service Statement

Dear Cillian

Thank you for your letter of 9th January in relation to the preparation of the next iteration of RTÉ’s Statement of Strategy and Public Service Statement, which, under Sections 99(1) and 101(1) of the Broadcasting Act 2009, are due this year.

RTÉ’s view that the Public Service Statement, informed by a public consultation, should precede and inform the next Statement of Strategy, is noted, as is its intention to conduct these processes in that order.

As you are aware, the current Public Service Statement was submitted to the Minister on 12 July 2010. Section 101(1) of the 2009 Act, therefore, requires the next iteration to be submitted to the Minister by 12 July this year. The current Statement of Strategy was submitted to the Minister on 12th January 2010 and the next iteration would therefore have been required by 12th January this year, in line with Section 99(1). As I’m sure you realise, the proposed course of action is consequently not in line with the provisions of the Act.

That said, while the Statement of Strategy 2010 – 2014 has expired, it must be recognised that the multi annual strategy Today, Tomorrow, Together 2013 – 2017 is in place, as noted in your letter. The Department also acknowledges that it has accepted this strategy in the context of the 5 Year Review and that RTÉ is pursuing the plans it sets out. In addition, the Department is cognisant of the relatively recent appointment of seven members to the Board and that four further appointments are due in February.

While the statutory deadline in respect of the Statement of Strategy has in this instance not been adhered to, the order in which RTÉ proposes to conduct these processes appears both reasonable and pragmatic from a governance perspective, particularly given the fully costed
strategy already in place and, as you point out, the time this affords the relatively new Board to consider the strategic direction of the organisation. However, in the absence of any justification for not presenting the Public Service Statement in line with the statutory deadline of 12\textsuperscript{th} July, particularly if it is to inform the Statement of Strategy, I would request that RTÉ endeavour to submit both documents by that date.

I am available to discuss this further if required.

Yours sincerely

[Signature]

Éanna Ó Conghaile
Principal Officer
Éanna Ó Conghaile  
Department of Communications,  
Energy and Natural Resources  
29-31 Adelaide Road  
Dublin 2

9th February 2015

Dear Éanna,

Ref: RTÉ Approved New Services

RTÉ would be grateful for the opportunity to engage with DCENR on general condition 6 of the Ministerial consent issued in February 2011 for RTÉ’s new service proposals. This condition requires a review, within four years, of those services that were considered under Section 103 of the Broadcasting Act.

We wish to formally commence this review process when our MD of Television and Channel Controllers meet with you later this week.

We look forward to seeing you then.

Yours sincerely

Brian Dalton  
MD Corporate Development
10th February 2015

Mr Brian Dalton  
Managing Director  
Corporate Development  
RTÉ  
Dublin 4

Dear Brian

I refer to your letter dated 9th February 2015 in regard to the Ministerial Consent of February 2011 in regard to RTÉ’s new services and to your request to commence the review of those services in accordance with General Condition 6 of the Consent.

I confirm that this Department agrees that the review is to be formally initiated at the meeting with Mr Glen Killane, Managing Director of Television on Thursday, 12th February 2015. In this context, I would request that, if possible and in order to assist with the discussion, you might provide in advance any presentations or documents being prepared by RTÉ for that meeting.

In order to ensure that the transmission of ‘free to air’ television services is continued to be managed in an orderly manner and that the reception by the public is subject to minimum unnecessary disruption, I confirm that, pending the completion of the review and the publication of any Ministerial Decision resulting from the process, the channels and services approved under the 2011 Decision shall remain in operation as they are currently provided.

Yours sincerely

Éanna Ó Conghaile  
Broadcasting Policy
February 2015

Paul Mulligan
Head of Commercial Operations RTÉ Television
RTÉ
Donnybrook
Dublin 4

Re: RTÉ/IBI Radio Player Proposal

Dear Paul

I refer to your letter of 25th November and subsequent correspondence in relation to the proposed launch of a Radio Player app for all Irish radio stations.

As you are aware, the Department determined that the proposed arrangement with the Independent Broadcasters of Ireland (IBI) may be viewed as a partnership and, therefore, required the consent of both the Minister for Communications, Energy & Natural Resources and the Minister for Public Expenditure and Reform under Section 104(2) of the 2009 Act.

Having completed their consideration of the matter, I now wish to convey the consent of both Ministers for RTÉ to enter into a business partnership with IBI, underpinned by a Memorandum of Understanding, to develop an internet based radio player.

The establishment of the Irish Radio Player is, potentially, of great benefit to all participating Irish radio stations, leveraging technological advances to uphold the popularity of the medium in an increasingly competitive multi-platform environment.

In addition, I am conscious of the importance of RTÉ and the IBI working towards a shared objective and would like to take the opportunity to wish both parties well with this project.

Yours sincerely

Éanna Ó Conghaile
Principal Officer
February 2015

Cillian de Paor
RTÉ Group Secretary
RTÉ
Dublin 4

Re: 2015 Statement of Strategy

Dear Cillian,

I refer to previous correspondence on the preparation of RTÉ’s forthcoming Statement of Strategy, to be informed by preparation of the Public Service Statement, which is also due to be reviewed this year.

With reference to the Statement of Strategy specifically, I note that your letter of 9th January envisages ‘a high level update of the 2013 costed strategy, having regard to current and potential resources available … over the five years to 2020.’

As affirmed in my response of 23rd January, the Department has previously accepted the multi annual strategy Today, Tomorrow, Together 2013 - 2017 in the context of the 5 year review and also acknowledges that RTÉ is pursuing the plans it sets out.

However, in preparing the next iteration of its Statement of Strategy, RTÉ should be cognisant that s. 99(1) of the 2009 Act requires its format to be approved by the Minister, prior to its presentation. While it is, of course, a matter for the Board to determine the extent to which any revisions need to be made to the strategy document in order to ensure that it takes appropriate account of both available resources and developments in the sector since it was first devised, the Department would appreciate an indicative outline of the elements to be included at an early stage.

With this in mind, I would be grateful if you could provide an outline and description of the proposed format as soon as possible, to ensure there is sufficient time for consideration by the Minister in line with s. 99(1).

I am available to discuss this further as required.

Many thanks

Éanna Ó Conghaile
Principal Officer

29-31 Adelaide Road, Dublin 2
29-31 Bóthar Adelaide
Baile Átha Cliath 2
Tel: +353 1 678 2000
LoCall: 1890 44 99 00
Fax: +353 1 678 2449
Dear Michael,

I attach a copy of the Unaudited Financial Statements incorporating the Consolidated Management Accounts and Commentary for RTÉ for the month of January 2015.

The file is password protected, the password to open the file is [REDACTED].

Kind Regards

Yours Sincerely

Breda O‘Keeffe
Chief Financial Officer

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Tá an t-éolas sa riomhphost seo faoi rún agus d‘hheadfadh sé a bheith faoi phribhléid dhlíthiúil. Is ar an saol á thabhairt atá sé dírithe. Níl cead ag aon duine eile rochtain a fháil ar an riomhphost seo. Mura tú an fainisteoir beartaithe, tá cosc ar aon, nochtadh, cùipéil, dálleadh, nó aon ghníomh a dhéanamh nó a fhágáil ar lár i dtaca leis an riomhphost agus d‘hheadfadh sin a bheith midileathach. Tabhair ar aír le do thoil, d‘hheadfadh riomhphost chuíg, ó agus laistigh de RTÉ a bheith faoi réir an Acht um Shaoirí Faisnéise 1997, agus d‘hheadfadh go ndéanfai é a nochtadh.
Dear Michael,

I attach a copy of the Unaudited Financial Statements incorporating the Consolidated Management Accounts and Commentary for RTÉ for the month of February 2015.

The file is password protected, the password to open the file is [REDACTED].

Kind regards

Breda
Carriage of the Oireachtas Channel on SAORVIEW

Joint sub-Committee on Administration of the House of the Oireachtas

Tuesday 16 December 2014
Attendees

SAORVIEW
Richard Waghorn

RTÉ DTT Multiplex Management
Eamonn Reid
Paul Doyle

2rn
Mick Kehoe
**Agenda for the meeting**

- Digital switchover
- What is SAORVIEW?
- Services on SAORVIEW
- How SAORVIEW is managed
- How SAORVIEW is regulated
- Broadcasting Act 2009
- ComReg regulation
- Principles of regulation
- How broadcasters are charged for carriage on SAORVIEW
- Indicative charges
- Future developments for SAORVIEW
Digital switchover in Ireland

- In October 2012 Ireland switched from analogue terrestrial transmission of television to digital transmission. The new digital terrestrial television (DTT) service is called SAORVIEW*

- 2rn** invested €60 million in the digital transmission and distribution infrastructure to enable digital switchover. This investment was financed entirely by 2rn from a combination of its own resources and bank borrowing.

- Unlike virtually every other country in Europe, there was no public funding allocated to RTÉ to assist with the infrastructure or communication costs associated with digital switchover.

- The switching-off of the analogue television signals facilitated the sale of spectrum licences which generated over €800 million for the State.

---

* In addition to SAORVIEW, SAORSAT is the Irish free to air satellite platform

** Formerly RTÉNL, 2rn is a wholly owned subsidiary of RTÉ
What is SAORVIEW?

- SAORVIEW is Ireland’s free-to-air Digital Terrestrial Television (DTT) platform
- SAORVIEW was established by RTÉ as required by Part 8 of the Broadcasting Act, 2009
- SAORVIEW is currently available in more than 600,000 homes - of those homes, SAORVIEW is the only source of digital television for 164,000 homes
- SAORVIEW and SAORSAT provide 100% population coverage
- Once viewers have bought their SAORVIEW equipment they have no ongoing cost for the service – no contract and no monthly bills
- Pay TV providers, such as Sky, UPC and eVision, charge viewers for access to their services, including the Irish free-to-air television channels
- SAORVIEW is solely financed by payments from broadcasters that are carried on the SAORVIEW platform
Services on SAORVIEW

- SAORVIEW consists of two DTT multiplexes
- SAORVIEW currently provides free access to 8 television channels (2 in High Definition), 9 radio stations and digital Aertel
- UTV Ireland launches on 1 January 2015
How SAORVIEW is managed

- Broadcasters’ contracts with RTÉ are handled by the DTT Multiplex Management unit
- 2rn provides the coding, multiplexing and transmission services for the platform
- SAORVIEW markets and promotes the service to consumers and manages relationships with the trade
How SAORVIEW is regulated

- Section 130 of the Broadcasting Act, 2009:
  - sets out the legislative scheme for the provision of DTT by RTÉ and
  - the specific statutory obligations with which RTÉ must comply
  - obliges RTÉ to establish maintain and operate at least one national digital multiplex with an entitlement to apply for an additional multiplex licence.
- RTÉ operates two digital multiplexes as an integrated platform called SAORVIEW
- In order for RTÉ to discharge this statutory obligation, RTÉ has contracted 2rn to provide distribution transmission and multiplexing services. RTÉ as multiplex operator is invoiced by 2rn on a full arm’s length basis
- RTÉ is obliged to carry specifically named broadcasting services on SAORVIEW which are listed within Section 130. The services listed within Section 130 include the Houses of the Oireachtas Channel and the Irish Film Channel
**Broadcasting Act 2009**

- The Minister in consultation with the Broadcasting Authority of Ireland (BAI) determines what services are carried on SAORVIEW and not the platform itself. RTÉ is obliged to provide the platform but does not determine content or terms of access. For example, *UTV Ireland* could not be carried on SAORVIEW until it was designated by the Minister by order under Section 130(1)(iv).

- The basis for the carriage of channels is also catered for within Section 130. There are specific provisions regarding payment. Section **130(4)** provides that the Commission of the Houses of the Oireachtas shall make to RTÉ such periodic or other payments in respect of any service provided by RTÉ .... as the Minister (after consultation with ComReg and the Commission of the Houses of the Oireachtas) may direct.

- There are similar payment provisions within Section 130 for all channels that must be carried on SAORVIEW; notably at Section **130(2)** in respect of *TG4*, Section **130(6)** in respect of the *Irish Film Channel* and Section **130(10)** in respect of *TV3*.

- RTÉ cannot act outside of its statutory and regulatory requirements in relation to carriage arrangements for any channel, and to do so would render it in breach of same.
ComReg regulation

- At an EU level almost all broadcast transmission markets have been removed from regulation as a result of ASO. In Ireland, ComReg decided that the wholesale terrestrial broadcast market had to continue to be regulated at a national level.

- On that basis and having notified the Commission of its decision, ComReg published a very long and detailed decision in July 2013. It was decided that, as RTÉ is the only provider of a DTT platform in Ireland, RTÉ would be designated with Significant Market Power (SMP) in its specific market. Similarly, 2rn as the sole provider of wholesale terrestrial broadcasting distribution and transmission services was designated with SMP in its own separate and distinct market.

- When an entity is designated with SMP, there are a whole range of very detailed legal obligations imposed upon that entity by way of final Decision Instruments. RTÉ has specific obligations that include:
  
  - non-discrimination
  - transparency
  - pricing / cost orientation
  - obligations with regard to the terms of access to the SAORVIEW platform which it is obliged to make available to broadcast services
Principles of regulation

Non-Discrimination
All services should be charged on a non-discriminatory basis. There should be no differentiation in charges based on the ownership or purpose of the channel. For example, all broadcast services must have similar terms of access. RTÉ is obliged to publish those proposed terms of access on its website by way of a Reference Offer. This Reference Offer includes the terms of access that RTÉ is obliged to make to all broadcast services carried on SAORVIEW, and the basis of the proposed or indicative charges.

Transparency
RTÉ shall be transparent in its operation of the platform.

Cost Orientation
Tariffs charged for carriage on SAORVIEW should be related to the recovery of costs both capital and operating incurred in the provision of the service.
How broadcasters are charged for carriage

- 2rn must charge RTÉ the same costs as it would to any other multiplex operator.
- RTÉ must seek to recover those costs by applying tariffs derived from a regulated tariff model to all of its broadcast customers (including the RTÉ channels) and irrespective of the nature of those broadcast customers.
- RTÉ must submit proposed tariff to ComReg – if ComReg does not object the tariff comes into effect for all broadcasters.
- Any further adjustments to the tariff model must be submitted to ComReg for their acceptance.
How broadcasters are charged for carriage

- Tariff is based on estimated costs and usage over a five year period
- Assumptions are made on the level of new entrants and High Definition / Standard Definition services
- A broadcaster’s usage is affected by the type of material transmitted
- Tariff model generates a quarterly average rate per Mbit for each broadcaster
- Increasing the number of channels, and channels upgrading to HD on the platform, can reduce the unit cost of carriage for all channels on the platform
- In simple terms, the more channels (and the more HD channels) on the platform the lower the tariff becomes for each channel
Indicative charges for Oireachtas TV

- SAORVIEW and the Oireachtas TV technical personnel have conducted tests to estimate the level of capacity usage for the type of programming anticipated.
- Cost estimates are based on eighteen hours live transmission.
- Based on an eighteen hours daily transmission and the current video rates, the current regulated tariff for Oireachtas TV would be circa €525,000 p.a.
- If multiplex utilisation is greater than anticipated in the current tariff model (e.g. additional channels or further channels converting to HD) regulated tariffs would reduce.
Future developments for SAORVIEW

- Implementing an upgrade path for SAORVIEW called SAORVIEW Connected which will combine DTT with broadband into a single service designed for televisions
- SAORVIEW Connected will enable viewers to access the current line-up of channels on DTT together with additional linear and on-demand content delivered over the internet
- SAORVIEW Connected could offer a particular opportunity for the Oireachtas, as it would be well suited to delivering low volume simultaneous multiple video feeds to televisions in free-to-air homes
Dear Éanna,

Please find attached the draft format for the Statement of Strategy 2015. I will forward a hard copy to your office today.

As discussed in previous correspondence, RTÉ have reversed the order of the Public Service Statement and the Statement of Strategy to provide what we consider to be a more coherent approach. In your letter of 23rd January accepting this you asked that both documents be submitted to the Department by July 12th. RTÉ are working towards that deadline and have constituted a Board sub-committee to oversee the process. The public consultation is underway at the moment and once the results of that are available we will proceed with the drafting of both documents which will then be submitted to the Board.

As Section 99 (1) of the Broadcasting Act 2009 requires Ministerial approval of the format for the Statement of Strategy, I attach our proposal for your consideration. To expedite the drafting of the Statement I would be obliged if you can let me know your decision as soon as is convenient.

Regards,

Cillian
Draft Format for Statement of Strategy 2015

Part 1: Vision, Mission and Values of RTÉ:

RTÉ Vision
Text to be inserted......

RTÉ’s mission
Text to be inserted......

RTÉ’s Values
Text to be inserted......

Part 2: RTÉ Portfolio of Services

Explanation of the Portfolio of Services concept followed by a short summary of each RTÉ service.

Part 3: Corporate Strategy of RTÉ

3.1 Short statement of the overarching strategy

Text to be inserted......

[Note: The statement will answer the question – “Where do we want to be?” as articulated in RTÉ’s Strategy 2013-2017.
It will be consistent with the VMV and RTÉ’s Public Service Statement and incorporate any significant findings from the Public Service Statement Consultation as appropriate.
It will outline any significant deviations from RTÉ’s Strategy 2013-2017 resulting from changed market conditions, revenue shortfall or other external forces.]

3.2 High Level Strategic Objectives

RTÉ has identified key high level objectives as central to delivering on this strategy.

High level objectives will be inserted from RTÉ’s Strategy 2013-2017. These will be consistent with ASPC Commitments

[Note: the following themes will be covered:
- Distinctive, targeted services to connect to the lives of our audiences
- Quality programming and content]
- Use of technology to enhance content and reach out to new audiences
- Open RTÉ
- Fit for purpose organisation
- Funding RTÉ for the future

3.3 Milestone Map

To deliver the high level strategic objectives, RTÉ has identified a range of activities which it will undertake over the period of the Statement of Strategy. On an annual basis IBD Plans will contain detailed activities aimed at delivering on the strategy. These together with the Annual Statement of Performance Commitments will aim to achieve the strategy set out for the 5 years.

Over the course of the period of this Statement of Strategy, RTÉ has identified key events which need to take place in order to deliver on it. These are mapped out on the milestone map below.

[Note: These are high level actions]

3.4 Contingency Planning/Risk Management

- Alignment of Strategy with internal Risk Management
- Scenarios or eventualities which would trigger a review of the strategy

Part 4: Strategic Context

4.1 Summary of the Strategic External Environment Facing RTÉ

4.1.1. Statutory Environment:
Text to be inserted......

4.1.2. Regulatory Environment:
Text to be inserted......

4.1.3. Consumer and Technical Trends:
Text to be inserted......

4.1.4. Competition:
Text to be inserted......

4.1.5. Financial environment:
Text to be inserted......
4.2 A Summary of the Strategic Internal situation in RTÉ

4.2.1. Financial Status:
Text to be inserted......

4.2.2. Buildings and Infrastructure:
Text to be inserted......

4.2.3. Human Resources:
Text to be inserted......

4.2.4. Reputation:
Text to be inserted......

Part 5: APPENDICES

5.1 As required

OVERALL in 10-15 page range
This format to be approved by Minister
Dear Michael,

I attach a copy of the Unaudited Financial Statements incorporating the Consolidated Management Accounts and Commentary for RTÉ for the month of March 2015.

The file is password protected, the password to open the file is

Kind Regards

Breda

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BREDA O’KEEFFE Chief Financial Officer

RTÉ

Central Offices, RTÉ, Donnybrook, Dublin 4

T: +353 1 208 2189 M: +353 87 640 8155 E: breda.okeeffe@rte.ie | www.rte.ie | twitter.com/ | www.facebook.com | LinkedIn/RTÉ

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Tá an t-eolas sa riomhphost seo faoi rún agus d’fhéadfadh sé a bheith faoi phribhléid dhlíthiúil. Is ar an seoláid amháin atá sé dírthe. Nil cead ag aon duine eile rochtain a fháil ar an riomhphost seo. Mura tú an faighteoireacht beartaithe, tá cosc ar aon nachdach, cóipéail, dáileadh, nó aon ghníomh a dhéanmh nó a fhágaí ar lár i dtaca leis an riomhphost agus d’fhéadfadh sin a bheith midheachathch. Tabhair ar aird le do thoil, d’fhéadfadh riomhphost chugó, ó agus laistigh de RTÉ a bheith faoi réir an Acha um Shaoráil Faisnéise 1997, agus d’fhéadfadh go ndéanfaí é a nochtaidh.
Good afternoon,

Following on from my email this afternoon please see attached soft copy of the RTÉ Annual Report 2014 & Chairperson’s Report to the Minister for Communications, Energy and Natural Resources.

As previously advised, hard copies of these documents will be delivered by courier tomorrow Thursday the 29th of April 2015.

Kind regards,

Paula

Good afternoon Mr Griffin,

In accordance with Sections 109 and 110 of the Broadcasting Act 2009 I will forward, for the Minister’s attention, five copies of the English language text of the Board of RTÉ’s Annual Report and Group Financial Statements 2014 tomorrow Thursday the 30th of April 2015 with the request that they be presented to Government for approval and subsequently laid before the Houses of the Oireachtas.

I will also enclose the Chairperson’s Report to the Minister for Communications, Energy and Natural Resources in accordance with Paragraph 13.1 of the Code of Practice for the Governance of State Bodies.

A soft copy and an Irish Language version will follow as soon as possible.

Kind regards,

Paula
Dear Ger,

It was good to meet you again yesterday. Please find attached information as discussed.

A summarised cash flow for 2014 and average full time equivalents for 2014 and 2013.

If you have any further requirements please let me know.

Kind regards
Fiona
Dear Michael,

I attach a copy o' the Unaudited Financial Statements incorporating the Consolidated Management Accounts and Commentary for RTÉ for the month of April 2015.

The file is password protected, the password to open the file is [Redacted]

Kind Regards

Breda

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May 2015

Cillian de Paor
Group Secretary, RTÉ
RTÉ
Dublin 4

Format of Statement of Strategy

Dear Cillian

I refer to your letter of 1st April enclosing a draft format for RTÉ's Statement of Strategy 2015.

I wish to advise that the format submitted has now been approved by the Minister, in accordance with Section 99(1) of the Broadcasting Act 2009.

As you will be aware, Section 99(3) of the Act provides that a copy of the Statement of Strategy, or a summary of it, shall be laid before each House of the Oireachtas, following submission of the completed document to the Minister.

In this regard, we look forward to receiving the completed Statement of Strategy and Public Service Statement documents in July, as agreed in the course of our previous correspondence.

Yours sincerely

Éanna Ó Conghaile
Principal Officer
Dear Michael,

I attach a copy of the Unaudited Financial Statements incorporating the Consolidated Management Accounts and Commentary for RTÉ for the month of May 2015.

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Kind Regards

Fiona

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Tá an t-eolas sa riomhphost seo faoi rún agus d’fhéadfadh sé a bheith faoi phribhléid dhlíthiúil. Is ar an seoláire amháin atá sé dírithe. Níl cead ag aon duine eile rochtaithe a tháil ar an riomhphost seo. Mura tú an fáth go beartaithe, tá cosc ar aon rochtadh, cóipeál, dáileadh, nó aon ghníomh a dheanamh nó a thógáil ar lár i dtánaicse an riomhphost agus d’fhéadfadh sé a bheith muidheachtaíocht. Tabhair ar a dhuine de, d’fhéadfadh riomhphost chuíg, ó agus laistigh de RTÉ a bheith faoi réir an Achta um Shaoirí Faisnéise 1997, agus d’fhéadfadh go ndéanfaí é a rochtadh.
22\textsuperscript{nd} June 2015

Cillian de Paor
Company Secretary & Director of Compliance
RTÉ
Donnybrook
Dublin 4

\textbf{Re: Joint Oireachtas Committee on Transport \& Communications –
Ref: JCTC-r-881 (2015)}

Dear Cillian,

The Department has received notification from the Joint Oireachtas Committee on Transport \& Communications of correspondence received from the Independent Broadcasters of Ireland (IBI) in relation to RTÉ's 'Summer Advertising Offer'. I understand that copies of this correspondence have already been forwarded to both RTÉ and the BAI for their response; however, the Committee is also seeking the Minister's views on the issues raised by the IBI.

Mindful of the statutory independence of RTÉ, as well as any potential process with the Competition Authority on this issue, the Department is requesting that RTÉ provide a detailed briefing on the issues raised. It would be helpful if RTÉ could provide the Department with as much background and detail as possible on the allegations, particularly as they relate to RTÉ's compliance with Section 108(2) of the Broadcasting Act 2009.

Please feel free to contact the undersigned if you have any further questions or need any further clarifications.
Your assistance in this matter is greatly appreciated.

Yours sincerely

Éanna Ó Conghaile
Principal Officer
Broadcasting Policy Division
May 2015

Mr Noel Curran  
Director General  
RTÉ  
Dublin 4

Dear Noel,

I refer to the RTÉ Code of Fair Trading Practice for Radio (copy attached) which was submitted to my Department in accordance with the provisions of section 112 of the Broadcasting Act 2009.

I wish to confirm approval of the Code in accordance with section 112(4) of the Act. In confirming my approval, I wish to acknowledge the effort put into the process by your team, by the representatives of AIRPI and also by the BAI.

As you may recall, the Code of Fair Trading Practice for Television was approved in October 2013. As acknowledged at the time, this process helped establish a new relationship between RTÉ and the independent sector, particularly in regard to the ownership of rights. As part of this approval, RTÉ was requested to undertake a review of the operation of the Code after 18 months, in cooperation with Screen Producers Ireland and with the assistance of the BAI, with the review to be completed within a period of six months, i.e. in October 2015. I look forward to receiving a Report of this review once it is completed. I consider that a similar review of the operation of the Radio Code might also be useful after an appropriate period.

In terms of future iterations of both the Television and Radio Codes, I would expect that these should be informed by the findings of the reviews. I would also expect that they would take account to the fullest extent possible of the Fair Trading Policy, which is currently being developed by RTÉ in consultation with the BAI, and of the BAI recommendation that the complex nature of the language in both codes should be addressed to provide clarity and ease of understanding.

My Department is, of course, available to provide any assistance it can as part of these processes.

Yours sincerely,

Alex White, T.D.  
Minister for Communications, Energy & Natural Resources

c.c. Michael O’Keeffe, BAI

+353 1 678 9807  
1890 44 9900  
+ 353 1 678 2029
11 June 2015

Mr Noel Curran  
Director General  
RTÉ  
Donnybrook  
Dublin 4

Dear Noel

I refer to the issue of Protection and Safety of Journalists and, in particular, to the work on standards related to the safety of journalists and other media actors being undertaken by the Council of Europe.

To assist in ensuring the widest dissemination of the relevant CoE standards, I have been asked by the Council’s Committee on Media and Information Society to disseminate the following CoE instruments on this subject to relevant parties (copies enclosed).

- Recommendation CM/Rec(2011)7 of the Committee of Ministers to member states on a new notion of media, 21 September 2011  
  (https://wcd.coe.int/ViewDoc.jsp?id=1835645).

- Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations (2011)  
  (https://wcd.coe.int/ViewDoc.jsp?id=1769177)

- Recommendation 1876 (2009) of the Parliamentary Assembly on the state of human rights in Europe: the need to eradicate impunity  
  (http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/t/a09/EREC1876.htm)

- Guidelines of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis, adopted on 26 September 2007  
  (https://wcd.coe.int/ViewDoc.jsp?id=1188493)
Recommendation CM/Rec(2004)16 of the Committee of Ministers to member States on the right to reply in the new media environment

Recommendation CM/Rec(2000)7 of the Committee of Ministers to member states on the right of journalists not to disclose their sources of information

Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns

Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content

Recommendation No. R (2003) 13 on the provision of information through the media in relation to criminal proceedings

Belgrade Conference of Ministers Resolution nº 3 Safety of Journalists

I would appreciate it if you could ensure that these are brought to the attention of relevant persons within RTÉ.

Yours sincerely

Éanna Ó Conghaile
Principal Officer
Broadcasting Policy Division
COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

of the Committee of Ministers to member states
on the right of journalists not to disclose
their sources of information

(Adopted by the Committee of Ministers
on 8 March 2000
at the 70th meeting of the Ministers’ Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Recalling the commitment of the member states to the fundamental right to freedom of expression as guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Reaffirming that the right to freedom of expression and information constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and the development of every individual, as expressed in the Declaration on the Freedom of Expression and Information of 1982;

Reaffirming the need for democratic societies to secure adequate means of promoting the development of free, independent and pluralist media;

Recognising that the free and unhindered exercise of journalism is enshrined in the right to freedom of expression and is a fundamental prerequisite to the right of the public to be informed on matters of public concern;

Convinced that the protection of journalists' sources of information constitutes a basic condition for journalistic work and freedom as well as for the freedom of the media;

Recalling that many journalists have expressed in professional codes of conduct their obligation not to disclose their sources of information in case they received the information confidentially;

Recalling that the protection of journalists and their sources has been established in the legal systems of some member states;

Recalling also that the exercise by journalists of their right not to disclose their sources of information carries with it duties and responsibilities as expressed in Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms;
Aware of the Resolution of the European Parliament of 1994 on confidentiality for journalists’ sources and the right of civil servants to disclose information;

Aware of Resolution No. 2 on journalistic freedoms and human rights of the 4th European Ministerial Conference on Mass Media Policy held in Prague in December 1994, and recalling Recommendation No. R (96) 4 on the protection of journalists in situations of conflict and tension,

Recommends to the governments of member states:

1. to implement in their domestic law and practice the principles appended to this recommendation,

2. to disseminate widely this recommendation and its appended principles, where appropriate accompanied by a translation, and

3. to bring them in particular to the attention of public authorities, police authorities and the judiciary as well as to make them available to journalists, the media and their professional organisations.


Principles concerning the right of journalists not to disclose their sources of information

Definitions

For the purposes of this Recommendation:

a. the term "journalist" means any natural or legal person who is regularly or professionally engaged in the collection and dissemination of information to the public via any means of mass communication;

b. the term "information" means any statement of fact, opinion or idea in the form of text, sound and/or picture;

c. the term "source" means any person who provides information to a journalist;

d. the term "information identifying a source" means, as far as this is likely to lead to the identification of a source:

   i. the name and personal data as well as voice and image of a source,

   ii. the factual circumstances of acquiring information from a source by a journalist,

   iii. the unpublished content of the information provided by a source to a journalist, and

   iv. personal data of journalists and their employers related to their professional work.

Principle 1 (Right of non-disclosure of journalists)
Domestic law and practice in member states should provide for explicit and clear protection of the right of journalists not to disclose information identifying a source in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms
(hereinafter: the Convention) and the principles established herein, which are to be considered as minimum standards for the respect of this right.

**Principle 2 (Right of non-disclosure of other persons)**

Other persons who, by their professional relations with journalists, acquire knowledge of information identifying a source through the collection, editorial processing or dissemination of this information, should equally be protected under the principles established herein.

**Principle 3 (Limits to the right of non-disclosure)**

*a.* The right of journalists not to disclose information identifying a source must not be subject to other restrictions than those mentioned in Article 10, paragraph 2 of the Convention. In determining whether a legitimate interest in a disclosure falling within the scope of Article 10, paragraph 2 of the Convention outweighs the public interest in not disclosing information identifying a source, competent authorities of member states shall pay particular regard to the importance of the right of non-disclosure and the pre-eminence given to it in the case-law of the European Court of Human Rights, and may only order a disclosure if, subject to paragraph *b,* there exists an overriding requirement in the public interest and if circumstances are of a sufficiently vital and serious nature.

*b.* The disclosure of information identifying a source should not be deemed necessary unless it can be convincingly established that:

1. reasonable alternative measures to the disclosure do not exist or have been exhausted by the persons or public authorities that seek the disclosure, and

2. the legitimate interest in the disclosure clearly outweighs the public interest in the non-disclosure, bearing in mind that:

   - an overriding requirement of the need for disclosure is proved,
   - the circumstances are of a sufficiently vital and serious nature,
   - the necessity of the disclosure is identified as responding to a pressing social need, and
   - member states enjoy a certain margin of appreciation in assessing this need, but this margin goes hand in hand with the supervision by the European Court of Human Rights.

*c.* The above requirements should be applied at all stages of any proceedings where the right of non-disclosure might be invoked.

**Principle 4 (Alternative evidence to journalists’ sources)**

In legal proceedings against a journalist on grounds of an alleged infringement of the honour or reputation of a person, authorities should consider, for the purpose of establishing the truth or otherwise of the allegation, all evidence which is available to them under national procedural law and may not require for that purpose the disclosure of information identifying a source by the journalist.

**Principle 5 (Conditions concerning disclosures)**

*a.* The motion or request for initiating any action by competent authorities aimed at the disclosure of information identifying a source should only be introduced by persons or public authorities that have a direct legitimate interest in the disclosure.
b. Journalists should be informed by the competent authorities of their right not to disclose information identifying a source as well as of the limits of this right before a disclosure is requested.

c. Sanctions against journalists for not disclosing information identifying a source should only be imposed by judicial authorities during court proceedings which allow for a hearing of the journalists concerned in accordance with Article 6 of the Convention.

d. Journalists should have the right to have the imposition of a sanction for not disclosing their information identifying a source reviewed by another judicial authority.

e. Where journalists respond to a request or order to disclose information identifying a source, the competent authorities should consider applying measures to limit the extent of a disclosure, for example by excluding the public from the disclosure with due respect to Article 6 of the Convention, where relevant, and by themselves respecting the confidentiality of such a disclosure.

Principle 6 (Interception of communication, surveillance and judicial search and seizure)

a. The following measures should not be applied if their purpose is to circumvent the right of journalists, under the terms of these principles, not to disclose information identifying a source:

i. interception orders or actions concerning communication or correspondence of journalists or their employers,

ii. surveillance orders or actions concerning journalists, their contacts or their employers, or

iii. search or seizure orders or actions concerning the private or business premises, belongings or correspondence of journalists or their employers or personal data related to their professional work.

b. Where information identifying a source has been properly obtained by police or judicial authorities by any of the above actions, although this might not have been the purpose of these actions, measures should be taken to prevent the subsequent use of this information as evidence before courts, unless the disclosure would be justified under Principle 3.

Principle 7 (Protection against self-incrimination)

The principles established herein shall not in any way limit national laws on the protection against self-incrimination in criminal proceedings, and journalists should, as far as such laws apply, enjoy such protection with regard to the disclosure of information identifying a source.
COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation Rec(2003)13
of the Committee of Ministers to member states
on the provision of information through the media
in relation to criminal proceedings

(Adopted by the Committee of Ministers on 10 July 2003
at the 848th meeting of the Ministers’ Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Recalling the commitment of the 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 (hereinafter “the Convention”), which constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for the development of every individual;

Recalling that the media have the right to inform the public due to the right of the public to receive information, including information on matters of public concern, under Article 10 of the Convention, and that they have a professional duty to do so;

Recalling that the rights to presumption of innocence, to a fair trial and to respect for private and family life under Articles 6 and 8 of the Convention constitute fundamental requirements which must be respected in any democratic society;

Stressing the importance of media reporting in informing the public on criminal proceedings, making the deterrent function of criminal law visible as well as in ensuring public scrutiny of the functioning of the criminal justice system;

Considering the possibly conflicting interests protected by Articles 6, 8 and 10 of the Convention and the necessity to balance these rights in view of the facts of every individual case, with due regard to the supervisory role of the European Court of Human Rights in ensuring the observance of the commitments under the Convention;

Recalling, furthermore, the right of the media and journalists to create professional associations, as guaranteed by the right to freedom of association under Article 11 of the Convention, which is a basis for self-regulation in the media field;

Aware of the many initiatives taken by the media and journalists in Europe to promote the responsible exercise of journalism, either through self-regulation or in co-operation with the state through co-regulatory frameworks;

Desirous to enhance an informed debate on the protection of the rights and interests at stake in the context of media reporting relating to criminal proceedings, and to foster good practice throughout Europe while ensuring access of the media to criminal proceedings;
Recalling its Resolution (74) 26 on the right of reply – position of the individual in relation to the press, its Recommendation No. R (85) 11 on the position of the victim in the framework of criminal law and procedure, its Recommendation No. R (97) 13 concerning the intimidation of witnesses and the rights of the defence, and its Recommendation No. R (97) 21 on the media and the promotion of a culture of tolerance;

Stressing the importance of protecting journalists' sources of information in the context of criminal proceedings, in accordance with its Recommendation No. R (2000) 7 on the right of journalists not to disclose their sources of information;

Bearing in mind Resolution No. 2 on journalistic freedoms and human rights adopted at the 4th European Ministerial Conference on Mass Media Policy (Prague, December 1994) as well as the Declaration on a media policy for tomorrow adopted at the 6th European Ministerial Conference on Mass Media Policy (Cracow, June 2000);

Recalling that this recommendation does not intend to limit the standards already in force in member states which aim to protect freedom of expression,

Recommends, while acknowledging the diversity of national legal systems concerning criminal procedure, that the governments of member states:

1. take or reinforce, as the case may be, all measures which they consider necessary with a view to the implementation of the principles appended to this recommendation, within the limits of their respective constitutional provisions,

2. disseminate widely this recommendation and its appended principles, where appropriate accompanied by a translation, and

3. bring them in particular to the attention of judicial authorities and police services as well as to make them available to representative organisations of lawyers and media professionals.

Appendix to Recommendation Rec(2003)13

Principles concerning the provision of information through the media in relation to criminal proceedings

Principle 1 - Information of the public via the media

The public must be able to receive information about the activities of judicial authorities and police services through the media. Therefore, journalists must be able to freely report and comment on the functioning of the criminal justice system, subject only to the limitations provided for under the following principles.

Principle 2 - Presumption of innocence

Respect for the principle of the presumption of innocence is an integral part of the right to a fair trial. Accordingly, opinions and information relating to on-going criminal proceedings should only be communicated or disseminated through the media where this does not prejudice the presumption of innocence of the suspect or accused.

Principle 3 - Accuracy of information

Judicial authorities and police services should provide to the media only verified information or information which is based on reasonable assumptions. In the latter case, this should be clearly indicated to the media.
Principle 4 - Access to information

When journalists have lawfully obtained information in the context of on-going criminal proceedings from judicial authorities or police services, those authorities and services should make available such information, without discrimination, to all journalists who make or have made the same request.

Principle 5 - Ways of providing information to the media

When judicial authorities and police services themselves have decided to provide information to the media in the context of on-going criminal proceedings, such information should be provided on a non-discriminatory basis and, wherever possible, through press releases, press conferences by authorised officers or similar authorised means.

Principle 6 - Regular information during criminal proceedings

In the context of criminal proceedings of public interest or other criminal proceedings which have gained the particular attention of the public, judicial authorities and police services should inform the media about their essential acts, so long as this does not prejudice the secrecy of investigations and police inquiries or delay or impede the outcome of the proceedings. In cases of criminal proceedings which continue for a long period, this information should be provided regularly.

Principle 7 - Prohibition of the exploitation of information

Judicial authorities and police services should not exploit information about on-going criminal proceedings for commercial purposes or purposes other than those relevant to the enforcement of the law.

Principle 8 - Protection of privacy in the context of on-going criminal proceedings

The provision of information about suspects, accused or convicted persons or other parties to criminal proceedings should respect their right to protection of privacy in accordance with Article 8 of the Convention. Particular protection should be given to parties who are minors or other vulnerable persons, as well as to victims, to witnesses and to the families of suspects, accused and convicted. In all cases, particular consideration should be given to the harmful effect which the disclosure of information enabling their identification may have on the persons referred to in this Principle.

Principle 9 - Right of correction or right of reply

Without prejudice to the availability of other remedies, everyone who has been the subject of incorrect or defamatory media reports in the context of criminal proceedings should have a right of correction or reply, as the case may be, against the media concerned. A right of correction should also be available with respect to press releases containing incorrect information which have been issued by judicial authorities or police services.

Principle 10 - Prevention of prejudicial influence

In the context of criminal proceedings, particularly those involving juries or lay judges, judicial authorities and police services should abstain from publicly providing information which bears a risk of substantial prejudice to the fairness of the proceedings.

Principle 11 - Prejudicial pre-trial publicity

Where the accused can show that the provision of information is highly likely to result, or has resulted, in a breach of his or her right to a fair trial, he or she should have an effective legal remedy.
Principle 12 - Admission of journalists

Journalists should be admitted to public court hearings and public pronouncements of judgements without discrimination and without prior accreditation requirements. They should not be excluded from court hearings, unless and as far as the public is excluded in accordance with Article 6 of the Convention.

Principle 13 - Access of journalists to courtrooms

The competent authorities should, unless it is clearly impracticable, provide in courtrooms a number of seats for journalists which is sufficient in accordance with the demand, without excluding the presence of the public as such.

Principle 14 - live reporting and recordings in court rooms

Live reporting or recordings by the media in court rooms should not be possible unless and as far as expressly permitted by law or the competent judicial authorities. Such reporting should be authorised only where it does not bear a serious risk of undue influence on victims, witnesses, parties to criminal proceedings, juries or judges.

Principle 15 - Support for media reporting

Announcements of scheduled hearings, indictments or charges and other information of relevance to legal reporting should be made available to journalists upon simple request by the competent authorities in due time, unless impracticable. Journalists should be allowed, on a non-discriminatory basis, to make or receive copies of publicly pronounced judgments. They should have the possibility to disseminate or communicate these judgments to the public.

Principle 16 - Protection of witnesses

The identity of witnesses should not be disclosed, unless a witness has given his or her prior consent, the identification of a witness is of public concern, or the testimony has already been given in public. The identity of witnesses should never be disclosed where this endangers their lives or security. Due respect shall be paid to protection programmes for witnesses, especially in criminal proceedings against organised crime or crime within the family.

Principle 17 - Media reporting on the enforcement of court sentences

Journalists should be permitted to have contacts with persons serving court sentences in prisons, as far as this does not prejudice the fair administration of justice, the rights of prisoners and prison officers or the security of a prison.

Principle 18 - Media reporting after the end of court sentences

In order not to prejudice the re-integration into society of persons who have served court sentences, the right to protection of privacy under Article 8 of the Convention should include the right to protect the identity of those persons in connection with their prior offences after the end of their court sentences, unless they have expressly consented to the disclosure of their identity or they and their prior offence are of public concern again or have become of public concern again.
COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation Rec(2004)16¹
of the Committee of Ministers to member states
on the right of reply in the new media environment

(Adopted by the Committee of Ministers on 15 December 2004
at the 909th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the
purpose of safeguarding and promoting the ideals and principles which are their common heritage;

Recalling its Resolution (74) 26 on the right of reply – position of the individual in relation to the press, the
provisions of which should apply to all media;

Noting that, since the adoption of this Resolution, a number of major technological developments have taken
place, necessitating a revision of this text in order to adapt it to the current situation of the media sector in
Europe;

Recalling, furthermore, that the European Convention on Transfrontier Television (ETS No. 132) refers not only
to the right of reply but also to other comparable legal or administrative remedies;

Reaffirming that the right of reply should protect any legal or natural person from any information presenting
inaccurate facts concerning that person and affecting his or her rights, and considering consequently that the
dissemination of opinions and ideas must remain outside the scope of this Recommendation;

Considering that the right of reply is a particularly appropriate remedy in the online environment due to the
possibility of instant correction of contested information and the technical ease with which replies from
concerned persons can be attached to it;

Considering that it is also in the interest of the public to receive information from different sources, thereby
guaranteeing that they receive complete information;

Acknowledging that the right of reply can be assured not only through legislation, but also through co-regulatory
or self-regulatory measures;

Emphasising that the right of reply is without prejudice to other remedies available to persons whose right to
dignity, honour, reputation or privacy have been violated in the media,

Recommends that the governments of the member states should examine and, if necessary, introduce in their
domestic law or practice a right of reply or any other equivalent remedy, which allows a rapid correction of
incorrect information in online or off-line media along the lines of the following minimum principles, without
prejudice to the possibility to adjust their exercise to the particularities of each type of media.

¹ When adopting this Recommendation, the Permanent Representatives of the United Kingdom and the Slovak Republic indicated that, in
accordance with Article 10.2 c of the Rules of Procedure for the meetings of the Ministers' Deputies, they reserved the right of their
Governments to comply or not with the Recommendation, in so far as it referred to online services.
Definition

For the purposes of this Recommendation:

The term "medium" refers to any means of communication for the periodic dissemination to the public of edited information, whether on-line or off-line, such as newspapers, periodicals, radio, television and web-based news services.

Minimum principles

1. **Scope of the right of reply**

Any natural or legal person, irrespective of nationality or residence, should be given a right of reply or an equivalent remedy offering a possibility to react to any information in the media presenting inaccurate facts about him or her and which affect his/her personal rights.

2. **Promptness**

The request for a reply should be addressed to the medium concerned within a reasonably short time from the publication of the contested information. The medium in question should make the reply public without undue delay.

3. **Prominence**

The reply should be given, as far as possible, the same prominence as was given to the contested information in order for it to reach the same public and with the same impact.

4. **Free of charge**

The reply should be made public free of charge for the person concerned.

5. **Exceptions**

By way of exception, national law or practice may provide that the request for a reply may be refused by the medium in question in the following cases:

- if the length of the reply exceeds what is necessary to correct the contested information;
- if the reply is not limited to a correction of the facts challenged;
- if its publication would involve a punishable act, would render the content provider liable to civil law proceedings or would transgress standards of public decency;
- if it is considered contrary to the legally protected interests of a third party;
- if the individual concerned cannot show the existence of a legitimate interest;
- if the reply is in a language different from that in which the contested information was made public;
- if the contested information is a part of a truthful report on public sessions of the public authorities or the courts.

6. **Safeguarding an effective exercise of the right of reply**

In order to safeguard the effective exercise of the right of reply, the media should make public the name and contact details of the person to whom requests for a reply can be addressed.

For the same purpose, national law or practice should determine to what extent the media are obliged to conserve, for a reasonable length of time, a copy of information or programmes made publicly available or, at least, while a request for inserting a reply can be made, or while a dispute is pending before a tribunal or other competent body.
7. **Electronic archives**

If the contested information is kept publicly available in electronic archives and a right of reply has been granted, a link should be established between the two if possible, in order to draw the attention of the user to the fact that the original information has been subject to a response.

8. **Settlement of disputes**

If a medium refuses a request to make a reply public, or if the reply is not made public in a manner satisfactory for the person concerned, the possibility should exist for the latter to bring the dispute before a tribunal or another body with the power to order the publication of the reply.
Recommendation CM/Rec(2007)15
of the Committee of Ministers to member states
on measures concerning media coverage of election campaigns

(Adopted by the Committee of Ministers on 7 November 2007
at the 1010th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe:

Noting the important role of the media in modern societies, especially at the time of elections;

Considering the constant development of information and communication technology and the evolving media landscape which necessitates the revision of Recommendation No. R (99) 15 of the Committee of Ministers on measures concerning media coverage of election campaigns;

Aware of the need to take account of the significant differences which still exist between the print and the broadcast media;

Considering the differences between linear and non-linear audiovisual media services, in particular as regards their reach, impact and the way in which they are consumed;

Stressing that the fundamental principle of editorial independence of the media assumes a special importance in election periods;

Underlining that the coverage of elections by the broadcast media should be fair, balanced and impartial;

Recalling the basic principles contained in Resolution No. 2 adopted at the 4th Ministerial Conference on Mass Media Policy (Prague, December 1994), and Recommendation No. R (96) 10 of the Committee of Ministers on the guarantee of the independence of public service broadcasting;

Noting the emergence of public service media in the information society as elaborated in Recommendation Rec(2007)3 of the Committee of Ministers on the remit of public service media in the information society;

Considering that public service media are a publicly accountable source of information which have a particular responsibility in ensuring in their programmes, a fair, balanced and thorough coverage of elections, which may include the carrying of messages of political parties and candidates free of charge and on an equitable basis;

Noting that particular attention should be paid to certain specific features of the coverage of election campaigns, such as the dissemination of opinion polls, paid political advertising, the right of reply, days of reflection and provision for pre-election time;

Stressing the important role of self-regulatory measures by media professionals themselves – for example, in the form of codes of conduct – which set out guidelines of good practice for responsible, accurate and fair coverage of election campaigns;
Recognising the complementary nature of regulatory and self-regulatory measures in this area;

Convinced of the usefulness of appropriate frameworks for media coverage of elections to contribute to free and democratic elections, bearing in mind the different legal and practical approaches of member states in this area and the fact that it can be subject to different branches of law;

Acknowledging that any regulatory framework on the media coverage of elections should respect the fundamental principle of freedom of expression protected under Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights;

Recalling Recommendation Rec(2004)16 of the Committee of Ministers on the right of reply in the new media environment which allows the possibility for easy-to-use instant or rapid correction of contested information,

Recommends that the governments of the member states, if they have not already done so, examine ways of ensuring respect for the principles stated hereinafter regarding the coverage of election campaigns by the media, and, where necessary, adopt appropriate measures to implement these principles in their domestic law or practice and in accordance with constitutional law.

Definition

For the purposes of this recommendation:

The term "media" refers to those responsible for the periodic creation of information and content and its dissemination over which there is editorial responsibility, irrespective of the means and technology used for delivery, which are intended for reception by, and which could have a clear impact on, a significant proportion of the general public. This could, inter alia, include print media (newspapers, periodicals) and media disseminated over electronic communication networks, such as broadcast media (radio, television and other linear audiovisual media services), online news-services (such as online editions of newspapers and newsletters) and non-linear audiovisual media services (such as on-demand television).

Scope of the recommendation

The principles of this recommendation apply to all types of political elections taking place in member states, including presidential, legislative, regional and, where practicable, local elections and referenda.

These principles should also apply, where relevant, to media reporting on elections taking place abroad, especially when these media address persons in the country where the election is taking place.

In member states where the notion of the "pre-election period" is defined under domestic legislation, the principles contained in this recommendation should also apply.

Principles

1. General provisions

1. Non-interference by public authorities

Public authorities should refrain from interfering in the activities of journalists and other media personnel with a view to influencing the elections.
2. **Protection against attacks, intimidation or other types of unlawful pressure on the media**

Public authorities should take appropriate steps for the effective protection of journalists and other media personnel and their premises, as this assumes a greater significance during elections. At the same time, this protection should not obstruct the media in carrying out their work.

3. **Editorial independence**

Regulatory frameworks on media coverage of elections should respect the editorial independence of the media.

Member states should ensure that there is an effective and manifest separation between the exercise of control of media and decision making as regards media content and the exercise of political authority or influence.

4. **Ownership by public authorities**

Member states should adopt measures whereby the media which are owned by public authorities, when covering election campaigns, should do so in a fair, balanced and impartial manner, without discriminating against or supporting a specific political party or candidate.

If such media outlets accept paid political advertising in their publications, they should ensure that all political contenders and parties that request the purchase of advertising space are treated in an equal and non-discriminatory manner.

5. **Professional and ethical standards of the media**

All media are encouraged to develop self-regulatory frameworks and incorporate self-regulatory professional and ethical standards regarding their coverage of election campaigns, including, *inter alia*, respect for the principles of human dignity and non-discrimination. These standards should reflect their particular roles and responsibilities in democratic processes.

6. **Transparency of, and access to, the media**

If the media accept paid political advertising, regulatory or self-regulatory frameworks should ensure that such advertising is readily recognisable as such.

Where media is owned by political parties or politicians, member states should ensure that this is made transparent to the public.

7. **The right of reply or equivalent remedies**

Given the short duration of an election campaign, any candidate or political party which is entitled to a right of reply or equivalent remedies under national law or systems should be able to exercise this right or equivalent remedies during the campaign period without undue delay.

8. **Opinion polls**

Regulatory or self-regulatory frameworks should ensure that the media will, when disseminating the results of opinion polls, provide the public with sufficient information to make a judgement on the value of the polls. Such information could, in particular:

- name the political party or other organisation or person which commissioned and paid for the poll;
- identify the organisation conducting the poll and the methodology employed;
- indicate the sample and margin of error of the poll;
- indicate the date and/or period when the poll was conducted.

All other matters concerning the way in which the media present the results of opinion polls should be decided by the media themselves.

Any restriction by member states forbidding the publication/dissemination of opinion polls (on voting intentions) on voting day or a number of days before the election should comply with Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights.

Similarly, in respect of exit polls, member states may consider prohibiting reporting by the media on the results of such polls until all polling stations in the country have closed.

9. **"Day of reflection"**

Member states may consider the merits of including a provision in their regulatory frameworks to prohibit the dissemination of partisan electoral messages on the day preceding voting or to provide for their correction.

II. **Measures concerning broadcast media**

1. **General framework**

During election campaigns, regulatory frameworks should encourage and facilitate the pluralistic expression of opinions via the broadcast media.

With due respect for the editorial independence of broadcasters, regulatory frameworks should also provide for the obligation to cover election campaigns in a fair, balanced and impartial manner in the overall programme services of broadcasters. Such an obligation should apply to both public service media and private broadcasters in their relevant transmission areas.

Member states may derogate from these measures with respect to those broadcast media services exclusively devoted to, and clearly identified as, the self-promotion of a political party or candidate.

2. **News and current affairs programmes**

Where self-regulation does not provide for this, member states should adopt measures whereby public service media and private broadcasters, during the election period, should in particular be fair, balanced and impartial in their news and current affairs programmes, including discussion programmes such as interviews or debates.

No privileged treatment should be given by broadcasters to public authorities during such programmes. This matter should primarily be addressed via appropriate self-regulatory measures. In this connection, member states might examine whether, where practicable, the relevant authorities monitoring the coverage of elections should be given the power to intervene in order to remedy possible shortcomings.

3. **Non-linear audiovisual services of public service media**

Member states should apply the principles contained in points 1 and 2 above or similar provisions to non-linear audiovisual media services of public service media.
4. **Free airtime and equivalent presence for political parties/candidates on public service media**

Member states may examine the advisability of including in their regulatory frameworks provisions whereby public service media may make available free airtime on their broadcast and other linear audiovisual media services and/or an equivalent presence on their non-linear audiovisual media services to political parties/candidates during the election period.

Wherever such airtime and/or equivalent presence is granted, this should be done in a fair and non-discriminatory manner, on the basis of transparent and objective criteria.

5. **Paid political advertising**

In member states where political parties and candidates are permitted to buy advertising space for election purposes, regulatory frameworks should ensure that all contending parties have the possibility of buying advertising space on and according to equal conditions and rates of payment.

Member states may consider introducing a provision in their regulatory frameworks to limit the amount of political advertising space and time which a given party or candidate can purchase.

Regular presenters of news and current affairs programmes should not take part in paid political advertising.
Recommendation CM/Rec(2011)7
of the Committee of Ministers to member states
on a new notion of media

(Adopted by the Committee of Ministers on 21 September 2011
at the 1121st meeting of the Ministers’ Deputies)

Introduction

The purpose of media

1. Since their emergence as a means of mass communication, media have been the most important
tool for freedom of expression in the public sphere, enabling people to exercise their right to seek and
receive information. Media animate and provide a space for public debate. Media offer comment and opinion
as part of political dialogue, contribute to setting the political agenda and the shaping of public opinion, and
they often seek to promote certain values. Media facilitate the scrutiny of public and political affairs and
private or business-related matters, thereby increasing transparency and accountability. Moreover, media
provide education, entertainment, cultural and artistic expression. Media also play an important part in the
economy, create jobs and generate income.

Media and democracy

2. Freedom of expression, in particular the right to seek, impart and receive information, and its
corollary freedom of the media, are indispensable for genuine democracy and democratic processes. In a
democratic society, people must be able to contribute to and participate in the decision-making processes
which concern them. This applies to local, national or international governance models as well as to other
specific communities. In this context, democratic governance should be understood in broad terms to include
processes concerning private or business-related matters with public policy relevance or collective interest.
All content provided by the media has potential impact on society regardless of the value attributed to it. The
power of the media can be misused, especially in a context of strong media concentration, to the detriment of
pluralism and democracy.

Media standards and regulation

3. All Council of Europe member states have undertaken to secure to everyone within their jurisdiction
the fundamental right to freedom of expression and information, in accordance with Article 10 of the
European Convention on Human Rights (“the Convention”, ETS No. 5). This right is not absolute; it carries
with it duties and responsibilities and can be subject to limitations in accordance with Article 10, paragraph 2,
of the Convention.

4. Historically, media regulation has been justified by and graduated having regard to its potential high
impact on society and on individual rights; regulation has also been a means of managing scarce resources
in the public interest. Given their importance for democracy, media have been the subject of extensive
Council of Europe standard-setting activity. The purpose has been to ensure the highest protection of media
freedom and to provide guidance on duties and responsibilities. As a form of interference, any regulation
should itself comply with the requirements set out in Article 10 of the European Convention on Human Rights
and the standards that stem from the relevant case law of the European Court of Human Rights.
Developments in the media ecosystem

5. Developments in information and communication technologies and their application to mass communication have led to significant changes in the media ecosystem, understood in broad terms to encompass all actors and factors whose interaction allows the media to function and to fulfill their role in society. It has allowed for new ways of disseminating content on a large scale and often at considerably lower cost and with fewer technical and professional requirements. New features include unprecedented levels of interaction and engagement by users, offering new opportunities for democratic citizenship. New applications also facilitate users’ participation in the creation process and in the dissemination of information and content, blurring the boundaries between public and private communication. The media’s intrinsic editorial practices have diversified, adopting new modalities, procedures and outcomes.

6. With these changes in the media ecosystem, the functioning and existence of traditional media actors, as well as their economic models and professional standards, are being complemented or replaced by other actors. New actors have assumed functions in the production and distribution process of media services which, until recently, had been performed only (or mostly) by traditional media organisations; these include content aggregators, application designers and users who are also producers of content. A number of “intermediaries” or “auxiliaries”, often stemming from the information and communication (ICT) sector, including those serving at the outset as mere hosts or conduits (for example infrastructure, network or platform operators), are essential for digital media’s outreach and people’s access to them. Services provided by these new actors have become essential pathfinders to information, at times turning the intermediaries or auxiliaries into gatekeepers or into players who assume an active role in mass communication editorial processes. Such services have complemented or, on occasion, partly replaced traditional media actors in respect of those functions. The roles of each actor can easily change or evolve fluidly and seamlessly. Furthermore, some have developed services or applications which have put them in a dominant position on a national or even at a global level.

A new notion of media which requires a graduated and differentiated approach

7. Despite the changes in its ecosystem, the role of the media in a democratic society, albeit with additional tools (namely interaction and engagement), has not changed. Media-related policy must therefore take full account of these and future developments, embracing a notion of media which is appropriate for such a fluid and multi-dimensional reality. All actors – whether new or traditional – who operate within the media ecosystem should be offered a policy framework which guarantees an appropriate level of protection and provides a clear indication of their duties and responsibilities in line with Council of Europe standards. The response should be graduated and differentiated according to the part that media services play in content production and dissemination processes. Attention should also be paid to potential forms of interference in the proper functioning of media or its ecosystem, including through indirect action against the media’s economic or operational infrastructure.

The Committee of Ministers, under the terms of Article 15. b of the Statute of the Council of Europe recommends that member states:

- adopt a new, broad notion of media which encompasses all actors involved in the production and dissemination, to potentially large numbers of people, of content (for example information: analysis, comment, opinion, education, culture, art and entertainment in text, audio, visual, audiovisual or other form) and applications which are designed to facilitate interactive mass communication (for example social networks) or other content-based large-scale interactive experiences (for example online games), while retaining (in all these cases) editorial control or oversight of the contents;

- review regulatory needs in respect of all actors delivering services or products in the media ecosystem so as to guarantee people’s right to seek, receive and impart information in accordance with Article 10 of the European Convention on Human Rights, and to extend to those actors relevant safeguards against interference that might otherwise have an adverse effect on Article 10 rights, including as regards situations which risk leading to undue self-restraint or self-censorship;

- apply the criteria set out in the appendix hereto when considering a graduated and differentiated response for actors falling within the new notion of media based on relevant Council of Europe media-related standards, having regard to their specific functions in the media process and their potential impact and significance in ensuring or enhancing good governance in a democratic society;
- engage in dialogue with all actors in the media ecosystem in order for them to be properly apprised of the applicable legal framework; invite traditional and new media to exchange good practice and, if appropriate, consult each other in order to develop self-regulatory tools, including codes of conduct, which take account of, or incorporate in a suitable form, generally accepted media and journalistic standards;

- adopt strategies to promote, develop or ensure suitable levels of public service delivery so as to guarantee a satisfactory level of pluralism, diversity of content and consumer choice and ensure close scrutiny or monitoring of developments;

- remain attentive to addressing situations of strong concentration in the media ecosystem which might result in the misuse of an actor's ability to shape or influence public opinion or people's choices with potentially adverse consequences in respect of governance and, more particularly, political pluralism and democratic processes, especially as new types of services, applications or platforms gain relevance in these respects;

- undertake action, individually or collectively, to promote these approaches in appropriate international fora.

Appendix to Recommendation CM/Rec(2011)7

Criteria for identifying media and guidance for a graduated and differentiated response

Introduction

1. Democracy and freedom of expression require member states to refrain from undue interference with the media. Member states should also take proactive measures to promote media freedom, independence, pluralism and diversity and to protect the activities that ensure the adequate functioning of the media ecosystem, understood in broad terms to encompass all actors and factors whose interaction allow the media to function and to fulfil their role in society.

2. The policy framework in place should be clear and the consequences of its application should be foreseeable. It should be articulated towards protecting and promoting freedom of expression, diversity and pluralism, and should identify the duties and responsibilities of all actors in the media ecosystem, subject to the strict limits stipulated in Article 10 of the European Convention on Human Rights, as interpreted in the relevant case law of the European Court of Human Rights.

3. Policy-making and, more particularly, regulatory processes should ensure that due attention is paid to the principle that, as a form of interference, any regulation should itself comply with the requirements set out in Article 10 of the European Convention on Human Rights and the standards that stem from the relevant case law of the European Court of Human Rights. Regulatory responses should therefore respond to a pressing social need and, having regard to their tangible impact, they should be proportional to the aim pursued.

4. The Council of Europe has developed over the years a significant body of standards with regard to the media in order to assist media policy makers in their necessary endeavour to offer media the protection they need for their proper functioning and in their related policy-making and regulatory activities. In order to assist member states in the implementation of the Recommendation on a New Notion of Media, guidance is proposed in the present Appendix, on the one hand, to facilitate discerning whether particular activities, services or actors might be categorised as media (Part I) and, on the other hand, to inspire a graduated and differentiated policy approach in respect of the various activities, services or actors that are part of the media ecosystem (Part II).

5. The result of examining activities, services or actors in the light of the criteria (and indicators) should assist in gauging the necessity and the extent of policy-making or regulatory needs and also the degree of application of relevant legal frameworks (both as concerns freedoms and responsibilities). For example, policy responses for media focussing on news services may differ from those offering a platform for political debate or entertainment, in turn different from the mere association of revenue-generating activities to the dissemination of content through means of mass communication.
6. To this end, based on existing Council of Europe standards, Part II provides guidance to policy makers on how to apply media standards to new media activities, services or actors. It also offers the opportunity to address, or reinforce, the gender equality perspective in response to the call made by the Committee of Ministers of the Council of Europe in its Madrid Declaration “Making gender equality a reality” (12 May 2009) and the call made in the report of the Group of Eminent Persons' entitled “Living together. Combining diversity and freedom in 21st century Europe”, presented to the Committee of Ministers in Istanbul on 10 May 2011.

7. A differentiated and graduated approach requires that each actor whose services are identified as media or as an intermediary or auxiliary activity benefit from both the appropriate form (differentiated) and the appropriate level (graduated) of protection and that responsibility also be delimited in conformity with Article 10 of the European Convention on Human Rights and other relevant standards developed by the Council of Europe.

8. It should also be recalled that newer or emerging modes of mass dissemination of and access to content, and the associated retention, processing and exploitation of data, may well affect the rights protected under Article 10 of the European Convention on Human Rights.

Part I

Media criteria and indicators

Preliminary remarks

9. Media policy makers are invited to take account of the following criteria when considering if particular activities, services or actors ought to be regarded as media.

10. Six criteria are set out below, each supplemented by a set of indicators, which should allow policy makers to identify media and media activities in the new ecosystem. The extent to which criteria are met will permit to recognise whether a new communication service amounts to media or will provide an indication of the bearing of intermediary or auxiliary activity on media services. Indicators should allow for establishing whether and to what extent a particular criterion is met. Not all indicators need to be met to fulfil a particular criterion. Some indicators, such as those relating to professional standards and media ethics, relate to more than one criterion.

11. Similarly, not all criteria carry equal weight. The absence of certain criteria such as purpose (criterion 2), editorial control (criterion 3) or outreach and dissemination (criterion 5) would tend to disqualify a service from being regarded as media. Certain criteria may not be met, such as intent (criterion 1) or public expectation (criterion 6) or not be immediately apparent, which should not automatically disqualify a service from being considered media, but may carry considerable weight if they are present.

12. When considering criteria, account should be taken of the service provider's own characteristics and idiosyncrasy, as well as the service provider's maturing process as media, which may have a bearing on the manner of displaying editorial control (criterion 3) or on self-perceived professionalism (criterion 4). Consequently, all criteria (and indicators) should be applied in a flexible manner, interpreting them in the context of specific situations or realities. In the new communication environments, continuous attention is called for, as an actor's role and operation can easily change and evolve fluidly and seamlessly, which might affect the extent to which one or more criteria are met and thus its potential classification as media.

13. A commonly accepted feature of media is its role in society and its impact on society or bearing on democratic processes. Impact can be seen as part of several of the criteria below. However, given that assessing impact is highly subjective, it should not be considered as a determining factor. All content provided by media has a potential impact on society, whatever the size of the segment of population concerned, and regardless of the value attributed to it by society as a whole.

14. The result of this analysis should be taken into account when shaping media-related policy and when graduating its application, always subject to the caveats of strict necessity and minimum intervention. It will also have a bearing on the extent to which Council of Europe media-related standards apply and the modalities of its application. This entails a need for a flexible response, tailored to a concrete case (namely differentiated) and graduated for the purpose. The response should also take account of the service provider's own characteristics and idiosyncrasy, as well as that service provider's maturing process as media.
15. Intermediaries and auxiliaries in the media ecosystem can be distinguished from media as they may meet certain of the criteria or indicators below, but they usually do not meet some of the core criteria such as editorial control (criterion 3) or purpose (criterion 2). However, they often play an essential role, which can give them considerable power as regards outreach and control or oversight over content. As a result, intermediaries and auxiliaries can easily assume an active role in mass communication editorial processes. Member states should therefore consider them carefully in media-related policy making and should be particularly attentive to their own positive and negative obligations stemming from Article 10 of the European Convention on Human Rights. This may call for a differentiated policy response in their respect (adapted to particular intermediaries or auxiliaries) having regard to the specificities of the situation (for example when their action can have a bearing on pluralism or on the ability of media served by the intermediaries or auxiliaries in question to fulfil their purpose, to function normally or to continue delivering their services).

Criterion 1 – Intent to act as media

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<td>Working methods which are typical for media</td>
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<td>Commitment to professional media standards</td>
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<td>Practical arrangements for mass communication</td>
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16. The volition of an actor is an important factor in assessing whether the actor itself or some or all of its services and products should be regarded as media. It also allows for a first instance in policy differentiation on the basis of different actors' own perceptions as regards their activities and services.

17. Intent to act as media can be expressed by subjective means (for example by self-declaration as media, self-labelling, brand, declaring a purpose, mission statement or business plan that avow media or journalistic goals) and may be explicit or even formally recorded (as in the case of business registration, purpose stated in a company's articles of association). These subjective indicators can refer to other criteria, such as purpose (for example resolve to provide regularly updated news), editorial control or professional standards.

18. More particularly, intent can be revealed by the adoption of an editorial policy or commitment to professional and ethical standards which are typical for media. An editorial policy or commitment can also be expressed in the terms and conditions of use which provide explanations to users of a service about the types of content or behaviour that are, or are not, accepted by the operator.

19. Membership in professional media organisations or professional organisations which promote or enforce codes of ethics or good practice or engage in other forms of self-regulation which are typical for media may also be relevant, together with the choice of staff (for example journalists) for certain functions, job descriptions of staff, the training or even the choice of professional insurance (for example against defamation) offered to them.

20. Intent can also be inferred from action taken (for example setting up a business or platform and hiring staff, etc.) to produce or disseminate to a wide audience typical media content (for example information, analysis, comment, opinion, education, culture, art and entertainment in text, audio, visual, audiovisual form).

21. In a new communications environment, this extends to action taken to arrange, aggregate or select (for example by means of algorithms) and to disseminate the above-mentioned content to potentially large numbers of people through means of mass communication. It also extends to operating applications for collective online shared spaces which are designed to facilitate interactive mass communication (or mass communication in aggregate) or other content-based large-scale interactive experiences. It can, in particular, be evidenced by the means, arrangements or structures put in place for mass communication (for example platform or bandwidth enabling mass outreach).

22. While intent is in itself an important criterion, by itself it is not sufficient for considering or treating an actor or any of its services or products as media.
23. In spite of the changes in the media ecosystem, the purpose and underlying objective(s) of the media remains on the whole unchanged, namely the provision or dissemination of content to a broad public and the provision of a space for different interactive experiences. Media are the most important tool for freedom of expression.

24. Media’s purpose and underlying objectives remain a determining factor, especially as regards its role in and impact on society. They have been features of choice for identifying media and are highly relevant for media-related policy-making and regulatory processes. They will therefore be an important tool when considering a differentiated and graduated response.

25. A desire to influence public opinion, which has traditionally been one of the key indicators for identifying media or media-related activities, manifests itself in devoting content to matters of public debate and interest and in efforts to reach a large public. Evidence of such influence and impact on society can be derived from research on media’s credibility and trustworthiness and on their ability to achieve those underlying objectives which are relevant for democratic processes (see in this context criteria 5 and 6, relating to outreach and dissemination and to public expectation).

26. However, value judgements in respect of content should not be a determining factor to disqualify services, activities or actors as media. Attention should in particular be paid to the risk of excluding certain activities from consideration as media because of their innovative modalities rather than their essential features. Arranging, aggregating, selecting or, on occasion, even promoting content for its broad dissemination are relevant. Depending on the degree to which criteria are met, the notion of producer may need to be distinguished from media (for example in respect of content-sharing platforms subject to light touch editorial control or ex post moderation). In this respect, reference to traditional media’s interactive or user generated content (for example collaborative, audience participation, call-in, quiz or talk show formats) may be useful. This may bear on the extent and modalities of application of media-related policies to them.

27. New business models have been, and will no doubt continue to be, developed for associating revenue-generating activities to the dissemination of content. This is sometimes at the centre of media activities and can therefore be useful to identify and categorise the underlying media services and activities and to consider the policy and regulatory consequences.

28. The periodic or regular renewal or updating of content should also be given due consideration. This indicator of media has to be applied with precaution given the importance of constant or occasional renewal. Moreover, in a new communications environment where users exercise considerable control over the shaping and the timing of access to content, updating or renewal may well relate more closely to user experience than to timing or to the content itself. This is particularly the case for services involving collective online shared spaces designed to facilitate content-based interactive mass communication in aggregate or other large-scale interactive experiences.
29. Editorial freedom or independence is an essential requirement for media and a direct corollary of freedom of expression and the right to hold opinions and to receive and impart information, guaranteed under Article 10 of the European Convention on Human Rights. A number of existing Council of Europe standards provide guidance designed to preserve and promote editorial freedom or independence. The reverse of the medal is media’s own editorial control or oversight over content and responsibility for editorial decisions.

30. Editorial control can be evidenced by the actors’ own policy decisions on the content to make available or to promote, and on the manner in which to present or arrange it. Legacy media sometimes publicise explicitly written editorial policies, but they can also be found in internal instructions or criteria for selecting or processing (for example verifying or validating) content. In the new communications environments, editorial policies can be embedded in mission statements or in terms and conditions of use (which may contain very detailed provisions on content), or may be expressed informally as a commitment to certain principles (for example netiquette, motto).

31. The absence of an outward assertion of editorial control by the media should not, by itself, be considered as an indication of its absence. Editorial process involves a set of routines and conventions that inform decision making as regards content. In an evolving media environment, there are many examples of the gradual development and consolidation of editorial process as media mature. As has been the case for legacy media, there may be varying degrees of intensity of control over content, which may be perceived only as regards a small part of it.

32. Editorial process can involve users (for example peer review and take down requests) with ultimate decisions taken according to an internally defined process and having regard to specified criteria (reactive moderation). New media often resort to ex post moderation (often referred to as post-moderation) in respect of user generated content, which may at first sight be imperceptible. Editorial processes may also be automated (for example in the case of algorithms ex ante selecting content or comparing content with copyrighted material).

33. In certain cases, editorial control can be more apparent in respect of selected or promoted content or content associated to revenue-generating activities (for example advertising) than as regards other content (for example user generated material). In turn, part of the content (for example advertising) can be under direct control of a third party by virtue of an agency agreement. Legacy media tend to resort to ex ante editorial control (or pre-moderation) in respect of certain services or activities (for example print media or some broadcasts) but not others (for example collaborative, audience participation, call-in or talk show formats).

34. Staff entrusted with producing, commissioning, collecting, examining, processing or validating content will serve as a reliable indicator of editorial control or oversight. The existence of editorial boards, designated controllers or supervisors with editorial powers, or arrangements for responding to or dealing with users requests or complaints as regards content, will be particularly helpful in this respect.

35. Again, it should be noted that different levels of editorial control go along with different levels of editorial responsibility. Different levels of editorial control or editorial modalities (for example ex ante as compared with ex post moderation) call for differentiated responses and will almost certainly permit best to graduate the response.
36. Consequently, a provider of an intermediary or auxiliary service which contributes to the functioning or accessing of a media but does not – or should not – itself exercise editorial control, and therefore has limited or no editorial responsibility, should not be considered to be media. However, their action may be relevant in a media context. Nonetheless, action taken by providers of intermediary or auxiliary services as a result of legal obligations (for example take down of content in response to a judicial order) should not be considered as editorial control in the sense of the above.

Criterion 4 – Professional standards

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37. Media have built trust over time through competence and professionalism of their staff, in particular journalists. Collectively, they have expressed their commitment to preserve their values in a wide range of declarations, charters and codes which they seek to promote throughout the sector and transmit to their peers, in particular to newcomers to the profession. Specific media have reinforced this through their own internal codes of practice, staff regulations or instructions and norms as to procedure and style. Self-regulation also speaks of the importance of media and journalism for our societies, especially for democracy.

38. However it is expressed, adhesion to the profession’s own ethics, deontology and standards is a strong media indicator; standards frequently mentioned in this context are truthfulness, responsibility, freedom of expression and of the media, equality, fairness, and journalistic independence. In new media, evidence of this criterion can be less apparent, but may be found in mission statements, in staff regulations or in terms and conditions of use. The selection of staff, the tasks entrusted to them, guidance for their performance, or their professional background or competence could also be relevant.

39. Media (and journalists’) ethics, deontology and standards are the basis of media accountability systems. There is a wide range of media accountability systems; they include media or press councils, ombudspersons (including in-house users’ advocates), informal peer (media) review, and a range of formal or informal processes that permit to hold media to account for their performance or to conduct ethical audits.

40. Media accountability systems extend to complaint procedures and to the existence of bodies tasked with examining complaints and deciding on compliance with professional standards. In this connection, attention should be paid to the availability of remedies typical of media (for example reply, correction, apology) or other means of providing satisfaction in response to complaints about the content disseminated.

41. As regards in particular new media, codes of conduct or ethical standards for bloggers have already been accepted by at least part of the online journalism community. Nonetheless, bloggers should only be considered media if they fulfil the criteria to a sufficient degree. In the absence of self-regulation, national and international decisions or case law (for example of national judges or data protection authorities and international bodies, including the European Court of Human Rights) are also contributing to the shaping of standards (for example as regards privacy or the protection of personal data, or the protection of children from harmful content).

42. Seeking to benefit from protection or privileges offered to media can be very revealing. Prerogatives, rights and privileges which can be asserted by media or by journalists, subject to relevant legal provisions, include: the protection of sources; privileged communications and protection against seizure of journalistic material; freedom of movement and access to information; the right to accreditation; protection against misuse of libel and defamation laws (for example defences as regards the truthfulness and accuracy of information, good faith public interest).
Criterion 5 – Outreach and dissemination

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<td>Actual dissemination</td>
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<td>Resources for outreach</td>
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43. In order to achieve the purposes described above, media seek outreach to a large number of people. Media or mass communication has traditionally been defined as mediated public communication addressed to a large audience and open to all. Outreach or actual dissemination (number of copies, viewers or users) is therefore an important indicator in identifying media and in distinguishing it from private communication, including private communication taking place in a public space (which is not, in itself media, but could be incorporated into media or mass communication in aggregate). However, there is no single or common understanding of what is mass or large audience; it can easily range from a territorial, interest or other community (for example the target of local, professional or community media) to potentially global audiences (in the case of satellite television or certain Internet services).

44. Technologies making possible non-linear or on-demand delivery of content, conditional access, unbundling of electronically delivered content, personalisation of content or uncasting, bring a different dimension to the term and have brought a new dimension to mass communication. So has the capacity of the Internet to support the full range of public (one-to-many, many-to-many) communication, as well as group (few-to-few) and private communication (one-to-one); the fact that such communication takes place on the internet (a public space) does not necessarily imply that it is media.

45. For an assessment of outreach, attention should be paid to the aggregated audience, namely all those sharing the platform or common features of the service and who can be reached by the content produced, arranged, selected, aggregated or distributed by the operator, including when the delivery of or access to content is not simultaneous. It may be useful to consider separately the question of content sought by the user and that directly or indirectly related to the revenue-generating activity of the operator of the service. The number of registered users is therefore relevant.

46. The above is consistent with emerging case law which suggests a fine line between private and public communication; as a result, publishing content in social networks has attracted consequences proper to public communication. However, this does not entail categorising the users as media (which would have given them access to media or journalists' prerogatives or privileges). To meet this criterion, a content provider has to take concrete steps to power or project content to a mass-communication dimension; this outreach could be evidenced by recourse to sufficient bandwidth or developing suitable distribution platforms. Attention should be paid to the possibility of rapid developments in this respect.

47. The new fluid ecosystem allows for media to operate easily within other media or for different operators to overlap, sometimes blurring the boundaries between them. It is therefore important to distinguish their respective roles, so as to discern their respective responsibilities. This process may be facilitated by exploring the degree to which the guest, separately, meets the media criteria. This is also important in order not to overstretch the notion of media to unduly include users who produce or contribute to generating content.

48. Together with other criteria, the dimension of entirely closed collective online shared spaces designed to facilitate interactive communication should permit to determine whether they are media. However, the mere fact of restricted access should not automatically disqualify them (this is comparable to media services only available by subscription).

49. The level of outreach and dissemination is an important criterion which, clearly, has an impact on a differentiated and graduated approach. If outreach and dissemination are low, a service should not be considered media. However, this should be considered having regard to the size of the market or potential audience or user base and also potential impact. The absence of sufficiently large outreach and dissemination does not preclude something from being considered to be media but, in all such cases, those circumstances will have a bearing on differentiation and graduation.
Criterion 6 – Public expectation

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<td>Respect of professional and ethical standards</td>
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<td>Accountability and transparency</td>
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50. People’s expectations follow largely the preceding criteria (and the related indicators). They expect that media be available and will be there for them when they wish to turn their attention to it. Without prejudice to discontinuation or temporary suspension, media services are therefore presumed ongoing and broadly accessible (this does not rule out services for consideration, by subscription or subject to membership arrangements).

51. In general, people recognise media and rely to a large extent on media for information and other content. They expect that content will be produced according to relevant professional standards. In a democratic society, they count on the availability of a range of sources of information and expect their content to be diverse, responding to the interests of different segments in society.

52. Depending on the purpose and nature of specific media, public expectation may vary. Expectations in respect of public service media are higher than in respect of certain other media. News media will naturally be expected to be regularly updated and disseminated periodically. People even have expectations as regards content of a commercial nature, which are higher in respect of media or media content designed for minors.

53. In order to be able to fulfil their role and achieve their purpose, media have to earn the trust of the public. Depending on the expressed or perceived purpose, editorial policy, financing model and impact, the trust accorded by the public to media varies. The development of professional and ethical standards to a large extent reflects people’s expectations. However, self-regulation may not always be regarded as sufficient and people look to public authorities to ensure that minima are guaranteed. There are also expectations as to transparency and accountability. Higher levels of expected trustworthiness, standards, transparency and accountability does not necessarily bring about higher outreach, dissemination or impact.

54. Public expectation in a given society may, to some extent, be revealed by law makers’ interest on and attention to the subject, and by existing regulation (including co-regulation). In a global society where media know no borders, there is an expectation of some degree of harmonisation also in the understanding of what media is. Comparative solutions may therefore be relevant.

55. The level and nature of public expectation can change rapidly both as regards the media themselves and the part to be played by policy makers, depending on whether and the extent to which other criteria and indicators are met.

Part II

Standards applied to media in the new ecosystem

Preliminary remarks

56. The objective of this part is to offer guidance to policy makers on how to apply media standards to new media activities, services or actors in a graduated and differentiated manner. Further, it provides a substantive basis for implementing the recommendation that member states engage in dialogue with all actors in the media ecosystem in order for them to be properly apprised of the applicable legal framework. It should also assist media actors in any self-regulatory exercise in which they may engage.

57. While the Recommendation on a new notion of media and Part I of this appendix are expected to stand the test of time because of their broad nature, this part, which is of a more pragmatic nature, may need to be further developed, adapted or revised periodically in light of changes in the media ecosystem.
58. Media and journalists are subject to general legal provisions (namely those that are not specific to the media, whether civil, commercial, corporate, tax or penal law). However, given media’s needs and role in society, certain general provisions may need to be interpreted specifically for the media (for example in respect of defamation, surveillance, stop and search, state secrets or corporate confidentiality) or their application be scrutinised to avoid their misuse to covertly impinge on media freedom.

59. Subject to the principle that, as a form of interference, media regulation should comply with the requirements of strict necessity and minimum intervention, specific regulatory frameworks should respond to the need to protect media from interference (recognising prerogatives, rights and privileges beyond general law, or providing a framework for their exercise), to manage scarce resources (to ensure media pluralism and diversity of content – cf. Article 10, paragraph 1 in fine, of the European Convention on Human Rights) or to address media responsibilities (within the strict boundaries set out in Article 10, paragraph 2, of the Convention and the related case law of the European Court of Human Rights). These considerations inspired the structure of this part of the appendix.

60. In each case, an indication is given of existing Council of Europe standards, and their application in a new media environment is briefly explained. There is no attempt to set out standards in an exhaustive manner. Those selected should be seen as examples which can provide some inspiration for the application of other relevant Council of Europe standards. Given the nature and scope of this instrument, guidance is presented in very broad terms; more precise guidance will have to be deduced from related Committee of Ministers standard-setting instruments (a proposed list is set out at the end of the section). The application of standards will be subject to and evolve in line with developments as regards media actors, services and activities.

A. Rights, privileges and prerogatives

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<td>Freedom from censorship</td>
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<td>Protection against misuse of defamation laws and risk of chilling effect</td>
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61. There is no genuine democracy without independent media. Media freedom should be understood in broad terms. It comprises freedom of expression and the right to disseminate content. As stipulated in Article 10 of the European Convention on Human Rights, this right has to be guaranteed regardless of frontiers. Actors should be able to initiate media activities or to evolve without undue difficulty from private or semi-private communication in a public space into mass communication. In particular, there should be no prior authorisation processes; if required, declaration of media activities should pursue the objective of enhancing their protection against interference, without creating unwarranted obstacles to their operation.

62. There are many examples of interference or attempts to interfere with the independence of media in the new ecosystem. There have been reports of direct pressure by politicians on media to withhold or withdraw content and also calls on intermediaries to exclude media actors from their hosting services. Respect of editorial independence requires absence of censorship or ex ante control of content. Media should be free from blocking and filtering measures. Public disclosure of all such incidents should be welcome.

63. The importance of the role of intermediaries should be underlined. They offer alternative and complementary means or channels for the dissemination of media content, thus broadening outreach and enhancing effectiveness in media’s achievements of its purposes and objectives. In a competitive intermediaries and auxiliaries market, they may significantly reduce the risk of interference by authorities. However, given the degree to which media have to rely on them in the new ecosystem, there is also a risk of censorship operated through intermediaries and auxiliaries. Certain situations may also pose a risk of private censorship (by intermediaries and auxiliaries in respect of media to which they provide services or content they carry).

64. There is growing concern about denial of service attacks against media in the digital environment. Smaller media operators, which are a key component of a plural and diverse media landscape, are most vulnerable. As a result, they may also be refused hosting services. Claims have also been made of indirect action against media by obstructing their funding arrangements; tax or competition procedures could be misused in a similar way.
65. In the new ecosystem, all media should be preserved from pressure, including that which is politically motivated or stemming from economic interests. Media should be free from censorship and preserved from self-censorship. Editorial independence requires effective and manifest separation between ownership or control over media and decision making as regards content. This is an important factor in the maturing process of media. Persons who exercise political authority or influence should refrain from participating in media’s editorial decisions. This is particularly relevant as regards media in the new ecosystem which carry content capable of shaping opinion or informing the electorate’s political decisions. These considerations apply equally to content creators and distributors.

66. Libel and defamation laws can be misused to interfere with, or by way of reprisal against, media. They can have a strong chilling effect. According to the case law of the European Court of Human Rights, expressions (or content) which disturb, shock or offend must be tolerated. Subject to the respect or clearing of pertinent intellectual property rights, media should be able to rely on prior media reports or published material without risk. However, in the new ecosystem, consideration needs to be given to the accumulated or multiplied impact and the possible need to apportion responsibility in case of damage (for example resulting from dissemination by a first outlet as compared to the enhanced or multiplied impact when the same content is disseminated by other, including mainstream, media).

67. All media in the new ecosystem should be entitled to use the defences of truthfulness and accuracy of information, good faith or public interest (in particular in the context of scrutiny of the conduct of public or political figures and public officials, and also in respect of matters a priori covered by state secrets or by corporate confidentiality rules). Media should be confident that, when assessing content, fact will be treated differently from opinion (the latter allowing for greater freedom). Media should also be able to rely on freedom of satire and the right to exaggeration.

68. Any action sought against media in respect of content should respect strictly applicable laws; above all international human rights law, in particular the provisions of the European Convention on Human Rights, and comply with procedural safeguards. There should be a presumption in favour of freedom of expression and information and in favour of media freedom. Due account should be taken of the role of users and of the nature of user generated content.

69. Whether in the form of negative obligations (not to interfere) or positive obligations (to facilitate the exercise of freedom of expression and the right to impart and receive information regardless of frontiers, including by ensuring the availability of effective remedies in case of interference by other actors) the duty bearer of these rights, privileges and prerogatives is the state. This should be graduated depending on the circumstances of each case and the realistic possibilities for the state to take necessary preventive or remedial measures. State responsibility should, in no case, be interpreted as allowing for any control, inspection or interference, or indeed any other action, capable of obstructing the legitimate exercise of the right to freedom of expression and the right to impart and receive information regardless of frontiers.

**Indicators**

**Right to investigate**

**Protection of journalists and journalistic sources**

70. Media’s right to investigate is essential for democracy; it should therefore be recognised, preserved and promoted in the new media ecosystem. Journalists’ right to investigate may be facilitated by accreditation; where applicable, media professionals in the new ecosystem should be offered accreditation without discrimination and without undue delay or impediment. The rights to freedom of movement (for example access to crisis zones) and access to information are highly relevant for all media professionals. Where appropriate, they should be offered protection without discrimination.

71. The above may extend, in certain cases, to providing protection or some form of support (for example guidance or training so that they do not put their own lives at risk) to actors who, while meeting certain of the criteria and indicators set out in Part I of this appendix, may not fully qualify as media (for example individual bloggers). A graduated response should take account of the extent to which such actors can be considered part of the media ecosystem and contributors to the functions and role of media in a democratic society.
72. Other essential components of the right to investigate are privacy of communications and the protection against seizure of professional material. Any form of surveillance of media professionals, including the tracking of their movements through electronic means, should be considered with great circumspection and be made the subject of reinforced safeguards.

73. The protection of sources is increasingly the subject of formal legal recognition. There is a need for robust protection of whistleblowers. In the new media ecosystem, the protection of sources should extend to the identity of users who make content of public interest available on collective online shared spaces which are designed to facilitate interactive mass communication (or mass communication in aggregate); this includes content-sharing platforms and social networking services. Arrangements may be needed to authorise the use of pseudonyms (for example in social networks) in cases where disclosure of identity might attract retaliation (for example as a consequence of political or human rights activism).

**Indicators**

**Fair access to distribution channels**

**Intermediaries and auxiliaries**

74. Media should have fair access to electronic communication networks (including hosting services) and should be able to rely on the principle of net neutrality. Interoperability and open standards may be useful tools for eliminating technical barriers to the dissemination of media content. Consideration might be given to reinterpreting “must carry” rules in the new media ecosystem.

75. To the extent that their action or decisions can have an impact on media in the new ecosystem, intermediaries and auxiliaries should be free from pressure or influence intended to bear on media, its independence or its editorial decisions. Policy measures may be required to give effect to this requirement.

76. In case of legitimate action (for example resulting from understandable business decisions) by an intermediary, auxiliary or other actor bearing on essential conditions for the media's operation, arrangements may be desirable to preserve the media's ongoing functioning (for example to preserve pluralism and diversity in the public interest). This may call for additional safeguards (for example in the context of judicial procedures) or consideration by relevant authorities of possible means to prevent or mitigate the undesirable outcome. This may also be relevant, mutatis mutandis, as regards action by authorities (for example applying tax law) if such action can have a negative impact on media freedoms and pluralism and to the extent necessary in a democratic society.

**B. Media pluralism and diversity of content**

**Indicators**

**Management of scarce resources**

**Transparency of ownership**

**Public service media**

77. As has already been indicated, actors in the new ecosystem should be able to initiate media activities or to evolve into media activities without undue difficulty. In particular, there should be no prior authorisation processes. In the new media ecosystem there is a plethora of actors, means and platforms for distribution and content; nonetheless, licensing may still be justified in exceptional cases by the need to manage scarce resources (for example the electromagnetic wavelength spectrum).

78. Limited to such exceptional cases, licensing or authorisation should pursue the public interest, namely to guarantee the existence of a wide range of independent and diverse media. Licensing and authorisation measures should respond to necessity, and persistence of the need for such measures should be reconsidered in light of developments.
79. Pluralism will not be automatically guaranteed by the existence of a large number of means of mass communication accessible to people. Moreover, in a situation of strong media concentration, the ability to shape or influence public opinion or people's choices may lie with one or only a few actors. Misuse of this power can have adverse consequences for political pluralism and for democratic processes. In the new media ecosystem, some actors have already developed services or applications which have put them in a dominant position on a national or even at a global level. Even if there is no evidence of misuse, such a dominant position can pose a potential risk.

80. Monitoring trends and concentration in the media ecosystem will permit the competent authorities to keep abreast of developments and to assess risks. Regulatory measures may be required with a view to guaranteeing full transparency of media ownership. This will help identify suitable preventive or remedial action, if appropriate and having regard to the characteristics of each media market, with a view to preventing media concentration levels that could pose risks to democracy or the role of the media in democratic processes.

81. Public service media is essential in the European model, involving the coexistence of public service, commercial and community media. They should adhere to high professional standards and should, ideally, involve the public in its governance structures. Their objective should be to ensure universal delivery, quality, trustworthy and diverse content, and political pluralism in the media. Adequately equipped and funded public service media, enjoying genuine editorial independence and institutional autonomy, should contribute to counterbalancing the risk of misuse of the power of the media in a situation of strong media concentration.

82. Public service media should therefore have a distinct place in the new media ecosystem, and should be equipped to provide high-quality and innovative content and services in the digital environment, and should be able to resort to relevant tools (for example to facilitate interaction and engagement).

83. The new ecosystem offers an unprecedented opportunity to incorporate diversity into media governance, in particular as regards gender balanced participation in the production, editorial and distribution processes. The same is true as regards various ethnic and religious groups. This will be a key factor in ensuring balanced representation and coverage by media and in combating stereotypes in respect of all constituent groups of society.

C. Media responsibilities

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84. The watchdog function, namely scrutiny of public and political affairs and private or business-related matters of public interest, contributes to justify media's broad freedom; however, it is counterpoised by a requirement of greater diligence in respect of factual information. Scrutiny should involve accurate, in-depth and critical reporting. It should be distinguished from journalistic practices which involve unduly probing into and exposing people's private and family lives in a way that would be incompatible with their fundamental rights. Media should exercise special care not to contribute to stereotypes about members of particular ethnic or religious groups and to exist stereotypes. Representatives of all groups should be offered the opportunity to contribute to content, express their views and explain their understanding of facts; media should consider adopting a proactive approach in this respect.

85. Subject to accuracy of information, the right to the respect of one's honour and reputation finds its limits in the public interest. Professionalism requires verifying information and assessing credibility, but there is no requirement to inform a person of the intention to disseminate information in their respect prior to its dissemination. The exigency of accuracy is less pertinent for opinion, comment and entertainment, which also permit exaggeration. However, media should distinguish these forms of expression from factual information.
86. The above requirements should be graduated having regard to the editorial policies and processes adopted by the media concerned and their potential outreach and impact, and also public expectation in their respect. Media content creators, editors and distributors should adhere to relevant professional standards, including those designed to combat discrimination and stereotypes and to promote gender equality. They should exercise special care to ensure ethical coverage of minority and women's issues also by associating minorities and women to creation, editorial and distribution processes.

87. The role of media, whether new or legacy, in informing the public about criminal proceedings is important in a democratic society. In exercising their editorial responsibility, media should be attentive not to perturb the course of justice or undermine the correct functioning of the judiciary, the privacy and safety of all those involved and, in particular, the presumption of innocence of the suspect or accused. Particular attention should be paid to preserving the dignity of vulnerable persons, victims, witnesses and relatives of persons concerned by criminal proceedings. This should not preclude providing information in the public interest.

88. There is a vast amount of personal information and data in the new media ecosystem, including in online shared spaces designed to facilitate interactive mass communication (or mass communication in aggregate). The management, aggregation and use of such information and data should respect people's right to private and family life as protected by Article 8 of the European Convention on Human Rights, having regard also to the provisions of Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108). The persistence of content in digital environments and its potential for broad dissemination and re-use calls for special care and, in case of need, quick action with a view to mitigating damage. Media operating in the new ecosystem should also place high on their agenda the respect of human rights related standards in respect of profiling.

89. In the new ecosystem, considerable amounts of content are re-used or re-transmitted. In this connection, media should respect the intellectual property rights of others. Without prejudice to the private and collective private enjoyment of content, including in online shared spaces, and other forms of authorised use, attention should be paid to the modalities of application and respect of those rights in the context of user-generated or posted content.

90. Effective internal media accountability systems underpinned by appropriate professional standards often justify the absence of, or decrease the need for, external accountability. Actors in the new ecosystem should develop adequate complaints mechanisms and strive to offer remedies to third parties who consider that they have suffered prejudice because of media activities or services (for example right to reply, correction, apology).

**Indicators**

- Hate speech
- Rights of children
- Rights of women
- Rights of minorities

91. Media should refrain from conveying hate speech and other content that incites violence or discrimination for whatever reason. Special attention is needed on the part of actors operating collective online shared spaces which are designed to facilitate interactive mass communication (or mass communication in aggregate). They should be attentive to the use of, and editorial response to, expressions motivated by racist, xenophobic, anti-Semitic, misogynist, sexist (including as regards LGBT people) or other bias. Actors in the new media ecosystem may be required (by law) to report to the competent authorities criminal threats of violence based on racial, ethnic, religious, gender or other grounds that come to their attention.

92. On the other hand, media can provide a balanced (or positive) image of the various groups that make up society and contribute to a culture of tolerance and dialogue. Other than in the cases prescribed by law with due respect to the provisions of the European Convention on Human Rights, no group in society should be discriminated from in the exercise of the right to association which, in the new media ecosystem, includes online association.
93. Particular attention should be paid to preserving the dignity, security and privacy of children. Content concerning them can be a source of present and future prejudice. Consequently, there should be no lasting or permanently accessible record of the content about or created by children, which challenges their dignity, security or privacy, or otherwise renders them vulnerable now or at a later stage in their lives.

94. Risk of harm may arise from a wide range of content and behaviour. Content intended only for adults should be clearly identifiable to facilitate rendering it inaccessible to children. Protection of children should not impinge on their freedom of expression and right to seek and receive information. Media can contribute to the development of safe spaces (walled gardens), as well as other tools facilitating access to websites and content appropriate for children, to the development and voluntary use of labels and trustmarks, to the development of skills among children, parents and educators to understand better and deal with content and behaviour that carries a risk of harm.

95. Harassment, bullying, intimidation and stalking can be facilitated in the new media ecosystem by collective online shared spaces, tracking applications or even search engines and profiling technology. Women are frequent victims of these forms of abuse, which can lead to physical (including sexual) abuse and violence which are unacceptable expressions of inequality. Attention should also be paid to the possible abusive use of technology in respect of members of minorities.

96. In the above-mentioned cases, the response will depend on the circumstances, including the nature and scope of the activity or service in question, as well as the actor's own editorial processes. A graduated approach should consider the possibilities of the actors concerned (for example those operating collective online shared spaces or offering search engine, tracking or profiling applications and technology) to address or mitigate the risks in question. Relevant stakeholders could be encouraged to explore together the feasibility of removing or deleting content in appropriate cases, to the extent that it is not inconsistent with the fundamental right to freedom of expression, including its traces (logs, records and processing), within a reasonably short period of time. Greater technical capabilities bring with them greater responsibility. Self-regulation could usefully be complemented by capacity building (for example enhancing intercultural competencies) and by sharing best or corrective practices developed within sectors of activity in the new media ecosystem.

**Indicators**

**Advertising**

97. Freedom of expression also applies to commercial and political advertising, tele-shopping and sponsorship. Limitations in this respect are only admissible within the conditions set out in Article 10 of the European Convention on Human Rights. Such limitations may be needed for the protection of consumers, minors, public health or democratic processes.

98. The potential for abusive, intrusive or surreptitious advertising is greater in the new media ecosystem than ever before. It calls for enhanced responsibility on the part of media actors. It may call for self- or co-regulation and, in certain cases, regulation.

**D. Reference Instruments**

**Convention and treaties of the Council of Europe in the media field**

- Convention on Information and Legal Co-operation concerning “Information Society Services” (ETS No. 180, 2001)
- European Convention on the Legal Protection of Services based on, or consisting of, Conditional Access (ETS No. 178, 2000)
- European Agreement concerning Programme Exchanges by means of Television Films (ETS No. 27, 1958)
- European Agreement on the Protection of Television Broadcasts (ETS No. 34, 1960)
- European Agreement for the Prevention of Broadcasts transmitted from Stations outside National Territories (ETS No. 53, 1965)
Other conventions with provisions relevant for the media

- Convention on Cybercrime (ETS No. 185, 2001) and Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189, 2003)
- Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108, 1981) and Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows (ETS No. 181, 2001)
- European Charter for Regional or Minority Languages (ETS No. 148, 1992)

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2010

- Recommendation CM/Rec(2010)13 on the protection of individuals with regard to automatic processing of personal data in the context of profiling
- Declaration on the management of the Internet protocol address resources in the public interest (29 September 2010)
- Declaration on network neutrality (29 September 2010)
- Declaration on the Digital Agenda for Europe (29 September 2010)
- Declaration on enhanced participation of member states in Internet governance matters – Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) (26 May 2010)
- Declaration on measures to promote the respect of Article 10 of the European Convention on Human Rights (13 January 2010)

2009

- Recommendation CM/Rec(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
- Declaration on the role of community media in promoting social cohesion and intercultural dialogue (11 February 2009)

2008

- Recommendation CM/Rec(2008)6 on measures to promote the respect for freedom of expression and information with regard to Internet filters
- Declaration on the independence and functions of regulatory authorities for the broadcasting sector (26 March 2008)
- Declaration on protecting the dignity, security and privacy of children on the Internet (20 February 2008)
- Declaration on the allocation and management of the digital dividend and the public interest (20 February 2008)

2007

- Recommendation CM/Rec(2007)16 on measures to promote the public service value of the Internet
- Recommendation CM/Rec(2007)15 on measures concerning media coverage of election campaigns
- Recommendation CM/Rec(2007)11 on promoting freedom of expression and information in the new information and communications environment
- Recommendation Rec(2007)3 on the remit of public service media in the information society
- Recommendation Rec(2007)2 on media pluralism and diversity of media content
- Guidelines on protecting freedom of expression and information in times of crisis (26 September 2007)
- Declaration on the protection and promotion of investigative journalism (26 September 2007)
- Declaration on protecting the role of the media in democracy in the context of media concentration (31 January 2007)
- Recommendation Rec(2006)12 on empowering children in the new information and communications environment
- Recommendation Rec(2006)3 on the UNESCO Convention on the protection and promotion of the diversity of cultural expressions
- Declaration on the guarantee of the independence of public service broadcasting in the member states (27 September 2006)

2005

- Declaration on human rights and the rule of law in the Information Society (13 May 2005)
- Declaration on freedom of expression and information in the media in the context of the fight against terrorism (2 March 2005)

2004

- Recommendation Rec(2004)16 of the Committee of Ministers to member states on the right of reply in the new media environment
- Declaration on freedom of political debate in the media (12 February 2004)

2003

- Recommendation Rec(2003)13 on the provision of information through the media in relation to criminal proceedings
- Recommendation Rec(2003)9 on measures to promote the democratic and social contribution of digital broadcasting
- Declaration on the provision of information through the media in relation to criminal proceedings (10 July 2003)
- Declaration on freedom of communication on the Internet (28 May 2003)

2002

- Recommendation Rec(2002)7 on measures to enhance the protection of the neighbouring rights of broadcasting organisations
- Recommendation Rec(2002)2 on access to official documents

2001

- Recommendation Rec(2001)8 on self-regulation concerning cyber content (self-regulation and user protection against illegal or harmful content on new communications and information services)
- Recommendation Rec(2001)7 on measures to protect copyright and neighbouring rights and combat piracy, especially in the digital environment

2000

- Recommendation Rec(2000)23 on the independence and functions of regulatory authorities for the broadcasting sector
- Recommendation Rec(2000)7 on the right of journalists not to disclose their sources of information
- Declaration on cultural diversity (7 December 2000)
1999

- Recommendation Rec(99)15 on measures concerning media coverage of election campaigns
- Recommendation Rec(99)14 on universal community service concerning new communication and information services
- Recommendation Rec(99)5 for the protection of privacy on the Internet
- Recommendation Rec(99)1 on measures to promote media pluralism
- Declaration on the exploitation of protected radio and television productions held in the archives of broadcasting organisations (9 September 1999)
- Declaration on a European policy for new information technologies (7 May 1999)

1997

- Recommendation Rec(97)21 on the media and the promotion of a culture of tolerance
- Recommendation Rec(97)20 on "hate speech"
- Recommendation Rec (97)19 on the portrayal of violence in the electronic media

1996

- Recommendation Rec(96)10 on the guarantee of the independence of public service broadcasting
- Recommendation Rec(96)4 on the protection of journalists in situations of conflict and tension
- Declaration on the protection of journalists in situations of conflict and tension (3 May 1996)

1995

- Recommendation Rec(95)13 concerning problems of criminal procedural law connected with information technology
- Recommendation Rec(95)1 on measures against sound and audio-visual piracy

1994

- Recommendation Rec(94)13 on measures to promote media transparency
- Recommendation Rec(94)3 on the promotion of education and awareness in the area of copyright and neighbouring rights concerning creativity
- Declaration on neighbouring rights (17 February 1994)

1993

- Recommendation Rec(93)5 containing principles aimed at promoting the distribution and broadcasting of audiovisual works originated in countries or regions with a low audiovisual output or a limited geographic or linguistic coverage on the European television markets

1992

- Resolution Res(92)70 on establishing a European Audiovisual Observatory
- Recommendation Rec(92)19 on video games with a racist content
- Recommendation Rec(92)15 concerning teaching, research and training in the field of law and information technology

1991

- Recommendation Rec(91)14 on the legal protection of encrypted television services
- Recommendation Rec(91)5 on the right to short reporting on major events where exclusive rights for their television broadcast have been acquired in a transfrontier context

1990

- Recommendation Rec(90)11 on principles relating to copyright law questions in the field of reprography
- Recommendation Rec(90)10 on cinema for children and adolescents
1989
- Recommendation Rec(89)7 concerning principles on the distribution of videograms having a violent, brutal or pornographic content

1988
- Resolution Res(88)15 setting up a European support fund for the co-production and distribution of creative cinematographic and audiovisual works ("Eurimages")
- Recommendation Rec(88)2 on measures to combat piracy in the field of copyright and neighbouring rights
- Recommendation Rec(88)1 on sound and audiovisual private copying

1987
- Recommendation Rec(87)7 on film distribution in Europe

1986
- Recommendation Rec(86)14 on the drawing up of strategies to combat smoking, alcohol and drug dependence in co-operation with opinion-makers and the media
- Recommendation Rec(86)9 on copyright and cultural policy
- Recommendation Rec(86)3 on the promotion of audiovisual production in Europe
- Recommendation Rec(86)2 on principles relating to copyright law questions in the field of television by satellite and cable

1985
- Recommendation Rec(85)8 on the conservation of the European film heritage
- Recommendation Rec(85)6 on aid for artistic creation

1984
- Recommendation Rec(84)22 on the use of satellite capacity for television and sound radio
- Recommendation Rec(84)17 on equality between women and men in the media
- Recommendation Rec(84)3 on principles on television advertising

1982
- Declaration on the freedom of expression and information (29 April 1982)

1981
- Recommendation Rec(81)19 on the access to information held by public authorities

1980
- Recommendation Rec(80)1 on sport and television

1979
- Recommendation Rec(79)1 concerning consumer education of adults and consumer information

1974
- Resolution Res(74)43 on press concentrations
- Resolution Res(74)26 on the right of reply – Position of the individual in relation to the press
- Resolution Res(70)19 on educational and cultural uses of radio and television in Europe and the relations in this respect between public authorities and broadcasting organisations

1967
- Resolution Res(67)13 on the press and the protection of youth

1961
- Resolution Res(61)23 on the exchange of television programmes

Parliamentary Assembly of the Council of Europe

- Recommendation 1950 (2011) "The protection of journalists' sources"
- Recommendation 1697 (2010) "Respect for media freedom"
- Recommendation 1682 (2009) "The promotion of Internet and online media services appropriate for minors"
- Recommendation 1878 (2009) "The funding of public service broadcasting"
- Recommendation 1855 (2009) "The regulation of audiovisual media services"
- Resolution 1636 and Recommendation 1848 (2008) "Indicators for media in a democracy"
- Recommendation 1836 (2008) "Realising the full potential of e-learning for education and training"
- Resolution 1577 and Recommendation 1814 (2007) "Towards decriminalisation of defamation"
- Recommendation 1805 (2007) "Blasphemy, religious insults and hate speech against persons on grounds of their religion"
- Resolution 1557 and Recommendation 1799 (2007) "The image of women in advertising"
- Recommendation 1789 (2007) "Professional education and training of journalists"
- Resolution 1535 and Recommendation 1783 (2007) "Threats to the lives and freedom of expression of journalists"
- Recommendation 1773 (2006) "The 2003 guidelines on the use of minority languages in the broadcast media and the Council of Europe standards: need to enhance co-operation and synergy with the OSCE"
- Recommendation 1768 (2006) "The image of asylum seekers, migrants and refugees in the media"
- Resolution 1510 (2006) "Freedom of expression and respect for religious beliefs"
- Recommendation 1706 (2005) "Media and terrorism"
- Resolution 1438 and Recommendation 1702 (2005) "Freedom of the press and the working conditions of journalists in conflict zones"
- Resolution 1387 (2004) "Monopolisation of the electronic media and possible abuse of power in Italy"
- Recommendation 1641 (2004) "Public service broadcasting"
- Recommendation 1589 (2003) "Freedom of expression in the media in Europe"
- Resolution 1313 (2003) "Cultural co-operation between Europe and the south Mediterranean countries"
- Recommendation 1586 (2002) "The digital divide and education"
- Recommendation 1555 (2002) "The image of women in the media"
- Recommendation 1543 (2001) "Racism and xenophobia in cyberspace"
- Recommendation 1506 (2001) "Freedom of expression and information in the media in Europe"
- Recommendation 1466 (2000) "Media education"
- Recommendation 1407 (1999) "Media and democratic culture"
- Resolution 1191 (1999) "The information society and a digital world"
- Resolution 1165 (1998) "The right to privacy"
- Resolution 1142 (1997) "Parliaments and the media"
- Recommendation 1332 (1997) "The scientific and technical aspects of the new information and communications technologies"
- Resolution 1120 (1997) "The impact of the new communication and information technologies on democracy"
- Recommendation 1314 (1997) "New technologies and employment"
- Recommendation 1277 (1995) "Migrants, ethnic minorities and media"
- Recommendation 1276 (1995) "The power of the visual image"
- Recommendation 1265 (1995) "Enlargement and European cultural co-operation"
- Recommendation 1228 (1994) “Cable networks and local television stations: their importance for Greater Europe”
- Resolution 956 (1991) “Transfer of technology to countries of Central and Eastern Europe”
- Recommendation 1136 (1990) “A European policy on alcohol”
- Recommendation 1110 (1989) “Distance teaching”
- Recommendation 1043 (1986) “Europe’s linguistic and literary heritage”
- Recommendation 1037 (1986) “Data protection and freedom of information”
- Resolution 848 (1985) “Privacy of sound and individual freedom of musical choice”
- Recommendation 996 (1984) “Council of Europe work relating to the media”
- Resolution 820 (1984) “Relations of national parliaments with the media”
- Recommendation 963 (1983) “Cultural and educational means of reducing violence”
- Recommendation 952 (1982) “International means to protect freedom of expression by regulating commercial advertising”
- Recommendation 926 (1981) “Questions raised by cable and television and by direct satellite broadcasts”
- Recommendation 862 (1979) “Cinema and the state”
- Recommendation 749 (1975) “European broadcasting”
- Recommendation 748 (1975) “The role and management of national broadcasting”
- Recommendation 747 (1975) “Press concentrations”
- Resolution 428 (1970) “Declaration on mass communication media and human rights”

Council of Europe Conferences of Specialised Ministers

1st Council of Europe Conference of Ministers responsible for Media and New Communication Services
(28 and 29 May 2009, Reykjavik, Iceland)
A new notion of media?

7th European Ministerial Conference on Mass Media Policy
(Kyiv, Ukraine, 10 and 11 March 2005)
Integration and diversity: the new frontiers of European media and communication policy

6th European Ministerial Conference on Mass Media Policy
(Cracow, Poland, 15 and 16 June 2000)
A media policy for tomorrow

5th European Ministerial Conference on Mass Media Policy
(Thessaloniki, Greece, 11 and 12 December 1997)
The Information Society: a challenge for Europe

4th European Ministerial Conference on Mass Media Policy
(Prague, Czech Republic, 7 and 8 December 1994)
The media in a democratic society
3rd European Ministerial Conference on Mass Media Policy
(Nicosia, Cyprus, 9 and 10 October 1991)
Which way forward for Europe's media in the 1990s?

2nd European Ministerial Conference on Mass Media Policy
(Stockholm, Sweden, 23 and 24 November 1988)
European Mass Media Policy in an international context

1st European Ministerial Conference on Mass Media Policy
(Vienna, Austria, 9 and 10 December 1986)
The future of television in Europe
Appendix 5

(Item 4.8)

Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations

(Adopted by the Committee of Ministers on 30 March 2011 at the 1110th meeting of the Ministers’ Deputies)

Preamble

The Committee of Ministers,

Recalling that those responsible for acts amounting to serious human rights violations must be held to account for their actions;

Considering that a lack of accountability encourages repetition of crimes, as perpetrators and others feel free to commit further offences without fear of punishment;

Recalling that impunity for those responsible for acts amounting to serious human rights violations inflicts additional suffering on victims;

Considering that impunity must be fought as a matter of justice for the victims, as a deterrent to prevent new violations, and to uphold the rule of law and public trust in the justice system, including where there is a legacy of serious human rights violations;

Considering the need for states to co-operate at the international level in order to put an end to impunity;

Reaffirming that it is an important goal of the Council of Europe to eradicate impunity throughout the continent, as the Parliamentary Assembly recalled in its Recommendation 1876 (2009) on "The state of human rights in Europe: the need to eradicate impunity", and that its action may contribute to worldwide efforts against impunity;

Bearing in mind the European Convention on Human Rights (ETS No. 5, hereinafter “the Convention”), in the light of the relevant case law of the European Court of Human Rights (“the Court”), as well as the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and other relevant standards established within the framework of the Council of Europe;

Stressing that the full and speedy execution of the judgments of the Court is a key factor in combating impunity;

Bearing in mind the Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity of the United Nations Commission on Human Rights;

Recalling the importance of the right to an effective remedy for victims of human rights violations, as contained in numerous international instruments – notably in Article 13 of the Convention, Article 2 of the United Nations International Covenant on Civil and Political Rights and Article 8 of the Universal Declaration on Human Rights – and as reflected in the United Nations General Assembly’s Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law;


Bearing in mind the need to ensure that, when fighting impunity, the fundamental rights of persons accused of serious human rights violations, as well as the rule of law, are respected,
Adopt the following guidelines and invites member states to implement them effectively and ensure that they are widely disseminated, and where necessary translated, in particular among all authorities responsible for the fight against impunity.

I. The need to combat impunity

1. These guidelines address the problem of impunity in respect of serious human rights violations. Impunity arises where those responsible for acts that amount to serious human rights violations are not brought to account.

2. When it occurs, impunity is caused or facilitated notably by the lack of diligent reaction of institutions or state agents to serious human rights violations. In these circumstances, faults might be observed within state institutions, as well as at each stage of the judicial or administrative proceedings.

3. States are to combat impunity as a matter of justice for the victims, as a deterrent with respect to future human rights violations and in order to uphold the rule of law and public trust in the justice system.

II. Scope of the guidelines

1. These guidelines deal with impunity for acts or omissions that amount to serious human rights violations and which occur within the jurisdiction of the state concerned.

2. They are addressed to states, and cover the acts or omissions of states, including those carried out through their agents. They also cover states’ obligations under the Convention to take positive action in respect of non-state actors.

3. For the purposes of these guidelines, “serious human rights violations” concern those acts in respect of which states have an obligation under the Convention, and in the light of the Court’s case law, to enact criminal law provisions. Such obligations arise in the context of the right to life (Article 2 of the Convention), the prohibition of torture and inhuman or degrading treatment or punishment (Article 3 of the Convention), the prohibition of forced labour and slavery (Article 4 of the Convention) and with regard to certain aspects of the right to liberty and security (Article 5, paragraph 1, of the Convention) and of the right to respect for private and family life (Article 8 of the Convention). Not all violations of these articles will necessarily reach this threshold.

4. In the guidelines, the term “perpetrators” refers to those responsible for acts or omissions amounting to serious human rights violations.

5. In the guidelines, the term “victim” refers to a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, caused by a serious human rights violation. The term “victim” may also include, where appropriate, the immediate family or dependants of the direct victim. A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted, and regardless of the familial relationship between the perpetrator and the victim.

6. These guidelines complement and do not replace other standards relating to impunity. In particular, they neither replicate nor qualify the obligations and responsibilities of states under international law, including international humanitarian law and international criminal law, nor are they intended to resolve questions as to the relationship between international human rights law and other rules of international law. Nothing in these guidelines prevents states from establishing or maintaining stronger or broader measures to fight impunity.

III. General measures for the prevention of impunity

1. In order to avoid loopholes or legal gaps contributing to impunity:

- States should take all necessary measures to comply with their obligations under the Convention to adopt criminal law provisions to effectively punish serious human rights violations through adequate penalties. These provisions should be applied by the appropriate executive and judicial authorities in a coherent and non-discriminatory manner.
- States should provide for the possibility of disciplinary proceedings against state officials.

- In the same manner, states should provide a mechanism involving criminal and disciplinary measures in order to sanction behaviour and practice within state authorities which lead to impunity for serious human rights violations.

2. States – including their officials and representatives – should publicly condemn serious human rights’ violations.

3. States should elaborate policies and take practical measures to prevent and combat an institutional culture within their authorities which promotes impunity. Such measures should include:

- promoting a culture of respect for human rights and systematic work for the implementation of human rights at the national level;
- establishing or reinforcing appropriate training and control mechanisms;
- introducing anti-corruption policies;
- making the relevant authorities aware of their obligations, including taking necessary measures, with regard to preventing impunity, and establishing appropriate sanctions for the failure to uphold those obligations;
- conducting a policy of zero-tolerance of serious human rights violations;
- providing information to the public concerning violations and the authorities’ response to these violations;
- preserving archives and facilitating appropriate access to them through applicable mechanisms.

4. States should establish and publicise clear procedures for reporting allegations of serious human rights violations, both within their authorities and for the general public. States should ensure that such reports are received and effectively dealt with by the competent authorities.

5. States should take measures to encourage reporting by those who are aware of serious human rights violations. They should, where appropriate, take measures to ensure that those who report such violations are protected from any harassment and reprisals.

6. States should establish plans and policies to counter discrimination that may lead to serious human rights violations and to impunity for such acts and their recurrence.

7. States should also establish mechanisms to ensure the integrity and accountability of their agents. States should remove from office individuals who have been found, by a competent authority, to be responsible for serious human rights violations or for furthering or tolerating impunity, or adopt other appropriate disciplinary measures. States should notably develop and institutionalise codes of conduct.

IV. Safeguards to protect persons deprived of their liberty from serious human rights violations

1. States must provide adequate guarantees to persons deprived of their liberty by a public authority, in order to prevent any unlawful detention or ill-treatment, and ensure that any unlawful detention or ill-treatment does not go unpunished. In particular, persons deprived of their liberty should be provided with the following guarantees:

- the right to inform, or to have informed, a third party of his or her choice of their deprivation of liberty, their location and of any transfers;
- the right to have access to a lawyer;
- the right to have access to a medical doctor.

Persons deprived of their liberty should be expressly informed without delay about all their rights, including those listed above. Any possibility for the authorities to delay the exercise of one of these rights, in order to protect the interests of justice or public order, should be clearly defined by law, and its application should be strictly limited in time and subject to appropriate procedural safeguards.
2. In addition to the rights listed above, persons deprived of their liberty are entitled to take court proceedings through which the lawfulness of their detention shall be speedily decided and release ordered if that detention is not lawful. Persons arrested or detained in relation to the commission of an offence must be brought promptly before a judge, and they have the right to receive a trial within a reasonable time or to be released pending trial, in accordance with the Court's case law.

3. States should take effective measures to safeguard against the risk of serious human rights violations by the keeping of records concerning the date, time and location of persons deprived of their liberty, as well as other relevant information concerning the deprivation of liberty.

4. States must ensure that officials carrying out arrests or interrogations or using force can be identified in any subsequent criminal or disciplinary investigations or proceedings.

V. The duty to investigate

1. Combating impunity requires that there be an effective investigation in cases of serious human rights violations. This duty has an absolute character.

_The right to life (Article 2 of the Convention)_

The obligation to protect the right to life requires, _inter alia_, that there should be an effective investigation when individuals have been killed, whether by state agents or private persons, and in all cases of suspicious death. This duty also arises in situations in which it is uncertain whether or not the victim has died, and there is reason to believe the circumstances are suspicious, such as in the case of enforced disappearances.

_The prohibition of torture and inhuman or degrading treatment or punishment (Article 3 of the Convention)_

States are under a procedural obligation arising under Article 3 of the Convention to carry out an effective investigation into credible claims that a person has been seriously ill-treated, or when the authorities have reasonable grounds to suspect that such treatment has occurred.

_The prohibition of slavery and forced labour (Article 4 of the Convention)_

The prohibition of slavery and forced labour entails a procedural obligation to carry out an effective investigation into situations of potential trafficking in human beings.

_The right to liberty and security (Article 5 of the Convention)_

Procedural safeguards derived, _inter alia_, from the right to liberty and security require that states conduct effective investigations into credible claims that a person has been deprived of his or her liberty and has not been seen since.

_The right to respect for private and family life (Article 8 of the Convention)_

States have a duty to effectively investigate credible claims of serious violations of the rights enshrined in Article 8 of the Convention where the nature and gravity of the alleged violation so requires, in accordance with the case law of the Court.

2. Where an arguable claim is made, or the authorities have reasonable grounds to suspect that a serious human rights violation has occurred, the authorities must commence an investigation on their own initiative.

3. The fact that the victim wishes not to lodge an official complaint, later withdraws such a complaint or decides to discontinue the proceedings does not absolve the authorities from their obligation to carry out an effective investigation, if there are reasons to believe that a serious human rights violation has occurred.

4. A decision either to refuse to initiate or to terminate investigations may be taken only by an independent and competent authority in accordance with the criteria of an effective investigation as set out in guideline VI. It should be duly reasoned.

5. Such decisions must be subject to appropriate scrutiny and be generally challengeable by means of a judicial process.
VI. Criteria for an effective investigation

In order for an investigation to be effective, it should respect the following essential requirements:

Adequacy
The investigation must be capable of leading to the identification and punishment of those responsible. This does not create an obligation on states to ensure that the investigation leads to a particular result, but the authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident.

Thoroughness
The investigation should be comprehensive in scope and address all of the relevant background circumstances, including any racist or other discriminatory motivation. It should be capable of identifying any systematic failures that led to the violation. This requires the taking of all reasonable steps to secure relevant evidence, such as identifying and interviewing the alleged victims, suspects and eyewitnesses; examination of the scene of the alleged violation for material evidence; and the gathering of forensic and medical evidence by competent specialists. The evidence should be assessed in a thorough, consistent and objective manner.

Impartiality and independence
Persons responsible for carrying out the investigation must be impartial and independent from those implicated in the events. This requires that the authorities who are implicated in the events can neither lead the taking of evidence nor the preliminary investigation; in particular, the investigators cannot be part of the same unit as the officials who are the subject of the investigation.

Promptness
The investigation must be commenced with sufficient promptness in order to obtain the best possible amount and quality of evidence available. While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities may generally be regarded as essential in maintaining public confidence in the maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts. The investigation must be completed within a reasonable time and, in all cases, be conducted with all necessary diligence.

Public scrutiny
There should be a sufficient element of public scrutiny of the investigation or its results to secure accountability, to maintain public confidence in the authorities' adherence to the rule of law and to prevent any appearance of collusion in or tolerance of unlawful acts. Public scrutiny should not endanger the aims of the investigation and the fundamental rights of the parties.

VII. Involvement of victims in the investigation

1. States should ensure that victims may participate in the investigation and the proceedings to the extent necessary to safeguard their legitimate interests through relevant procedures under national law.

2. States have to ensure that victims may, to the extent necessary to safeguard their legitimate interests, receive information regarding the progress, follow-up and outcome of their complaints, the progress of the investigation and the prosecution, the execution of judicial decisions and all measures taken concerning reparation for damage caused to the victims.

3. In cases of suspicious death or enforced disappearances, states must, to the extent possible, provide information regarding the fate of the person concerned to his or her family.

4. Victims may be given the opportunity to indicate that they do not wish to receive such information.

5. Where participation in proceedings as parties is provided for in domestic law, states should ensure that appropriate public legal assistance and advice be provided to victims, as far as necessary for their participation in the proceedings.
6. States should ensure that, at all stages of the proceedings when necessary, protection measures are put in place for the physical and psychological integrity of victims and witnesses. States should ensure that victims and witnesses are not intimidated, subject to reprisals or dissuaded by other means from complaining or pursuing their complaints or participating in the proceedings. These measures may include particular means of investigation, protection and assistance before, during or after the investigation process, in order to guarantee the security and dignity of the persons concerned.

VIII. Prosecutions

1. States have a duty to prosecute where the outcome of an investigation warrants this. Although there is no right guaranteeing the prosecution or conviction of a particular person, prosecuting authorities must, where the facts warrant this, take the necessary steps to bring those who have committed serious human rights violations to justice.

2. The essential requirements for an effective investigation as set out in guidelines V and VI also apply at the prosecution stage.

IX. Court proceedings

1. States should ensure the independence and impartiality of the judiciary in accordance with the principle of separation of powers.

2. Safeguards should be put in place to ensure that lawyers, prosecutors and judges do not fear reprisals for exercising their functions.

3. Proceedings should be concluded within a reasonable time. States should ensure that the necessary means are at the disposal of the judicial and investigative authorities to this end.

4. Persons accused of having committed serious human rights violations have the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

X. Sentences

While respecting the independence of the courts, when serious human rights violations have been proven, the imposition of a suitable penalty should follow. The sentences which are handed out should be effective, proportionate and appropriate to the offence committed.

XI. Implementation of domestic court judgments

Domestic court judgments should be fully and speedily executed by the competent authorities.

XII. International co-operation

International co-operation plays a significant role in combating impunity. In order to prevent and eradicate impunity, states must fulfil their obligations, notably with regard to mutual legal assistance, prosecutions and extraditions, in a manner consistent with respect for human rights, including the principle of "non-refoulement", and in good faith. To that end, states are encouraged to intensify their co-operation beyond their existing obligations.

XIII. Accountability of subordinates

While the following of orders or instructions from a superior may have a bearing on punishment, it may not serve as a circumstance precluding accountability for serious human rights violations.

XIV. Restrictions and limitations

States should support, by all possible means, the investigation of serious human rights violations and the prosecution of alleged perpetrators. Legitimate restrictions and limitations on investigations and prosecutions should be restricted to the minimum necessary to achieve their aim.
XV. Non-judicial mechanisms

States should also consider establishing non-judicial mechanisms, such as parliamentary or other public inquiries, ombudspersons, independent commissions and mediation, as useful complementary procedures to the domestic judicial remedies guaranteed under the Convention.

XVI. Reparation

States should take all appropriate measures to establish accessible and effective mechanisms which ensure that victims of serious human rights violations receive prompt and adequate reparation for the harm suffered. This may include measures of rehabilitation, compensation, satisfaction, restitution and guarantees of non-repetition.
Recommendation CM/Rec(2007)2
of the Committee of Ministers to member states
on media pluralism and diversity of media content

(Adopted by the Committee of Ministers on 31 January 2007
at the 985th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and promoting the ideals and principles which are their common heritage and fostering economic and social development;

Recalling Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), which guarantees freedom of expression and freedom to receive and impart information and ideas without interference by public authority and regardless of frontiers;

Recalling its Declaration on the freedom of expression and information, adopted on 29 April 1982, which stresses that a free flow and wide circulation of information of all kinds across frontiers is an important factor for international understanding, for bringing peoples together and for the mutual enrichment of cultures;

Recalling its Recommendation Rec(2000)23 on the independence and functions of regulatory authorities for the broadcasting sector and its Explanatory Memorandum, which stress the importance of the political, financial and operational independence of broadcasting regulators;

Recalling the opportunities provided by digital technologies as well as the potential risks related to them in modern society as stated in its Recommendation Rec(2003)9 on measures to promote the democratic and social contribution of digital broadcasting;

Recalling its Recommendation No. R (99) 1 on measures to promote media pluralism and its Recommendation No. R (94) 13 on measures to promote media transparency, the provisions of which should jointly apply to all media;

Noting that, since the adoption of Recommendations No. R (99) 1 and No. R (94) 13, important technological developments have taken place, which make a revision of these texts necessary in order to adapt them to the current situation of the media sector in Europe;

Having regard to its Declaration on cultural diversity, adopted on 7 December 2000, and to the provisions on media pluralism contained in the European Convention on Transfrontier Television (ETS No. 132);

Bearing in mind the provisions of the UNESCO Convention on the protection and promotion of the diversity of cultural expressions, adopted on 20 October 2005, which proclaim the sovereign right of states to formulate and implement their cultural policies and to adopt measures to protect and promote intercultural dialogue and the diversity of cultural expressions, in particular, measures aimed at enhancing the diversity of the media including through public service broadcasting;
Reaffirming that media pluralism and diversity of media content are essential for the functioning of a democratic society and are the corollaries of 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 the demands which result from Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms will be fully satisfied only if each person is given the possibility to form his or her own opinion from diverse sources of information;

Recognising the crucial contribution of the media in fostering public debate, political pluralism and awareness of diverse opinions, notably by providing different groups in society – including cultural, linguistic, ethnic, religious or other minorities – with an opportunity to receive and impart information, to express themselves and to exchange ideas;

Recalling the importance of transparency of media ownership so as to ensure that the authorities in charge of the implementation of regulations concerning media pluralism can take informed decisions, and that the public can make its own analysis of the information, ideas and opinions expressed by the media;

Reaffirming that, in order to protect and actively promote the pluralistic expressions of ideas and opinions as well as cultural diversity, member states should adapt the existing regulatory frameworks, particularly with regard to media ownership, and adopt any regulatory and financial measures called for in order to guarantee media transparency and structural pluralism as well as diversity of the content distributed;

Recalling that the efforts expected from all member states in this field should take into account the necessary editorial independence of newsrooms, the stakes, risks and opportunities inherent to the development of new means of communication, as well as the specific situation of each of the audiovisual and written media that these measures affect, whether it be print and on-line press services, or radio and television services, whichever platforms are used for the transmission;

Bearing in mind that national media policy may also be oriented to preserve the competitiveness of domestic media companies in the context of the globalisation of markets and that the transnational media concentration phenomena can have a negative impact on diversity of content,

Recommends that governments of member states:

i. consider including in national law or practice the measures set out below;

ii. evaluate at national level, on a regular basis, the effectiveness of existing measures to promote media pluralism and content diversity, and examine the possible need to revise them in the light of economic, technological and social developments on the media;

iii. exchange information about the structure of media, domestic law and studies regarding concentration and media diversity.

**Recommended measures**

I. Measures promoting structural pluralism of the media

1. **General principle**

1.1. Member states should seek to ensure that a sufficient variety of media outlets provided by a range of different owners, both private and public, is available to the public, taking into account the characteristics of the media market, notably the specific commercial and competition aspects.

1.2. Where the application of general competition rules in the media sector and access regulation are not sufficient to guarantee the observance of the demands concerning cultural diversity and the pluralistic expressions of ideas and opinions, member states should adopt specific measures.
1.3. Member states should in particular envisage adapting their regulatory framework to economic, technological and social developments taking into account, in particular, the convergence and the digital transition and therefore include in it all the elements of media production and distribution.

1.4. When adapting their regulatory framework, member states should pay particular attention to the need for effective and manifest separation between the exercise of political authority or influence and control of the media or decision making as regards media content.

2. Ownership regulation

2.1. Member states should consider the adoption of rules aimed at limiting the influence which a single person, company or group may have in one or more media sectors as well as ensuring a sufficient number of diverse media outlets.

2.2. These rules should be adapted to the size and the specific characteristics of the national, regional or local audiovisual media and/or text-based media market to which they would be applicable.

2.3. These rules may include introducing thresholds based on objective and realist criteria, such as the audience share, circulation, turnover/revenue, the share capital or voting rights.

2.4. These rules should make it possible to take into account the horizontal integration phenomena, understood as mergers in the same branch of activity – in this case mono-media and multi-media concentrations –, as well as vertical integration phenomena, that is, the control by a single person, company or group of some of the key elements of production, distribution and related activities such as advertisement or telecommunications.

2.5. Furthermore, member states should review on a regular basis the established thresholds in the light of ongoing technological, economic and social developments in order not to hinder innovations in the media field.

2.6. Whether they are, or are not, specific to the audiovisual and written media, the authorities responsible for the application of these rules should be vested with the powers required to accomplish their mission, in particular, the power to refuse an authorisation or a license request and the power to act against concentration operations of all forms, notably to divest existing media properties where unacceptable levels of concentration are reached and/or where media pluralism is threatened. Their competences could therefore include the power to require commitments of a structural nature or with regard to conduct from participants in such operations and the capacity to impose sanctions, if need be.

3. Public service media

3.1. Member states should ensure that existing public service media organisations occupy a visible place in the new media landscape. They should allow public service media organisations to develop in order to make their content accessible on a variety of platforms, notably in order to ensure the provision of high-quality and innovative content in the digital environment and to develop a whole range of new services including interactive facilities.

3.2. Member states should encourage public service media to play an active role in promoting social cohesion and integrating all communities, social groups and generations, including minority groups, young people, the elderly, underprivileged and disadvantaged social categories, disabled persons, etc., while respecting their different identities and needs. In this context, attention should be paid to the content created by and for such groups, and to their access to, and presence and portrayal in, public service media. Due attention should also be paid to gender equality issues.

3.3. Member states should invite public service media organisations to envisage the introduction of forms of consultation with the public, which may include the creation of advisory structures, where appropriate reflecting the public in its diversity, so as to reflect in their programming policy the wishes and requirements of the public.
3.4. Member states should adopt the mechanisms needed to guarantee the independence of public service media organisations vital for the safeguard of their editorial independence and for their protection from control by one or more political or social groups. These mechanisms should be established in co-operation with civil society.

3.5. Member states should define ways of ensuring appropriate and secure funding of public service media from a variety of sources – which may include licence fees, public funding, commercial revenues and/or individual payment – necessary for the discharge of their democratic, social and cultural functions.

4. Other media contributing to pluralism and diversity

Member states should encourage the development of other media capable of making a contribution to pluralism and diversity and providing a space for dialogue. These media could, for example, take the form of community, local, minority or social media. The content of such media can be created mainly, but not exclusively, by and for certain groups in society, can provide a response to their specific needs or demands, and can serve as a factor of social cohesion and integration. The means of distribution, which may include digital technologies, should be adapted to the habits and needs of the public for whom these media are intended.

5. Access regulation and interoperability

5.1. Member states should ensure that content providers have fair access to electronic communication networks.

5.2. In order to promote the development of new means of communication and new platforms and reduce the risk of bottlenecks that block the availability of a broad variety of media content, member states should encourage a greater interoperability of software and equipment, as well as the use of open standards by the manufacturers of software and equipment and by the operators of the media and the electronic communications sectors.

5.3. This result should be obtained by means of improved co-operation between all interested parties, supported, if necessary and with the aim of not hindering innovation, by the relevant authorities.

5.4. Member states should ensure that their regulatory bodies and other relevant authorities have the necessary skills in order to assess how economic and technical developments will affect the structure of the media and their ability to perform their cultural role.

6. Other support measures

6.1. Member states should take any financial and regulatory measures necessary to protect and promote structural pluralism of audiovisual and print media.

6.2. These measures may include support and encouragement aimed at facilitating the digital switchover for traditional broadcast media, and, where appropriate, the digital transition for print media.

II. Measures promoting content diversity

1. General principle

Pluralism of information and diversity of media content will not be automatically guaranteed by the multiplication of the means of communication offered to the public. Therefore, member states should define and implement an active policy in this field, including monitoring procedures, and adopt any necessary measures in order to ensure that a sufficient variety of information, opinions and programmes is disseminated by the media and is available to the public.

2. Promotion of a wider democratic participation and internal diversity
2.1. Member states should, while respecting the principle of editorial independence, encourage the media to supply the public with a diversity of media content capable of promoting a critical debate and a wider democratic participation of persons belonging to all communities and generations.

2.2. Member states should, in particular, encourage the media to contribute to intercultural and inter-religious dialogue, so as to promote mutual respect and tolerance and to prevent potential conflicts through discussions.

To this end, member states should:

- on the one hand, encourage the media to adopt or strengthen a voluntary policy promoting minorities in their internal organisation in all its branches, in order to reflect society's diverse composition and reinforce social cohesion;
- on the other hand, in order to take into account the emergence of new means of communication resulting from dynamic technological changes, consider taking actions in order to promote digital media literacy and to bridge the so-called "digital divide".

3. **Allocation of broadcasting licences and must carry/must offer rules**

3.1. Member states should consider introducing measures to promote and to monitor the production and provision of diverse content by media organisations. In respect of the broadcasting sector, such measures could be to require in broadcasting licences that a certain volume of original programmes, in particular as regards news and current affairs, is produced or commissioned by broadcasters.

3.2. Member states should consider the introduction of rules aimed at preserving a pluralistic local media landscape, ensuring in particular that syndication, understood as the centralised provision of programmes and related services, does not endanger pluralism.

3.3. Member states should envisage, where necessary, adopting must carry rules for other distribution means and delivery platforms than cable networks. Moreover, in the light of the digitisation process - especially the increased capacity of networks and proliferation of different networks - member states should periodically review their must carry rules in order to ensure that they continue to meet well-defined general interest objectives. Member states should explore the relevance of a must offer obligation in parallel to the must carry rules so as to encourage public service media and principal commercial media companies to make their channels available to network operators that wish to carry them. Any resulting measures should take into account copyright obligations.

4. **Support measures**

4.1. Support measures for the creation, production and distribution of audiovisual, written and all types of media contents which make a valuable contribution to media diversity should be considered. Such measures could also serve to protect and promote the diversity of the sources of information, such as independent news agencies and investigative journalism. Support measures for media entities printing or broadcasting in a minority language should also be considered.

4.2. Without neglecting competition considerations, any of the above support measures should be granted on the basis of objective and non-partisan criteria, within the framework of transparent procedures and subject to independent control. The conditions for granting support should be reconsidered periodically to avoid accidental encouragement for any media concentration process or the undue enrichment of enterprises benefiting from support.

5. **Raising awareness of the role of medias**

5.1. Member states should support the training of media professionals, including on-going training, and encourage such training to address the role that media professionals can play in favour of diversity. Society at large should be made aware of this role.
5.2. Diversity could be included as an objective in the charters of media organisations and in codes of ethics adopted by media professionals.

III. Media transparency

1. Member states should ensure that the public have access to the following types of information on existing media outlets:

- information concerning the persons or bodies participating in the structure of the media and on the nature and the extent of the respective participation of these persons or bodies in the structure concerned and, where possible, the ultimate beneficiaries of this participation;
- information on the nature and the extent of the interests held by the above persons and bodies in other media or in media enterprises, even in other economic sectors;
- information on other persons or bodies likely to exercise a significant influence on the programming policy or editorial policy;
- information regarding the support measures granted to the media;
- information on the procedure applied in respect of the right of reply and complaint.

2. Member states should prompt the media to take any measures which could allow the public to make its own analysis of information, ideas and opinions expressed in the media.

IV. Scientific research

1. Member states should support scientific research and study in the field of media concentration and pluralism and promote public debate on these matters. Particular attention could be paid to the effect of media concentration on diversity of media content, on the balance between entertainment programmes, and information and programmes fostering the public debate, on the one hand, and on the contribution of the media to intercultural dialogue on the other.

2. Member states should support international research efforts focused on transnational media concentration and its impact on different aspects of media pluralism.
Recommendation 1876 (2009)¹

State of human rights in Europe: the need to eradicate impunity

1. The Parliamentary Assembly, referring to its Resolution 1675 (2009) on the state of human rights in Europe: the need to eradicate impunity, considers the eradication of impunity for perpetrators, instigators and organisers of serious human rights violations as a priority for Council of Europe action, as a matter of individual justice, deterrence and upholding the rule of law.

2. The Assembly therefore welcomes the follow-up already given by the Committee of Ministers to its Recommendation 1791 (2007) on the state of human rights and democracy in Europe and invites the Committee of Ministers to speed up and intensify its work on elaborating Council of Europe guidelines on human rights and the fight against impunity. These guidelines should:

2.1. draw from the case law of the European Court of Human Rights, from the work of the Committee of Ministers on execution of judgments, the pertinent resolutions and recommendations of the Assembly and the work of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as well as from the work of the United Nations and relevant non-governmental organisations on this subject;

2.2. stress that state secrecy and immunities do not prevent effective, independent and impartial investigations into serious human rights violations – including in relation to the secret detentions and unlawful interstate transfers of individuals that have taken place in and throughout Europe – and that those responsible should be held to account;

2.3. clearly state that immunity of international actors for serious human rights violations, in particular violations of non-derogable rights such as the right to life, is unacceptable;

2.4. specify which measures shall be taken and remedies made available at national and international levels to tackle all forms of impunity.

3. The Assembly calls on the Committee of Ministers to instruct the Ad hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO) to ensure that the future Council of Europe convention effectively combats impunity for the authors of gender-based violence by including the severest and most widespread forms of violence against women, including domestic violence and so-called "honour crimes".

4. As regards the role of the Committee of Ministers in supervising the execution of judgments of the European Court of Human Rights, the Assembly:

4.1. welcomes the stand taken by the Committee of Ministers in determining that there exists a continuing obligation to conduct effective investigations in so far as procedural violations of Articles 2 and 3 of the European Convention on Human Rights (ETS No. 5) are concerned;
4.2. encourages the Committee of Ministers to explore the possibility for states to re-open domestic legal proceedings subsequent to a ruling of the European Court of Human Rights finding the domestic investigations or proceedings fundamentally flawed, to prevent criminals from being granted impunity by virtue of the *ne bis in idem* rule.

5. The Assembly invites the Committee of Ministers to examine the advisability of establishing an independent European committee to investigate serious allegations of gross and systematic violations of human rights.

1. *Assembly debate on 24 June 2009 (22nd Sitting)* (see Doc. 11934, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mrs Däubler-Gmelin; and Doc. 11964, opinion of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Čurdová). *Text adopted by the Assembly on 24 June 2009 (22nd Sitting).*
Appendix 11
(Item 5.3)

Guidelines of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis

(Adopted by the Committee of Ministers on 26 September 2007 at the 1005th meeting of the Ministers' Deputies)

Preamble

The Committee of Ministers,

1. Emphasising that freedom of expression and information and freedom of the media are crucial for the functioning of a truly democratic society;

2. Reaffirming that Article 10 of the European Convention on Human Rights (ETS No. 5) and the relevant case law of the European Court of Human Rights remain the fundamental standards concerning the exercise of the right to freedom of expression and information;

3. Deeply concerned by the fact that crisis situations, such as wars and terrorist attacks, are still widespread and threaten seriously human life and liberty, and the fact that governments, concerned about the survival of society may be tempted to impose undue restrictions on the exercise of this right;

4. Condemning the killings and other attacks on media professionals and recalling its Recommendation No. R (96) 4 on the protection of journalists in situations of conflict and tension;

5. Recalling Resolution No. 1 on freedom of expression and information in times of crisis adopted by the Ministers of states participating in the 7th European Ministerial Conference on Mass Media Policy (Kyiv, 10-11 March 2005);

6. Having taken note of Resolution 1535 (2007) and Recommendation 1783 (2007) of the Parliamentary Assembly of the Council of Europe on threats to the lives and freedom of expression of journalists;

7. Welcoming Resolution 1738 (2006) of the Security Council of the United Nations condemning attacks on media professionals in conflict situations and recognising the urgency and necessity of taking action for the protection of these professionals;

8. Underlining that dialogue and co-operation between governments, media professionals and civil society can contribute to the efforts to guarantee freedom of expression and information in times of crisis;

9. Convinced not only that media coverage can be crucial in times of crisis by providing accurate, timely and comprehensive information, but also that media professionals can make a positive contribution to the prevention or resolution of certain crisis situations by adhering to the highest professional standards and by fostering a culture of tolerance and understanding between different groups in society;

10. Adopts, as an extension and complement to the "Guidelines on human rights and the fight against terrorism" adopted on 11 July 2002, the following guidelines and invites member states to ensure that they are widely disseminated and observed by all relevant authorities.
I. Definitions

1. As used in these guidelines,

- the term "crisis" includes, but is not limited to, wars, terrorist attacks, natural and man-made disasters, i.e. situations in which freedom of expression and information is threatened (for example, by limiting it for security reasons);

- the term "media professionals" covers all those engaged in the collection, processing and dissemination of information intended for the media. The term includes also cameramen and photographers, as well as support staff such as drivers and interpreters.

II. Working conditions of media professionals in crisis situations

Personal safety

2. Member states should assure to the maximum possible extent the safety of media professionals - both national and foreign. The need to guarantee the safety, however, should not be used by member states as a pretext to limit unnecessarily the rights of media professionals such as their freedom of movement and access to information.

3. Competent authorities should investigate promptly and thoroughly the killings and other attacks on media professionals. Where applicable, the perpetrators should be brought to justice under a transparent and rapid procedure.

4. Member states should require from military and civilian agencies in charge of managing crisis situations to take practical steps to promote understanding and communication with media professionals covering such situations.

5. Journalism schools, professional associations and media are encouraged to provide as appropriate general and specialised safety training for media professionals.

6. Employers should strive for the best possible protection of their media staff on dangerous missions, including by providing training, safety equipment and practical counselling. They should also offer them adequate insurance in respect of risks to the physical integrity. International organisations of journalists might consider facilitating the establishment of an insurance system for freelance media professionals covering crisis situations.

7. Media professionals who are expelled from zones with restricted access for disobeying national and international law, inciting violence or hatred in the content of their news or spreading propaganda of warring parties should be accompanied by military forces to a neutral, secure region or a country or embassy.

Freedom of movement and access to information

8. Member states should guarantee freedom of movement and access to information to media professionals in times of crisis. In order to accomplish this task, authorities in charge of managing crisis situations should allow media professionals accredited by their media organisations access to crisis areas.

9. Where appropriate, accreditation systems for media professionals covering crisis situations should be used in accordance with Principle 11 of the Appendix to Recommendation No. R (96) 4 of the Committee of Ministers to member states on the protection of journalists in situations of conflict and tension.

10. If required by national law, accreditation should be given to all media professionals without discrimination according to clear and fast procedures free of bureaucratic obstacles.
11. Military and civilian authorities in charge of managing crisis situations should provide regular information to all media professionals covering the events through briefings, press conferences, press tours or other appropriate means. If possible, the authorities should set up a secure information centre with appropriate equipment for the media professionals.

12. The competent authorities in member states should provide information to all media professionals on an equal basis and without discrimination. Embedded journalists should not get more privileged access to information than the rest except for the advantage naturally due to their attachment to military units.

III. Protection of journalists' sources of information and journalistic material

13. Member states should protect the right of journalists not to disclose their sources of information in accordance with Recommendation No. R (2000) 7 of the Committee of Ministers on the same subject. Member states should implement in their domestic law and practice, as a minimum, the principles appended to this recommendation.

14. With a view, *inter alia*, to ensuring their safety, media professionals should not be required by law-enforcement agencies to hand over information or material (for example, notes, photographs, audio and video recordings) gathered in the context of covering crisis situations nor should such material be liable to seizure for use in legal proceedings. Any exceptions to this principle should be strictly in conformity with Article 10 of the European Convention on Human Rights and the relevant case law of European Court of Human Rights.

IV. Guarantees against misuse of defamation legislation

15. Member states should not misuse in crisis situations libel and defamation legislation and thus limit freedom of expression. In particular, member states should not intimidate media professionals by law suits or disproportionate sanctions in libel and defamation proceedings.

16. The relevant authorities should not use otherwise legitimate aims as a pretext to bring libel and defamation suits against media professionals and thus interfere with their freedom of expression.

V. Guarantees against undue limitations on freedom of expression and information and manipulation of public opinion

17. Member states should not restrict the public's access to information in times of crisis beyond the limitations allowed by Article 10 of the European Convention on Human Rights and interpreted in the case law of the European Court of Human Rights.

18. Member states should always bear in mind that free access to information can help to effectively resolve the crisis and expose abuses that may occur. In response to the legitimate need for information in situations of great public concern, the authorities should guarantee to the public free access to information, including through the media.

19. Member states should not use vague terms when imposing restrictions of freedom of expression and information in times of crisis. Incitement to violence and public disorder should be adequately and clearly defined.

20. International and national courts should always weigh the public's legitimate need for essential information against the need to protect the integrity of court proceedings.

21. Member states should constantly strive to maintain a favourable environment, in line with the Council of Europe standards, for the functioning of independent and professional media, notably in crisis situations. In this respect, special efforts should be made to support the role of public service media as a reliable source of information and a factor for social integration and understanding between the different groups of society.
22. Member states should consider criminal or administrative liability for public officials who try to manipulate, including through the media, public opinion exploiting its special vulnerability in times of crisis.

VI. Responsibilities of media professionals

23. Media professionals need to adhere, especially in times of crisis, to the highest professional and ethical standards, having regard to their special responsibility in crisis situations to make available to the public timely, factual, accurate and comprehensive information while being attentive to the rights of other people, their special sensitivities and their possible feeling of uncertainty and fear.

24. If a system of embedded journalists needs to be maintained and journalists choose to make use of it, they are advised to make this clear in their reports and to point out the source of their information.

25. Self-regulation as the most appropriate mechanism for ensuring that media professionals perform in a responsible and professional way needs to be made more effective in times of crisis. In this regard, co-operation between self-regulatory bodies is encouraged at both the regional and the European levels. Member states, professional organisations of journalists, other relevant non-governmental organisations and the media are invited to facilitate such co-operation and provide further assistance where appropriate.

26. Media professionals are invited to take into consideration in their work Recommendation No. R (97) 21 of the Committee of Ministers to member states on the media and the promotion of a culture of tolerance and to apply as a minimum the professional practices outlined in the appendix to this recommendation.

VII. Dialogue and co-operation

27. National governments, media organisations, national or international governmental and non-governmental organisations should strive to ensure the protection of freedom of expression and information in times of crisis through dialogue and co-operation.

28. At the national level, relevant stakeholders such as governmental bodies, regulatory authorities, non-governmental organisations and the media including owners, publishers and editors might consider the establishment of voluntary fora to facilitate, through dialogue, the exercise of the right to freedom of expression and information in times of crisis.

29. Media professionals themselves are encouraged, directly or through their representative organisations, to engage in a constructive dialogue with the authorities in situations of crisis.

30. Non-governmental organisations and in particular specialised watchdog organisations are invited to contribute to the safeguarding of freedom of expression and information in times of crisis in various ways, such as:

- maintaining help lines for consultation and for reporting harassment of journalists and other alleged violations of the right to freedom of expression and information;

- offering support, including in appropriate cases free legal assistance, to media professionals facing, as a result of their work, lawsuits or problems with the public authorities;

- co-operating with the Council of Europe and other relevant organisations to facilitate exchange of information and to effectively monitor possible violations.

31. Governmental and non-governmental donor institutions are strongly encouraged to include media development and media assistance as part of their strategies for conflict prevention, conflict resolution and post-conflict reconstruction.