



## Internet freedom

From principles to global treaty law?

*content ... stakeholders ... form*

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### **Protection and Promotion of Internet's Universality, Integrity and Openness**

This document contains a proposal by the Council of Europe Ad Hoc Advisory Group on Cross-border Internet for a draft Council of Europe Committee of Ministers Recommendation addressed to its member states on the protection and promotion of Internet's universality, integrity and openness. The members of the Ad Hoc Advisory Group on Cross-border Internet are: Mr Bertrand de la Chapelle, Mr Wolfgang Kleinwächter, Mr Christian Singer, Mr Rolf H. Weber and Mr Michael V. Yakushev.

1. The member states of the Council of Europe, state Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights – ETS No. 5) have undertaken to secure to everyone within their jurisdiction the human rights and fundamental freedoms defined therein. They have particular roles and responsibilities to secure the protection and promotion of these rights and freedoms and can be held to account for the rights involved before the European Court of Human Rights.
2. The right to freedom of expression is essential for citizens' participation in democratic processes. This right applies to both online and offline activities and is regardless of frontiers. Its protection should be ensured in accordance with article 10 of the European Convention on Human Rights.
3. The Internet enables people to have access to information and services, to connect, and to communicate, as well as to share ideas and knowledge globally. It provides essential tools for participation and deliberation in political, and other, activities of public interest.
4. The individual's freedom to have access to information and to form and express opinions, and the ability of groups to communicate and share views on the Internet depend on actions related to the Internet's infrastructure and critical resources, and decisions on information technology design, as well as on governmental action.
5. In particular, access and use of the Internet is exposed to risks of disruption of the stable and ongoing functioning of the network due to technical failures and is vulnerable to other acts of interference with the infrastructure of the Internet. The question of the Internet's stability and resilience is intrinsically related to the cross-border interconnectedness and interdependencies of its infrastructure. Actions that take place in one jurisdiction may affect the ability of users to have access to information on the Internet in another.
6. Moreover, decisions taken in the context of the technical coordination and management of resources that are critical for the functioning of the Internet, notably domain names and Internet protocol addresses, may have a direct bearing on users' access to information and the protection of personal data. These resources are distributed in different jurisdictions and are managed by various international private entities.
7. Against this background, the protection of freedom of expression and access to information on the Internet, as well as the promotion of the public service value of the Internet are part of a larger set of concerns about how to ensure the Internet's universality, integrity and openness.
8. People increasingly rely on the Internet for their everyday activities and to ensure their rights as citizens. They have a legitimate expectation that Internet services will

be accessible and affordable, secure, reliable and ongoing. The Internet is, similarly, a critical resource for numerous sectors of the economy and public administrations.

9. These expectations of society require states to carefully preserve the general public interest in Internet-related policy making. Indeed, many countries have recognised the public service value of the Internet, whether in their national policies or legislation, or in the form of political declarations, including in international fora.
10. As bearers of a duty to ensure the protection of fundamental rights and freedoms of their citizens, and primary respondents to their legitimate expectations regarding the criticality of the Internet, states have a responsibility to preserve the public interest in national and international Internet-related public policy.
11. In addition, states have a mutual expectation towards each other that they will make their best efforts to preserve and promote the public service value of the Internet. In that context, they should acknowledge the shared and reciprocal responsibility to take reasonable measures to preserve the universality, integrity and openness of the Internet as a means of safeguarding freedom of expression and information regardless of frontiers.
12. Therefore, the Committee of Ministers recommends to member states to:
  - be guided by the principles contained in the Committee of Ministers’ Declaration on Internet governance principles, both in the context of developing national Internet-related policies and when participating in such endeavours within the international community;
  - to protect and promote Internet’s universality, integrity and openness having regard to the principles and in accordance with the commitment set out in this recommendation and ensure that they are reflected in practice and law;
  - ensure the broad dissemination of the attached commitment to all public authorities and private entities, in particular those dealing with the management of resources that are critical for the functioning of the Internet, as well as civil society organisations;
  - encourage these actors to support and promote the implementation of the principles included therein.

# **Commitment to protect and promote Internet's universality, integrity and openness**

## **1. General principles**

### 1.1 No harm

1.1.1 States have the responsibility to ensure, in accordance with the principles of international law, that their actions do not have an adverse transboundary impact on access to and use of the Internet.

1.1.2 This includes, in particular, the responsibility to ensure that their actions within their jurisdictions do not interfere with access to content outside their territorial boundaries or negatively impact the transboundary flow of Internet traffic.

### 1.2 Cooperation

States should cooperate in good faith between themselves, and with relevant stakeholders, at all stages of developing and implementing Internet-related public policies in order to avoid any adverse transboundary impact on access to, and use of, the Internet.

### 1.3. Due diligence

Within the limits of non-involvement in the operational issues and ordinary administration of Internet activities, states should, in cooperation with each other and with all relevant stakeholders, take all necessary measures to prevent, manage and respond to significant transboundary disruption to, and interference with, the infrastructure of the Internet, or at any event minimise the risk of, and consequences arising from, such events.

## **2. Integrity of the Internet**

### 2.1. Preparedness

2.1.1 States should jointly develop and implement emergency plans for managing and responding to disruptions to, and interferences with, the infrastructure of the Internet.

2.1.2 In particular, states should co-operate with a view to support the development and implementation of common standards, rules and practices aimed

at preserving and strengthening the stability, robustness and resilience of the Internet.

2.1.3. States should create an environment that facilitates information sharing and response coordination among stakeholders, notably through the creation of public-private partnerships, in respect of activities involving risk of causing significant transboundary disruption to, or interferences with, infrastructure of the Internet.

## 2.2 Response

### 2.2.1 Notification

States should, without delay, provide potentially-affected states with notification of significant risks of transboundary disruption to, and interference with, the infrastructure of the Internet.

### 2.2.2 Information sharing

States should, in a timely manner, provide potentially-affected states with all available information relevant to responding to transboundary disruption to, or interference with, the infrastructure of the Internet.

### 2.2.3 Consultation

States should enter into consultation with each other without delay in order to reach mutually-acceptable solutions regarding measures to be adopted to respond to significant transboundary disruption to, or interference with, the infrastructure of the Internet.

### 2.2.4 Mutual assistance

As appropriate, and with due regard for their capabilities, states should, in good faith, offer their assistance to other affected states with a view to mitigating the adverse effects of disruptions to, or interferences, with the infrastructure of the Internet.

## 2.3 Implementation

States should, as appropriate, in consultation with relevant stakeholders, and within the limits of non-involvement in operational issues and ordinary administration of Internet activities, develop reasonable legislative, administrative or other measures , including the establishment of suitable monitoring mechanisms, to implement their due diligence commitments regarding the integrity of the Internet.

## 2.4 Responsibility

With the objective of ensuring accountability in respect of adverse consequences on the integrity of the Internet, states should engage in dialogue and cooperation for the further development of international law relating to the responsibility and liability for damage, its assessment and compensation, as well as the settlement of related disputes.

### **3. Resources that are critical for the functioning of the Internet**

States should take all appropriate measures to ensure that the development and application of standards, policies, procedures or practices in connection with the management of resources that are critical for the functioning of the Internet incorporate protections for human rights and fundamental freedoms of Internet users in compliance with the standards recognised in international human rights law.

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