

New Council of Europe Recommendation fails to uphold online freedom of expression
European Digital Rights Statement and Call for Action - 10 October 2007
www.edri.org/coerec200711

European Digital Rights (EDRI) wishes to express its serious concerns over the adoption on 26 September 2007 by the Council of Europe (CoE) Committee of Ministers of a new Recommendation on ‘promoting freedom of expression and information in the new information and communications environment’ (Rec(2007)11).

The Recommendation has been prepared by the Council of Europe Group of Specialists on Human Rights in the Information Society (MC-S-IS). It has been proposed and discussed by members of this group since December 2005. It was originally intended to be an instrument to ‘further elaborate principles and guidelines to ensure respect for human rights and the rule of law in the information society’. The text eventually turned into a set of ‘guidelines on the ethical roles and responsibilities for key state and non-state actors’, to be promoted through this Recommendation by the Council of Europe. Its final draft has further been amended by the Steering Committee on the Media and New Communication Services (CDMC), under which authority the MC-S-IS operates, and then submitted to the Committee of Ministers.

EDRI participated in the debate in its capacity of independent non-governmental observer to the MC-S-I-S group, without the right to vote. However, few EDRI’s contributions, either during meetings or through written comments and proposed amendments, were taken into account in the final document.

We consider the result to be promoting opaque “self-regulation” and other soft law instruments driven by private interests and implemented through technical mechanisms. As a result, we have great concern that the Recommendation will fail to uphold respect for freedom of expression and information in the online world.

The Recommendation also raises specific concerns, most notably over its part II (‘Common standards and strategies for reliable information, flexible content creation and transparency in the processing of information’).

It refers to ‘reliable information’ or content and this is little different from the “official information” of the bad old days. It is hardly compatible with the promotion of freedom of expression and information, which is the purpose of this document.

Moreover, this section calls for balancing freedom of expression and communication with the rights of others to have their ‘values and sensibilities’ respected. As “values and sensibilities” vary not only from time to time and from place to place, but also among different sections of the population, this is certainly against the general CoE background, and in any case goes far beyond the restrictions identified in Article 10 paragraph 2 of the European Convention on Human Rights, as stressed by the jurisprudence of the European Court of Human Rights numerous times.

Furthermore, and in order to strike such a balance, section II of the Recommendation calls for the development by the private sector and member States of tools and standards for the rating and

labelling of content and services. EDRI regrets that the CoE encourages such trend over transparent and accountable public policies as well as binding legislation respectful of fundamental rights, democracy and the rule of law.

EDRI considers this Recommendation to be damaging and a retrograde step for freedom of expression and freedom of the press. EDRI is deeply concerned that such instruments will be used to legitimize subtle means of censorship, through privatised censorship and measures to protect against so-called harmful content.

EDRI will continue to participate to the MC-S-I-S group as an active independent observer, and will continue to raise awareness of the public on issues related to the group mandate. With other instruments being prepared by the same MC-S-I-S group, there is a risk that the trend shown in this Recommendation be confirmed. To better avoid such a risk, EDRI needs your support.

What you can do (means to take action detailed at: <http://www.edri.org/coerec200711>):

- **Sign up in support** to this EDRI statement (NGOs and groups from non CoE member States also welcome)
- **Spread the word** to other NGOs and groups
- **Translate** the statement into your other languages and inform EDRI of availability of translations
- **Use background information** to know more about this issue and **raise awareness** in your own country
- **Take part in the CoE consultation** on a possible Article 10 monitoring mechanism to ensure that it also covers freedom of expression online
- **Ask to join** MC-S-IS working group as observer

Background information:

CoE instruments resulting from the MC-S-IS group activities:

- Council of Europe Recommendation Rec(2007)11 on promoting freedom of expression and information in the new information and communications environment (26.09.2007):
[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec\(2007\)11](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec(2007)11)
- Council of Europe Recommendation Rec(2006)12 on empowering children in the new information and communications environment (27.09.2006):
[https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(2006\)12](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(2006)12)
- Council of Europe Group of Specialists on Human Rights in the Information Society (MC-S-IS) website:
http://www.coe.int/t/e/human_rights/media/1_intergovernmental_co%2Doperation/MC-S-IS/
- Council of Europe Steering Committee on the Media and New Communication Services (CDMC) website:
http://www.coe.int/t/e/human_rights/media/1_intergovernmental_co%2Doperation/CDMC/

EDRI activities in relation with the CoE:

- EDRI report on European regional meeting on the “Ethical dimensions of the information society” organized by the French Commission for UNESCO in cooperation with UNESCO and the Council of Europe (‘Human Rights in the Information Society - rediscover the proportionality’, 26.09.2007)
<http://www.edri.org/edriagram/number5.18/human-rights-is>

- EDRI report on 7th MC-S-IS meeting ('CoE to address the impact of technical measures on human rights', 12.04.2007):
<http://www.edri.org/edriagram/number5.7/coe-human-rights>
- EDRI report on 5th MC-S-IS meeting ('News on CoE activities on Human Rights in the Information Society', 05.07.2006)
<http://www.edri.org/edriagram/number4.13/hrinfosoc>
- EDRI report on 4th MC-S-IS meeting ('CoE works on new instrument on children empowerment on the net', 15.03.2006):
<http://www.edri.org/edriagram/number4.5/coe>
- EDRI report on 2nd MC-S-IS meeting and CoE Pan-European Forum ('Human Rights In The Information Society On CoE Agenda', 21.09.2005):
<http://www.edri.org/edriagram/number3.19/CoE>
- EDRI gets observer status to MC-S-IS group ('EDRI Granted Observer Status In CoE HR Group', 29.06.2005):
<http://www.edri.org/edriagram/number3.13/EDRI>
- EDRI comments on CAHSI Document ('Council Of Europe Declaration On Human Rights And Internet', 24.05.2005):
<http://www.edri.org/edriagram/number3.10/CoE>
- EDRI report on 2nd meeting of the Multidisciplinary Ad-hoc Committee of Experts on the Information Society (CAHSI) ('Council Of Europe Draft Statement On Human Rights And Internet', 20.04.2005)
<http://www.edri.org/edriagram/number3.8/CoE>

About EDRI:

European Digital Rights is an international non-profit association (AISBL) under Belgium law founded in June 2002. Its goals include the defence and promotion of human rights in the field of information and communication technology. EDRI takes an active interest in developments regarding these subjects in all 45 member States of the Council of Europe. Currently 28 privacy and civil rights organisations have EDRI membership. They are based or have offices in 17 different countries in Europe. Since January 2003, EDRI produces EDRI-gram, a bi-weekly newsletter about digital civil rights in Europe. For more information: www.edri.org. General contact: board@edri.org. Press contact: press@edri.org.