

# Freedom of expression regime in Europe – coping with the Net

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# Characteristics of the freedom of expression and information regime in Europe

- Constitutional framework: Article 10 of the ECHR
- No censorship – not even across borders
- Balance between freedom of expression and other rights (content standards)
- Freedom of information (plurality/psb/access to publicly held information)

# Characteristics of the freedom of expression regime in Europe

- Specific liability rules for media content (protection for anonymous speech)
- Remedies (right of reply, fines, damages, imprisonment)
- Implementation (different forms of regulation)

# Coping with the Net – new horizons – the e-democracy

- Access for individuals (Declaration refers to affordability and the importance of public access points)
- Setting up of websites by members of the public should not be subject to any licensing (Declaration Principle 4)
- Easier access to information held by public authorities

# Coping with the Net – the constitutional framework

- No need to revise the general principles
- Public vs. private communications (Cybercrime Convention)
- No general blocking or filtering measures (Declaration Principle 3.1.)
- Restrictive measures should be aimed at “clearly identifiable Internet content” (Declaration Principle 3.2.)

## Coping with the Net – the content standards

- Horizontal content standards should in principle be applicable
- What about the media specific ones?
- Advertising standards
- Harmful content (Recommendation (2001) 8)

# Coping with the Net – freedom of information

- At first sight no problems
- Public service communication?
- Importance of independent media professionals (CoE contribution to WSIS)
- Need to increase transparency of new information providers?

## Coping with the Net – liability

- How to deal with ISPs?
- No general obligation to monitor
- No liability for innocent transmission
- The freedom of expression of information providers must not be forgotten  
(Declaration, principle 6.4)



# Coping with the Net – remedies

- In general not an issue
- What about the right of reply?

## Coping with the Net – implementation

- Importance of international co-operation, example Cybercrime Convention
- Encouraging responsibility by private actors: self-regulation/co-regulation, user awareness
- Jurisdiction/applicable law

## Conclusion – some outstanding issues

- What about the broadcasting standards?
- Need to encourage quality content and guarantee the freedom of information with policy measures?
- New ways of implementing content standards
- Applicable law: Ex. defamation

# Article 10 ECHR

- 1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
- 2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

# Further information

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