



Declaration by the Committee of Ministers on the protection of freedom of expression and information and freedom of assembly and association with regard to Internet domain names and name strings

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

1. Freedom of expression and the right to receive and impart information, and their corollary, the freedom of the media, are indispensable for genuine democracy and democratic processes, as is freedom of assembly and association. All Council of Europe member states have undertaken to secure these freedoms to everyone within their jurisdiction in accordance with Articles 10 and 11 of the European Convention on Human Rights (ETS No. 5).
2. The Internet offers significant opportunities to enhance the exercise and full enjoyment of human rights and freedoms. The Committee of Ministers affirmed the public service value of the Internet in Recommendation CM/Rec(2007)16 on measures to promote the public service value of the Internet and provided guidelines to member states on necessary measures that should be taken to promote this value. The United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has recently rightly stated that "by acting as a catalyst for individuals to exercise their right to freedom of opinion and expression, the Internet also facilitates the realisation of a range of other human rights".
3. Citizens' communication and interaction in online environments and their participation in activities that involve matters of public interest can bring positive, real-life, social change. When freedom of expression and the right to receive and impart information and freedom of assembly are not upheld online, their protection offline is likely to be undermined and democracy and the rule of law can also be compromised.
4. Action by a state that limits or forbids access to specific Internet content constitutes an interference with freedom of expression and the right to receive and impart information. In Europe, such an interference can only be justified if it fulfils the conditions of Article 10, paragraph 2, of the European Convention on Human Rights and the relevant case law of the European Court of Human Rights.
5. In particular, as specified in Principle 3 of the Declaration of the Committee of Ministers on freedom of communication on the Internet of 28 May 2003, states should not, through general blocking or filtering measures, exercise prior control of content made available on the Internet unless such measures are taken on the basis of a provisional or final decision on the illegality of such content by the competent national authorities and in full respect for the strict conditions of Article 10, paragraph 2, of the European Convention on Human Rights. These measures should concern clearly identifiable content and should be proportionate. This should not prevent the installation of filters for the protection of minors, in particular in places accessible to them, such as schools or libraries.
6. The Committee of Ministers has stated, in its Declaration on human rights and the rule of law in the Information Society of 13 May 2005, that member states should maintain and enhance legal and practical measures to prevent state and private censorship. In addition, Recommendation CM/Rec(2008)6 of the Committee of Ministers to member states on measures to promote the respect for freedom of expression and information with regard to Internet filters includes guidelines for using and controlling Internet filters in general, and more specifically in relation to the protection of children and young people.

7. Expressions contained in the names of Internet websites, such as domain names and name strings, should not, a priori, be excluded from the scope of application of legal standards on freedom of expression and the right to receive and impart information and should, therefore, benefit from a presumption in their favour. The addressing function of domain names and name strings and the forms of expressions that they comprise, as well as the content that they relate to, are inextricably intertwined. More specifically, individuals or operators of websites may choose to use a particular domain name or name string to identify and describe content hosted in their websites, to disseminate a particular point of view or to create spaces for communication, interaction, assembly and association for various societal groups or communities.

8. The need to provide safeguards for freedom of expression in legal frameworks related to the management of domain names which identify a country in the Internet addressing system has been affirmed by constitutional oversight bodies of specific Council of Europe member states.

9. On the other hand, instances of measures proposed in other Council of Europe member states to prohibit the use of certain words or characters in domain names and name strings are a source of concern. They may raise issues under Articles 10 and 11 of the European Convention on Human Rights within their own jurisdiction. In a cross-border context they may have an impact on content accessible in other states' territories. They may also set negative precedents which, if replicated and generalised, could thwart the vitality of Internet expression and have devastating effects on Internet freedom.

10. The protection of freedom of expression and the right to receive and impart information and freedom of assembly and association is relevant to policy development processes which are taking place in the Internet Corporation for Assigned Names and Numbers (ICANN) to expand the domain name space so as to include new top-level domain extensions that contain generic expressions. In this context, state and non-state stakeholders should be attentive to and uphold the guarantees in international law on freedom of expression and the right to receive and impart information and on freedom of assembly and association, to the extent that they apply to certain generic expressions that may be proposed in the future as top-level domain names. These considerations should guide relevant policy development and implementation processes.

11. Against this background, the Committee of Ministers:

- declares its support for the recognition by member states of the need to apply fundamental rights safeguards to the management of domain names;
- alerts to the risk which over-regulation of the domain name space and name strings entails for the exercise of freedom of expression and the right to receive and impart information and of freedom of assembly and association; as a form of interference, any regulation should meet the conditions of Articles 10 and 11 of the European Convention on Human Rights and the related case law of the European Court of Human Rights;
- undertakes to pursue further standard-setting work with a view to providing guidance to member states on this subject;
- recalls the Resolution on Internet governance and critical Internet resources adopted by the ministers of states participating in the 1st Council of Europe Conference of Ministers responsible for Media and New Communication Services held in Reykjavik on 28 and 29 May 2009, and invites the competent Council of Europe bodies to work with relevant corporations, agencies and other entities that manage or contribute to the management of the domain name space in order for decisions to take full account of international law, including international human rights law.