Committee of Ministers: Declaration on Freedom of Communication on the Internet

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Páll Thórhallsson
Legislative Department, Prime Minister´s Office, Iceland and Reykjavik University in Media Law

On 28 May 2003, the Council of Europe's Committee of Ministers adopted a Declaration on freedom of communication on the Internet. The aim of the Declaration is to reaffirm the importance of freedom of expression and free circulation of information on the Internet. As stated in the preamble, the Committee of Ministers is concerned about attempts to limit public access to communication on the Internet for political reasons or other motives contrary to democratic principles.

The Declaration states that content on the Internet should not be subjected to restrictions that go further than those applied to other means of content delivery. Leaving open the question as to whether broacasting standards, printed press standards or other content standards should apply to the Internet, this statement nevertheless gives a clear signal that States should not invent new restrictions for this new platform of content delivery. Furthermore, it is underlined that Member States should encourage self-regulation or co-regulation concerning Internet content, these being the forms of regulation most appropriate to the new services. Highlighting the unique opportunities provided by the Internet for interactive communication, the Declaration emphasises that barriers to the participation of individuals in the information society should be removed and that the setting up of and running of individual web sites should not be subject to any licensing or other requirements having a similar effect. Falling short of stipulating a right to anonymity, the Declaration states that the desire of Internet users not to disclose their identity should be respected, subject to limitations required by law enforcement agencies in order to tackle criminal activity.

Perhaps the most important part of the Declaration is to be found in Principle 3, which deals with when and under which circumstances public authorities are permitted to block access to Internet content. Although censorship, in the sense of prior administrative control of publications, has been abolished in all Member States, new technological possibilities permit new forms of prior restrictions. There are examples, mainly outside Europe, of public authorities using crude filtering methods to censor the Internet.

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The Declaration states first of all that public authorities should not employ "general blocking or filtering measures" in order to deny access by the public to information and other communication on the Internet, regardless of frontiers. With "general measures", the Declaration refers to crude filtering methods that do not discriminate between illegal and legal content. This principle, which is quite broad in its scope, does not prevent Member States from requiring the installation of filtering software in places accessible by minors, such as libraries and schools.

Member States still have the possibility, according to the Declaration, to block access to Internet content or to order such blockage. There are, however, several conditions which need to be fulfilled: a) the content has to be clearly identifiable, b) a decision on the illegality of the content has to have been taken by the competent national authorities and c) the safeguards of Article 10, paragraph 2, of the European Convention on Human Rights have to be respected, i.e a restriction has to be prescribed by law, be aimed at a lawful purpose and be necessary in a democratic society.

As stated in the Explanatory Note to the Declaration, Principle 3 is in particular aimed at situations where State authorities would block access by the people to content on certain foreign (or domestic) web sites for political reasons. At the same time it outlines the circumstances in which, in general, blockage of content may be considered acceptable, a matter which is or will be relevant to all Member States.

Principle 6 on the limited liability of service providers is also worth highlighting. In line with the Directive 2000/31/EC on electronic commerce, it is stated that service providers should be under no general obligation to monitor content on the Internet to which they give access, that they transmit or store. They may, however, be held jointly responsible for content which they store on their servers, if they become aware of its illegal nature and do not act rapidly to disable access to it. This is fully in accordance with the Directive on electronic commerce. The Declaration, however, goes one step further, emphasising that when defining under national law the obligations of service providers that host content, "due care must be taken to respect the freedom of expression of those who made the information available in the first place, as well as the corresponding right of users to the information". The questions that are addressed here are currently widely debated, for example in the context of defamatory remarks on the Internet. The Explanatory Note underlines that questions about "whether certain material is illegal are often complicated and best dealt with by the courts. If service providers act too quickly to remove content after a complaint is received, this might be dangerous from the point of view of freedom of expression and information. Perfectly legitimate content might thus be suppressed out of fear of legal liability."

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