[NL] New Recommendations on Freedom of Expression, Access and Privacy

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A new set of Recommendations on freedom of expression, access to information and means of communication, and privacy, was adopted at a recent international conference organised by the Netherlands National Commission for UNESCO. The Recommendations, which focus in particular on the exercise of these rights in an online environment, are divided into a preamble and three substantive sections: human rights protection, access and privacy.

The section, “Human rights protection”, opens with a reminder of some of the procedural safeguards governing regulations with a potentially restrictive effect on the exercise of human rights (e.g. permissibility under international law, direct democratic control, transparency, proportionality and judicial accountability). It also provides that rules “adopted in times of crisis shall comply fully with international human rights standards and should be limited in duration”.

The role of private actors in upholding freedom of expression in cyberspace is recognised, as is the need to avoid requiring Internet service providers “to act as judges on the legitimacy of expressions”. The Recommendations also call for “new regulatory models” to be “developed in close collaboration with representatives of civil society and private parties, reviewed publicly, and measured against benchmarks and indicators to ensure compliance with Human Rights, democracy and the rule of law”.

In addition, the difference between illegal and harmful content is underlined: the terms are not synonymous and tendencies to ban content that is merely harmful (as opposed to illegal) can have a chilling effect on public debate. The section concludes with the statement that “[T]here should be no mandatory filtering or blocking of Internet access”.

The second section of the Recommendations classes active and passive access to all means of communication as a universal right and identifies education as being the key to its realisation. States Parties are called upon to ensure that information and communications technologies (ICTs) are made available to all communities in society on an affordable, non-commercial basis. This section also pleads for an increase in the availability of works in the public domain and a recalibration of the relationship between (intellectual) property rights and the rights of users. It

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describes the “current imbalance” in that relationship as being “particularly detrimental to developing countries” and calls for the situation to be redressed.

In the third section, privacy is described as “an indispensable prerequisite to the right of freedom of expression and the right to communicate”. It is stated that “the same high level of privacy and anonymity” applies in both the off- and on-line worlds. A note of warning is also sounded, viz., that self-censorship will result, if “online access to information is tracked and tied to personal profiles”.

States Parties are urged to ensure that the right to privacy - as a basic human right - is subject only to the restrictions set out in relevant provisions of international human rights law, as interpreted by competent international courts. They are similarly urged to ensure that ICTs are not used for “surveillance or control by governments or private parties beyond what is permissible under international human rights law”.

The Recommendations have fed into the discussions of the Council of Europe's Multidisciplinary Ad-hoc Committee of Experts on the Information Society (CAHSI), which is charged with the task of preparing and submitting to the Committee of Ministers for approval, “a draft political statement on the principles and guidelines for ensuring respect for human rights and the rule of law in the Information Society, with a view to its use as a contribution to the third Summit of Heads of State and Government of the Council of Europe (16-17 May 2005) and the Tunis phase of the World Summit on the Information Society (16-18 November 2005)”.

Recommendations, Conference on Internet, Human Rights and Culture, Netherlands National Commission for UNESCO, Oegstgeest, the Netherlands, 4-5 February 2005

http://www.unesco.nl/images/recommendations.pdf

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