Committee of Ministers: Draft Recommendation on the roles and responsibilities of Internet intermediaries

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On 19 September 2017, the draft Recommendation of the Committee of Ministers to member states on the roles and responsibilities of Internet intermediaries was finalised by the Committee of experts on Internet intermediaries (MSI-NET). The draft Recommendation has now been sent to the Steering Committee on Media and Information Society (CDSMI) for approval. The MSI-NET was established by the Committee of Ministers in 2016 to prepare, under the supervision of the CDSMI, standard-setting proposals on the roles and responsibilities of Internet intermediaries.

The Recommendation begins by confirming that, in line with the case law of the European Court of Human Rights (ECtHR), Council of Europe member states have the obligation to secure and respect the rights and freedoms contained in the Convention for the Protection of Human Rights and Fundamental Freedoms both offline and online. The Recommendation then describes the role of Internet intermediaries, which are a wide, diverse and rapidly evolving range of actors who "facilitate interactions between natural and legal persons on the Internet by offering and performing a variety of functions and services". These services include connecting users to the Internet, enabling the processing of information and data, and hosting web-based services (including for user-generated content). Other services aggregate information and enable searches, and give access to, host and index content and services designed and/or operated by third parties. Some facilitate the sale of goods and services, including audio-visual services, and enable other commercial transactions, including payments.

Next, the Recommendation includes a number of recommendations for member states, including that member states implement the Guidelines (which are annexed to the Recommendation) on the protection and promotion of human rights and fundamental freedoms with regard to Internet intermediaries. Moreover, member states should encourage and promote the implementation of effective age- and gender-sensitive media and information literacy programmes to enable adults, young people and children to enjoy the benefits and minimise their exposure to the risks of the online communications environment, in cooperation with all relevant stakeholders, including from the private sector, the public service media, civil society, educational establishments and academia.

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As mentioned above, the Recommendation includes Guidelines regarding Internet intermediaries, which are set out in a ten-page annex. Firstly, the Guidelines describe the duties and obligations of States - in particular, that all powers of public authorities in relation to Internet intermediaries must be prescribed by law and exercised within the limits conferred by law. States should not use informal means to circumvent the guarantees offered by formal legal proceedings. Moreover, the Guidelines include provisions on legal certainty and transparency, safeguards for freedom of expression, safeguards for privacy and data protection, and access to an effective remedy. Secondly, the Guidelines describe the responsibilities of Internet intermediaries with regard to human rights and fundamental freedoms. In particular, the Guidelines have a number of provisions concerning the need for Internet intermediaries to respect human rights and fundamental freedoms - for example, any interference by intermediaries with the free and open flow of information and data should be based on clear and transparent policies and must be limited to specific legitimate purposes, such as to restrict access to content that has been determined as unlawful by a judicial authority or another independent administrative authority whose decisions are subject to judicial review, or in accordance with their own content restriction policies or codes of ethics. Moreover, there are detailed provisions on transparency and accountability, content moderation, use of personal data, and access to an effective remedy.

The draft Recommendation will be considered by the CDSMI, and thereafter the Committee of Ministers.

Draft Recommendation CM/Rec(2017)xxx of the Committee of Ministers to member states on the roles and responsibilities of internet intermediaries, 19 September 2017

https://rm.coe.int/draft-recommendation-cm-rec-2017-xxx-of-the-committee-of-ministers-to-/168075d869

Committee of experts on internet intermediaries, MSI-NET 4th meeting 18-19 September 2017, Meeting report, 6 October 2017

https://rm.coe.int/msi-net-4th-meeting-18-19-september-2017/168075f8e9

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