

Recommendation CM/Rec(2014)6 of the Committee of Ministers to member States on a Guide to human rights for Internet users

(Adopted by the Committee of Ministers on 16 April 2014 at the 1197th meeting of the Ministers' Deputies)

1. Council of Europe member States have the obligation to secure for everyone within their jurisdiction the human rights and fundamental freedoms enshrined in the European Convention on Human Rights (ETS No. 5, the Convention). This obligation is also valid in the context of Internet use. Other Council of Europe conventions and instruments, which deal with the protection of the right to freedom of expression, access to information, the right to freedom of assembly, protection from cybercrime and of the right to private life and to the protection of personal data, are also applicable.

2. The obligations of States to respect, protect and promote human rights include the oversight of private companies. Human rights, which are universal and indivisible, and related standards, prevail over the general terms and conditions imposed on Internet users by any private sector actor.

3. The Internet has a public service value. People, communities, public authorities and private entities rely on the Internet for their activities and have a legitimate expectation that its services are accessible, provided without discrimination, affordable, secure, reliable and ongoing. Furthermore, no one should be subjected to unlawful, unnecessary or disproportionate interference with the exercise of their human rights and fundamental freedoms when using the Internet.

4. Users should receive support to understand and effectively exercise their human rights online when their rights and freedoms have been restricted or interfered with. This support should include guidance on access to effective remedies. In light of the opportunities that the Internet provides for transparency and accountability in the conduct of public affairs, users should be empowered to use the Internet to participate in democratic life.

5. To ensure that existing human rights and fundamental freedoms apply equally offline and online, the Committee of Ministers recommends under the terms of Article 15.b of the Statute of the Council of Europe that member States:

5.1. actively promote the Guide to human rights for Internet users, as set out in the Appendix, among citizens, public authorities and private sector actors and take specific action regarding its application in order to enable users to fully exercise their human rights and fundamental freedoms online;

5.2. assess, regularly review and, as appropriate, remove restrictions regarding the exercise of rights and freedoms on the Internet, especially when they are not in conformity with the Convention in the light of the relevant case law of the European Court of Human Rights. Any restriction must be prescribed by law, necessary in a democratic society to pursue a legitimate aim and proportionate to the legitimate aim pursued;

5.3. ensure that Internet users have access to effective remedies when their rights and freedoms have been restricted or when they believe that their rights have been violated. This requires enhancing co-ordination and co-operation among relevant institutions, entities and communities. It also necessitates the engagement of and effective co-operation with private sector actors and civil society organisations. Depending on the national context, this may include redress mechanisms such as those provided by data protection authorities, national human rights institutions (such as ombudspersons), court procedures and hotlines;

5.4. promote co-ordination with other State and non-State actors, within and beyond the Council of Europe, with regard to the standards and procedures which have an impact on the protection of human rights and fundamental freedoms on the Internet;

5.5. encourage the private sector to engage in genuine dialogue with relevant State authorities

and civil society in the exercise of their corporate social responsibility, in particular their transparency and accountability, in line with the “Guiding Principles on Business and Human Rights: implementing the United Nations ‘Protect, Respect and Remedy’ Framework”. The private sector should also be encouraged to contribute to the dissemination of the guide;

5.6. encourage civil society to support the dissemination and application of the guide so that it provides an effective tool for Internet users.

Appendix to Recommendation CM/Rec(2014)6

Introduction

1. This guide is a tool for you, the Internet user, to learn about your human rights online, their possible limitations, and available remedies for such limitations. Human rights and fundamental freedoms apply equally offline and online. This principle includes respect for the rights and freedoms of other Internet users. The guide provides you with information about what rights and freedoms mean in practice in the context of the Internet, how they can be relied and acted upon, as well as how to access remedies. It is an evolving document, open to periodic updating.

2. This guide is based on the European Convention on Human Rights and other Council of Europe conventions and instruments that deal with various aspects of human rights protection. All Council of Europe member States have a duty to respect, protect and fulfil the rights and freedoms contained in the instruments that they have ratified. The guide is also inspired by the continuous interpretation of these rights and freedoms by the European Court of Human Rights and by other relevant legal instruments of the Council of Europe.

3. The guide does not establish new human rights and fundamental freedoms. It builds on existing human rights standards and enforcement mechanisms.¹

Access and non-discrimination

1. Access to the Internet is an important means for you to exercise your rights and freedoms and to participate in democracy. You should therefore not be disconnected from the Internet against your will, except when it is decided by a court. In certain cases, contractual arrangements may also lead to discontinuation of service but this should be a measure of last resort.

2. Your access should be affordable and non-discriminatory. You should have the greatest possible access to Internet content, applications and services using the devices of your choice.

3. You should expect public authorities to make reasonable efforts and to take specific measures to facilitate your access to the Internet if you live in rural and geographically remote areas, are on a low income and/or have special needs or disabilities.

4. In your interactions with public authorities, Internet service providers and providers of online content and services, or with other users or groups of users, you must not be discriminated against on any grounds such as gender, race, colour, language, religion or belief, political or other opinion, national or social origin, association with a national minority, property, birth or other status, including ethnicity, age or sexual orientation.

Freedom of expression and information

You have the right to seek, receive and impart information and ideas of your choice, without interference and regardless of frontiers. This means:

1. you have the freedom to express yourself online and to access information and the opinions and expressions of others. This includes political speech, views on religion, opinions and expressions that are favourably received or regarded as inoffensive, but also those that may offend, shock or disturb others. You should have due regard to the reputation or rights of others, including their right to privacy;

2. restrictions may apply to expressions which incite discrimination, hatred or violence. These restrictions must be lawful, narrowly tailored and executed with court oversight;

3. you are free to create, re-use and distribute content respecting the right to protection of intellectual property, including copyright;

4. public authorities have a duty to respect and protect your freedom of expression and your freedom of information. Any restrictions to this freedom must not be arbitrary, must pursue a legitimate aim in accordance with the European Convention on Human Rights such as, among others, the protection of national security or public order, public health or morals, and must comply with human rights law. Moreover, they must be made known to you, coupled with information on ways to seek guidance and redress, and not be broader or maintained for longer than is strictly necessary to achieve a legitimate aim;

5. your Internet service provider and your provider of online content and services have corporate responsibilities to respect your human rights and provide mechanisms to respond to your claims. You should be aware, however, that online service providers, such as social networks, may restrict certain types of content and behaviour due to their content policies. You should be informed of possible restrictions so that you are able to take an informed decision as to whether to use the service or not. This includes specific information on what the online service provider considers as illegal or inappropriate content and behaviour when using the service and how it is dealt with by the provider;

6. you may choose not to disclose your identity online, for instance by using a pseudonym. However, you should be aware that measures can be taken, by national authorities, which might lead to your identity being revealed.

Assembly, association and participation

You have the right to peacefully assemble and associate with others using the Internet. In practice, this means:

1. you have the freedom to choose any website, application or other service in order to form, join, mobilise and participate in social groups and assemblies whether or not they are formally recognised by public authorities. You should also be able to use the Internet to exercise your

right to form and join trade unions;

2. you have the right to protest peacefully online. However, you should be aware that, if your online protest leads to blockages, the disruption of services and/or damage to the property of others, you may face legal consequences;

3. you have the freedom to use available online tools to participate in local, national and global public policy debates, legislative initiatives and public scrutiny of decision-making processes, including the right to sign petitions and to participate in policy making relating to how the Internet is governed.

Privacy and data protection

You have the right to private and family life on the Internet which includes the protection of your personal data and respect for the confidentiality of your correspondence and communications. This means:

1. you should be aware that, in using the Internet your personal data is regularly processed. This happens when you use services such as browsers, e-mail, instant messages, voice-over Internet protocols, social networks and search engines and cloud data storage services;

2. public authorities and private companies have an obligation to respect specific rules and procedures when they process your personal data;

3. your personal data should only be processed when laid down by law or when you have consented to it. You should be informed of what personal data are processed and/or transferred to third parties, when, by whom and for what purpose. Generally, you should be able to exercise control over your personal data (check its accuracy, request a correction, a deletion or that personal data is kept for no longer than necessary);

4. you must not be subjected to general surveillance or interception measures. In exceptional circumstances, which are prescribed by law, your privacy with regard to your personal data may be interfered with, such as for a criminal investigation. Accessible, clear and precise information about the relevant law or policy and your rights in this regard should be made available to you;

5. your privacy must also be respected in the workplace. This includes the confidentiality of your private online correspondence and communications. Your employer must inform you of any surveillance and/or monitoring carried out;

6. you can be assisted by data protection authorities, which exist in a vast majority of European countries, to ensure that data protection laws and principles are upheld.

Education and literacy

You have the right to education, including access to knowledge. This means:

1. you should have online access to education and to cultural, scientific, scholarly and other content in official languages. Conditions might apply to such access in order to remunerate rights' holders for their work. You should also be able to freely access publicly funded research and cultural works in the public domain on the Internet, where available;

2. as part of Internet and media literacy you should have access to digital education and knowledge in order to exercise your rights and freedoms on the Internet. This includes skills to understand, use, and work with a broad range of Internet tools. This should enable you to critically analyse the accuracy and trustworthiness of content, applications and services that you access or wish to access.

Children and young people

As a child or young person, you have all the rights and freedoms outlined in this guide. In

particular, because of your age, you are entitled to special protection and guidance when using the Internet. This means:

1. you have the right to freely express your views and participate in society, to be heard and to contribute to decision making on matters affecting you. Your views must be given due weight in accordance with your age and maturity and without discrimination;
2. you can expect to receive information in a language appropriate for your age and training from your teachers, educators and parents or guardians about safe use of the Internet, including about how to preserve your privacy;
3. you should be aware that content you create on the Internet or content concerning you created by other Internet users may be accessible worldwide and could compromise your dignity, security and privacy or be otherwise detrimental to you or your rights now or at a later stage in your life. Upon your request, this should be removed or deleted within a reasonably short period of time;
4. you can expect clear information about online content and behaviour that is illegal (for example online harassment) as well as the possibility to report alleged illegal content. This information should be adapted to your age and circumstances and you should be provided with advice and support with due respect for your confidentiality and anonymity;
5. you should be afforded special protection from interference with your physical, mental and moral welfare, in particular regarding sexual exploitation and abuse on the Internet and other forms of cybercrime. In particular, you have the right to education to protect yourself from such threats.

Effective remedies

1. You have the right to an effective remedy when your human rights and fundamental freedoms are restricted or violated. To obtain a remedy, you should not necessarily have to pursue legal action straight away. The avenues for seeking remedies should be available, known,

accessible, affordable and capable of providing appropriate redress. Effective remedies can be obtained directly from Internet service providers, public authorities and/or national human rights institutions. Effective remedies can – depending on the violation in question – include inquiry, explanation, reply, correction, apology, reinstatement, reconnection and compensation. In practice, this means:

1.1. your Internet service provider, providers of access to online content and services, or other company and/or public authority should inform you about your rights, freedoms and possible remedies and how to obtain them. This includes easily accessible information on how to report and complain about interferences with your rights and how to seek redress;

1.2. additional information and guidance should be made available from public authorities, national human rights institutions (such as ombudspersons), data protection authorities, citizens' advice offices, human rights or digital rights associations or consumer organisations;

1.3. national authorities have an obligation to protect you from criminal activity or criminal offences committed on or using the Internet, in particular when this concerns illegal access, interference, forgery or other fraudulent manipulation of your digital identity, computer and data contained therein. The relevant law-enforcement authorities have an obligation to investigate and take appropriate action, including seeking sanctions, if you complain of damage to, or interference with, your personal identity and your property online.

2. In the determination of your rights and obligations or of any criminal charge against you with regard to the Internet:

2.1. you have the right to a fair trial within a reasonable time by an independent and impartial court;

2.2. you have the right to an individual application to the European Court of Human Rights after exhausting all available domestic remedies.

1 This guide is part of a recommendation adopted by the Committee of Ministers of the 47

member States of the Council of Europe. More detailed information explaining the guide can be found in the explanatory memorandum to the recommendation.