

HUMAN RIGHTS,
DEMOCRACY
AND THE RULE OF LAW

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

DROITS DE L'HOMME,
DÉMOCRATIE
ET ÉTAT DE DROIT

HUMAN RIGHTS ONLINE AND OFFLINE



The Council of Europe key values:

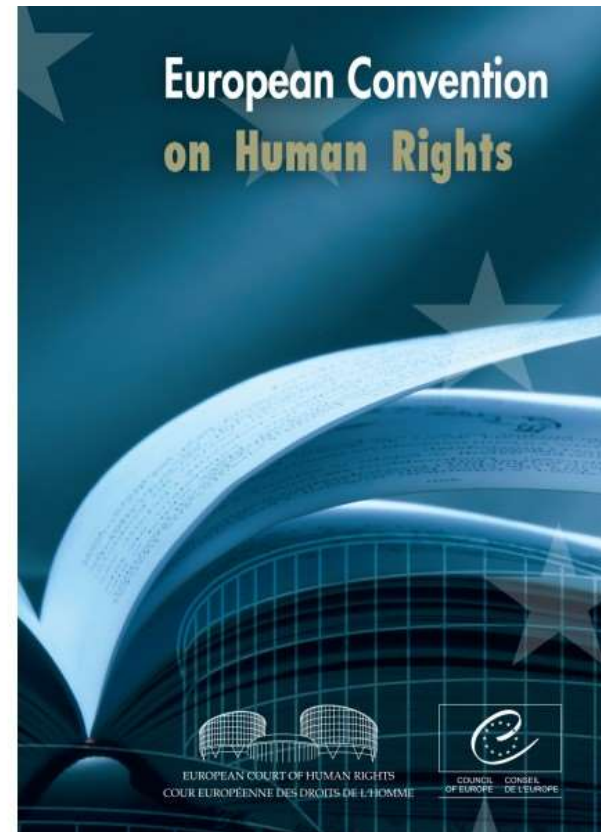
**Human
rights**

Democracy

Rule of law



Convention for the Protection of Human Rights and Fundamental Freedoms



Human rights regime in CoE member states:

- The Convention on Human Rights **applies both offline and online;**
- **States have the obligation to secure** to everyone within their jurisdiction the rights and freedoms contained in the Convention, **both offline and online;**
- **Private actors** carrying out a professional activity have **corporate social responsibility** to respect human rights and freedoms, both offline and online.



Human rights in the online environment:

- ✓ Access to the internet = precondition;
- ✓ Private actors = intermediaries;
- ✓ New opportunities = new challenges.



INTERNET USERS

- use online services
- make online payments / transactions
- look for / share information
- perform other daily activities

INTERNET INTERMEDIARIES

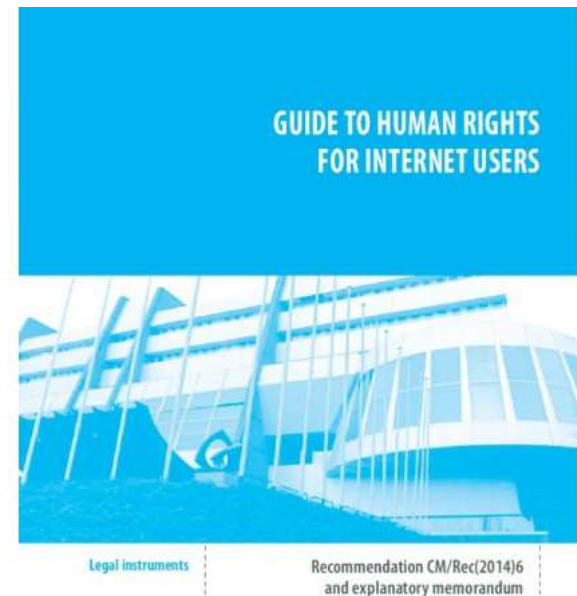
- connect users to the internet
- enable the processing of information and data
- host and store web-based services
- perform other **intermediary** functions



CoE GUIDANCE FOR USERS

Guide to Human Rights for Internet Users

CM/Rec(2014)6





Access and non-discrimination

- ✓ Access to the internet is an important means for you to exercise your rights and freedoms and to participate in democracy;
- ✓ Your access should be affordable and non-discriminatory.





Access and non-discrimination: **obligations of states / responsibilities of private actors**

- ✓ You should expect public authorities to make reasonable efforts and to take specific measures to facilitate your access to the internet;
- ✓ 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.





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:

- ✓ You have the freedom to express yourself online and to access information and the opinions and expressions of others;
- ✓ Restrictions may apply to expressions which incite discrimination, hatred or violence;
- ✓ You are free to create, re-use and distribute content;
- ✓ You may choose not to disclose your identity online.





Freedom of expression and information: **obligations of states / responsibilities of private actors**

- ✓ Public authorities have a duty to respect and protect your freedom of expression and your freedom of information;
- ✓ 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.





Assembly, Association and Participation

You have the right to peacefully assemble and associate with others using the internet:

- ✓ 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;
- ✓ You have the right to protest peacefully online. Legal consequences may follow if your online protest leads to disruption of services and/or damage to the property of others;
- ✓ You have the freedom to use available online tools to participate in local, national and global public policy debates, legislative initiatives and public scrutiny.





Assembly, Association and Participation:

**obligations of states /
responsibilities of private actors**

- ✓ Public authorities have a duty to respect and protect your right to freedom of assembly and association;
- ✓ States should develop and implement strategies for e-democracy, e-participation and e-government using information and communication technologies (ICTs) in democratic processes and debates, both in relationships between public authorities and civil society as well as in the provision of public services.





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:

- ✓ You should be aware that in using the internet your personal data is regularly processed;
- ✓ Your personal data should only be processed when laid down by law or when you have consented to it;
- ✓ You must not be subjected to general surveillance or interception measures;
- ✓ Your privacy must also be respected in the workplace.





Privacy and data protection: **obligations of states / responsibilities of private actors**

- ✓ Public authorities and private companies have an obligation to respect specific rules and procedures when they process your personal data;
- ✓ 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:

- ✓ You should have online access to education and to cultural, scientific, scholarly and other content in official languages;
- ✓ 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.





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;
- ✓ You can expect to receive information in a language appropriate for your age and training;
- ✓ You can expect clear information about online content and behaviour that is illegal as well as the possibility to report alleged illegal content.





Effective Remedies

You have the right to an effective remedy when your human rights and fundamental freedoms are restricted or violated:

- ✓ In the determination of your rights and obligations or of any criminal charge against you with regard to the Internet you have the right to a fair trial within a reasonable time by an independent and impartial court;
- ✓ You have the right to an individual application to the European Court of Human Rights after exhausting all available domestic remedies.





Effective Remedies

obligations of states / responsibilities of private actors

- ✓ 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;
- ✓ National authorities have an obligation to protect you from criminal activity or criminal offences committed on or using the internet;
- ✓ Additional information and guidance should be made available from public authorities, national human rights institutions, data protection authorities, human rights or digital rights associations or consumer organisations.



CoE GUIDANCE FOR STATES

- Committee of Ministers Recommendation CM/Rec(2015)6 on Free, Transboundary Flow of Information on the Internet;
- Committee of Ministers Recommendation CM/Rec(2016)1 on Protecting and Promoting the Right to Freedom of Expression and the Right to Private Life with Regard Network Neutrality;
- Committee of Ministers Recommendation CM/Rec(2016)5 on Internet Freedom;
- other Committee of Ministers recommendations and declarations.



Obligations of states as interpreted by the ECHR:

- negative obligation to refrain from violating human rights;
- positive obligation to protect human rights and to create an enabling environment:
 - ✓ put in place a sufficiently developed legal framework;
 - ✓ prevent, investigate, punish and redress private actors' abuse;
 - ✓ take other appropriate measures.

(see, for instance, *Van der Musselle v. Belgium*, no. 8919/80, 23 November 1983; *Ahmet Yildirim v. Turkey*, no. 3111/10, 18 December 2012)

CoE GUIDANCE FOR STATES AND INTERNET INTERMEDIARIES

- Committee of Ministers Recommendation CM/Rec(2016)3 on Human Rights and Business;
- Committee of Ministers Recommendation CM/Rec(2018)2 on the Roles and Responsibilities of Internet Intermediaries;
- other Committee of Ministers recommendations and declarations.



Responsibilities of internet intermediaries as interpreted by the ECHR:

- corporate responsibility to respect human rights;
- duty of care (as persons carrying out a professional activity):
 - ✓ proceed with a high degree of caution when pursuing their occupation;
 - ✓ take special care in assessing the risks that such activity entails;
 - ✓ assess possible impact on human rights;
 - ✓ put in place safeguards and effective remedies.

(see, for instance, *Delfi AS v. Estonia* (GC), no. 64569/09, 16 June 2015; *MTE and Index.hu ZRT v. Hungary*, no. 22947/13, 2 February 2016)

Need for re-establishing human rights-based and rule of law-based approach

In other words:

- internet must not be a lawless space;
- human right must be equally guaranteed and protected online and offline;
- obligations / responsibilities of all stakeholders must be clearly established and strictly observed;
- safeguards and effective remedies must be in place.

Thank you!

www.coe.int/freedomofexpression



 Albania - Albanie Tirana	 Estonia - Estonie Tallinn	 Lithuania - Lituanie Vilnius	 San Marino - Saint-Marin San Marino - Saint Marin
 Andorra - Andorre Andorre-la-Vieille Andorre-la-Vella	 Finland - Finlande Helsinki	 Luxembourg Luxembourg	 Serbia - Serbie Belgrade
 Armenia - Arménie Yerevan - Erevan	 France Paris	 Malta - Malta Valletta - La-Valetta	 Slovakia - Slovaquie Bratislava
 Austria - Autriche Vienna - Vienne	 Georgia - Géorgie Tbilisi - Tbilissi	 Republic of Moldova - République de Moldova Chişinău	 Slovenia - Slovénie Ljubljana
 Azerbaijan - Azerbaïdjan Baku - Bakou	 Germany - Allemagne Berlin	 Monaco Monaco	 Spain - Espagne Madrid
 Belgium - Belgique Brussels - Bruxelles	 Greece - Grèce Athens - Athènes	 Montenegro - Monténégro Podgorica	 Sweden - Suède Stockholm
 Bosnia and Herzegovina Bosnie-Herzégovine Sarajevo	 Hungary - Hongrie Budapest	 Netherlands - Pays-Bas Amsterdam	 Switzerland - Suisse Bern - Berne
 Bulgaria - Bulgarie Sofia	 Iceland - Islande Reykjavik	 Norway - Norvège Oslo	 "The Former Yugoslav Republic of Macedonia" "L'Ex-République yougoslave de Macédoine" Skopje
 Croatia - Croatie Zagreb	 Ireland - Irlande Dublin	 Poland - Pologne Warsaw - Varsovie	 Turkey - Turquie Ankara
 Cyprus - Chypre Nicosia - Nicosie	 Italy - Italie Rome	 Portugal - Portugal Lisbon - Lisbonne	 Ukraine Kyiv - Kiev
 Czech Republic - République tchèque Prague	 Latvia - Lettonie Riga	 Romania - Roumanie Bucharest - Bucarest	 United Kingdom Boulogne - Londres Boulogne - Londres
 Denmark - Danemark Copenhagen - Copenhague	 Liechtenstein Vaduz	 Russian Federation Fédération de Russie Moscow - Moscou	 United Kingdom Boulogne - Londres Boulogne - Londres

