



## Resolution 1877 (2012)<sup>1</sup>

# The protection of freedom of expression and information on the Internet and online media

Parliamentary Assembly

1. The Parliamentary Assembly recalls the universal right to freedom of expression and information under Article 10 of the European Convention on Human Rights (ETS No. 5, hereafter “the Convention”) and Article 19 of the United Nations International Covenant on Civil and Political Rights. This right is typically exercised through the media and, nowadays in particular, through media based on new information and communication technologies (hereafter “ICTs”) such as the Internet and online media, including mobile communication devices.
2. Aligning itself with the United Nations Millennium Declaration of 8 September 2000, the Assembly welcomes the fast growth in access to ICT-based media by the general public globally. Hence, it seems much more difficult for non-democratic regimes to deprive their population of information and an exchange of opinions necessary for any popular control of government. The Assembly strongly condemns the restrictions of access to the Internet and online media applied by the governments of China, Belarus and other countries.
3. The Assembly also welcomes the new possibilities for individuals to share publicly, through the Internet and online media, information which is of public concern, such as information about misgovernment, corruption and organised crime as well as human rights violations. In this respect, the Assembly appreciates the efforts of journalists and media to collect, analyse and disseminate in a professional manner the raw information provided by Internet sources.
4. Recalling its [Resolution 1729 \(2010\)](#) on the protection of “whistle-blowers”, the Assembly reaffirms the right of everyone to disclose information of public concern which corresponds to the right of the public to be informed under Article 10 of the Convention. Member States must not curtail the right of the public to be informed by restricting the right of individuals to disclose information of public concern, for example by applying defamation and insult laws as well as national security and anti-terrorist laws in an overly broad and non-proportional manner.
5. Referring to Articles 10, paragraph 2, and 17 of the Convention, the Assembly recalls, however, that no State, group or person may exercise freedom of expression and information for the destruction of any rights and freedoms set forth in the Convention, in particular the right to life, the right to a fair trial, the right to respect for private life and the right to protection of property. The Assembly puts strong emphasis on Article 20 of the United Nations International Covenant on Civil and Political Rights which stipulates that any propaganda for war and any advocacy of national, racist or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.
6. Recalling its [Recommendation 1543 \(2001\)](#) on racism and xenophobia in cyberspace, the Assembly regrets that some member States have not yet signed and ratified the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189). This protocol may be applicable, for example, in cases of incitement through the Internet to violence and terrorism based on racist or religious extremism.

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1. Assembly debate on 25 April 2012 (15th Sitting) (see [Doc. 12874](#) and Addendum, report of the Committee on Culture, Science, Education and Media, rapporteur: Ms Postanjyan). Text adopted by the Assembly on 25 April 2012 (15th Sitting). See also [Recommendation 1998 \(2012\)](#).

7. Referring to the wide criticism and concerns over the restriction of fundamental rights and freedoms, most notably the freedom of expression and communication privacy, raised by Internet stakeholders and governments as regards the Anti-Counterfeiting Trade Agreement (ACTA) of 1 October 2011, the Assembly invites member States which are signatories to ACTA to pursue public consultations about future domestic legislation resulting from ACTA, taking into account Assembly [Resolution 1744 \(2010\)](#) on extra-institutional actors in the democratic system. Such domestic legislation must respect in particular Articles 6, 8 and 10 of the European Convention on Human Rights and Article 1 of its first Protocol (ETS No. 9). ACTA parties which are also Parties to the Convention on Cybercrime (ETS No. 185) or the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) should not derogate from the latter conventions, in accordance with Article 1 of ACTA.
8. Article 10 of the European Convention on Human Rights prohibits public authorities from restricting freedom of expression and information, but also provides the obligation for member States to ensure that this fundamental freedom is not threatened by any non-governmental or private sector participants. In this context, the Assembly refers also to Committee of Ministers Recommendation CM/Rec(2007)16 on measures to promote the public service value of the Internet and the Declaration of the Committee of Ministers of 29 September 2010 on network neutrality.
9. The Assembly notes that access to ICT-based media for each individual and the public at large is mainly determined by private intermediaries. Many of them, such as Internet access or service providers and mobile phone or telecommunications companies, have a dominant position vis-à-vis individual users because they are system-relevant or exercise significant market power. In this context, the Assembly welcomes Resolution 17/4 on human rights and transnational corporations and other business enterprises adopted by the United Nations Human Rights Council on 16 June 2011.
10. The Assembly is concerned that the intermediaries of ICT-based media might unduly restrict the access to, and dissemination of, information for commercial and other reasons without informing their users and in breach of user rights. Due to the complex corporate and technical structures of such intermediaries, their often unclear corporate localisation and their co-operation with corporate partners in other countries, users may have difficulties in determining court jurisdiction in such cases.
11. In order to protect freedom of expression and information on the Internet and online media, the Assembly calls on the member States of the Council of Europe to:
  - 11.1. ensure, in accordance with Article 10 of the Convention and the case law of the European Court of Human Rights, respect for freedom of expression and information on the Internet and online media by public as well as private entities, while respecting the protection of privacy and personal data;
  - 11.2. encourage intermediaries of ICT-based media to set up self-regulatory codes of conduct for the respect of their users' right to freedom of expression and information, and to create or join commercial associations with such codes of conduct and the power to implement them against non-compliant members;
  - 11.3. ensure that intermediaries of ICT-based media are transparent to the public and inform users of any measures which may impact their right to freedom of expression and information; such transparency may include the requirement to publicise corporate policies affecting the dissemination of, or access to, information and opinions;
  - 11.4. implement Committee of Ministers Recommendation CM/Rec(2007)16 on measures to promote the public service value of the Internet; particular attention should be paid to the obligation not to refuse their services, not to provide their services in a discriminatory manner, or terminate services to users without the right to do so;
  - 11.5. hold intermediaries of ICT-based media responsible for unlawful content, if they are the author of such content or have the obligation under national law to remove unlawful third-party content; particular emphasis should be paid to child pornography and content which incites racist and xenophobic discrimination, hatred, violence or terrorism;
  - 11.6. seek to ensure that intermediaries of ICT-based media can be held accountable for violations of their users' right to freedom of expression and information; this shall include ensuring the jurisdiction of domestic courts in case of violations, in accordance with Articles 10 and 13 of the Convention;

11.7. review, if need be, the mandate of their national regulatory authorities for audiovisual media and telecommunications in order to reinforce freedom of expression and information on the Internet and online media in accordance with this resolution.