

Declaration of the Committee of Ministers on network neutrality

*(Adopted by the Committee of Ministers on 29 September 2010
at the 1094th meeting of the Ministers' Deputies)*

1. The member states of the Council of Europe have repeatedly expressed their commitment to the protection and promotion of human rights on the Internet. This applies in particular to the fundamental rights to freedom of expression and information regardless of frontiers, the right to respect for private life and correspondence, the right to freedom of thought and religion, the right to freedom of association, the right to education and the right to the protection of property, as well as to related procedural rights guaranteed by the European Convention on Human Rights (ETS No. 5).
2. Recommendation [CM/Rec\(2007\)16](#) of the Committee of Ministers to member states on measures to promote the public service value of the Internet underlines people's significant reliance on the Internet as an essential tool for their everyday activities (communication, information, knowledge, commercial transactions) and the resulting legitimate expectation that Internet services be accessible and affordable, secure, reliable and ongoing.
3. Electronic communication networks have become basic tools for the free exchange of ideas and information. They help to ensure freedom of expression and access to information, pluralism and diversity and contribute to the enjoyment of a range of fundamental rights. A competitive and dynamic environment may encourage innovation, increasing network availability and performance and lowering costs, and can promote the free circulation of a wide range of content and services on the Internet. However, users' right to access and distribute information online and the development of new tools and services might be adversely affected by non-transparent traffic management, content and services' discrimination or impeding connectivity of devices.
4. Users should have the greatest possible access to Internet-based content, applications and services of their choice, whether or not they are offered free of charge, using suitable devices of their choice. Such a general principle, commonly referred to as network neutrality, should apply irrespective of the infrastructure or the network used for Internet connectivity. Access to infrastructure is a prerequisite for the realisation of this objective.
5. There is an exponential increase in Internet traffic due to the growing number of users and new applications, content and services that take up more bandwidth than ever before. The connectivity of existing types of devices is broadened as regards networks and infrastructure, and new types of devices are connected. In this context, operators of electronic communication networks may have to manage Internet traffic. This management may relate to quality of service, the development of new services, network stability and resilience or combating cybercrime.
6. In so far as it is necessary in the context described above, traffic management should not be seen as a departure from the principle of network neutrality. However, exceptions to this principle should be considered with great circumspection and need to be justified by overriding public interests. In this context, member states should pay due attention to the provisions of Article 10 of the European Convention on Human Rights and the related case law of the European Court of Human Rights. Member states may also find it useful to refer to the guidelines of Recommendation [CM/Rec\(2008\)6](#) of the Committee of Ministers to member

states on measures to promote the respect for freedom of expression and information with regard to Internet filters.

7. Reference might also be made in this context to the European Union regulatory framework on electronic communications whereby national regulatory authorities are tasked with promoting users' ability to access and distribute information and to run applications and services of their choice.

8. Users and service, application or content providers should be able to gauge the impact of network management measures on the enjoyment of fundamental rights and freedoms, in particular the rights to freedom of expression and to impart or receive information regardless of frontiers, as well as the right to respect for private life. Those measures should be proportionate, appropriate and avoid unjustified discrimination; they should be subject to periodic review and not be maintained longer than strictly necessary. Users and service providers should be adequately informed about any network management measures that affect in a significant way access to content, applications or services. As regards procedural safeguards, there should be adequate avenues, respectful of rule of law requirements, to challenge network management decisions and, where appropriate, there should be adequate avenues to seek redress.

9. The Committee of Ministers declares its commitment to the principle of network neutrality and underlines that any exceptions to this principle should comply with the requirements set out above. This subject should be explored further within a Council of Europe framework with a view to providing guidance to member states and/or to facilitating the elaboration of guidelines with and for private sector actors in order to define more precisely acceptable management measures and minimum quality-of-service requirements.