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**GROUP OF SPECIALISTS ON ON-LINE SERVICES
AND DEMOCRACY**

(MM-S-OD)

**Draft Recommendation
on the right of reply
in the new media environment**

**Secretariat memorandum
prepared by the
Directorate General of Human Rights**

Introduction

This document reproduces a draft Recommendation on the right of reply in the new media environment which has been prepared by the Secretariat in the light of the comments made on a previous draft Recommendation on the right of reply in the on-line media during the 7th meeting of the MM-S-OD (10-12 February 2003) and the 59th meeting of the CDMM (13-16 May 2003). The approach taken in this new draft is to cover all media, and not only those available on-line, as suggested by some experts during the above meetings. Changes subsequently agreed during the 8th meeting of the MM-S-OD (Tallinn, 16-18 June 2003) are underlined. Any comments should be sent to the Media Division before **15 September 2003**.

**DRAFT RECOMMENDATION Rec (2004) ...
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON THE RIGHT OF REPLY IN THE NEW MEDIA ENVIRONMENT¹**

*(Adopted by the Committee of Ministers on ...
at the ... meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b. of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Recalling its Resolution (74) 26 on the right of reply – position of the individual in relation to the press, the provisions of which should apply to all media;

Noting that, since the adoption of this Resolution, a number of major technological developments have taken place, necessitating a revision of this text in order to adapt it to the current situation of the media sector in Europe;

Reaffirming that the right of reply ~~must~~ should be limited to factual statements claimed to be inaccurate and that, as a consequence, the dissemination of opinions and ideas falls outside the scope of this Recommendation;

Considering that the right of reply is a particularly appropriate remedy in the on-line environment due to the possibility of instant correction of contested information and the technical ease with which replies from concerned persons can be attached to it;

Considering that publications, such as websites operated by individuals, which do not contain ~~a collection of regularly~~ frequently updated and edited information of public interest ~~about current affairs~~, should remain outside the scope of the following minimum principles;

Acknowledging that the right of reply can be assured not only through legislation, but also through co-regulatory or self-regulatory measures ~~adopted by the media~~;

Emphasising that the right of reply is without prejudice to other remedies available to persons whose dignity, honour, reputation, or privacy rights have been violated in the media;

Recommends that the governments of the member States should consider introducing measures in their domestic law or practice so as to harmonise ~~rules on~~ the right of reply across all media, without prejudice to the possibility to adjust its exercise to the particularities of each type of media, along the lines of the following minimum principles:

¹ The Secretariat will draw up an explanatory memorandum before the 9th meeting of the MM-S-OD (Strasbourg, 15-17 October 2003).

Definitions

For the purposes of this Recommendation:

The term “medium” refers to any means of communication for the dissemination to the public of information at regular intervals in the same format, such as newspapers, periodicals, radio and television, or to any other service available to the public containing frequently updated and edited information of public interest.

~~The term “medium” refers to any service available to the public, which contains a regularly updated collection of edited information about current affairs, regardless of the technical means used for the dissemination of the service and of whether or not it is provided against remuneration.~~

Minimum principles

1. Scope of the right of reply

Any natural or legal person, irrespective of nationality or residence, should be given the possibility of reacting to inaccurate factual statements in the media which affect his/her personal rights.

2. Promptness

The request for a reply should be addressed to the medium concerned within a reasonably short time from the ~~first~~ publication of the contested information.

At the request of the person concerned, the medium in question should publish his/her reply without undue delay.

3. Prominence

The reply should be given, as far as possible, the same prominence² as was given to the contested information in order for it to reach the same public and with the same impact.

4. Free of charge

The reply should be published free of charge for the person concerned.

5. Exceptions

By way of exception, national law or practice may provide that the publication of the reply may be refused by the medium in question in the following cases:

- i. if the length of the reply exceeds what is necessary to correct the contested information;
- ii. if the reply is not limited to a correction of the facts challenged;
- iii. if it constitutes a punishable offence;
- iv. if it is considered contrary to the legally protected interests of a third party;
- v. if the individual concerned cannot show the existence of a legitimate interest;

² This will be further explained in the explanatory memorandum, in particular how this can be applied to media which appear on the Internet, either exclusively or in addition to other more traditional forms of publishing.

- vi. if the medium has corrected the inaccurate statements on its own initiative;
- vii. if the reply is in a language different from that in which the contested information was published;
- viii. if the reply relates to truthful reports on public sessions of the public authorities or the courts.

6. Safeguarding an effective exercise of the right of reply

In order to safeguard the effective exercise of the right to reply, every medium should ~~determine and~~ make public the name and contact details of a the person to whom requests to publish a reply can be addressed.

For the same purpose, national law should determine to what extent the media should be obliged to conserve a copy of information or programmes made publicly available, at least while a request for inserting a reply can be legally made, or while a dispute is pending before a tribunal or other competent body. If such a copy or other means of proving the content of the published information do not exist, this should be taken to mean that the medium concerned accepts that it published the information to which the insertion of a reply has been requested.

7. Electronic archives

If the contested information is kept publicly available in electronic archives and a right of reply has been granted, a link should be established between the two if possible, in order to draw the attention of the user to the fact that the original information has been subject to a response.

8. Settlement of disputes

If a medium refuses a request to publish a reply, the possibility should exist for the person concerned to bring the dispute before a tribunal or another body with the power to order the immediate publication of the reply.