



Strasbourg, 20 November 2006

DH-MIN(2006)015

**COMMITTEE OF EXPERTS ON ISSUES RELATING TO THE PROTECTION OF
NATIONAL MINORITIES
(DH-MIN)**

**ACCESS OF NATIONAL MINORITIES TO THE MEDIA:
NEW CHALLENGES**

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This report was prepared upon the request of the Secretariat of the Framework Convention for the Protection of National Minorities and of the DH-MIN, for the fourth meeting of the Committee of Experts on Issues Relating to the Protection of National Minorities (DH-MIN), 19-20 October 2006, Strasbourg, France. The views expressed are those of the author.

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Summary¹

This study aims to support an informed debate on how to promote access of national minorities to media in a changing media environment. The focus is on what has been widely referred to as *New Media*. This choice of focus is based on the observation that the attention has so far been directed predominantly on how national minorities have been treated by traditional media (print and electronic), as explicitly defined in international instruments. When at all, attention to new media has predominantly been focused on the lack of restrictive measures to prevent intolerance and hate speech. While this is of course of the utmost importance, policies to promote national minorities do, however, require a balanced approach, including positive measures in order to maintain and promote their culture and language. There is a need therefore for State Parties as well as for monitoring bodies to consider new in-depth proposals in this field.

Whereas bodies of, or related to, the Council of Europe have already on several occasions pointed to the need for further action in this field², this study will show that action on the ground has not yet reached out to new media. The fast development of new media technologies and new user patterns gives rise to concerns that national minorities may be permanently left behind.

The main observation underpinning the analysis presented in this study is that new types of media and media usage emerge rapidly, while the existing instruments to secure access for national minorities to these media have - with some minor exceptions - remained unchanged. Furthermore, this observation is supported by a crucial complementary observation: the international instruments available for policy-makers in this field (i.e., the Framework Convention for the Protection of National Minorities, hence the *Framework Convention*, and the European Charter for Regional or Minority Languages, hence the *Charter*) were designed with such farsightedness that state parties that have ratified these instruments are not only encouraged, but also obliged—at least in a general sense, and in certain cases also explicitly—to act in the field of new media. A third observation is that, in the light of the monitoring reports of the *Framework Convention* and the *Charter*, these instruments have so far been underused in this respect.

In the monitoring work carried out by the Advisory Committee of the *Framework Convention* and the Committee of Experts of the *Charter*, concerns that have been raised regarding new media fall into two broad categories: concerns regarding the usage of new media (particularly the Internet) by racist or extremist groups to disseminate discriminatory propaganda, and concerns regarding the access of national minorities to media which are available on or transferred to digital platforms. A third concern that has been raised in political debate, and is also in single cases reflected in the monitoring reports, relates to the alleged dominant use of “diasporic”³ media over nationally and/or locally produced media among (particularly migrant) minorities.

¹ This study has been commissioned by the Council of Europe (the Secretariat of the *Framework Convention*). The author recognises that the research for the study has been carried out as part of the project European Public Sphere(s): Uniting and Dividing; Sub-project Public sphere and sphericules: ethnic and linguistic minorities in an integrating (?) Europe. This project is financed by the Academy of Finland (2005—2007).

² See the comment to this report by Jakubowicz 2006. The comment lists the Warsaw Declaration and the Action Plan adopted at the Third Summit of Heads of State and Government of the Member States of the Council of Europe (Warsaw on 16-17 May 2005); Resolutions No 2 and 3 by the 7th European Ministerial Conference on Mass Media Policy (Kyiv, 10-11 March 2005); Recommendation No. R (99) 14 of the Committee of Ministers; the 2005 Declaration of the Committee of Ministers on human rights and the rule of law in the Information Society (CM(2005)56 final), the Political message from to the World Summit on the Information Society (CM(2003)87 final); and the Council of Europe Submission to the Internet Governance Forum (Athens, 30 October to 2 November 2006).

³ As Georgiou (2003, 15) points out, *diaspora* is a contested category. For the groups that historically became key examples of a diaspora like the Jews, Armenians, Palestinians and Africans, diaspora signified a collective trauma, a banishment. The term “diaspora” has made a dynamic comeback in contemporary discourses on migration and mobility across the globe.

The work by the monitoring bodies that has so far been carried out only rarely contains information about positive traits and possibilities as regards the availability of new media to national minorities. This bears witness to a lack of attention to this field of media policies in the efforts to maintain and promote national minorities and their cultures. In the light of the heightened attention given to investments in new media (such as broadband and digitalization of television broadcasting) by nation states and by the European Union, it would be expected that this issue be raised more frequently.

The analysis presented in this study, and the viewpoints presented in two supplementing commentary contributions (Jakubowicz 2006; McGonagle 2006)⁴ lead to the conclusion that there is room for much more activity in this field. Whereas both the *Framework Convention* and the *Charter* include articles that already apply expressly, or *mutatis mutandis* to new media, according to evidence that has been brought about in the monitoring process, the implementation has not followed suit. The states should be encouraged to improve their current practices in this regard.

The existing instruments provide measures that can be effectively implemented by the States in order to facilitate, enhance and promote access to new media for national minorities. What appears to be required is a development of *best practice* in this field in a way that can be of help to the States. Clearly, the State Parties have a major role to play in this process. This role includes developing new activities with regard to new media in order to improve the situation of national minorities, or to maintain their relative position in a changing world. It is, however, also important that States improve their reporting of factual developments in this field in order to increase transparency and support the bench-marking activity of international organisations and monitoring bodies that work in this field. As McGonagle (2006) rightly noted in his comment on this report, given that the reflection envisaged must be based on considerable information-gathering exercises, the DH-MIN - by virtue of its direct representation of States authorities - constitutes an ideal forum for identifying issues of particular concern to States.

Measures to combat discrimination, aimed at regulating the offensive use of new media, are already on the agenda of international monitoring bodies. In particular, the monitoring reports of the *Framework Convention*, refer to policies that have been established in these fields in regard to new media. Regulatory work is under way at the EU level to amend the Television without Frontiers directive (Directive 89/552/EEC as amended by Directive 97/36/EC) also to on-demand audio-visual services as part of new media developments.

Regarding “diasporic media” (such as satellite broadcasts and web contents from countries of origin of minorities), concerns have been raised regarding identity formation; how to safeguard (or even foster) national identity. In mature migrant communities, where the individuals are predominantly citizens of the state where they live, identity formation appears to lean on relations to the immediate (often urban) surrounding and the cultural tradition of the family, rather than on the nationalisms of the old and the new countries of residence. This position will here be called *cityzenship*. In recent discussions of this matter, views have been raised against transborder communication, in order to secure integration within a national frame. In light of research, however, this situation calls for a broader view on diversity and investments to support media projects serving the migrant populations in their new surrounding rather than to prevent transborder or “diasporic” media from reaching them. An example

⁴ Whereas this report is mainly focused on the implementation of two main instruments of Council of Europe that set the standards in this field (the *Framework Convention* and the *Charter*), and on aspects of supply and use patterns among minorities in the light of developments of new media, the comment by Karol Jakubowicz adds valuable information on recent discussions in the context of Council of Europe and the EU, and on the new media developments as such. The comment of Tarlach McGonagle adds a valuable analysis linking the issue to a Human Rights-perspective, and exploring the interface between the right to freedom of expression and rights of persons belonging to national minorities in the field of media. It also offers a useful analysis of features of mainstream and minority media. Furthermore, both commenting contributions provide valuable suggestions and ideas to develop the regulative framework to take into account the development of new media. Where appropriate, reference to the comments has been incorporated in this report, but the author recommends the comments also to be read in their own right.

of a positive effort to cope with this problem is the on-going initiative by the European Broadcasting Union (EBU) to raise awareness of the responsibility of public service broadcasting in this field.

A particular question that arises with development of Information Society (more recently also Interaction Society) is how the new media impact on minority rights obligations that are not media-specific, particularly in relation to Article 10 of the *Framework Convention* and Article 10 of the *Charter*. These articles relate to the use of a minority language in contact with administrative authorities. There is an evident need to foster new practices also in this field, as part of policies to improve the position of national minorities with respect to new media.

Basic considerations

The theme of this study calls for a discussion of certain terms included in its title, and particularly relevant to the two main instruments of the Council of Europe (the *Framework Convention* and the *Charter*) that guide this field. The following discussion will be organised under the subheadings *Minorities, New Media, Access* and *Challenges*.

Minorities

It is not the task of this study to define, in any essentialist terms, the concept of *National Minority*. This concept is widely debated. As it is clear that no single term or concept can be used to cover the complex situation in full, this study will pragmatically apply a distinction between *autochthonous minorities* and *migrant minorities* to distinguish between two main characteristics with relevance to media, and particularly to new media. This distinction is not applied to distinguish between individuals, groups, or languages that are included or remain outside protection under the *Framework Convention* or the *Charter* (for a further discussion of this point, see the comment by McGonagle 2006). From the point of view of this study, the distinction is meant to illustrate differences in cultural conditions with relevance to the availability of media, particularly new media.

Typically, autochthonous minorities are composed of citizens of the state they reside in and have a long history in the state. More often than not, these minorities have been present in regions and in rural areas of the state. Migrant minorities, on the contrary, are predominantly urban populations with a more recent history connecting them to other states. In many cases, however, people that are seen as migrant minorities have become citizens of the state of their current residence, and with time lost their immediate relation to their country of origin. Due to this factor, which connects migrant minorities to the urban surrounding where they live rather than to any particular “nationality” (Alam and Husband, forthcoming; Robins 2006), their cultural condition could be described as *citizenship*. From the point of view of media—also new media—this has particular consequences.

New Media

New Media have often been defined in technical terms; meaning digitally produced, transmitted and/or received information. Also media that do not particularly lean on digital techniques have, however, been categorized as new media, such as broadcasting via satellite; in many instances in a hybrid solution with local cable networks (McGonagle and Price 2005, 42; McGonagle et al. 2003, 8). As noted by Jakubowicz (2006), convergent digital communication has the following features:

- Its multimedia nature;
- Interactivity; interchangeable sender/receive roles; user ability to order, choose or distribute self-generated content;
- Passive linear communication (push technology: “Take what is offered when it is available”) is replaced by active non-linear communication (pull technology: “Take what you want, whenever you want”);

- Asynchronous communication: content can be stored and await the user's decision to access it;
- Individualisation/personalisation, signifying the twin elements of both the sender's and the user's ability to guide communication flows in such a way that the sender can address to individual users content suited to their choices and interests, or users can select content from what is on offer for the same purpose;
- Disintermediation (any communicator can access any receiver directly, without the need for intermediaries, i.e. the media, and vice-versa) and neo-intermediation (e.g. emergence of new intermediaries on the Internet: portals, search machines which aggregate and organization information, and provide access to it).

As Cormack (2004, 7) notes, there is but the beginning of a debate about the use of the Internet by minority languages (reflected, for example, in recent issues of the journal *Mercator Media Forum*; see Falkena 2001; Fernandez 2001; Thomas et al. 2001; Lopez 2002). There are reasons to believe that the specific logic of new media will follow a similar pattern as the logic of traditional types of media, and thus affect minorities in the same way. There are, however, particular features of new media that will evidently mean new opportunities as well as new threats for minorities.

The Director of the Catalan New Media provider Vilaweb.cat, Vicent Partal (2006), has forcefully claimed that one cannot stand on the side in the development of new media but must take active part to keep pace. Partal claims that the current phase in the media development is characterised by a decline of traditional media, emergence of active "readers" (media consumers), personalisation and market fragmentation, rise of on-demand information and a transition to upload paradigms such as *blogs*, *flirck*, *myspace*, *youtube* etc. Whereas the old paradigm is based on the will of the companies (*download*), the new paradigm is based on the will of the readers (*upload*). This development is greatly enhanced by the new generation of the web (*Web 2.0*) which further develops existing wireless techniques (so called *W-LAN* and *WiFi* techniques) to become a type of web-based social software.

Jakubowicz (2006) notes that Web 2.0 is based on what is described as the "architecture of participation", a built-in ethic of cooperation, in which the service acts primarily as an intelligent broker, harnessing the power of the users themselves.

So far, this has been seen mainly in the explosive development of interactive weblogs (*Blogs*) and collectively produced hypertexts (*Wikis*), but the first examples of on-line video services that have created global audiences are already there. The interactive features of the new media environment have also led to suggestions of a re-definition of the concept *Information Society* (established in, for example, the EU parlance) to *Interaction Society* (Wiberg 2005). This development will change the entire information and communication environment, and the minorities will have to be part of these changes.

In more sociological terms, those new media that have developed through digitalisation of information technology show features that may or may not profoundly affect media practices. As noted above, digital media facilitate new communicative features, such as interactivity, sharing of information, easy upload, and transgression of spatial limitations. New qualities in communication that are introduced with new media allow us to transgress earlier limits in temporal and spatial interconnectivity. This may affect also fields that have not earlier been considered as part of the media world, such as how people communicate with and within administration and business (digital/social *imbrication*, to use a term introduced in media research, see Sassen 2006). For example, administrative matters that may earlier have been handled over interpersonal communication or correspondence become part of the interactive web, and on-line services take an increasing share of sales and marketing. Such developments will have to be assessed also from the point of view of how they affect minority rights and the position of services available in minority languages.

Whereas it is important to understand the distinct features of new media, it is equally important to look upon new media not only from the point of view of their technical characteristics and the potential

new modes of usages that this opens. In many cases, new media are just another distribution route that represents a less costly, less regulated and more efficient way to distribute information that could be distributed in traditional ways as well.

While new media may take on functions that have earlier been served by other media, this substitutive feature is partial and limited in many ways. Media habits change slowly and incrementally, young or technically advanced audiences may predominantly lean on other media than older or technologically more conservative audiences. Moreover, as new media have been introduced in the past, they have often been expected to substitute one or many of the existing media systems. But contrary to expectations, new media have developed their own distinctive features, and the old media have almost always adopted new strategies to adjust themselves to the new situation. Thus the new media themselves have tended to become part of everyday media practice, and the introduction of new media technologies has thus tended to add complexity and diversity to the media landscape. (Pool 1983, 5-7; Moring, forthcoming)

Different minorities are treated very differently by new media, and advantages and disadvantages may turn out opposite ways depending on the particular conditions where new media are introduced. A minority may benefit from the introduction of new digital radio or television services in its language over terrestrial networks (such as many migrant languages and Gaelic in UK, or Sami in Finland, Norway and Sweden, Finnish on radio in Sweden and Swedish on TV in Finland). At the same time, the transition to new forms of distribution may form an obstacle to access by requiring equipment that is not commonly in use. Existing forms of exchange, for example cross-border viewing of television—supported by international principles of transborder cooperation that are included in both the *Framework Convention* and the *Charter*—may be endangered by the same technological development. Such negative developments have raised heated debate in the Nordic countries, where the coding and decoding of national television may hamper established patterns of cross-border viewing due to copyright rules that are maintained by national media companies or by third parties.

Different types of media tend to obtain different functions and different patterns of use. Therefore, in developing media for national minorities *substitutive policies* (where new media are expected to substitute old media) would be inferior to *additive policies* (where new media add to the diverse media supply and old media adjust their niches). Any policy to treat minorities less generously than the majority in this development would be potentially very harmful. If, for example, services in minority languages are transformed from one platform (such as printed press, FM-radio, or television) to another platform (such as the Internet) while the same services in the majority language remain on the previous platforms and are complemented on the new platform, the relative opportunity of minorities to media access in their own language is hampered. This is likely to be particularly harmful in situations where the minority language is under threat and has to compete for attention among its own speakers.

Also the context in which minority media operate is changing. New media formats are introduced, targeting age- and interest segments of the audience. The traditional offerings, for example by public service television companies in minority languages, become marginalised. Research has directed attention towards the fact that generally speaking the media tend to favour majority culture (Innis 1951; more particularly, Busch 2001; Jackson and Rosenberg 2004). The overall effect of media tends to undermine rather than support minority identity in the sense that mainstream media accelerate language shift and assimilation of minority communities. In most cases, minority language media serve as a defensive tool, balancing the impact of the language(s) that dominate the media landscape (Moring, forthcoming).

In the following sections, these aspects will be discussed in terms of *institutional completeness*, *functional completeness*, *access*, and actual *supply* and *use*.

Within migrant minorities in particular, satellite television—offered by various types of broadcasters ranging from national public service to more or less ideologically or economically driven interests—

attract growing audiences (Georgiou 2003; Robins 2006). While this may support part of the identity of a minority group, it may leave another part - that relates to the current habitat - unsupported. The overwhelming presence of satellite media in some languages may overshadow efforts to develop media on national or local scale. And it should be remembered that only certain languages and cultures are supported by satellite media whereas others are not.

The current development will bring threats but also opportunities to minority media, which need to develop fast even to maintain their relative position on the media market. As is noted by Jakubowicz (2006), the digital new media and their global reach can empower national minorities and make them more self-reliant in media access and use as entry barriers to the Internet world are very low and it is easy to enter this market. Jakubowicz and McGonagle (2006) rightly also point to the need for capacity and skills to use those new media.

We do, however, have to consider new media also from the point of view of a market place where competitive features matter. Whereas new media offer the possibility of a diversified market, there are also signs of increasing concentration of the use of new media services on a global market to the biggest languages and the most forceful providers.

Institutional and functional completeness

Regarding media in general, access has been discussed from the perspective of media structures and their level of completeness (Moring, forthcoming; Moring and Dunbar, forthcoming). In an early study in this field conducted among minority groups in Canada (Breton 1964), it was not surprisingly found that high institutional completeness—including media—coincides with higher orientation towards the ethnic community, whereas low institutional completeness coincides with orientation towards the outer society. This would evidently have immediate repercussions regarding issues relating to integration or assimilation of minorities.

In this discussion, it is important to distinguish between *institutional* and *functional completeness* of the media landscape (Moring, forthcoming). By *institutional completeness* in the media⁵ we mean the level of completeness of a media system that serves a particular minority. One aspects of completeness is the availability of different types of media (print, radio, television and new media). Another aspect is the availability of formats (news and information, cultural programming, popular culture, media-related new services). *Functional completeness* means the extent to which people within a target group actually lean on the media supply that is produced for them (in their language or for their community).

It is evident that institutional completeness is a necessary, but not sufficient condition for functional completeness. Smaller societies, also smaller states with unique official languages, reside on a continuum of institutional completeness, as certain media formats are only marginally produced in the state and its language. States, however, tend to maintain or host a full range of types of media; press, radio, television including also satellite broadcasts, and new media. This is not normally the case for minorities, and particularly for unique minorities that are not supported by a kin-state. Such minorities tend to remain institutionally disadvantaged.

Even with full institutional support, in terms of types of media, societies and individuals reside on a continuum of functional completeness. It is commonplace, particularly for bi- or multi-lingual people, to use media in more than one language. Whereas this tendency to a varying degree concerns all types of media (less common for newspapers and talk radio, more common for music on radio and popular television) it is particularly clear as far as new media are concerned. As will be seen below, it is also apparent that the use of media on the web tends to be skewed towards big languages with voluminous presence on the web.

⁵ *Institutional Completeness* has been discussed as an aspect of minority policies also in a more general context, including all types of institutions supporting a (minority) language (cf. Kymlicka 1995, 1998 and 2004)

Whereas it is evident that institutional completeness and functional completeness are related - higher institutional completeness foster higher functional completeness - two additional concepts become of importance in our discussion of minorities' use of the media: *needs and preference*. It is important to keep in mind that different individuals and minority groups have different *needs* with regard to media. Some seek a level of *normalització* (Grin 2003, 201-203) in their media use, meaning that media use in the minority language would be made normal and correspond to the capacity and desire of the user. To achieve this state, minority and majority media would have to be made available on equal footing within society. For others, a complementary media use may be sufficient, mainly leaning on mainstream media, but fulfilling certain needs relating to culture and identity. *Preference* refers to the tendency of the target group to, *ceteris paribus*, direct their media use to such media outlets that are targeted to serve it. Also here, the variation is large between individuals and groups that mainly lean on minority (language) media if possible, and individuals and groups that only for particular reasons - such as to seek support for part of their identity - may more occasionally use such media.

Minority policies fostered in the spirit of the *Framework Convention* and the *Charter* would seek to develop a situation where a *strict preference condition* is met (Grin et al. 2003, 190). This means that the target public, all other things being equal, must display a net preference for carrying out at least some of their activities in their (minority) language rather than in the majority language. If this condition is not (or only weakly) met, protection will be ineffectual. Whereas the fostering of attitudes in society that support the strict preference condition is part and parcel of the *Framework Convention* and the *Charter*, the principle of choice would also have to be respected (as formulated in Article 3, paragraph 1 of the *Framework Convention*⁶).

Access

With regard to media for minorities, the question of access tends to be a key issue. New media form no exception. Communication scholars argue that the introduction of new communication technologies lead to knowledge gaps (Tichenor et al., 1965). With digitalisation of communication technologies, the knowledge gap has come to be termed the *digital divide* (Bucy, 2000; Norris, 2001). Disadvantages in material conditions, motivation and skills (van Dijk, 2005, 21-22) raise barriers that prevent, for example, the less educated, non-whites, women, elderly and lower income people from participating in digital communication on equal grounds. Questions relating to such divides are relevant also to this study, as part of the new media (such as Internet services or mobile services) are not available in all societies; and where available - for different reasons - are not accessible to all social layers or age groups. Different studies have shown that minority groups are in some cases more advanced as regards, for example, Internet usage and competence. This is pointed out by McGonagle 2006 on the basis of a recent study (OFCOM 2006); similar results have been reported in audience research for example among Finnish speakers in Sweden.

Regarding minorities there is, however, one particular aspect to the problem of access that calls for special attention. Particularly in situations where a minority is gradually assimilating into the majority population, even minor technical obstacles or other hindrances to access to minority media may do great harm to the culture. Those individuals that are most remote from the core of the minority, and thus require most encouragement to invest time and interest in media that support the minority culture, are often the most difficult to attract to invest in particular techniques or other extra investments that may be required. (Moring and Nordqvist 2002) It is thus not recommendable to provide services to minorities through special receivers (such as DAB radio in Finnish in Sweden), extra decoders (such as text television in Sami language), cable subscriptions, or decoding cards for digital receivers. On the contrary, if the objective is to safeguard and promote minorities, media services that contribute to this effort should be made as easily available as possible.

⁶ "Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice."

This problem has been pointedly raised, for example by the Advisory Committee of the Framework Convention in its opinion on Sweden in 2003 (first monitoring cycle, para. 43). In Sweden radio services in minority languages (particularly Finnish and Meänkieli) were improved on the digital (DAB) radio platform. The Committee stressed the importance of providing adequate resources to radio broadcasting in minority languages on Swedish Radio both at the national and regional level and further underlined that, when evaluating the situation in this sphere, the authorities bear in mind that digital radio was used by persons belonging to national minorities only to a limited extent. The same concern was reflected also in the first report of the Committee of Experts of the Charter in 2003 (first monitoring cycle, para. 353) regarding Meänkieli radio broadcasts. The speakers of this language expressed concern that a great proportion of the radio programming was transmitted digitally, which still prevents most people from being able to access these radio programmes.

In addition to the technical and skill aspects, there is also a market aspect in regard to the development of new media. The challenges of access within the new media market face not only disadvantaged individuals and groups, but the worry of being left aside is shared by smaller nation states as well. Projects to enhance access to on-line services by speeding up investments in infrastructure are commonplace (particularly broadband access). According to the market research institution Internet World Stats, by June 2006 usage of Internet had spread to 69 percent of the population in North America and 53 percent in Oceania and Australia. In Europe the figure was 36 percent, in Asia 10 percent and in Africa less than 3 percent. (www.internetworldstats.com - on-line document, retrieved 29.7.2006).⁷ Europe's relatively slow development in this field has lead EU to launch several programmes to support Community development of digital media. (See, for example, the EU web site eEurope, on http://ec.europa.eu/information_society/europe/2005/index_en.htm - on-line document, retrieved 29.7.2006)

The production and use of contents for this new market are, however, severely skewed. In terms of languages, 81 percent of the use of Internet takes place in the top ten languages on the web, ranging from 30 percent (in English) to 2 percent (in Russian).⁸ While this figure is not immediately valid as a measure of the use in small languages such as unique minority languages, it gives an indication of in which languages web-based media mainly develop.

As regards the daily services to minorities, it is important to look at to what extent, in which languages, and for which groups, business and administration develop new on-line services. Whereas this is not systematically studied, it is clear just from visiting the web sites even in officially bilingual states (such as Finland) that there is no congruence between the availability of information in the language spoken by the majority and the language spoken by the minority.

In the realm of the *Framework Convention* and the *Charter*, the use of new media by administrative authorities is a matter of immediate concern that has already been raised in relation to the instruments in question. As noted by Korkeakivi (2006), "the increasing role of new media is a development that affects not only the implementation of minority rights in the field of the media, but has potential implications that go way beyond that. For example, the *Framework Convention* provides the right to use a minority language in contacts with administrative authorities under certain conditions."⁹ Today,

⁷ Internet World Stats defines an Internet User as anyone currently in capacity to use the Internet. There are two requirements for a person to be considered an Internet User: The person must have available access to an Internet connection point, and the person must have the basic knowledge required to use web technology. (See www.internetworldstats.com/surfing.htm#1)

⁸ The languages, in falling order, are English, Chinese, Japanese, Spanish, German, French, Korean, Portuguese, Italian and Russian. See www.internetworldstats.com/stats7.htm

⁹ According to the *Framework Convention*, Article 10.2, "In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities."

many authorities communicate increasingly often with the public through the medium of Internet. So the question arises: to what extent the obligation under the *Framework Convention* to guarantee the right to use a minority language applies to such internet-based communication and to what extent, for example, the authorities' internet portals today include information in minority languages.”

The transfer of commercial and administrative activities to the web are examples of what above has been called digital and social *imbrication*. Apparently, in this field the lesser used languages lag severely behind. There is little research in this field, but there is a risk that the flexible and fast changing web-based services and information sites will more often be unilingual in comparison to traditional services based on printed materials. If this development occurs, this would lead to that in the new media world principles of official access would be increasingly overruled by aspects relating to size and resourcefulness of population. At the same time, we should notice that also the opposite development is possible; web-based services are technically easy and relatively cost-effective to maintain in several languages.

Challenges

In this context, the challenges fall into two broad categories. On the one hand, there is a need for schemes and regulations that strengthen policies against discriminatory and intolerant use of new media. On the other hand, there is a need for supportive incentives that can be introduced as part of the media sphere and regulatory practices.

In his comment to this report, McGonagle (2006) provides a useful categorisation of what he calls *mainstream media* and *minority media*. Applying the points he identifies in a tabular form, we may in broad terms, and non-exclusively, develop the following functional features:

	<i>Mainstream media</i>	<i>Minority media</i>
Communicative Sphere	Public sphere – more opinions lead to debate that is more inclusive and more representative	Creation of alternative public spheres/own discursive spaces
Tolerance	Elimination of discrimination and promotion of equality	Empowerment of minority groups; understanding the societal context of own position
Participation	Participation in general affairs of State and society	Participation in own affairs
Institution	All encompassing - intercommunity communication	Own institutions as a means of eliminating discrimination and promoting equality
Scope	Fostering of mutual understanding and tolerance	Promotion of language, culture and religion of minorities
Identity	Expression of distinct cultural identities and challenging of (negative) stereotypes	Validation of history, heritage and creative activities of minorities
Promotion	Promotion and validation of (minority) ways of life and traditions	Positive impact on minority communities – creation of network of information exchange; social capital, etc.
Spin-offs		Employment opportunities and economic spin-offs

McGonagle (2006) rightly notes that society may - and indeed should - carry out policies in order to enhance such functional aspects as listed above, and that this is not at odds with freedom of expression. These types of policies would fall under the broad concept of *Regulation*. Regulation may be direct and legally binding (such as broadcasting legislation); it may be indirect and binding (for example the undertakings in international instruments such as the *Framework Convention* or the *Charter*); they may be encouraging or facilitating (such as economic support schemes for the press); and they may be based on best practices (such as international guidelines, for example the OSCE Guidelines on the Use of Minority Languages in the Broadcast Media).

Regulatory principles can be divided into negative and positive, with respect to the goals they seek to pursue. Negative goals relate to efforts that seek to prevent observance and promotion of media rights (for example, principles of non-discrimination; to avoid hate speech or stereotypical depiction), whereas positive goals relate to actions designed to ensure exercising of such rights (goals that seek to assist minorities in the enjoyment of media rights; goals that seek to empower minorities actively to exercise such rights) (Jakubowicz 2005, 101-102).

In his comment to this report, Jakubowicz (2006) presents this argument in the form of a table, providing an overview of State obligations with respect to minority media rights:

Negative Goals	Positive Goals	
I. "Ban, combat"	II. "Assist"	III. "Empower"
State action to prohibit, disavow, marginalise, counteract all forms of discrimination and inequality	State action to develop public policy and regulation and provide assistance and funds to guarantee the right of minorities to media in their own languages, to access to media from kin and/or neighbouring countries and to a proper representation of their identity, culture, history and interests in media content, as well as action to promote inter-cultural and inter-ethnic dialogue and understanding	State not to hinder, or to take action to ensure minority access to, and participation in, the media at the level of: Programming Work-force Editorial control and management Ownership of media Regulation and oversight Legislation, public policy

As Jakubowicz rightly points out, while this table is derived from a traditional media landscape, it does still, *mutatis mutandis*, apply also to new media.

A main part of minority rights derive from general human rights standards, especially non-discrimination, freedom of expression, right to private life, and the right of members of a linguistic minority to use their language with other members of their community (de Varennes 2001, 16). The most fundamental individual rights are the freedom of expression and the principle of non-discrimination, established in many international treaties, for example the Convention for the Protection of Human Rights and Fundamental Freedoms, ECHR¹⁰, articles 10 and 14, and Protocol 12.

¹⁰ To the same family of international instruments belong, for example, the Universal Declaration of Human Rights, Articles 1, 2, 7, 10 and 26 (UN Doc. A/RES/217 A (III) 10. Dec. 1948); the International Covenant on Civil and Political Rights, Articles 2, 14, 20, 26 and 27 (Resolution 2200 A(XXI), 16. Dec. 1966); the Charter of Fundamental Rights of the European Union, Articles 20 and 21 (Official Journal of the European Communities (2000/C 364/01)); and the Council of Europe Parliamentary Assembly Recommendation on Migrants, Ethnic Minorities and the Media (1227/1995). (See Dunbar 2001, 91; Jakubowicz 2005, 100)

But since the beginning of the 1990s, there have also been developing a set of secondary rights of a supportive nature, encompassing a regime of linguistic promotion¹¹ (Dunbar 2001, 92; Jakubowicz 2005, 102-106; see also McGonagle 2006). Among these instruments, the *Framework Convention* and the *Charter* maintain a special position, due to their sophisticated monitoring mechanisms and the detailed character of the latter.

The complex relationship between policies that seek to respect and foster difference in society and at the same time foster mutual comprehension within a common public sphere requires three levels of communication. A within-group dimension (*the right to impart and share*) and the right of recognised presence in society (*the right to be heard*) are well established in the afore-mentioned second generation instruments. But meaningful communication also implies mutual comprehension (*the right to be understood*), which would require a medium of mutual intelligibility within civil society (Downing and Husband 2005, 216). This aspect has recently been given increasing attention, in direct connection with new media (particularly “diasporic” satellite television and on-line contents on the web), raising arguments for the maintenance of national public service broadcasting; but also, on a European level, for a common overarching dialogue that crosses national boundaries. The role and position of media for minorities is looked upon quite differently by participants in this debate (Robins, 2006).

McGonagle (2006) presents a number of regulatory measures with potential of exerting direct influence on minorities’ access to the media (especially broadcasting):

- Licensing of broadcasters and frequency allocation
- Participation in policy- and decision-making processes
- Public service broadcasting: specific remit
- Language prescriptions and translation requirements
- Temporal and structural criteria
- Existence or absence of promotional and other support mechanisms

Inspired by Schultz and Held (2001), Jakubowicz (2006) divides regulatory measures into two large groups—an *old* and a *new* approach—a division that has emerged as a consequence of convergence of media in a new digital environment. The difference between the two approaches is particularly relevant to content regulation:

<i>Old Model of Regulation</i>	<i>New Model of Regulation</i>
Content regulation of broadcasting	Horizontal, technologically-neutral, graduated regulation of audiovisual content services/electronic media involving – where appropriate – self- and co-regulation

¹¹ In addition to the Framework Convention and the Charter, the following instruments should be mentioned: under the auspices of the OSCE, the Document of the Copenhagen Meeting of the Conference of the Human Dimension (1990, 11 H.R.L.J.232) and the Oslo Recommendations Regarding the Linguistic Rights of National Minorities (The Hague: OSCE, 1998); the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UN Doc. A/RES/47/135, 18. Dec. 1992); and the 1994 Central European Initiative Instrument for the Protection of Minority Rights (On-line document, www.ceinet-download.org/download/minority_rights.pdf, retrieved 29.7.2006). (See Dunbar 2001, 92; Jakubowicz 2005, 104-105)

The terms in the two models are defined in the following way (for further reference, see Jakubowicz 2006):

- *Self-regulation* – where the State has no role to play;
- *Regulated self-regulation* – fits in with a legal framework or has a basis laid down in law
- *Co-regulation* – indicates situations in which the regulator is actively involved in ensuring that an acceptable and effective solution is achieved.

In the light of these opinions of renowned experts on regulation, it is clear that states also in a new media context are in the position to develop policies in this field through positive as well as negative policy measures. This report will now proceed to study the situation in practice, in light of existing research of the minority media in Europe and documentation from the monitoring process carried out by bodies of the Council of Europe.

Developments in national minorities' access to media—an overview

This study will focus more in detail on the two afore-mentioned international instruments that bear the most immediate relevance in the media field: the *Framework Convention* and the *Charter*. The discussion will focus on articles with relevance to media, particularly new media. Before entering into this discussion, a brief - and, because of the lack of systematic research in this field, necessarily incomplete - overview of existing minority media will be outlined. This overview builds on three main sources of information: the Mercator Media data base (www.aber.ac.uk/~merwww/, retrieved 29.7.2006), the MIDAS web site for minority newspapers (www.midas-press.org/index, retrieved 29.7.2006), and visiting of media web sites of a selection of prominent newspapers and broadcasting media operating in minority languages.

It goes beyond the scope of this study to chart a comprehensive landscape of the new media for minorities in Europe. Some studies exist on a national level (for example, Camauër 2005). In addition a recent EU project has charted the availability of “diasporic” media, particularly satellite television (Georgiou 2003). There is also a comprehensive study on the availability and regulation of traditional broadcasting, covering the entire OSCE (McGonagle et al. 2003). These studies will be selectively referred to in order to support the arguments presented here. Regrettably, no study has been found that would cover new media for minorities in Europe as such.

Supply

The main observation that rises out of an endeavour to chart the field is that very few minorities have access to media that can be considered to be *functionally complete*.

Media for autochthonous minorities

The situation of the autochthonous minorities within EU is reasonably well mapped out by different studies. The total size of the autochthonous minorities within the 15 states constituting EU before the latest enlargement is usually estimated at 40 million people forming around 60 communities (European Parliament Resolution on regional and lesser-used European languages, 2001). With enlargement, the number of communities that can be distinguished by language is now estimated to be 90 (Euromosaic 2004; the researchers do not estimate the number of speakers due to the great variation between different estimates, but 45 million is a figure that has been mentioned). There are, however, less than 10 communities that are served by all of the following: a daily newspaper (4-7 days/week), a radio station and a television channel broadcasting solely in the language. Such communities are the Basques and Catalans in Spain, German-speakers in Italy, Irish in Ireland (with the daily newspaper appearing in Northern Ireland, UK), Russian-speakers in Estonia, Russian-speakers in Latvia and Swedish-speakers in Finland. Four of these minorities have a neighbouring

kin-state. The other three are cross-border communities insofar as they have speakers—to a greater or lesser extent—in another state. With respect to all these communities, it can be noted that there are daily media services available also on the web. Whereas most of it is versioned off-spring from the traditional media, there are some quite innovative media as well. An outstanding example is the Catalan web service Vilaweb (López, Bernat 2002, see also www.vilaweb.cat/ - on-line document, retrieved 29.7.2006).

There are, however, several communities that have either a daily newspaper or a television channel in addition to services on the radio. MIDAS, the organization for minority language daily newspapers in Europe, has 29 members from 12 states. Among minorities that are served by a daily newspaper but not a television channel we find Danish and Sorbian-speakers in Germany, German-speakers in Denmark and Belgium, Hungarian-speakers in Slovakia and Romania, Slovenian-speakers in Italy, Italian-speakers in Slovenia, and Romansh-speakers in Switzerland. Usually, these communities are served by radio as well, though in some cases the radio stations operate in two or more languages. Also in these cases, the daily newspaper generally carries a news service and some other contents on line.

Communities served by television and radio but not by a daily newspaper are, for example, Welsh- and Frisian-speakers in the Netherlands, and Irish-speakers in the Irish Republic. In these cases too, the media services are carried out on a regular basis on the web. A listing included in the OCSE study on minority-language broadcasting (McGonagle et al. 2003) draws the following picture regarding broadcasting: of the 55 states included in the study, in about 10 percent of the states there were no provisions for broadcasting in minority languages. Indication of at least some provisions for programmes on radio or television were found in 90 percent of the states, but clear indications of existing full television channels operated in a minority language could be found in less than 20 percent of the states.

It must be noted, that the data bases supporting this information are incomplete, and some cases will be missing. For the autochthonous communities, particularly in the EU area, the broad picture provided, however, gives a rather realistic portrayal of the situation on the ground. All in all, some 20 communities are served by a functionally complete or almost complete set of “old media”, somewhat more than half of these have a neighbouring kin state. For all of these minorities it can be said that the media provide news and information from and about the community on a regular basis. In these communities, there are also regularly updated media services on the web. Many of these services are, however, offspring products of the traditional media. Sites offering more resource-craving services such as interactive blogs, pod-casting and video-on-demand do exist, but they are rare, and they have not developed at the same pace as the media industry in general.

For autochthonous minorities with a kin state, the supply on the web is dramatically different. Media in the kin-state usually maintain a full range of services available in the language spoken by the minority, which then can use these services. Whereas this may greatly enhance the language and also provide an attractive service to a minority in another state, it usually lacks the dimension of reporting from the community and about the community.

Regarding services to autochthonous minorities on the web, the data are even scarcer. Mercator Media provides information of some 45 radio stations or television channels that are offering services on the web in a minority language. In addition to the dailies, a great number of weeklies and other periodicals is available on the web as well. In addition, there are several news services that are solely available on-line, such as Vilaweb and Sabadell (in Catalan), Beo (in Irish), Asturnews and Asturias (in Asturian) and Nowodhow Kernow (Cornish). There is also a Finnish radio service in Sweden available only through digital broadcasting (DAB) and on the web (P7), and a Swedish Television station in Finland (FST Digital) that is available only through digital broadcasting (DVB).

Generally speaking, the picture emerges that where there are daily media outlets in minority languages, these outlets also maintain some services on the web. Except for the most resourceful

communities (such as the Catalan, the Basque, the Welsh, the Irish or the Frisian in Netherlands), unique minority languages are so far not extensively served by new media on the web. As far as the new media are concerned, the situation is quite different for kin-state minorities that can avail themselves not only of services provided by their own community, but also of those offered by the kin-state, which lack however the dimension of reflecting the community itself.

Media for migrants

There are several studies covering the visibility and representation of minorities in mainstream media. A common observation in this field (concerning autochthonous minorities, as well as immigrant minorities) is that mainstream media, directed at the majority population either hides, or if not, ethnifies, misrepresents, objectifies and stereotypes minority groups (much in line with Edward Saïd's classical analysis of Orientalism, Saïd 1978; see also, for example, Hervik 2003, van Dijk 2000, Eide 2003 and Raittila 2004;).¹²

The EMTEL project (Georgiou 2003) to some extent challenges this perspective, in the light of the development of new media and particularly of "diasporic" television. The project aims at mapping diasporas and migrant minorities within EU from the perspective of cultural exclusion by analysing cultural differences as expressed in media and ICT. This research shows convincingly the importance today to immigrant communities of "diasporic" media, while also revealing the unevenness of access to such media, the un-proportional role of urban production, and the caveats in competence to use some of the new media. The study estimates the size of "diasporic" communities in 15 member states of EU (EU before the enlargement in 2004) to 30 million people of a total of 380 million. In addition, there are older immigrant groups and a total of 5 million refugees. The study identifies 83 communities with at least 1,000 (and up to a few million) members in one or more EU countries (Georgiou 2003, 8, 30-31).¹³

The study shows that the vast majority of minority media for migrant groups are print publications of periodical nature.¹⁴ Particularly media that are circulated on a national scale are print media, whereas broadcasting media and the Internet are either local or transnational. The supply of transnational satellite ("diasporic") television is, however, enormous, if we compare it to the supply provided within a national frame; the study lists almost 200 different channels, mainly in European, Arabic, Turkish or Asian languages (Georgiou 2003, 48-51). While print media still dominate the scene, they are lagging behind because of a decrease in funding from the states. There is a growing focus on "diasporic" television and ICT, such as internet-based projects. Particularly the latter are often short-lived, especially when they are carried by smaller active groups on voluntary basis. Such projects may also create conflicts within the minority community as far as claims of representativity are concerned. The study also shows the interdependence between state support to multicultural projects, regulation, and development of minority media in this sector.

¹² Observations regarding misrepresentation are reflected in all the studied comments by the Advisory Committee of the Framework Convention. Particularly media coverage of the Roma population, where present, is frequently criticised for being prejudiced. Also observations regarding non-visibility of minorities in the media that target the majority population are included in the comments (see, for example, the second opinion on Denmark).

¹³ Some communities were entered several times as they represented different types of communities in different contexts.

¹⁴ This general conclusion gets support by a comprehensive study of migrant media carried out in Sweden (Camauër 2005).

Particular projects

On an EU-level, some media- and information society related projects have been carried out. The following examples could be mentioned:

A major outlet covering issues relating to national minorities and linguistic minorities is the news agency EuroLang, maintained by the European Bureau for Lesser Used Languages since 2000 with financial support from the European Union (www.eurolang.net). EuroLang focuses on matters related to minority languages. It operates in two distinct fields, reporting on a daily basis on the EU institutions on the one hand and on developments in the minority language communities in European states (predominantly EU states) on the other. According to information provided by the Bureau, it has half a million regular readers and its web site is accessed by one million visits per month.

A group of minority language daily newspapers gathered to a joint project for the years 2000-2002 within the EU financing scheme eContent¹⁵. The project focused on the use of automatic syntactical translation software, the uses of mobile telephone techniques for news and multi-portal services, and techniques for remote and personal printing of media. Automatic translation software has been in active use for the purpose of publishing versions of the same newspaper in two languages (Catalan and Castilian) in Catalonia, but has not yet spread to other languages.

The Mercator Media project, hosted by the University of Wales Aberystwyth and maintained with financial support of the European Union, has been used as a source for this study. It should, however, also be mentioned as a media project in its own right. Mercator's main goal is to gather, store, analyse and distribute information through a documentation and information network for regional and minority languages in the European Union.¹⁶ Mercator Media maintains an electronic database for media outlets. So far this database does not include a category for new media, but it maintains a directory of organisations broadcasting in a minority language on the web (www.aber.ac.uk/mercator/english/media/webcast.htm - on-line document, retrieved 29.7.2006).

Use

From a functional perspective, issues concerning minorities' use of media are two-fold. On the one hand, there is a need to support the connection between people and the society where they reside. On the other hand, there is a need to support the dynamics of the cultural identity of the minority. As is indicated by the argument presented above, the issue is complex and involves hybridisation of identities. This would also reflect on preferences in the use of media. It is evident that minorities in their use of media show great variation. The debate tends to address issues that are usually related to migrant minorities quite differently from issues relating to autochthonous minorities.

Autochthonous minorities

Looking at issues typically discussed in relation to autochthonous minorities, they appear in a quite different light. Here, the problem is usually formulated in terms of sustaining diversity against odds. Minority populations with a long history as citizens of the state are usually bilingual. As noted before in this study, the media landscape develops fast under market pressure from global culture industry and even smaller nation states find it hard to keep pace. Media supply for many of the unique minority cultures, such as some of the Celtic, the Sami, or the belt of old Latin minority languages north of the Mediterranean, remain notoriously undernourished and run the danger of becoming extinct. It is also

¹⁵ (<http://mnm.uib.es/pages/indice.php?lang=EN&option=OBJECTIVES> – on-line document, retrieved 29.7.2006)

¹⁶ There are three Mercator centres, in addition to Mercator Media, Mercator Legislation (hosted by CIEMEN in Barcelona), and Mercator Education (hosted by Fryske Akademie in Leeuwarden).

worth noting that even linguistic minorities that enjoy the support of a kin-state tend to shrink by partly assimilating into the national culture.

As has been shown in the not-so-extensive research, different autochthonous minorities show great internal variation. In communities that are extraordinarily equipped with media, such as the Catalan-speakers in Spain, the German-speakers in Northern Italy, or the Swedish-speakers in Finland, the media use may indeed be functionally complete (in the sense of the term *normalització* introduced above). But even in the communities that are best equipped, there is a gliding scale between individuals who lean predominantly on media in their own (minority) language and in individuals who use it more as a cultural artefact (Moring and Nordqvist 2002).

In situations where the media supply in the minority language is scarce, other patterns of media use occur. Brigitta Busch has studied the listening to Slovenian language radio in Carinthia, noting that the listening habits among Slovenian speakers tend to be of a complementary nature, while the media habits of the speakers of the minority language in general resembles those of the majority (Busch 2001, 37).¹⁷

The observation of a similarity in media use between the majority population and autochthonous minority populations supports the afore-mentioned argument against substitutive strategies in the development of new media. It is often expressed as a hope among policy makers that new media will provide society with a cost-effective tool for coping with cultural diversity. New media, particularly web services, would substitute for the lack of other media for minorities. In the light of this research, however, the functional differences between different types of media can be expected to remain after the introduction of new media. There is a slot in the day for a newspaper, for the radio, the television and the web. Substitutive arrangements of media supply will in many cases only increase the tendency for minorities to move towards the use of the majority media (in majority languages or languages of the global cultural industry). This, again, increases the danger of domain loss for endangered cultures. (Moring, forthcoming)

As audience and readership figures from Estonia and Latvia indicate, these states with substantial Russian speaking population show a quite divided media use. (Moring, 2006) This has been considered problematic. For example, the Advisory Committee of the *Framework Convention* points at a consequent division of the society in its opinion on Estonia (Opinion on Estonia, second monitoring cycle, paras. 19 and 72). Also in this minority, however, internal differences are found. Whereas part of the Russian minority would prefer media only in their language, and in this use would lean on media from Russia (which would resemble the alleged use of media of diaspora minorities), another, younger and usually more resourceful, part of the Russian minority would look for a more varied media supply, mixing Russian media with national media in Estonian and a variety of globally distributed media. (Jakobson 2004) This does, however, point to a division within the minority that appears to be at least partly due to a lack of media supply in the minority language.

In cases where the supply of minority language media have been increased, there have been clear indications of an even over-compensating increase of use of these services by speakers of these languages. Such examples were found in Finland, when a new radio station in Swedish for a younger audience was established, and in Ireland, where the programming on the Irish public service radio was increased (see Grin et al. 2003). This would indicate that - at least in many cases - the strict preference condition would be fulfilled, which means that minorities, *ceteris paribus*, would prefer media in their own language where available.

Generic knowledge of the use of web-sites directed to (or used by) minorities is not available and would require extensive research. An example of such use patterns would be the current situation among young Swedish-speaking Finns in Ostrobothnia who share their interest mainly between sites

¹⁷ Research of the Finnish minority in Sweden has given similar results, showing also a varying connectedness to the kin-state (Andersson 2002, 31-32).

from Finland and Sweden, such as the site of radio station Radio X3M (www.yle.fi/extrem), a Swedish language youth-oriented station broadcast in Finland that was established in 1997 and maintains an interactive web-community; and [Aftonbladet.se](http://www.aftonbladet.se) (www.aftonbladet.se), the site of the biggest evening newspaper in Sweden that offers a variety of popular culture and sports.

Migrant minorities

Turning to aspects of media use by migrants, concerns have been raised, as noted above, regarding cultural “ghettoisation” of minorities that would take place as an effect of extensive use of “diasporic” media (see Christiansen 2003, 157; Robins 2006, 145). In a report for the Culture and Cultural Heritage Department of Council of Europe, some of the assumptions underpinning this debate are challenged (Robins 2006). The report shows that the perceived homogeneity of the nation state is more and more becoming a false imagination, as is the perceived homogeneity of the migrant society (which does not necessarily restrict itself to one nation state).

The perception of a “diasporic” identity, evoked by “diasporic” television, is proven to be flawed, although channels broadcasting over satellite to migrant populations tend to claim the existence of audiences with homogeneous identities. The report argues that identity formation is not naïve, but much more sophisticated, and it places migrant populations in the core of cosmopolitanism and the development of transcultural sensibility. This, again, is seen as a positive value, facilitating European integration. At the same time, this calls for states and other agencies, at European and local levels, to apply a wider scope in the cultural policies and develop transnational cooperation (Robins 2006, 26-37, 44, 146-152). The concept *Transcultural Diversities* is introduced to challenge essentialist interpretations of the identity formation of migrant populations with respect to three relevant societies: the new host society, the migrant society residing in the host society and the society of origin.

Other research also supports the conclusions arrived at in the research headed by Robins. The picture that emerges is much more complex, and does not support expectations of ghettoised media use. The focus of the interest of migrant groups tends rather to be more broadly cultural instead of nostalgically oriented to the country of origin (Christiansen 2003, Robins 2006, 147; see also Alam and Husband, forthcoming). As shown by Christiansen, the media use of minorities - including recent movers who are less linguistically competent - is more diverse than expected. Irrespective of the fact that news from the country of origin may be given the highest esteem, news from the current country is also highly present in the preference structure, and - where available in an intelligible format - used. Efforts to reduce availability to new media would thus be based on misconceptions of assimilationist nature (compare to findings by Breton 1964, as quoted above).

The issue of participation in civil society has, however, been raised from a diametrically opposite point of view, relating to the construction of a common public sphere involving the entire society. The formation of isolated *sphericules* (Downing and Husband 2005, 211) could indeed be considered an obstacle to this process. The ultimate problems rising from such a development would, however, have to be reciprocal, and it would have to involve active support to involve the different segments of society, for example by increasing the resources of disadvantaged migrant communities. This type of policy would also include reciprocal rights and obligations of these communities and society at large. Such rights and obligations would include to receive, impart and share communication, and ultimately, to be understood. (Downing and Husband 2005, 213-218)

The worries about cultural cleavages have lately been addressed, predominantly, from this latter perspective within the confines of the European Broadcasting Union (EBU). This organisation holds specific provisions for services to minorities in its membership requirements. According to the membership conditions, active membership requires that the broadcasters “are under an obligation to, and actually do, provide varied and balanced programming for all sections of the population, including programmes catering for special/minority interests of various sections of the public, irrespective of the ratio of programme cost to audience”. (See the European Broadcasting Union website, www.ebu.ch/departments/legal/activities/leg_membership.php#active - on-line document, retrieved

29.7.2006). The President of EBU, Mr. Arne Wessberg specifies the obligation not only to concern all groups in society, but also to include programming that offers information, education, and entertainment. (A. Wessberg, personal communication, April 12, 2006.)

New challenges in term of access of national minorities to the new media

As noted above (see note 2), and as further explored in the comment by Jakubowicz (2006), the Council of Europe and also EU have initiated several initiatives with regard to new media. These initiatives include protecting human rights against violations stemming from the abuse of ICT; commitment to create conditions for equitable access to new communication services in order to promote participation in public life; removing hindrances to the free flow of information through new communication services; preventing digital exclusion and promoting inclusion in the Information Society by encouraging access to the new communication services along the lines of the principle of universal community service; and in the delivery of the public service aspects of the Internet requiring states to, where necessary, adopt measures to fill gaps in access to services left by private operators. As Jakubowicz rightly points out, these normative, policy and regulatory orientations represent stated Council of Europe policy and commitments in areas directly related to the development of new media.

But whereas Council of Europe and the State Parties have shown awareness of the importance of the development of new initiatives in this field, a focused study of the monitoring reports based on the two main instruments show little activity on the ground. This conclusion becomes evident on the basis of a focused study of the reports of the monitoring bodies of the *Framework Convention* and the *Charter*.

Issues relating to new media have particularly surfaced during the last few years (due to changes in the broadcasting systems because of digitalisation of transmission; due to a fast development of broadband availability in many states, and due to a heated debate on “diasporic” communities, as discussed above). Thus, this study will focus on opinions adopted by the Advisory Committee of the *Framework Convention* since 2004. As reports adopted by the Committee of Experts of the *Charter* are significantly fewer, they have been considered in full.

The reader should be aware of that *media* in many cases is used as a generic term, both in the texts of the *Framework Convention* and the *Charter*, and in the reports of the monitoring bodies. This means that new media may in many cases be included in the arguments, even if this is not singled out in the opinions or reports. The exercise here is, however, carried out in order to see how new media have expressly been addressed in the monitoring process, in order to direct awareness to this particular field.

The Framework Convention

All in all, 16 opinions have been adopted by the advisory committee of the *Framework Convention* since 2004 (this includes all opinions from the second monitoring cycle and three opinions from the first cycle)¹⁸. Because of the long-standing presence of immigrant minorities with access to satellite based “diasporic” television in Germany and UK, the opinions on these two states from the first monitoring cycle were included in the analysis, in spite of the fact that they fall outside the period selected for this study (Germany 2002, UK 2001). Thus, all in all, 18 opinions adopted by the Advisory Committee of the *Framework Convention* were included.

¹⁸ The opinions from the first monitoring are: Bosnia and Herzegovina, Bulgaria and The former Yugoslav Republic of Macedonia, Germany and United Kingdom. The opinions from the second monitoring cycle are: Croatia, Czech Republic, Denmark, Estonia, Finland, Hungary, Italy, Lichtenstein, Malta, Moldova, Romania, Slovak Republic and Slovenia.

As noted above, in the *Framework Convention* there are 5 articles that can be found, in part or in full, to be relevant to new media: articles 6, 7, 9, 17 and 18. In addition, the main findings, the concluding remarks, and article 4 were scanned for eventual entries related to new media.¹⁹

Article 4, paragraphs 2 and 3, requires of the Parties to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. Measures adopted shall not be considered to be an act of discrimination.

The reference to economic, social, political and cultural life would, indeed, apply to new media, for example, in instances where a state or local authority establishes information services on the web, or in decisions to support new media development in the cultural sphere.

The first paragraph of article 6 requires that the Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.

Paragraph 6.1 does not distinguish between different types of media. Thus also new media would naturally be included. In all opinions that have been scrutinised for the purpose of this study, issues relating to tolerance and the media are raised. It is evident, that new media may well have been considered also in cases where they have not been specifically singled out in the opinion. Only five opinions, however, expressly mention new media.

¹⁹ The articles/paragraphs that have been found relevant read, in full: Article 4. 2 The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities; 4.3 The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination; Article 6.1 The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media; Article 7 The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion; Article 9.1 The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media; 9.2 Paragraph 1 shall not prevent Parties from requiring the licensing, without discrimination and based on objective criteria, of sound radio and television broadcasting, or cinema enterprises; 9.3 The Parties shall not hinder the creation and the use of printed media by persons belonging to national minorities. In the legal framework of sound radio and television broadcasting, they shall ensure, as far as possible, and taking into account the provisions of paragraph 1, that persons belonging to national minorities are granted the possibility of creating and using their own media; 9.4 In the framework of their legal systems, the Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism; Article 17.1 The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage; Article 18.1 The Parties shall endeavour to conclude, where necessary, bilateral and multilateral agreements with other States, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned; 1.2 Where relevant, the Parties shall take measures to encourage transfrontier co-operation. In addition to these articles, more remotely, but with increasing relevance, also article 10, paragraph 2 may in certain instances carry obligations that in the context of an increasingly web-based society become part of the new media. This paragraph relates to the communication between national minorities using a minority languages and the authorities (see note 9).

Article 7 requires the Parties to ensure respect for the right of every person belonging to a national minority to freedom of expression. This article is the base for more detailed measures to be set out in article 9, which is the article of the *Framework Convention* that is specifically devoted to media.

In paragraph 9.1 the Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure that persons belonging to a national minority are not discriminated against in their access to the media.

As there is no qualifier for the word *media* in this paragraph, it would naturally cover also new media. As pointed out in the explanatory report to the *Framework Convention* (para. 57), the second sentence of this paragraph contains an undertaking to ensure that there is no discrimination in access to the media. This is indeed a base for the requirement of positive measures in the field of new media, in situations where new media for national minorities remain underdeveloped.

Paragraph 9.2 specifies that Parties are allowed to require the licensing of sound radio and television broadcasting, or cinema enterprises. Such licensing would have to be done without discrimination and based on objective criteria.

In the light of discriminatory regulation against minority language broadcasting in many states, apparent in the study commissioned by OSCE referred to above (McGonagle et al. 2003), there is ample need for this paragraph. Indirectly, it would pertain also to new media as many services in this field are carried by companies that are mainly operating as broadcasters. Also satellite- and cable transmission may come under this article, thus evoking matters relating to transfrontier reception or “diasporic” media.

In addition to regulations regarding the press, paragraph 9.3 sets out that Parties in the legal framework of sound radio and television broadcasting shall ensure that persons belonging to national minorities are granted the possibility of creating and using their own media.

In the context of new media, this article furthers the same goals as the previous article. In states where the rights and obligations of broadcasters (including public service broadcasting) set out in legislative acts include also new media, the legislative framework would fall under this paragraph.²⁰

Paragraph 9.4 requires Parties to, within their legal systems, adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism.

As does paragraph 9.1, this paragraph also requires active facilitation, not distinguishing between types of media.

All in all, Article 9 does require the State Party to actively safeguard equality and facilitate access to all media, including new media.

Articles 17 and 18 are concerned with transborder cooperation, a field that in the light of the arguments presented above is increasingly important not only to autochthonous minorities with a kin-state across the border, but also to “diasporic” minorities of more recent migration. In several opinions

²⁰ Such regulative standards have recently been introduced, for example, in the Finnish Act on Yleisradio Oy (Finnish Broadcasting Company) (1380/1993; amendments up to 635/2005 included), where the duties of the company (Section 7) is defined as follows: “The company shall be responsible for the provision of comprehensive television and radio programming *with the related additional and extra services for all citizens under equal conditions*. (Emphasis added) These and other content services related to public service may be provided in all telecommunications networks.”

of the Advisory Committee it is made sufficiently clear that the *Framework Convention* concerns itself with both types of minorities (see note 2). As noted above, issues relating new media to transfrontier communication do not limit themselves to satellite broadcasting or web services. The issue has been given new actuality with the introduction of digital television that requires decoding. In many instances, for example when right-holders sell rights only for broadcasting in one state, earlier spill-over viewing on analogue television may become impossible with the introduction of the new techniques.

Article 17, paragraph 1 requires Parties not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage. Article 18, paragraph 1 requires parties to endeavour to conclude, where necessary, bilateral and multilateral agreements with other States, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned. Paragraph 2 requires Parties to take measures to encourage transfrontier co-operation. In the explanatory report (para. 86) this is exemplified with bilateral and multilateral agreements, for instance, in the fields of culture, education and information.

Articles 17 and 18 clearly make it an issue to State Parties not only to refrain from restricting new transborder media that may serve national minorities, but to react if existing transborder exchange in this field is hampered in any way.

Whereas there is plenty of room for permissive as well as actively supportive measures in the field of new media under the *Framework Convention*, very few direct references to new media were found in the opinions of the Advisory Committee that were scrutinised for this study. In five cases, such issues were raised under article 6, in 6 cases they were raised under article 9 (a seventh case, also included here, falling outside the set period of study), in one case issues that had been raised were further reflected on in the main findings and in the concluding remarks.

Under Article 6, three of the cases found are mainly concerned with negative stereotyping and racist contents on the Internet. The opinion on the Czech Republic (second monitoring cycle, paras. 85 and 90) mentions, among other examples from different media, that anti-Semitic ideas are circulated on Internet, and calls for self-regulatory and monitoring bodies, as well as ethical councils, to pay more attention to these phenomena and combat them by using all means at their disposal.

The opinion on Romania (second monitoring cycle, para. 88) expresses concern with that, irrespective of a positive trend in many media, the Roma continue to face attitudes marked by negative stereotypes and prejudices on the part of the non-Roma population. More recently, hostility towards Roma in sports arenas and on internet discussion forums has been reported.

The opinion on Finland (second monitoring cycle, paras. 84, 85, 87, 88 and 171.) notes that the Act on the Exercise of Freedom of Expression in Mass Media contains new tools to tackle racist materials on the Internet. It also notes that the Finnish Ministry of Education has organised seminars concerning racism on the Internet, seeking to raise awareness among internet operators and others concerned about the issue. The Advisory Committee, however, did express concern about the fact that the Internet, including a number of moderated discussion sites, is regularly used to spread negative stereotypes of certain minorities and to post racist material particularly in relation to non-traditional minorities of Finland, such as the Somalis. This type of material also extends to traditional minority groups, such as the Swedish-speaking Finns. While expressing its appreciation of the role of the Internet as an open forum for discussion and debate, the Advisory Committee has shown concern that the commitment to the principles of Article 6 of the *Framework Convention* have not fully penetrated into Finnish society at large. Also in this case the Advisory Committee found that self-regulatory bodies of the media should be encouraged to pursue further initiatives to stamp out derogatory terminology and reporting based on negative stereotypes concerning minorities. Furthermore it suggested that efforts to spread good practices amongst internet operators should be expanded further.

It finally noted that the new legal tools to combat racist speech on the Internet should be invoked where necessary, in full compliance with freedom of expression. The concern about manifestations of intolerance on the Internet was further reflected on in the Concluding Remarks.

One opinion (the opinion on Estonia, second monitoring cycle, paras. 19, 72 and 85) expressed concern of a situation that would in the conceptual discussion above be considered a case of “*diasporic*” media. The opinion noted that a certain separation between the majority population and the largest minority groups persists in various sectors of society. In addition it noted that inter-cultural dialogue in the field of media continues to be complicated by the fact that a majority of the persons belonging to national minorities continue to follow largely foreign-based media, in particular TV, thereby often falling outside the domestic information system. This concern was further reflected upon under Article 9, as a need for more programming for minorities on public service television, and in the Main Findings.

In one opinion (opinion on Moldova, second monitoring cycle, para. 65) a positive initiative based on internet is presented. The opinion positively noted the recent setting-up, with international backing, of a forum for information and common dialogue (“Ethnoforum”) open to the various ethnic groups. It consists in particular of a bilingual, interactive Web pages (State language and Russian) open to interethnic communication, and the production of a series of television programmes on the same set of issues to be broadcast by the public television channel.

Under article 9, in addition to the afore-mentioned reflection on the lack of television in minority language in Estonia that make Russian speakers dependent of broadcasts from abroad, we find 5 cases that more or less directly relate to new media.

In the opinion on Finland (second monitoring cycle, para. 96), the Advisory Committee welcomed the fact that Sami language TV news programmes are, as from 2005, accessible throughout Finland. While the Committee does not single it out, this development occurred due to digitalisation of broadcasting.

Express reference to digital broadcasting is to be found in one opinion only: on UK (first monitoring cycle, paras. 96, 62, 65 and 69), where the Advisory Committee took note of the availability of programme streams on local digital television multiplexes, eight of which contain streams for ethnic minorities. The Advisory Committee also welcomed the statement in the Government’s Communications White Paper that consideration will be given to the recommendations of the Gaelic Broadcasting Taskforce on the feasibility of a dedicated Gaelic television service once digital television becomes widely available. The Advisory Committee recognised the limited frequencies accessible for broadcasting and the competition for the limited licences available and noted that digital, cable and satellite broadcasting would bring with it new and further possibilities for meeting demands. It further stated that encouragement should be given to opening up broadcasting further to national minorities, using for example opportunities offered by the implementation of new technologies.

In the Opinion on Hungary (second monitoring cycle, paras. 73 and 74.), the Advisory Committee noted that time slots set aside for minority programmes in the first monitoring round were found not to reach the greatest number of the target audience. The Advisory Committee noted that there had been no improvement in this matter since the first monitoring cycle. Television programmes aimed at minorities were still broadcast early on weekday afternoons on the main Hungarian terrestrial channel and repeated on Saturday mornings on the second channel, transmitted via satellite. (In its comment on the opinion, the Hungarian government informed that a Democracy Channel was being started within public television broadcast by cable, thus shifting the broadcasting periods for national minorities’ programmes to a more favourable time interval.)

In addition to the opinions that fall within the studied time interval, the opinion on Sweden from the first monitoring cycle (2003) merits mention. Against the background of a development of particularly

Finnish and Meänkieli services on the digital (DAB) radio platform, the Advisory Committee in para. 43 expressed concern that radio broadcasting in minority languages on Swedish Radio is given adequate resources both at the national and regional level and that, when evaluating the situation in this sphere, the authorities bear in mind that digital radio is presently used by persons belonging to national minorities only to a limited extent.

In two further cases under article 9, issues relating to the availability of information on the web were raised.

In the opinion on Romania (second monitoring cycle, para. 114), the Advisory Committee noted that the minorities have numerous publications, mostly in the minority language or bilingual. In 2003, there were over 120 publications in Hungarian (the press and on-line) in various counties in the country, which received state funding.

In the opinion on Slovenia (second monitoring cycle, paras. 125, 126 and 127.), the Advisory Committee noted that the Constitution of Slovenia guarantees all individuals the right to express freely their affiliation with a nation or ethnic community, to develop and express their culture and to use their language and alphabet. At the same time, it noted that the recent Act on Public Use of the Slovene Language states that Slovene is the language to be used in the media, press conferences and written statements submitted to the media, and in web pages financed from public funds except for Hungarian, Italian and foreign languages by foreigners). The Advisory Committee found the Act problematic as regards the freedom to receive and circulate information and ideas in the minority language. The Advisory Committee recommended that the authorities should ensure that there are no legal obstacles hindering the use of mother tongue in the media by the Roma and others who might be affected. Amendments to the law should be introduced to ensure its full compliance with the relevant provisions of the *Framework Convention*.

The Charter

The construction of the *Charter* differs from the construction of the *Framework Convention*. Only parts of the *Charter* are generally applicable to all states that have ratified it. In terms of undertakings, the so called Part II of the *Charter* is generally applicable, whereas more concrete undertakings (under the so called Part III) are expressly defined in the instrument of ratification by the State Party, which may select undertakings from a menu. At least 35 paragraphs or subparagraphs must be designated for each language that the State Party wishes to include under Part III. Each State can apply different undertakings to different regional or minority languages. With respect to new media, particularly relevant articles of the *Charter* are article 7, para. 1, subparas. d, e and i; para. 3 from Part II; article 11; article 12, para 1, subparagraphs a, b, c and g; and article 14 from Part III.

A recent report has been commissioned by the Council of Europe regarding the *Charter* and the media (the afore-mentioned Moring and Dunbar, forthcoming). The analysis of the monitoring reports of the Committee of Experts of the *Charter* will partly be based on this study.

The *Charter* has been ratified by 21 states (by August, 2006). The report by Moring and Dunbar covers 13 of these states (those that have completed at least one monitoring round, except for Lichtenstein which maintained that it has no regional or minority languages, and Armenia for which the Committee of Experts had not yet published its report). This study has been updated with information regarding Armenia. All in all, the 14 reports²¹ of the Committee of Experts that have been studied cover 51 regional- or minority languages.

²¹ Armenia, Austria, Croatia, Denmark, Finland, Germany, Hungary, Netherlands, Norway, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom

In Part II, Article 7, the objectives and principles of the *Charter* are defined²². Among those we find several with consequences for new media. Subparagraph 7.1.d requires states to facilitate and/or encourage the use of regional or minority languages, in speech and writing, in public and private life; subparagraph 7.1.e requires the maintenance and development of links, in the fields covered by the *Charter*, between groups using a regional or minority language and other groups in the State employing a language used in identical or similar form, as well as the establishment of cultural relations with other groups in the State using different languages. Subparagraph 7.1.i requires the promotion of appropriate types of transnational exchanges for regional or minority languages used in identical or similar form in two or more States. While these subparagraphs do not expressly mention media, they call for attention to media in general, including new media (particularly the web and transborder broadcasts of different types).

Paragraph 7.3 expressly mentions media, requiring the Parties to promote, by appropriate measures, mutual understanding between all the linguistic groups of the country and in particular the inclusion of respect, understanding and tolerance in relation to regional or minority languages among the objectives of education and training provided within their countries and encouragement of the mass media to pursue the same objective. Paragraph 7.5 requires the Parties to apply, *mutatis mutandis*, the same principles to non-territorial languages in a flexible manner, bearing in mind the needs and wishes, and respecting the traditions and characteristics, of the groups which use the languages concerned.

The measures regarding media in Part III of the *Charter* are more concrete, and also in some cases more explicitly related to new information technologies. On the other hand, however, not all Parties select these obligations. This is a logical consequence of the nature of the *Charter*.

Article 11 is the article specifically devoted to media²³. There are undertakings relating to radio, television and the press, which indirectly apply to new media as well (subparagraphs 11.1.a-c and e).

²² Article 7.1 In respect of regional or minority languages, within the territories in which such languages are used and according to the situation of each language, the Parties shall base their policies, legislation and practice on the following objectives and principles: ... d the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life; e the maintenance and development of links, in the fields covered by this Charter, between groups using a regional or minority language and other groups in the State employing a language used in identical or similar form, as well as the establishment of cultural relations with other groups in the State using different languages; ... i the promotion of appropriate types of transnational exchanges, in the fields covered by this Charter, for regional or minority languages used in identical or similar form in two or more States.

²³ 11.1 The Parties undertake, for the users of the regional or minority languages within the territories in which those languages are spoken, according to the situation of each language, to the extent that the public authorities, directly or indirectly, are competent, have power or play a role in this field, and respecting the principle of the independence and autonomy of the media: (a) to the extent that radio and television carry out a public service mission: (i) to ensure the creation of at least one radio station and one television channel in the regional or minority languages; or (ii) to encourage and/or facilitate the creation of at least one radio station and one television channel in the regional or minority languages; or (iii) to make adequate provision so that broadcasters offer programmes in the regional or minority languages; b(i) to encourage and/or facilitate the creation of at least one radio station in the regional or minority languages; or (ii) to encourage and/or facilitate the broadcasting of radio programmes in the regional or minority languages on a regular basis; c (i) to encourage and/or facilitate the creation of at least one television channel in the regional or minority languages; or (ii) to encourage and/or facilitate the broadcasting of television programmes in the regional or minority languages on a regular basis; d to encourage and/or facilitate the production and distribution of audio and audiovisual works in the regional or minority languages; e (i) to encourage and/or facilitate the creation and/or maintenance of at least one newspaper in the regional or minority languages; (ii) to encourage and/or facilitate the publication of newspaper articles in the regional or minority languages on a regular basis; or f (i) to cover the additional costs of those media which use regional or minority languages, wherever the law provides for financial assistance in general for the media; or (ii) to apply existing measures for financial assistance also to audiovisual productions in the regional or minority languages; (g) to support the training of journalists and other staff for media using regional or minority languages. 2. The Parties undertake to guarantee freedom of direct reception of radio and television

Thus, the requirement for broadcasting services may include digital and satellite broadcasting, services may be expanded with the help of digitalisation of broadcasting, and the access may more or less temporarily be negatively affected by the introduction of digital technologies or satellite/cable broadcasting.

More explicitly, new media are covered by paragraph 11.d, which require State Parties to encourage and/or facilitate the production and distribution of audio and audiovisual works in the regional or minority languages. There are 34 languages covered by ratifications of this article. Much of the new media can be regarded as audiovisual works, and many distribution techniques (such as on-line media) can be regarded as new media.

The subparagraphs 11.1.f.i (“to cover the additional costs of those media which use regional or minority languages, wherever the law provides for financial assistance in general for the media; 7 languages are covered by this subparagraph”) and 11.1.f.ii (“to apply existing measures for financial assistance also to audiovisual productions in the regional or minority languages”; N.B.: 28 languages are covered by this subparagraph) are alternative to each other. They require the State Party to apply existing financial support schemes also to media in regional or minority languages. These paragraphs are not restricted to any particular media, which means that they apply also to new media. For example, a state that has accepted either of these undertakings, and supports development of internet media, would be required to apply the support scheme also to media in the regional or minority languages. Likewise, paragraph 11.1.g, which requires the State Party to support the training of journalists and other staff for media using regional or minority languages, would apply to new media in the same way as it applies to any other media (18 languages are covered by this paragraph).

Paragraph 11.2 requires the Parties to guarantee freedom of direct reception of radio and television broadcasts from neighbouring countries in a language used in identical or similar form to a regional or minority language, and not to oppose the retransmission of radio and television broadcasts from neighbouring countries in such a language. This article (that covers 44 languages) would be of immediate importance with regard to effects on transborder viewing in connection with the digitalisation of media and satellite distribution. As specified in the explanatory report to the *Charter* (para. 111), this paragraph applies not only to freedom of reception but also to passive obstacles resulting from the failure of the competent authorities to take any action to make such reception possible. The explanatory report (para. 112), however, notes that provisions of this paragraph do not affect the need for copyright to be respected.

Paragraph 11.3 requires State Parties to ensure that the interests of the users of regional or minority languages are represented or taken into account within bodies established in accordance with the law with responsibility for guaranteeing the freedom and pluralism of the media (29 languages are covered by this paragraph). This paragraph would apply to new media directly if, for example, ethic boards or other institutions would be designated by law to handle complaints regarding intolerant contents on the Internet (as suggested by the Advisory Committee of the *Framework Convention*, see section above).

broadcasts from neighbouring countries in a language used in identical or similar form to a regional or minority language, and not to oppose the retransmission of radio and television broadcasts from neighbouring countries in such a language. They further undertake to ensure that no restrictions will be placed on the freedom of expression and free circulation of information in the written press in a language used in identical or similar form to a regional or minority language. The exercise of the above-mentioned freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. 3. The Parties undertake to ensure that the interests of the users of regional or minority languages are represented or taken into account within such bodies as may be established in accordance with the law with responsibility for guaranteeing the freedom and pluralism of the media.

Article 12, which is focused on cultural activities and facilities²⁴, expressly includes a reference to the use of new technologies. Subparagraph 12.1.a (50 languages are covered by this subparagraph) requires the State Party to encourage expression and initiative specific to regional or minority languages and foster access to works in these languages. Paragraph 12.1.b (28 languages are covered by this subparagraph) requires the State Party to foster access to works produced in regional or minority languages to the large audience by aiding and developing translation, dubbing and other techniques; techniques that are in many cases developed as part of new media (for example, the aforementioned MNM-project financed by the EU programme eContent). Paragraph 12.1.c (26 languages are covered by this subparagraph) is a reciprocal commitment to make works available in regional or minority languages. Paragraph 12.1.g (39 languages are covered by this subparagraph) requires encouragement or facilitation of access through collecting, archiving, presentation and publishing of works in regional or minority languages.

Article 14 focuses on transfrontier exchanges.²⁵ While media are not expressly mentioned in this context, information is explicitly contained in paragraph 14.a (39 languages are covered by this paragraph). Both paragraph 14.a and 14.b (41 languages are covered by this latter paragraph) are involved with the same objective: to foster contact and co-operation over borders between identical or similar languages. Article 14 of the Charter is thus much involved with the same objectives as articles 17 and 18 of the *Framework Convention*. It would be quite unnatural to exclude media in any form from the field covered by the article.

Though issues relating to new media are clearly relevant under the *Charter*, the monitoring process has not yet to any great extent brought such issues to the fore. Whereas all the articles, paragraphs and subparagraphs listed above evoke a lot of observations regarding media, only few instances of reference expressly to new media were detected.

Under subparagraph 7.1.d, in the report on Austria (first monitoring cycle, paras. 72 and 77), it was noted that television programmes in Croatian and programmes in Hungarian from the Burgenland studio were made available on digital television in Vienna, an arrangement that was found insufficient. It was also noted (para. 73) that radio programmes in Czech language are made available on medium wave and internet. The Committee of Experts underlined the importance of devising a solution to make the programmes available on a more accessible medium.

In the report on Finland (second monitoring cycle, para. 46), it was noted that television programmes in Russian were available through satellite and cable television.

²⁴ Article 12.1 With regard to cultural activities and facilities - especially libraries, video libraries, cultural centres, museums, archives, academies, theatres and cinemas, as well as literary work and film production, vernacular forms of cultural expression, festivals and the culture industries, *including inter alia the use of new technologies* (emphasize added, TM) - the Parties undertake, within the territory in which such languages are used and to the extent that the public authorities are competent, have power or play a role in this field: a to encourage types of expression and initiative specific to regional or minority languages and foster the different means of access to works produced in these languages; b to foster the different means of access in other languages to works produced in regional or minority languages by aiding and developing translation, dubbing, post-synchronisation and subtitling activities; c to foster access in regional or minority languages to works produced in other languages by aiding and developing translation, dubbing, post-synchronisation and subtitling activities; g to encourage and/or facilitate the creation of a body or bodies responsible for collecting, keeping a copy of and presenting or publishing works produced in the regional or minority languages.

²⁵ Article 14. The Parties undertake: a to apply existing bilateral and multilateral agreements which bind them with the States in which the same language is used in identical or similar form, or if necessary to seek to conclude such agreements, in such a way as to foster contacts between the users of the same language in the States concerned in the fields of culture, education, information, vocational training and permanent education; b for the benefit of regional or minority languages, to facilitate and/or promote co-operation across borders, in particular between regional or local authorities in whose territory the same language is used in identical or similar form.

In the report on Germany (first monitoring cycle, para. 59), the Committee of Experts argued against the authorities' claim not to be allowed to 'interfere' with media and, therefore, to take no action likely to improve the presence of regional or minority languages in this field. The Committee argued that freedom of expression in the media was not compromised by facilitating or promoting use of regional or minority languages in the media. It noted further that, by reason of their relative economic and political weakness, minority languages are at an inherent disadvantage when it comes to opportunities to be seen and heard in the media. Noting the necessity for this imbalance to be redressed by positive measures, the Committee specified that "Such measures are needed *both in traditional and new media*." (Emphasis added, TM). The Committee of Experts reiterated this point in its report from the second monitoring cycle (para. 30).

Under subparagraph 7.1.e, in the report on the Netherlands (first monitoring cycle, para. 25), the Committee of experts noted that the administrative division in areas where Lower Saxon is spoken resulted in an obstacle to links between communities, especially as regards cable television.

Under article 11.1.a-c we find several examples of mention of new media. For example, the report on Sweden (first monitoring cycle, paras. 237 and 242), mentioned satellite and cable broadcasts in Finnish, and as has been mentioned above, reflected a concern of representatives of the Meänkieli speakers that a great proportion of radio programming in their language was transmitted digitally, which still excluded most people from being able to listen to these radio programmes. (para. 353). The report on UK (first monitoring cycle, para. 161) mentioned the possibility to choose a Welsh sound track for the second S4C television Channel, a service that was available for viewers possessing correct digital apparatus. The Committee of Experts pointed to the risk of exclusion of those who did not possess such equipment, but accepted the arrangement in spite of this problem.

Under subparagraph 11.1.d, in the report on UK (first monitoring cycle, para. 163), the Committee of Experts positively notes that the television channel S4C makes funds available for feature films and on-line audio-visual works in Welsh language.

Under subparagraph 12.1.g in the report on Denmark (first monitoring cycle, para. 101), and in the report on Finland (second monitoring cycle, para 153), the Committee of Experts noted that archiving includes games, audiovisual books, and works on CD and CD-Rom.

Issues where further reflection at an intergovernmental level would be needed

There are some general conclusions and recommendations rising from the conflict between new initiatives in the field of new media that have been initiated by State Parties under the auspices of Council of Europe on the one hand, and the apparent lack of activity on the ground, witnessed by the monitoring work of the *Framework Convention* and the *Charter* on the other.

Main conclusions

The main conclusion of this study is that there does not appear to be a lack of international instruments that apply—at least in a general sense—to the new media. But whereas the instruments are in place, their application to this new field is only in its first stage of development. The undertakings included in the *Framework Convention* and the *Charter* that are relevant to the new media are in many cases applied to media in general, but in very few cases the monitoring reports have singled out valid approaches to new media. Particularly those paragraphs of the *Framework Convention* that do not specify the type of media (9.1. and 9.4) could be actively used when States develop new types of media such as web-based and mobile solutions. Regarding the *Charter*, activities in this field could be carried out as inspired by article 11.1.d, which concerns production and distribution of audio and audiovisual works, and article 12.1, which concerns cultural activities and facilities and expressly covers *inter alia the use of new technologies*. The monitoring reports show that the development of new media in line with the requirements raised by these articles has in single cases already occurred. However, there appears to be a need for a more coherent inclusion of new media in state policies, and also in how states report new developments in this field as part of the monitoring process. This conclusion points to an obvious role of the DH-MIN in supporting increased attention to new media in the policies and regulative practices of the State Parties as well as in the way they follow up these developments as part of the monitoring process.

A second conclusion is that good practices in relation to new media have been developed under the *Framework Convention* and the *Charter*. What has here been called “negative goals of State action” (for example, principles of non-discrimination; suppression of hate speech or stereotypical depiction) are fostered and carried out as part of the process of implementation.

A third conclusion is that with the development of Information Society (more recently also Interaction Society) there are consequences for minority rights that in a traditional sense would not be considered media-specific. Administrative authorities offer more and more of their information and services through web portals and on-line, and much of this is not available in minority languages. There is an evident need to foster new practices also in this field, as part of policies to improve the position of national minorities with respect to new media.

A fourth conclusion arises from the developments in the field of media regulation. In light of the opinions by two leading experts in this field, regulatory measures required to carry out negative as well as positive regulation in the field of new media with the objective to protect and promote national minorities are (1) either in place; or (2) possible to install within regimes that are already established or in the process of being established at the level of the European Union. The deficit in practical implementation of measures regarding new media, required by the *Framework Convention* and the *Charter*, as shown in the empirical parts of the study, can thus be mended by pointed policy measures leaning on accepted standards.

A fifth conclusion is that the implementation process appears to be useful in the enhancement of diversity goals in a broader sense. Broadcast media (“diasporic” broadcast media, such as satellite television, in some cases in combination with cable distribution and digital broadcasting) have been discussed as a potential problem relating to the integration of migrant minorities. Again, there are good examples of how policies carried out in line with recommended practices included in the two instruments of the Council of Europe contribute to reduce problems in this respect. On the other hand, the spatial and temporal features of the web (and satellite broadcasting) allow a new connectedness. Groups of people with cultural proximity may connect irrespective of distance. Particularly for migrants, this feature appears to be important. Research, however, shows that migrants often relate more to the urbanised dwellings where they predominantly reside, and to their culture which they may share more with other migrants of the same background than with the places of their national origins. This new type of *citizenship* calls for particular attention to the development of media that support the minority in its new habitat. If this potential is rightly developed, it is a feature that may have strong

positive impact on the development of transnational and transcultural understanding. This would point to the relevance also in this realm of the same basic considerations that underpin the *Framework Convention* and the *Charter*. DH-MIN may advance this development by paying increased attention to the bench-marking value of the two instruments also in this realm.

A sixth conclusion is that transfrontier reception of media appears to need particular attention. There is a richness of measures in the *Framework Convention* and the *Charter* that do apply to this issue (articles 17 and 18 of the *Framework Convention*; subparagraph 7.1.i, paragraph 11.2 and article 14 under Part III of the *Charter*). There are also enlightening examples, showing how the issue has been raised (in regard to traditional broadcasting) under Part II of the *Charter*, subparagraph 7.1.i.²⁶ The attention of DH-MIN is drawn particularly to two aspects of this problem: (i) developments following from the emergence of new borders as new states have been formed, and (ii) developments following from the transition to new technologies that require mutual standards and solution to problems that relate to distribution and rights.

A seventh conclusion is that, regarding access to new media on the new media market, national minorities are in many cases left aside of the newest development. This lagging behind calls for attention to positive measures that enhance the development of content production and distribution and that can meet market-conditions. When addressing these challenges, states are required to recognise that new media should be developed side by side with traditional forms of media. Research clearly indicates that new media cannot be introduced as substitutive to traditional media without negative cultural consequences for the minorities. Policies with this objective would not differ in any fundamental way from policies aiming at increasing production of contents and distribution of traditional media. DH-MIN may wish to advance the development of supportive measures also in this field.

An eight conclusion concerns a quite specific, though important, field of application of new information technologies: the development of translation technology. A study in this field, commissioned by the European Parliament, notes as its main finding that “threat to linguistic diversity on the Internet will not, in the future, come from the dominance of one language but from the uneven development of language technology and resources which, given present trends, will privilege half a dozen world languages. It is estimated that the proportion of non-English speakers using the Internet will have raised to 60 per cent by 2005. Thus, global communication and information retrieval, e-commerce and websites that wish to have a global reach will all need either to be multilingual or to use machine translation systems.” (Thomas et al. 2001, 85) Attention to the aspects of apt investments in these technologies to advance communication between different groups in society should be of interest in the development of policies in this field.

A final conclusion concerns the main instruments discussed above. To some extent the findings in this study could be interpreted as bearing witness of the lack of explicit reference to new media in the texts of the *Framework Convention* and the *Charter*. There is, however, no reason why *New Media* should be excluded from being an integral part of *Media* in general. In addition, the *Charter* (article 12) expressly includes reference to the use of new technologies. On the basis of the undertakings included in these two instruments, new media would require more systematic attention by the State Parties in future developments of policies in the media field.

²⁶ In the reports of the Committee of Experts on Slovenia (first monitoring cycle, paras. 70-73) and Croatia (second monitoring cycle, paras. 35-36), the Committee regrets how the new state border between Slovenia and Croatia has been allowed to reduce availability of transborder television in Slovenia. This example could, mutatis mutandis, apply to cases regarding reduced reception due to technical changes of new media as well, and efforts to rectify the situation would logically be required not only under articles of the *Charter* but also under articles 17 and 18 of the *Framework Convention*.

Recommendations of possible steps that the DH-MIN may want to take in enhancing European cooperation on New Media

In addition to the observations relating to possible roles of DH-MIN that have been presented in connection with the conclusions in the previous section, the author of this report respectfully suggest that the DH-MIN could play an important role particularly in the following contexts:

At a State level

By encouraging Governments to collect information on new media in a more comprehensive and systematic way, and actively offer such information to the monitoring bodies of the *Framework Convention* and the *Charter*;

By promoting policies of inclusion of national minorities in ways that enable them to obtain capacity and skills needed in interactive communication via the Internet and other information and communication technologies;

By, at the level of state policies, enhancing and/or facilitating production and distribution of new media contents that supports the culture and language of national minorities.

At a European level

By further developing (together with the EU) principles against, and punitive measures following from, illegal content in new media that violates national minority rights;

By developing new types of national and European regulation, based on new principles of regulation as defined in this study and in the related comments, serving the elimination of Internet content harmful to national minorities;

DH-MIN actions

By initiating further research in this domain in order to enhance a more comprehensive understanding of the role of new media for national minorities and to provide a more exact picture of the situation on the ground in the Member States of the Council of Europe.

By furthering good practice in the development of new media for national minorities and initiating the drawing up of a practical tool for policy-makers in the form of a soft law instrument on the impact of new media on minorities.

The author of this report sides strongly with the closing argument presented by McGonagle (2006) that “Treaties have to follow their own ideological curves, and their monitoring bodies, being organic creations of the treaties, must similarly follow their own consolidation curves in their monitoring and (*de facto*) interpretive functions. Documents extraneous to the treaties should not be prescriptive, lest the autonomy and self-direction of the treaties be compromised or be seen to be compromised.” Soft law instruments, such as the two documents by OSCE referred to in this report (the Oslo Recommendations of 2006 and the Guidelines on the use of Minority Languages in the Broadcast Media of 2003) do, however, provide insightful and well documented summaries of internationally accepted standards and best practices. In this way they have proved to be useful in aiding policies by states and organisations towards common grounds in complicated matters. DH-MIN may wish to consider an initiative of this kind, to be carried out by DH-MIN itself, or in cooperation with other international bodies.

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