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

COMMENTS ON THE REPORT ON

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

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Introduction

These comments are prepared at the request of the Directorate General of Human Rights, Council of Europe, and are designed to:

- comment on the draft study while taking into account the latest developments in the area of access of national minorities to the media, in particular with regard to new advancements in the media sector;
- contribute to the identification of issues where some further reflection at an intergovernmental level would be needed and outline possible steps that the DH-MIN may wish to take in further enhancing European cooperation on the said issues.

These comments will apply the following typology of the purposes which should be served, according to a number of international binding and standard-setting documents, by State action to promote minority media rights. It has to be noted that the typology applies primarily to traditional media, but it can still, mutatis mutandis, be applied to the new media.

Figure 1: Minority Media Rights: General Overview of State Obligations

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: 1. Programming 2. Work-force 3. Editorial control and management 4. Ownership of media 5. Regulation and oversight 6. Legislation, public policy

Professor Moring begins his report in the following way: "This study aims at supporting an informed debate on how to promote access of National Minorities to media in a changing media environment. The focus of this study is on what has been widely referred to as *New Media*. A main observation underpinning the analysis presented in this study is that new types of media and media use emerge rapidly while the existing instruments to secure access for national minorities to these media have - with some minor exceptions - remained unchanged".

This being so, we will proceed here from the assumption that the monitoring bodies of the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages need assistance in developing criteria and benchmarks to apply in assessing implementation of the two instruments in particular countries.

In general terms, therefore, I believe that further work on the study could benefit from:

- **grounding the issues more firmly in a broader Council of Europe policy and normative framework;**

- **more systematic and detailed consideration of the nature of the different new media and the opportunities and challenges they create for the exercise of minority (new) media rights, especially the positive ones;**

- **more detailed consideration of the regulatory and policy instruments that can be applied to promote the exercise of minority media rights in the field of the new media.**

1. Developing a fuller policy and normative framework for minority (new) media rights

The draft report quite properly proceeds from the two key international instruments in this field, i.e., the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. However, efforts to promote a debate on promoting access of national minorities to the new media can draw on a wider body of Council of Europe standards and policy orientations. Fuller recourse to this body of work may give added impetus to the debate and ensure its greater effectiveness.

The Third Summit of Heads of State and Government of the Member States of the Council of Europe (Warsaw on 16-17 May 2005) reiterated, in both the Warsaw Declaration and the Action Plan, the organisation's commitment to the protection of national minorities.

The Action Plan confirmed the importance of respect for human rights in the information society, in particular freedom of expression and information and the right to respect for private life. It also contained a commitment to elaborate further principles and guidelines to ensure respect for human rights and the rule of law in the information society, as well as to address challenges created by the use of information and communication technologies (ICT) with a view to protecting human rights against violations stemming from the abuse of ICT.

The document also includes a commitment to take initiatives so that member states make use of the opportunities provided by the information society. In this connection, the Council of Europe will examine how ICT can facilitate democratic reform and practice.

The Ministers of States participating in the 7th European Ministerial Conference on Mass Media Policy (Kyiv, 10-11 March 2005) adopted Resolution No. 2 "Cultural diversity and media pluralism in times of globalisation" in which they:

- Resolved to maintain and promote cultural and linguistic diversity in the media, also in the interest of intercultural dialogue, paying particular attention to the interests of persons belonging to minority groups and to minority community media; and

- agreed to encourage access to the media by persons belonging to national minorities in order to promote tolerance and enhance cultural pluralism;

In Resolution No. 3 "Human rights and regulation of the media and new communication services in the Information Society", the Ministers, among other things:

- welcomed technological developments in the field of communications which enhance the free flow of information within and across national borders and provide individuals with unprecedented opportunities to exercise their right to freedom of expression and information;

– expressed the conviction that the new communication services can enhance the exercise of human rights;

– reiterated their commitment to create conditions for equitable access to new communication services by all individuals in their countries in order to promote their participation in public life;

– reaffirmed their commitment, in line with the principles of the Declaration on freedom of communication on the Internet adopted by the Committee of Ministers on 28 May 2003, to remove, when technically feasible, any hindrances to the free flow of information through new communication services;

– undertook to ensure that the regulatory measures which they may take with regard to the media and new communication services will respect and promote the fundamental values of pluralism and diversity, respect for human rights and non-discriminatory access; and

– undertook to step up efforts to ensure an effective and equitable access for all individuals to the new communication services, skills and knowledge, especially with a view to preventing digital exclusion.

The Action Plan adopted by he Ministerial Conference encompasses action to implement these standards and commitments, including examination of how different types of media can play a part in promoting social cohesion and integrating all communities and generations, and exchange of information and best practice between member States and other stakeholders on measures to promote inclusion in the Information Society, *inter alia* by encouraging access to the new communication services along the lines of the principle of universal community service, as defined in Recommendation No. R (99) 14 of the Committee of Ministers.

Another line of Council of Europe work which directly bears on the issue of minority access to, and use of, the new media has to do with human rights in the Information Society. Mention should be made here first of all of the 2005 Declaration of the Committee of Ministers on human rights and the rule of law in the Information Society (CM(2005)56 final), and of the various Council of Europe contributions to the WSIS process.

In its Political message from to the World Summit on the Information Society (CM(2003)87 final), the Committee of Ministers stressed the importance of an equitable access to information and expressed concern about the grave risks of a "digital divide" both between nations and within nations, widening existing disadvantages such as those arising from discrimination based on gender, religion, or ethnic or racial origin. The Committee of Ministers noted that the exercise of human rights and freedoms is mediated more and more by digital technology and that therefore effective and equitable access to communications services, skills and knowledge is becoming a precondition for full citizenship of individuals.

The Committee of Ministers also expressed its belief that ICT can strengthen representative democracy by making it easier to hold fair elections and public consultations, accessible to all, help to raise the quality of public deliberation, and enable citizens and civil society to take an active part in policy-making at national as well as local and regional levels. It noted that the Council of Europe's key strategy for social cohesion is to ensure real and effective access for all to their social rights and public services, as the organisation looks to ICT for ways of overcoming the obstacles that prevent people from effectively claiming their rights and for improving the quality of life of vulnerable people such as the elderly, the chronically ill, people with disabilities and all who are at risk of social marginalisation.

The Political Message notes that the preservation and promotion of cultural and linguistic diversity, and active intercultural dialogue are hallmarks of a thriving information society.

More recently, the Council of Europe Submission to the Internet Governance Forum (Athens, 30 October to 2 November 2006) notes that for the Council of Europe, it is crucial and indispensable for the issues of the openness, diversity and security of the Internet, as well as access to it, to be addressed from a people-centred perspective and for them to be underpinned by the core values of the Council of Europe, namely to protect and promote human rights, democracy and the rule of law based on shared values and respect for national and cultural specificities. Commenting on the public service value of the Internet, the Submission states that everyone should be entitled to expect the delivery of a minimum level of Internet services (for example effective and affordable access, a suitable environment for businesses to operate, etc.). It goes on to say that the state will have to play a growing part in the delivery of the public service aspects of the Internet, by facilitating a multi-stakeholder framework within which the private sector can operate and, where necessary, should adopt measures to fill gaps left by private operators.

Nevertheless, the document continues, there are a number of services which are already, or will be, provided directly by states through the Internet with respect to, for example, initiatives concerning e-government, education and culture, as well as the use of the Internet to facilitate participation in public matters and democratic processes (e-democracy), the Internet as a means of eliminating inequalities (for example distance work for persons with disabilities), etc. Such initiatives are increasingly important as they aim to improve access to information by all, and enhance the opportunities for all, including people with disabilities, to participate in education and in political, cultural and social life. Participation and access to information are essential elements of democracy and citizenship, and it is a permanent duty of the state to facilitate them.

The Submission further notes that the state can discharge many of its responsibilities by promoting new forms of solidarity, partnership and cooperation. Through open discussions and exchanges of information, a multi-stakeholder governance approach will help to shape regulatory and non-regulatory models and address challenges and problems arising from the rapid development of the information society.

These normative, policy and regulatory orientations could usefully be drawn upon in developing the study on "Access of National Minorities to the Media: New Challenges" in that they represent stated Council of Europe policy and commitments in areas directly related to, and underpinning, issues covered in the report. Another source of ideas could be found in the Report on Media Pluralism in the Digital Environment (MM-S-PL (2000) 10), adopted by the Group of Specialists on Media Pluralism, operating under the authority of the CDMM, in 2000.

The documents cited above suggest that perhaps the title of the study should be "Access of National Minorities to the Media in the Information Society: New Challenges and Opportunities". This would frame the issue more fully than now, also pointing to the fact that the ICTs bring not only challenges, but also many opportunities.

Analogue new media (cable and satellite) multiply the number of available channels and eliminate space as a factor in communication, thus assisting many aspects of minority media access and use. Digital broadcasting multiplies the number of available channels in terrestrial broadcasting, also boosting prospects for active minority access to broadcasting.

However, if we concentrate solely on "the media" – i.e. organisations which collect and develop information and other content and disseminate it – we are likely to miss the fact that the Information Society offers individuals not only enhanced media, but also electronic communication technologies (also known as information and communication technologies – ICTs).

"Access" to the media is too often discussed in the sense of passive access, which can at best allow exercise of the right to information and content. The question then becomes of how to regulate the media to make sure that minorities receive content appropriate to their needs. Active access to

communication, meaning the ability to develop and disseminate content by each individual or group[1], or in other words the ability to enjoy freedom of expression, is much more difficult to achieve in relation to the media. I share Tarlach McGonagle's emphasis on the importance of freedom of expression in discussing minority rights.

And this is where the advent of the Information Society can make all the difference. It means not only a quantitative, but also a qualitative change: a new situation as regards active access is arising and it must be approached as such. We live in what someone has described as an age of "semiotic democracy" – anyone with the right equipment and skills can be a communicator on the Internet, and the differences between communication "professionals" and "amateurs" is becoming blurred.

With the new ICTs, very many (though, of course, not all) barriers to active access disappear. Freedom of expression on a societal and even global scale is becoming possible for individuals and groups.

Another qualitative change brought about by the Information Society is the manner of exercising the right to freedom of expression. ICT impact on freedom of expression is such that it is extended and enriched, indeed redefined, by adding cyberspace as a new universe for its exercise. Hence, it is an ICT-enhanced right, going far beyond its form in the old analogue media world. Many other human rights are also profoundly affected by the ICTs, as shown in Figure 2.

Figure 2: ICT Impact on Human Rights (ECHR)

Form of ICT Impact	Articles of the Convention
Quantitative impact (multiplier effect)	Article 4 – Prohibition of slavery and forced labour Article 6 – Right to a fair trial Article 8 – Right to respect for private and family life Article 14 – Prohibition of discrimination Protocol No. 12 Article 1 – General prohibition of discrimination Protocol 1, Article 1 – Protection of property
Qualitative impact (ICTs create new forms of human rights violation, exercise or protection)	Article 4 – Prohibition of slavery and forced labour Article 7 – No punishment without law Protocol 1, Article 1 – Protection of property
Redefinition of a human right, primarily by adding cyberspace as a new universe for its exercise;	Article 11 – Freedom of assembly and association Protocol No. 1, Article 3 – Right to free elections Protocol No. 4, Article 2 – Freedom of movement
ICT-enhanced human rights	Article 10 – Freedom of expression Protocol 1, Article 2 – Right to education Protocol No. 4 Article 2 – Freedom of movement

Source: Karol Jakubowicz, "Human Rights and the Information Society: A preliminary Overview".
A working paper for the Preparatory Group on "Human Rights and the Rule of Law in the Information Society".
Integrated Project 1 "Making Democratic Institutions Work", IP1(2004)47, Strasbourg, 7 September 2004.

[1] Karol Jakubowicz, "A Critical Evaluation of the First Results of the Monitoring of the Framework Convention on the Issue of Persons Belonging to National Minorities and the Media (1988-2003)" (In:) Filling the Frame. Five Years of Monitoring the Framework Convention for the Protection of National Minorities. Strasbourg: Council of Europe Publishing, p. 113-143.

This is why Birgitte Kofod Olsen, in a recent paper "Ensuring Minority Rights in a Pluralistic and 'Liquid' Information Society"[2], talks about "digitizing minority rights". She says that "the right to enjoy the cultural life of the minority and to participate in the cultural, social and economic life of society may be effectively facilitated by the Internet and other ICTs" (pp. 271-272). And she adds: "When focusing on the special features of the information society, the Internet and other information and communication devices, may play an important role in de facto strengthening and furthering the enjoyment of minority rights. The setting up of Web sites, chat rooms, and virtual conferences enables members of minority groups spread throughout a country, or a region, or across borders, to stay in contact and thereby actively maintain and develop their specific identity and culture. Moreover, it creates a basis for a new perspective on structuring a pluralistic society that acknowledges the right of minorities to live in accordance with their own norms and traditions within their ethnic or religious group or community" (p. 274).

Thus, the Information Society and the ICTs add an entirely new dimension to the issue of minority rights. Of course, none of this is entirely unproblematic.

For the minorities themselves, these new opportunities can create an added challenge to integration, if the new technologies are used to create an impermeable "walled garden", locking individuals into a virtual community of language and culture, with little or no contact with those of their host countries and societies.

For the authorities, they create both many challenges in terms of combating violations of minority rights via the ICTs, and in implementing what Birgitte Kofod Olsen calls a "positive obligation" to provide access to the Internet and other ICTs for all. However, as shown by the British report on media literacy among adults from minority ethnic groups[3] (cited also in Tarlach McGonagle's comments), in the UK, at least, minority ethnic groups have somewhat higher levels of media literacy across the digital platforms; there is higher ownership of digital TV among minority ethnic groups; home access to, and use of the internet, as well as to 3G mobile phones and take-up of broadband are higher among minority ethnic groups than in the population as a whole. It would therefore seem that minorities are very adept at using the chances and opportunities offered by the ICTS.

2. "New Media": Unravelling the Concept

The term "new media" has been around for some time and has thus been employed to denote quite different generations of technologies. Generally speaking, the term refers to:

– analogue (old) "new media": cable and satellite television, the VCR;

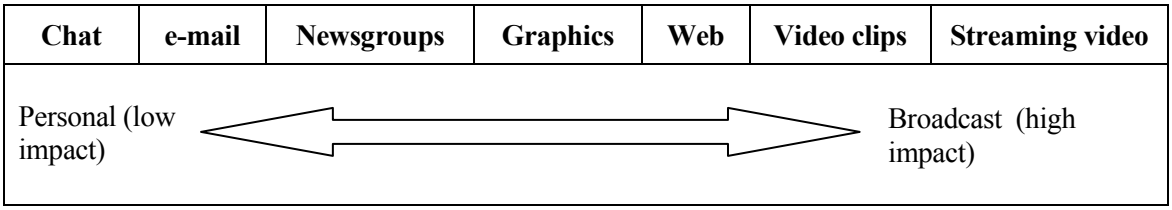
– digital (new) "new media": digital broadcasting in its various forms (DVB-T, DVB-C, DVB-S, DVB-H, i.e. terrestrial, cable, satellite and reception of mobile television on a handheld device, i.e. a cellular phone, or a PDA), interactive broadcasting, the Internet, mobile telephony, new platforms for content delivery (IPTV, xDSL, etc.), and so on.

Digital new media are also known as information and communication technologies (ICTs), or "new communication services".
What accounts for the difference between analogue and digital "new media" is the process of convergence which by means of digitisation integrates telecommunications, broadcasting and informatics into what may be described as "convergent digital communication".

[2] Birgitte Kofod Olsen "Ensuring Minority Rights in a Pluralistic and 'Liquid' Information Society" (in:) Rikke Frank Jørgensen (ed.) Human Rights in the Global Information Society. Cambridge, Mass.: The MIT Press, pp. 263-280.
[3] OFCOM, Media Literacy Audit: Report on media literacy amongst adults from minority ethnic groups, London, 2006

According to the European Commission's Green Book on Convergence, the process described by this term leads to the ability of different network platforms to carry essentially similar kinds of services, e.g. television signals may be distributed terrestrially, via cable, xDSL systems (e.g. via telecommunications lines, such as the telephone) or via the Internet. The Internet, confirms this by offering types of content also available from many network platforms (see Fig. 3).

Figure 3: Range of material available on the Internet



Source: David Mitchell and Mark Armstrong "Broadcasting regulatory mechanisms and the internet", Intermedia, Dec. 2001, Vol. 29, No. 5/6.

Mueller[4] views convergence as a take-over of all forms of media by one technology: digital computers, a technological system with solid-state integrated circuits (ICs) at its core, supplemented by photonic components (lasers and optical filters) and applications of mathematical information theory, capable of handling multimedia content. The computing power of information technology invests the digital media with the ability to process content potentially without any restrictions.

Telecommunication networks provide diverse and distant people with connectibility and access to content anywhere.

Digitisation additionally makes possible signal compression, reprocessibility of content as data, text, audio, video and its transference across distribution networks. This changes or eliminates constraints heretofore limiting communication, such as bandwidth, interactivity and network architecture.

Figure 4: Some differences between analogue and digital communications

20th Century - Analogue	21 Century - Digital
1 network - 1 service	1 network - many services
Limited content delivery/channel scarcity	Abundant delivery capacity/channel proliferation
High social impact of mass broadcasting	Wide choice of content providers: narrowcasting, VOD, PVRs
no/low user control and interactivity	Higher user control, full interactivity

Source: Directorate General for Education and Culture (n.d.) Audiovisual Content in the Digital Age. Brussels: European Commission.

VOD – Video on Demand
PVR – personal video recorder (a digital VCR with a hard disk for storage of recorded programming)

Given that in accordance with a recent ITU decision, analogue broadcasting is to be phased out in Europe by 2015, the modalities of digital broadcasting acquire growing importance, also in terms of minority media rights.

Figure 5 shows the main elements of the system.

[4] Milton Mueller "Digital Convergence and Its Consequences", The Public/Javnost, 1999, Vol. VI, 3: 11-28.

Figure 5: Path from broadcaster to user in digital broadcasting

Multiplex – a system used to combine multiple compressed digital signals for transmission over a single frequency
EPG – Electronic Programme Guide
CAS – Conditional Access System
STB - Set-top box, commonly used to receive and decode digital television broadcasts for display on analogue television sets (or computers)
API - Application Programme Interface (set-top box software)
SMS - Subscriber Management System

The appearance of these "digital gateways" or "bottlenecks" along the way from the broadcaster to the receiver in itself creates a host of regulatory problems and explains why regulation is more and more concerned with technical issues. Holznagel[5] (1998-1999: 6-7)) points out in this regard: "The most important goal of all regulatory efforts in the field of digital TV must be to overcome the above described "gatekeeper" or "bottleneck" problem by providing open access to these techniques. Only if these key positions are open to multiple providers, the demands for pluralism, a diversity of opinions and a fair competition can be achieved".

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 organisation information, and provide access to it).

With fast technological change, one can distinguish different stages also within the digital new media, especially the Internet. This is known for short as the difference between "Web 1.0" and "Web 2.0"[6]. 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.

[5] Bernd Holznagel "New Challenges: Convergence of Markets, Divergence of the Laws? Questions Regarding the Future Communications Regulation". International Journal of Communications Law and Policy, Issue 2, Winter 1998/99.
[6] See Tim O'Reilly,What Is Web 2.0 Design Patterns and Business Models for the Next Generation of Software, http://www.oreillynet.com/pub/a/oreilly/tim/news /2005/09/30/ what-is-web-20.html

The best-known feature of Web 2.0 is its openness to user-generated content, including blogs[7], photographs, films (YouTube), news by "citizen reporters" (as on OhmyNews[8]), social networking sites (MySpace), etc. This is described as introducing a new era of "semiotic democracy": "Anyone can now become a creator, a publisher, an author via this new form of cultural discourse, a platform to publish to the world at large that grants near instant publication and access." [9] "Personal media" have long been talked about, but are now becoming a reality. Of course, it is also true that "Certainly, digital media will create new stars and new businesses, but making high-quality video content will always be a daunting and expensive task. Music or a blog can be composed from a bedroom, but not an episode of 'Friends'"[10].

Nevertheless, the phenomenon of disintermediation and the development of Web 2.0 should be given attention in the context of national minority (new) media rights for two reasons:

- **They open many new opportunities of self-expression and communication for individuals and groups within various national minorities [11], as long as they are not on the wrong side of the digital divide; and thus may to some extent alleviate the problem of national minority active access to the media;**
- **And they require a new approach on the part of the authorities, as this is no longer a matter of regulation of media outlets subject to a licensing and regulatory regime, so entirely new methods are required.**

One possible approach is described by Harrison and Wessels: "The innovative use of new media is revealing reconfigured forms of social relations and media usage which are often organized around communities of interest within a networking environment. These developments occur at ultra-local level (the neighbourhood) or at the city or sub-region level. As such, we call them 'ground-up'. The 'ground-up' approach to PSB complements the 'top-down' approach to PSB. Both point to rethinking the concept of a media user (real or potentially).

This activity is organised in local government, the private sector, voluntary agencies and user-group partnerships, which is resulting in new relationships between producers, users and audiences. They are increasing in number and also gaining recognition as a source of public service communication and are fostering new forms of audience engagement and participation.

Examination of the institutional arrangements of both traditional and new media environments allow us to argue that the phrase 'audience fragmentation' hides the sense of audience participation produced by new forms of engagement within a reconfigured media environment. This environment stimulates the expression of a pluralism generated by the activities of diverse individuals and groups from different social, cultural and political milieu"[12].

Thus, the digital new media and their global reach can empower national minorities and make them more self-reliant in all the forms of media access and use mentioned in the report. The Report on Media Pluralism in the Digital Environment notes that entry barriers to the Internet world are very low and it is easy for companies/individuals to enter this market. This is so, provided, of course, that individuals belonging to national minorities have the capacity and skills to use those new media actively. Where this is not the case, public authorities should institute measures to promote digital inclusion for national minorities.

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[7] See David Sifry, State of the Blogosphere, August 2006, http://www.sifry.com/alerts/

[8] See Eun-Gyoo Kim, James W. Hamilton (2006) "Capitulation to Capital ? OhmyNews as alternative media". Media, Culture and Society, 28(4): 541-560.

[9] See Elizabeth Stark (2006) Free culture and the internet: a new semiotic democracy. http://www.opendemocracy.net/arts-commons/semiotic_3662.jsp#.

[10] "Don't write off Hollywood and the big media groups just yet", The Economist, Jan. 19th, 2006.

[11] Harmeet Sawhney and Seungwhan Lee, Arenas of innovation: understanding new configurational potentialities of communication technologies. Media, Culture & Society, 2005, Vol. 27(3): 391-414,.

[12] See also Jackie Harrison, Bridgette Wessels, "A New public service communication environment? Public service broadcasting in the reconfiguring media", New Media & Society. 2005. 7(6): 834-853.

Professor Moring correctly points out that media development has so far been cumulative and not substitutive, meaning that new media and technologies of communication have not replaced older ones, but have found a place in the communication ecology alongside them. There is some evidence now from the U.K. that the so called "networked generation" is devoting less time to the traditional media than previously[13], but no doubt old and new media will continue to co-exist in the foreseeable future. Accordingly, efforts to promote national minority media rights should continue to cover all types of media, though in a differentiated manner, in view of the different opportunities and challenges represented by each category of media, as well as of the different regulatory frameworks applying to them.

3. New Regulatory Framework for the New Media

Analogue new media are subject to the same regulatory framework as traditional broadcasting.

As for digital new media, a distinction needs to be made between digital broadcasting and the non-broadcast platforms, especially the Internet and the "Information Society services" defined as "any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services".

Convergence - thanks to creating conditions for multichannel radio and television, interactivity, individualisation, personalisation and the user's ability to access content on demand - introduces new considerations and criteria into content regulation, known as a proportional, graduated approach. It also brings to the fore the concepts of self-regulation and co-regulation, especially as regards the so called "Information Society services".

The difference between the old and new approach can be illustrated on the example of the change of the regulatory model proposed in the draft new Audiovisual Media Services directive and in debates on the revision of the European Convention on Transfrontier Television:

Figure 6: Old and New Models of Regulation

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

One argument in favour of the new model of regulation is that "When there are many more channels available to the mass of viewers, and as the degree of viewer control over those channels increases, there may be a case for moving towards a lighter touch approach to content regulation". According to this view, there could be a graduated approach depending on the

– extent of the availability and "publicness" of the service;

– degree of viewer control over the act of reception;

– and consciousness of the choice that is made to receive the service[14].

This would then, as shown in Figure 7, provide a broad spectrum of content regulation from an extremely light touch for most services to a more rigorous approach for mainstream free-to-air TV networks.

[13] OFCOM (2006) The Communications Market 2006. London: Office of Communications, http://www.ofcom.org.uk

[14] BBC Response to the EU Green Paper „The Convergence of the Telecommunications, Media and Information Technology Sectors and the Implications for Regulation" (1998), http:\\www.ispo.cec.be/convergencegp/bbc.html.

Figure 7: Graduated Regulation

Nature of service	Degree of regulation
On demand services, interactive TV services, the Internet	Relying mainly on self regulation and international co-operation in addition to the requirements of national civil and criminal law
Multi-channel/pay-TV services where viewers generally choose what they subscribe to	Requiring light touch, taste and decency regulation
Mainstream, free-to-air networks enjoying spectrum privileges	Requiring reasonably rigorous regulation

Source: BBC, 1998.

One example of this approach is the German regulatory system, covering new services of the digital era.

Figure 8: Broadcasting, media- and tele-services: features and regulation in Germany

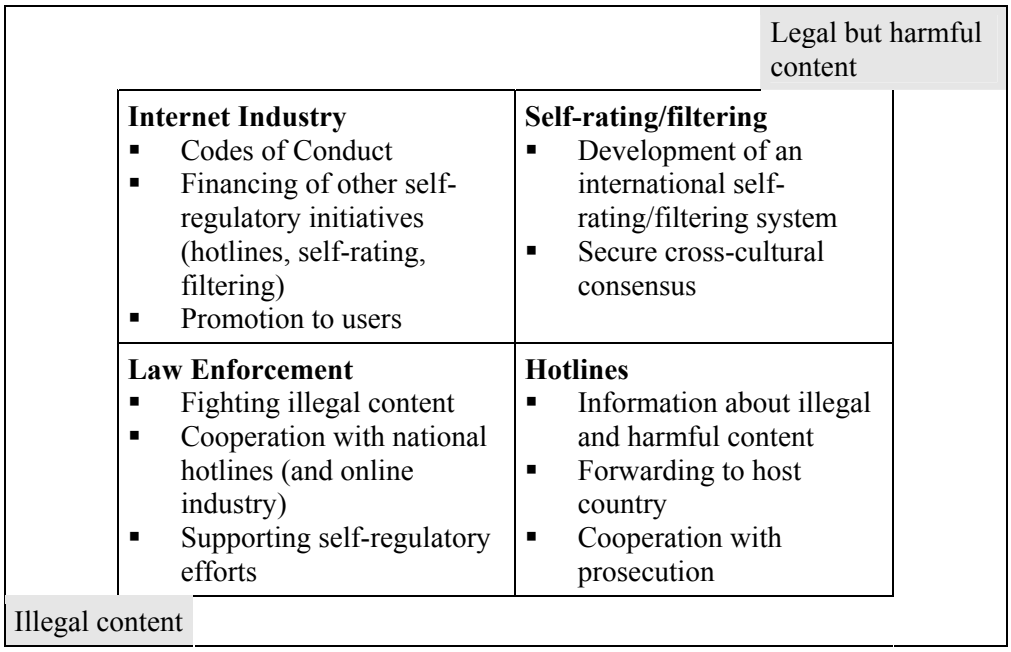
Programme Services	Information Society Services	
	Media Services	**Tele Services**
Interstate Treaty on Broadcasting	Interstate Treaty on Media Services	Tele Services Act
Point to multipoint Fixed programming schedule	Point to multipoint, Point to point, Relevant editorial content	Point to point No relevant editorial content
TV (and radio) programmes Free TV and Pay TV services	On-demand TV services; Teletext Online magazines and websites, i.e. CNN.com	E-Commerce transaction services, (i.e. online banking); Online databases
High level content regulation	**Low level content regulation**	**No significant content regulation**
Licensing requirement Concentration control Standards of journalism Programming quotas Access rights Listed events Advertising restrictions Sponsoring restrictions Protection of youth Right of reply Privacy (Pay TV)	Notification requirement Transparency Standards of journalism (Minor) restrictions on advertising & sponsoring Protection of youth Right of reply Liability for content Privacy	Notification requirement Liability for „content“

Source: Andreas Grünwald, What Future for Broadcasting in the Digital Era? Paper presented during an Expert Seminar on “The European Convention on Transfrontier Television in an Evolving Broadcasting Environment”, Strasbourg. (2001)

Some content services, especially on the Internet, cannot easily, or at all, be regulated or supervised under hitherto existing regulatory frameworks. In such cases, self-regulation by service providers becomes the best option.

Figure 9 shows the recommended model of self-regulation on the Internet, as far as protection against illegal and harmful content is concerned[15].

Figure 9: International system of self-regulation and youth protection on the Internet



Source: Self-regulation of Internet Content, 1999: 56.

While very much in line with what in Figure 1 we called negative goals of State obligations in the field of minority media rights, this system would need to be developed to be applicable to positive goals in the area of minority active access to, and use of, the Internet. It does, however, indicate the difference in the regulatory approach between traditional broadcasting and the Internet.

Schulz and Held note that the reverse of traditional regulation is self-regulation, where the State refrains from interfering with a process because it assumes that social processes will lead to a result which will achieve the objectives of regulation all on its own. Private arrangements are made without any interference by the state. In some areas, such as journalistic ethics, for example, self-regulation is the only option available, as state interference would be harmful. Elsewhere, self-regulation – when different players agree to rules regulating their activities and they define and enact codes of conduct ("intentional self-regulation") – is necessary also for heretofore regulated activities, such as provision of media content by new means.

The following modes of self- and co-regulation can be distinguished:

– "Self-regulation", where the State has no role to play;

– “Regulated self-regulation”: it fits in with a legal framework or has a basis laid down in law. This approach focuses on the instruments the state can apply to regulate a self-regulatory process;

[15] Self-regulation of Internet Content. Gütersloh: Bertelsmann Foundation, 1999.

– "Co-regulation" indicates situations in which the regulator would be actively involved in securing that an acceptable and effective solution is achieved. The regulator may for example set objectives which are to be achieved, or provide support for the sanctions available, while still leaving space for self-regulatory initiatives by industry, taking due account of the interests and views of other stakeholders, to meet the objectives in the most efficient way. The regulator will in any such case have scope to impose more formal regulation if the response of industry is ineffective or not forthcoming in a sufficiently timely manner[16].

Regulated self-regulation makes use of the advantages of both self-regulation as well as of command-and-control regulation. An example of such a combination is the law on the media and on telecommunications. To achieve the objectives of regulation, self-regulation is supported by traditional, imperative instruments. Additionally, flexible, evolutionary elements provide a supplement to traditional, imperative regulation. The state structures the frame to enable self-regulation. It intervenes if the objectives are not met by self-regulation, or if there are undesirable side-effects.

This offers a range of instruments which must be different from those applied to traditional broadcasters and rely much more on the cooperation of content and service providers.

In order to ensure that implementation of the FCNM and of the European Charter for Regional or Minority Languages keeps abreast of new technological developments and patterns of communication in the Information Society, the methodology used by the monitoring bodies of the two instruments should be developed and modernized, and the practical meaning and application of the standards laid down in them should be extended and enriched. On this basis, the monitoring bodies could then advise governments on how those standards should be understood and implemented in the Information Society, and what policy, regulatory and practical measures should be taken to these ends.

It should also be remembered in this context that the ICTs may make the job of DH-MIN, as well as of the bodies behind the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages, more difficult. After all, national governments may now be tempted to say: these documents are outdated and the Internet will solve all remaining problems.

In the future, it may therefore be necessary to add new language to the two instruments dealing with new communication technologies and what needs to be done in this area to protect minority rights. Many Council of Europe standards are now being reassessed and in some cases revised to ensure their continued relevance and effectiveness in the Information Society. This may also be necessary one day in relation to the Convention and the Charter.

But even if things do not go so far, the important point is that there should be a policy to promote passive and active access of the national minorities to the media, as well as their active use of new communication technologies. What instruments are used to implement this policy is always a matter of judging what is necessary in the particular circumstances of each country.

[16] Wolfgang Schultz, Thorsten Held, Regulated Self-Regulation as a Form of Modern Government. Interim Report. Hamburg: Hans Bredow Institute for Media Research, 2001. For a thorough treatment of co-regulation, see Final Report. Study on Co-Regulation Measures in the Media Sector. Study for the European Commission, Directorate Information Society and Media Unit A1 Audiovisual and Media Policies. Hamburg: Hans Bredow Institute for Media Research, 2006.

4. Brief Conclusions

1. Analogue new media (cable and satellite) multiply the number of available channels and eliminate space as a factor in communication, thus assisting many aspects of minority media access and use. They are subject to traditional broadcasting regulation.

2. Digital broadcasting multiplies the number of available channels in terrestrial broadcasting (how much depends on the standard of signal applied), also boosting prospects for active minority access to broadcasting. Depending on the legal framework in place in a given country, it may be subject to a mixture of broadcasting and telecommunications regulation (the latter applying to some telecom operators involved in the process). Many of the opportunities and challenges in the field of media pluralism (and by extension of minority access to digital broadcasting) created by digital broadcasting are discussed in the Report on Media Pluralism in the Digital Environment.

3. The Internet and other digital new media are not (and cannot be) covered by a State-administered consistent non-technical and human rights-oriented regulatory framework, though some elements, like the Cybercrime Convention, are emerging. They pose many challenges in terms of the negative goals of State action to promote minority (new) media rights, and also offer many opportunities in terms of the exercise of those rights by the individuals and groups concerned. Efforts by member states in this area could serve the following goals:

    a. Developing legal and administrative systems for the prosecution of illegal content which violates national minority rights;

    b. Developing systems of co-regulation or regulated self-regulation serving the elimination of Internet content harmful to national minorities;

    c. Promoting digital inclusion for national minorities, as part of a broader effort to promote the emergence of the Information Society, in ways that would enable them to obtain capacity and skills needed in bottom-up communication via the Internet and other ICTs;

    d. Developing on-line public services in ways designed, inter alia, to promote minority media rights.

In order to ensure that implementation of the FCNM and of the European Charter for Regional or Minority Languages keeps abreast of new technological developments and patterns of communication in the Information Society, DH-MIN could usefully discuss the opportunities and challenges created by the new media, as well as the regulatory issues involved in dealing with them. This could be a point of departure for developing and modernising the methodology used by the monitoring bodies of the two instruments, as well as for extending and enriching the practical meaning and application of the standards laid down in them. On this basis, the monitoring bodies could then advise governments on how those standards should be understood and implemented in the Information Society, and what policy, regulatory and practical measures should be taken to these ends.