



Draft Council of Europe Guide on Human Rights for Internet Users

22 October 2013

For multistakeholder consultations – deadline for comments 15 November 2013

Introduction

This Guide is a tool for you, the Internet user, to know about your human rights, their possible limitations, and available remedies to such limitations. Your human rights and fundamental freedoms apply equally offline and online. The Guide provides you with information and orientation about what they mean in practice, how they can be relied and acted upon as well as how to access remedies.

The Guide is based on the European Convention on Human Rights and other Council of Europe conventions and instruments, which deal with various aspects of human rights protection. All Council of Europe member states have a duty to respect, protect and fulfil the rights and freedoms contained therein. The Guide is also inspired by the on-going interpretation of these rights and freedoms by the European Court of Human Rights and by other relevant legal instruments of the Council of Europe.

The Guide does not establish new human rights and fundamental freedoms. It builds on existing human rights standards and enforcement mechanisms. It is an evolving document, open to periodic review.

Access and non-discrimination

Access to the Internet is an important means for you to exercise your rights and freedoms and to participate in democracy. You should therefore not be disconnected from the Internet against your will except when it is decided by a court.

Your access should be affordable and non-discriminatory. You should have the greatest possible access to content, applications and services using the devices of your choice.

You should expect specific measures from public authorities to facilitate your access to the Internet when you live in rural and geographically remote areas or if you are on a low income and/or have special needs or disabilities.

In your interactions with public authorities, Internet service providers as well as providers of access to online content and services, or with other users or groups of users, you must not be discriminated against on any grounds such as sex, race, colour, language, religion or belief, political or other opinion, national or social origin, association with a national minority, property, birth or other status, including ethnicity, age or sexual orientation.

Freedom of expression and information

You have the right to receive and impart information and ideas of your choice without interference and regardless of frontiers. This means:

For multi-stakeholder consultations – deadline for comments 15 November 2013

- You have the freedom to express yourself online and to access information and the expression of others. This includes political speech, views on religion, and opinions and expressions that offend, shock or disturb others. You should have due regard to the reputation of others. Restrictions apply to expressions which incite hatred, violence or discrimination.
- You are free to create, re-use and distribute content with due regard to the rights of others, including the right to protection of property.
- Your public authorities have a duty to respect and protect your freedom of expression and your freedom of information. Any restrictions to this freedom must not be arbitrary and must comply with human rights law. Moreover, they must be made known to you, coupled with information on ways to seek guidance and redress, and not broader or maintained for longer than is strictly necessary.
- Your Internet service provider and your provider of access to online content and services have corporate social responsibilities to protect, respect and remedy your human rights and fundamental freedoms. You should be aware, however, that online service providers, such as social networks, may restrict certain types of content and behaviour due to their content policies. You should be informed of possible restrictions so that you are able to take an informed decision as to whether to use the service or not. This includes specific information on how the online service provider deals with apparently illegal content and what is considered inappropriate content and behaviour when using the service.
- You can choose not to disclose your identity online, for instance by using a pseudonym. However, you should be aware that measures can be taken after decisions by courts that might lead to your identity being revealed.

Assembly, Association and Participation

You have the right to peacefully assemble and associate with others using the Internet. In practice, this means:

- You have the freedom to choose any website, application or other service in order to form, join, mobilise and participate in societal groups and assemblies whether or not they are formally recognised by any public authorities. You also have the right to form and join trade unions.
- You have the right to protest peacefully online. However, you should be aware that, if your online protest should lead to blocking, disrupting services or damaging of the property of others you may face legal consequences.
- You have the freedom to use online tools to participate in local, national and global public policy debates, legislative initiatives and scrutiny of decision making processes, including the right to sign petitions, and the right to participate in policy-making relating to how the Internet is governed.

Privacy and data protection

You have the right to private and family life on the Internet which includes the protection of your personal data and respect for the confidentiality of your correspondence and communications. This means:

- You should be aware that in using the Internet your personal data is regularly processed. This happens when you use services such as browsers, email, instant messages, voice-over Internet, social networks and search engines.
- There are rules and principles regarding the processing of your personal data which have to be respected by public authorities and private companies engaged in such processing.

- Your personal data should only be processed when it is laid down by law or you have consented to it (for example, when you agree to the terms and conditions of an Internet service). You should be informed of what personal data is processed and/or transferred to third parties, when, by whom and for which purpose. Generally, you should be able to exercise control over your personal data (check its accuracy, request its correction, request its erasure or maintain that it is kept for no longer than is necessary).
- You must not be subjected to general surveillance or interception measures. In exceptional circumstances which are prescribed by law, your privacy with regard to your personal data may be interfered with, such as to investigate crime. Accessible, clear and precise information about relevant law or policy in this regard should be made available to you.
- Your privacy must also be respected in the workplace. This includes the confidentiality of your private online correspondence and communications. Your employer must inform you of any surveillance and/or monitoring they carry out.
- You can be assisted by data protection authorities, which exist in a vast majority of European countries, to ensure that data protection laws and principles are adhered to.

Education and Literacy

You have the right to education, including access to knowledge. This means:

- You should have online access to education and to cultural, scientific, scholarly and other content in official languages. This also includes freely accessible publicly funded research and cultural works on the Internet. Restrictions might apply to such access in order to remunerate authors for their work.
- As part of Internet and media literacy you should have access to digital education and knowledge in order to exercise your rights and freedoms on the Internet. This includes skills to understand, use, and work with a broad range of Internet tools. This should enable you to critically analyse the accuracy and trustworthiness of content.

Children and Young People

As a child or young person, you have all the rights and freedoms outlined in this Guide. In particular, because of your age, you are entitled to special protection and guidance when using the Internet. This means:

- You have the right to freely express your views and participate in society, to be heard and to contribute to decision making on matters affecting you. Your views must be given due weight in accordance with your age and maturity and without discrimination.
- You can expect to receive information and training from your teachers, educators and parents or guardians about safe use of the Internet, including about how to preserve your privacy.
- You should be aware that content that you create on the Internet or content concerning you could challenge your dignity, security and privacy or be otherwise detrimental to you or your rights now or at a later stage in your life. You should be able to remove or delete such content including its traces (logs, records) within a reasonably short period of time.
- You can expect clear information about online content and behaviour that is illegal (for example online harassment) as well as the possibility to report alleged illegal content. This information

should be adapted to your age and circumstances and you should be provided with advice and support with due respect for your confidentiality and anonymity.

- You should be afforded special protection from interference with your physical and moral welfare, in particular regarding sexual exploitation and abuse on the Internet and other forms of cybercrime. In particular you have the right to education to protect yourself from such threats.

Effective Remedies

You have the right to an effective remedy when your human rights and fundamental freedoms are restricted or violated. To obtain a remedy you shouldn't necessarily have to pursue legal action straight away. The avenues for seeking remedies should be available, known, accessible, affordable and capable of providing appropriate redress. Effective remedies can be obtained directly from Internet service providers, public authorities and/or other national human rights institutions. Effective remedies can – depending on the violation in question – include inquiry, explanation, reply, correction, apology, reinstatement, reconnection and compensation. In practice, this means:

- Your Internet service provider, providers of access to online content and services, or other company and/or public authority should inform you about your rights, freedoms and remedies and how to obtain them. This includes easily accessible information on how to report and complain about interferences with your rights and/or how to seek redress.
- Additional information and guidance should be made available from public authorities and/or other national human rights institutions (ombudspersons), data protection authorities, citizens' advice offices, human rights or digital rights associations or consumer organisations.
- You can reasonably expect to be protected from criminal activity or criminal offences committed on or using the Internet, in particular when this concerns illegal access, interference, forgery or other fraudulent manipulation of your digital identity, computer and data contained therein. You can expect that relevant law enforcement authorities will investigate and take appropriate action if you complain of damage to, or interference with, your personal identity and your property online.

In the determination of your rights and obligations or of any criminal charge against you with regard to the Internet:

- You have the right to a fair trial within a reasonable time by an independent and impartial court.
- You have the right to an individual application to the European Court of Human Rights after exhausting all available effective domestic remedies.