



Foreword 1

Maud de Boer-Buquicchio,
Deputy Secretary General of the Council of Europe

Words matter. We sometimes need someone like Karol Jakubowicz to remind us of this and the fact that words, especially those that come at turning points in history, have a tendency to stick. Therefore, we must set our minds free to move beyond the limits that words can impose on our thinking.

When the revision of the European Convention on Transfrontier Television was discussed, he wrote, in a paper on the scope of the new convention: "If the scope of the Convention is to be extended beyond television, then its title will obviously have to be changed". And indeed, the draft second protocol amending the convention suggests a new title: "Convention on Transfrontier Audiovisual Media Services".

Karol Jakubowicz promoted the change of the time-honoured expression "public service *broadcasting*" to "public service *media*" in a Committee of Ministers recommendation, so that the debate on this subject could move into the 21st century and escape from the linguistic and policy traps that the former term entailed.

His proposal to change the name of the "Steering Committee on the Mass Media" to the "Steering Committee on the Media and New Communication Services" opened up entirely new paths for Council of Europe work, putting the Organisation at the centre of the crucial international debate on the information society.

However, of his many contributions in this area, the most interesting and far-reaching came during his keynote speech (also reproduced in this publication) at the 1st Council of Europe Conference of Ministers responsible for Media and New Communication Services, held in Reykjavik in May 2009. There, he challenged us to take yet another step and release words and notions from pervasive constraints, to look beyond assumptions and to go back to the basics in a new technology-enabled reality capable of devolving the right to public expression to the people.

Montesquieu advocated the separation of the powers of the state – executive, legislative and judicial – which is broadly accepted as a pre-condition for democracy. President Abraham Lincoln gave us the words that we all adhere to that democracy is the "government of the people, for the people, by the people". The so-called "powers" of the state are thus reduced in a democracy to the exercise of authority by delegation from those who matter in democracy, the people. In modern constitutions, this is reflected in the recognition that the ultimate

power (or sovereignty) in a democracy lies with the people, subject of course to fundamental human rights, democracy and rule of law imperatives.

However, old words stick and people continue to humble themselves in front of “powers” and those who detain power in a democracy, thus paving the way for those who are inclined to abuse power and make it serve their own interests.

It has very rightly been said that the media are the “fourth power” of democracy. The media have a key role to play in observing the exercise of authority, in denouncing abuse and in contributing to political debate. The right to freedom of expression – public expression in the case of means of mass communication – is there to ensure that media can do this. But words stick. Some media forget that, in a democracy, power comes from a delegated authority and therefore entails important responsibilities. Karol Jakubowicz reminds us that media should never use this power for their own objectives or loyalties.

Now that technological development has released public expression from the constraints of traditional forms of media, we must look again at the place of people in this context. Are their rights sufficiently preserved within the “right to freedom of expression”? Hence Karol Jakubowicz’s challenge: perhaps we should consider renaming it the “right to public expression”.

With great foresight and intellectual rigour, and through his invaluable work with the Council of Europe which is reflected in this volume, Karol Jakubowicz has made a considerable contribution to developments in European media policy in recent decades.

Thank you, Karol Jakubowicz. You have helped us to identify both the challenges and the opportunities emerging in a rapidly evolving environment. At a time when citizens all over Europe feel more and more disconnected from democratic processes, the debate you are launching about a right to public expression is particularly important. I hope it can be used as an opportunity to further empower citizens and advance DEMOCRACY, so that this keyword continues to matter.



Foreword 2

Professor Dr Delia Mucica,
Chair of the CDMC

It is a pleasure to offer the reader a view of the ever evolving work on media and media-related issues, through the speeches and papers presented by Karol Jakubowicz at various Council of Europe and international events, and collected in this volume.

Through his long association with the Steering Committee for Media and New Communication Services and the Standing Committee for Transfrontier Television, Mr Jakubowicz has provided invaluable insights into our field of work, opened up new avenues of thought and action and offered us all the benefits of his vision.

Some of the results of our common work, which have enriched the debate in many other international fora, are presented in this volume. The Steering Committee on Media and New Communications Services, true to its name, steered not only Council of Europe approaches, but the international debate as well, in addressing emerging trends and issues and bringing them to the attention of policy makers and stakeholders.

Human rights, and in particular freedom of expression and freedom of the media have been, more often than we would have thought, challenged by new developments, either technologically based or emerging from changes in consumer patterns and business models. The media landscape – in which I include the new communication services or the “media-like services” – has evolved and changed at an unprecedented pace during these last years. Understanding its new dimensions, anticipating the possible threats and obstacles they may pose while retaining the fundamental values that lie at the core of our work in the CDMC, and which in fact are our *raison d'être*, was, and indeed is, a difficult endeavour. One which we, the CDMC, and especially Mr Jakubowicz, undertook, often using innovative approaches, challenging traditional or conservative ways of thinking and treading sometimes into uncharted territories.

This is why, paraphrasing one of his speeches, I can say that Karol Jakubowicz is a man with “a heart, a social conscience and courage”.

The CDMC continues its work and its tradition of breaking new ground and setting the agenda for the future, building upon our collective expertise and the vision and foresight of some truly outstanding experts, one of whom is Karol Jakubowicz.



Introduction

“East is East, and West is West, and ne’er the twain shall meet”
Rudyard Kipling, 1889

It must have been 1990 when I attended my first meeting of what was then the Steering Committee on the Mass Media (CDMM) of the Council of Europe. Two other experts from “eastern” Europe were also present: Zoltan Jakab from Hungary and Milan Jakobec from the then Czechoslovakia. Our colleagues from “western” Europe were so struck by the similarity of our family names (a strange coincidence which I do not understand myself) that one of them asked me: “Do you all have the same name over there?”

It may have seemed at that particular moment that Kipling had been right after all. Of course, he was referring to a different “East,” but ever since the Iron Curtain descended over Europe his words also seem prophetic in the European context. Had we not been convinced for decades that the “East” and “West” of Europe would never come together again?

This collection of papers bears testimony to 16 years (I stopped representing Poland in the CDMM/CDMC and its subordinate bodies at the end of 2006) of my efforts to prove Kipling wrong. In November 2004, when I had the great honour of being elected the first “eastern” European Chairman of the CDMM (after having been also the first “eastern” European chairman of the Standing Committee on Transfrontier Television), the job could be regarded as successfully completed. Two years after my term of office expired, another “eastern” European, Delia Mucica of Romania, was elected Chair of what was now the Steering Committee on the Media and New Communication Services (CDMC) and no one batted an eyelid: at long last it was accepted and taken as a matter of course that what matters in such cases is personal qualifications for the post, and not who comes from where.

This short introduction is intended as a guide to the book and as a sentimental journey through some of the highlights of my involvement with the Council of Europe. The tone will be very personal and the approach subjective, but this is unavoidable if one wants to convey the quality of that experience and give a true account of what it has meant to me and others like me.

The first order of business after “eastern” Europe joined the Council of Europe was to learn and understand “European standards”. The early 1990s were a time when post-communist countries were formulating ideas about a new media order. Some of those concepts as well as some factors impacting on the process

of their implementation are presented in Part IV in “Post-communist central and eastern Europe: promoting the emergence of open and pluralist media systems”, and “Media concentrations and foreign media presence in central and eastern Europe”. Post-communist countries were then constantly being told that if they wanted to “return to Europe,” in the popular phrase of that time, they had better fully accommodate to “European (that is, human rights and democratic) standards”.

For us, newcomers, the thrill of being part of the Council of Europe was that we soon realised that it was precisely the place where most of the “European standards” came from. After all, Boris Navasardyan, president of the Yerevan Press Club in Armenia, has been quoted as saying that “the Council of Europe serves today as the main tutor of democracy” for European post-communist states. The thought that now we would be part of the process of formulating those standards was awe-inspiring. Moreover, I was soon invited to help the Council of Europe in serving as the tutor of democracy. Hence the list, available at the end of this collection, of expertises and reports regarding media legislation in new democracies that I wrote for the Council of Europe (sometimes in conjunction with the European Union). In addition, I sought in some of the papers and reports included in Part IV “Creating and protecting democratic media systems” to spell out the general Council of Europe view of a democratic media system and apply it to particular situations.

In this connection, mention should also be made of Part II “Public service media look to the future”. True to its human rights vocation, and to its view of how the media should serve the public interest, the Council of Europe is the only European organisation to persistently promote public service media and the cause of their survival and development in the 21st century. I considered that aspect of the CDMM’s and the Council of Europe’s activities as a whole to be very important. This is why I was glad to be invited to help write the 2004 report of the Parliamentary Assembly on Public Service Broadcasting (PSB) and also sought in various other papers to argue that media policy in European countries should support the continuation of public service media and their adjustment to social, cultural and technological conditions of the 21st century.

All this shows that with the passage of time, we “eastern” Europeans grew out of our role of pupils at the knees of our “western” European friends (some of us later actually had an opportunity to return the favour, as evidenced by the legal reviews of the Italian Gasparri and Frattini laws included in this volume). As I said in the speech “We need an EU with a heart, a social conscience and courage” which is included in this volume, we wanted, and thought we deserved, to be partners, recognised also for our ability to contribute to common endeavours. The papers in this collection bear witness to a personal effort to win that recognition. As most of the papers here were commissioned by Council of Europe bodies, evidently that has happened.

Early into the 21st century, it became obvious to me that the Council of Europe was not properly equipped to deal with information society issues. At the time of the World Summit on the Information Society, it was rather clear that matters debated there did not have a proper institutional home within the Council of Europe. True to its terms of reference, the CDMM continued to concentrate on old mass media dilemmas, when the rest of the world was breathlessly pondering new issues thrown up by the new technologies and new communication services. That is why in the run-up to the 7th European Ministerial Conference on Mass Media Policy (Kiev, 2005) I proposed that in the Political Declaration to be adopted at the conference, the ministers should "Request the Committee of Ministers of the Council of Europe ... to redefine the mandate of the Steering Committee on the Mass Media (CDMM) so that it can fully encompass the new information and communication technologies and, accordingly, to rename it Steering Committee on the Media and New Communication Services (CDMC)". And that, indeed, is what has happened, with the result that the CDMC is now fully empowered to deal with all and not just with some communication services. And when the successive ministerial conference was held in Reykjavik in 2009, it had to have a new title: the 1st Council of Europe Conference of Ministers Responsible for Media and New Communication Services.

Part III, "Human rights in the information society", contains papers dealing both with the general issues of whether (and if so, how) the information society requires a reconsideration or redefinition of human rights (see the paper "Human rights and the information society: a preliminary overview"), and with specific issues relating to social communication. This includes the main background paper for the Reykjavik conference: "A new notion of media? Media and media-like content and activities on new communication services", designed to make it clear to the assembled ministers that the old framework within which media issues have been considered for decades is changing fast and they have to be ready to readjust their mindsets and their policies to entirely new realities.

Bringing Council of Europe approach and standards into line with the new realities of the information society, and making them relevant in the new context, was a major objective of all the work undertaken in my final years at the Council of Europe (see "Council of Europe media standards relating to press freedom in the digital era"; "Public service broadcasting vis-à-vis the digital and online challenge"; Recommendation CM/Rec(2007)3 of the Committee of Ministers to member states on the remit of public service media in the information society; "The role and future of public service media, in particular with regard to e-democracy"; and "Modernising the European Convention on Transfrontier Television"). Also, after the conclusion of my formal association with the Council of Europe, I was invited by the CDMC to draft what later became Recommendation CM/Rec(2007)16 of the Committee of Ministers to member states on measures to promote the public service value of the Internet.

My parting gift to the Council of Europe was contained in the keynote address "A new notion of media" I was invited to give at the Reykjavik conference in 2009. This

was yet another effort to take the Council of Europe in a new direction, namely a proposal that the CDMC and the Council of Europe as a whole should “take the historic step of redefining freedom of expression into the right to public expression”. The idea has found some support, so it will be interesting to see how the debate unfolds.

I cannot conclude this introduction without giving expression to my gratitude to all my friends in the CDMM and CDMC, both for the years we spent together preserving and enhancing the reputation of the Council of Europe as the conscience of Europe, in our case in the freedom of expression field, and for the singular and greatly appreciated honour of being able to publish this collection. Many thanks also to the Media and Information Society Division (previously Media Division) in the Council of Europe Secretariat for dedicated and consistent support and leadership.

Part I. Speeches

A new notion of media

Keynote speech delivered during the 1st Council of Europe Conference of Ministers Responsible for Media and New Communication Services, Reykjavik, 28-29 May 2009.

This should have been – and could have been – the 8th European Ministerial Conference on Mass Media Policy. But it is not. It is the 1st Council of Europe Conference of Ministers responsible for Media and New Communication Services.

Of course, Shakespeare's Juliet would dismiss this change of title because "a rose by any other name would smell as sweet". Yes, but she could be reasonably certain she would know a rose, whatever it was called, when she saw one. We, on the other hand, are not sure whether or not what we see emerging around us can and should be classified as media. We do not know if we can trust the information we receive from those sources. Nor do we know whether or not our policy and regulatory frameworks apply to these new modes and technologies of communication.

Policy and regulation are usually far behind the curve of what is happening in real life. This conference and the work that will follow are giving you an opportunity both to go back to basics and start by defining the very terms we are using, and, at the same time, to look far into the future. By the same token, I am proud to say as a former chairman of the CDMC, the committee is providing you with a rare opportunity to be ahead of the curve and to blaze an entirely new trail in this area.

I must also point out, however, that to call the so-called new media "new", when some of them have been around for 30 to 40 years, betrays a mindset rooted in the past. This is known as "generational fallacy": judging new technology based on one's experience with the old and treating new developments as an element of discontinuity, a disruption, an exception from the way things "normally" are. To get in the right frame of mind, and to have a chance to develop anything like an adequate and future-proof policy response, we should learn to treat the "new" media and the context they operate in as the norm – in exactly the way that the so-called "digital natives" do. If so, then the right language to use would be "digital media" and "legacy media" – the latter being traditional media inherited from the past and facing an uncertain future.

Of course, we should not get carried away. Traditional media have considerable staying power and are, for the time being, unrivalled as producers of content in general and quality content in particular. After all, Google was reported recently to be talking to both the *New York Times* and the *Washington Post* about possible collaboration and "improved ways of creating and presenting news online." What it also means, however, is that for the first time mass media development may happen differently than before. In the traditional model of cumulative media

development, old media continued, perhaps with some modifications, despite the appearance of new ones. Now we may, over time, see not accumulation but substitution: new media may begin to replace old ones. As the Council of Europe Parliamentary Assembly has put it in Recommendation 1855 (2009) on the regulation of audiovisual media services, "Much of what is now considered broadcasting may in future be delivered over the Internet, where the user controls his or her access to countless sources of content which know no geographic boundaries". Broadband networks may ultimately take over and serve as the main conduit for all forms of content. Traditional media and journalistic functions will obviously continue, but will be required to adapt to new conditions.

In all this, we should remember that technology is not the prime cause of media development. If you want to understand what is happening, follow social and cultural trends, not just technological ones. Many new communication technologies – videophones, for example – have fallen by the wayside because they failed to meet socially- and culturally-based criteria of usefulness and acceptability. Needs and expectations arising from social and cultural change feed back into the process of technical innovation, but also affect our attitude to the traditional media, requiring change on their part, as well. For example, the draft action plan to be adopted by this conference calls for the elaboration of a policy document on the governance of public service media. I applaud this proposal. The interactive and participatory Internet culture has been shaped in part by the individualism and anti-authoritarianism of post-modernity. No-one who has experienced and grown used to that culture will be prepared to accept the traditional governance arrangements of public service media. They will expect a relationship of direct accountability, partnership and participation – not something many public service media are prepared to enter into, even if it means that they will be increasingly irrelevant and out of touch.

In preparing for this conference, we have identified three new notions of media: digital, convergent media into which all existing media may one day evolve; media created by new actors, including social, citizen and user-generated media, and media-like activities performed by non-traditional media actors. No doubt, more new forms of media will appear. Also, convergence will create many new permutations of old and new media. Community media would also like to be recognised as new media, but I think they are in reality old media. Still, they do represent a new phenomenon, to which I will return in a moment.

You will be discussing all of this during this unusually interactive and participatory ministerial conference. It is itself a sign that the CDMC and the Council of Europe have understood that the right communication mode in the 21st century is not one-to-many, but many-to-many and that peer-to-peer communication means government ministers and civil society being put on an equal footing. The Council of Europe Parliamentary Assembly has called on national legislators to review their existing regulation and set up new means for achieving their objectives regarding audiovisual media policy, while securing achievement of these objectives also in the new media environment. The job the Council of Europe

is facing is indeed to preserve all that the old media order could contribute to democracy and human rights, while at the same time maximising the contribution of the new media universe and dealing with the challenges it presents. Let me mention just one such challenge, but a big one: the downside of the ease and extended freedom of choice in access to information and content can be “ego-casting”, or the ability to screen out content we are not comfortable or do not agree with, and fragmentation – both potentially undermining social cohesion and national unity and perhaps leading to the disintegration of the democratic polity.

So, as we consider the new media, let us not lose sight of what is happening to the old ones. In its 2007 resolution on the state of human rights and democracy in Europe, the Parliamentary Assembly saw the media as “too often primarily business-driven institutions” that “by prioritising their business interests over the service to the citizens and democracy, inevitably contribute to the distortion of democracy.” That is why Jürgen Habermas, the German philosopher, has called for public subsidies for the quality press which he perceived as the lifeblood of the public sphere, democratic debate and discourse. Since then, things have only got worse, due to the economic downturn which is proving disastrous, especially for the traditional media. The International Federation of Journalists stated recently that “the traditional structure of information pluralism upon which democracy in Europe depends is on the verge of collapse.”

Recently, the Dutch Media Minister, Ronald Plasterk, allocated money for 60 young journalists, to relieve the financial burden on the commercial daily newspapers they work for. In the United States, the *Huffington Post*, a popular current affairs website, is bankrolling a group of investigative journalists to look at stories about the nation’s economy. This will help keep in work professional investigative reporters who were laid-off by crisis-stricken newspapers.

More systemic solutions are needed, however. This is a conference of ministers responsible for the media. It is to be hoped that you will find ways to guide the work of the Council of Europe in the coming years in such a way that these issues will be taken up and some solutions will be proposed.

Still, while professional journalists are crucially important in social communication, we should reject what I would call an aristocratic view of society and social communication, which claims that only educated and cultured, in short elite people should have the right to take part in public discourse. Yes, today anyone from a political party to a sports club, a corporation, or a single individual, can distribute content worldwide on the Internet, without the mediation of journalists and editors, their editorial judgment and their standards for selecting and presenting information. With such an avalanche of personal, often biased information and commentary, the media are said to have entered the post-objectivity era. Yes, there may be a lot of rubbish on the Internet. But any such consideration is far outweighed by the great democratic triumph of the almost universal ability, at least in developed societies, to exercise the right to freedom

of public expression. Sometimes this produces Twitter “revolutions”; but what it also means is that with citizen journalism, community, social and other new forms of media, audiences may have access to a lot more public-spirited content than in the past. What we do need, of course, is great investment into media education and media literacy, so that people can acquire or develop the competence to separate the wheat from the chaff. And we must hold the new media to many of the same ethical, legal, reliability and accountability standards as those prevailing in the old media. One thing is certain, however: the rebellion of the masses has happened and the masses have won. The floodgates to universal expression are wide open. That is why some people say we should no longer speak of “mass media”, but of “media of the masses”. And this is where I would put community media – as media of the people, and not of the elite.

In this context, let me present you with a challenge which at the same time is a call to greatness – greatness to which you can and should aspire if you and the Council of Europe as a whole will take the historic step of redefining freedom of expression into the right to public expression. What Article 10 of the European Convention on Human Rights (ETS No. 5) calls “the right to freedom of expression” has always been an incomplete right, making it an important, but not wholly effective pillar of democracy. As President Kekkonen of Finland said many decades ago, the freedom of the press is the freedom of those who own it. The concept of the “right to communicate”, introduced in the 1970s, and the whole media democratisation movement of the 1960s to the 1980s, testify to a feeling that all is not right with social communication, and to a strongly felt desire to go beyond the social communication arrangements of that time. That movement failed because no-one could imagine how the state could make freedom of expression a positive right by providing everyone with the means necessary to join the public discourse. Still, a media reform movement is alive and well in the United States today. In any case, individuals do not now need the state to give them the tools of public expression. Anyone with the right equipment and the right cultural and communication competence can broadcast their news and views to the entire world. In these circumstances, we should – I dare not say rewrite – reconsider the practical meaning of Article 10 and develop an interpretation in keeping with what is possible today, and was not possible when the Convention was being adopted.

Access cable channels in the US; free radio in Germany; *radio associative* in France, neighbourhood radio in Sweden; licensing of community radio in the UK; very recent legislation recognising community media in Austria; recognition of community media by the Council of Europe and the European Parliament; the fact that the US State Department now “tweets” on Twitter, has a Facebook account, and has launched a social networking site on its own web server; finally the fact that New Zealand police launched a “wiki” to invite the public to suggest the wording of a new piece of legislation, the Police Act, potentially producing a user-generated (but hopefully not a Mafia-generated) Police Act – all this shows that something like formal recognition of the right to public expression is a

breakthrough waiting to happen. The Council of Europe has a long tradition of discussing this issue, going back decades, and is now making its own contribution to this movement, for example by adopting the Recommendation on measures to promote the public service value of the Internet which highlights access, openness and diversity as indispensable features of the Internet and Internet content.

The recommendation also says in part: "Member states should encourage the use of ICTs (including online forums, web logs, political chats, instant messaging and other forms of citizen-to-citizen communication) by citizens, non-governmental organisations and political parties to engage in democratic deliberations, e-activism and e-campaigning, put forward their concerns, ideas and initiatives, promote dialogue and deliberation with representatives and government, and to scrutinise officials and politicians in matters of public interest".

So, who better to seize this opportunity than the Council of Europe?

Recently *The Guardian* published an editorial "In Praise of the Council of Europe" where it said that whatever other European organisations may be doing "it still falls to the Council to promote what matters most, namely democracy and the rule of law. The Council also provides the human rights court ... And it was a Council protocol that banished the death penalty, and thus made the continent that crows about being civilisation's cradle just a little bit more civilized".

If you can launch the process that will elevate freedom of expression into a right to public expression, to be recognised, promoted and protected by member states, you will have made Europe and the whole world not a little, but a lot more civilized and democratic. I hope you will. And I wish you success in that historic endeavour.

2

We need an EU with a heart, a social conscience and courage

Remarks delivered at a conference to mark the 10th anniversary of the European Audiovisual Observatory (Strasbourg, 17 January 2003) during the session "Pondering the legal framework for the audiovisual sector in Europe."

You may perhaps recall that at the Birmingham European Audiovisual Conference in 1998, I asked a question about maps. I said that on very old maps unexplored areas of which little was known used to be marked with the words "Here be dragons". That, before 1989, was how many in western Europe viewed maps of central and eastern Europe. Later, as they looked at maps of the region, what they often saw was words: "Here be markets". My question in 1998 was – when will they see the words: "Here be partners"?

What I want to discuss with you today – speaking in a purely personal capacity and concentrating on the spirit and not the letter of the law – are prospects for partnership in the area of media policy and regulation within the enlarged European Union. Theoretically, there should be no problem. However, there may be, if by partnership we mean a willingness to work together, to agree on goals and objectives to be pursued, and to assist each other in areas each side considers most important and pressing. Vision, flexibility and adaptability on many sides – the old and the new members, and all the EU institutions to boot – will be required for real partnership to flourish.

Potential conflict between national interests and EU regulations

If any common features of media policy in post-communist countries can be identified, they certainly include a general tendency to protect national culture and the national media market, as well as fear of outside domination. Many of our countries imposed domestic production quotas and caps on foreign investments into their broadcasting systems. The moment they started negotiating association agreements with the EU, they realised that both would eventually have to go and that domestic quotas would have to be replaced by European ones.

They were also given to understand that they were seen as markets to conquer. Back in 1994, the European Commission gave some consideration to promoting the growth of the programme industries in central and eastern European countries, but ultimately decided to consider the advisability and feasibility of providing incentives for EU companies "to move into these countries". Some of the candidate countries have now been admitted to the Media Plus programme, so things have changed. However, the EU's failure to do anything about media concentrations at the European level, together with guiding principles of the internal market, mean that our still relatively underdeveloped media markets

will be wide open to competition from much stronger media conglomerates from other EU countries.

Preoccupation in new member states with domestic issues of media policy and politics

In trying to develop a new media system after 1989, we were working with a number of models. Dissidents originally began with a model of direct communicative democracy, and direct democracy in general. Other models could be called the "western European model" and "beyond the western European model", a more democratic version which someone has called "testing the best of the west". Then there was a concept of wholesale media privatisation as the only – illusory, I might add – way of escaping state control. The model really applied has been called by one author a "paternal-commercial system".

The choice of media system model naturally depended on a much more momentous choice: of social and political system. As we began writing broadcasting laws, we realised that it was like writing a constitution, or, rather, that it is impossible to adopt a broadcasting law without first adopting a new constitution.

Elemer Hankiss, a Hungarian sociologist and first post-communist President of Hungarian Television, wrote in 1992 that "Present day events and developments are questions of life and death for each individual, family, group and class in these [post-communist] societies; it is being decided in these months and years who will be the winners and who will be the losers in the next decades; who will profit from, and who will lose by, the transition to a new social and economic model; whose children will be poor and whose will be rich; who will belong to the propertied classes and who will be the have-nots". Too much is at stake for the media not to be dragged into these battles.

We would need the EU as an honest broker to adjudicate in, and help resolve our battles around the new media order. Problems abound: media freedom, independence and pluralism; prospects for public service broadcasting to take root and survive; independence of regulatory authorities; journalistic professionalism; development of the content industry; ability to enter the digital age. We know the Community cannot easily play such a role, if at all. Still, we want to take the EU seriously as an organisation relevant to our lives, so we need the EU to take itself seriously and to face up to its responsibilities, instead of sweeping problems in new and old member countries under the carpet.

After EU accession, social and political problems in the new member countries will not go away. They may in fact intensify in the first years. Forgive me, but compared to the gravity of these problems, revision of the Television Without Frontiers directive appears somewhat esoteric and abstruse. Our representatives may perhaps find it difficult to concentrate during discussions of the more arcane points of new advertising techniques.

Differences of media policy goals between new countries and other EU members

Another common feature of early post-communist media policy was preservation of the traditional definition of the media as political, cultural and educational institutions, with almost total disregard – at least at the beginning – for their economic and technological dimensions.

We still treat the media as “meaning-making machines”. We have the impression that the EU treats the media as “money-making machines”. A meeting of minds may be difficult.

At the October 2002 meeting of EPRA, two representatives of the European Commission spoke to the subject of an EU media policy. Someone from the Internal Market Directorate-General (DG) described “our policy approach” in the following words: “Promotion of a European Space for Broadcasting by ensuring the fundamental freedoms of the *internal market* to broadcasters; guaranteeing *access and choice* for citizens; taking into account the specific nature of *public service broadcasting* – in an enlarged European Union”. To call this minimalist agenda a “policy approach” is to give it a very grand name.

In turn, someone from the Education and Culture DG outlined “themes of the work programme” on the revision of the directive: right to information, cultural diversity, protection of consumers, protection of minors, public order, right to reply, intellectual property and Television Without Frontiers. This is more recognisable as a policy approach.

However, I was greatly interested to read a speech given by Lennart van der Meulen, a Commissioner of the Dutch Commissariaat voor de Media at the Film and Television Forum in Barcelona in October last year, where he called for a change of the EU audiovisual policy ... Let me just repeat some of his proposals. He wants the audiovisual policy to serve cultural as well as economic goals. He wants more to be done to develop content production, especially at the national and regional level. He wants action to relieve commercial pressure on the media, to “untie” (as he puts it) the main multimedia concerns, to stress the social responsibility of broadcasters and to preserve and strengthen public service broadcasting as part of the dual system. He wants the directive to be revised with these and similar goals in mind.

After reading his speech, I decided we in central and eastern Europe were not as backward and underdeveloped as we had been led to believe.

I know that the effect of EU accession on the domestic politics, policies and institutions of the new members has often been referred to as “Europeanisation”: EU membership changes the way states define their interests, the international perspective becomes more part of their daily lives. However, let us be mindful of the scene that keeps being replayed at European organisations. New post-communist countries join, new people arrive – fresh from the battles on the

home front – and they begin to raise issues and make proposals on matters of current importance to them. They soon realise, however, that their proposals are getting nowhere, and they fall silent, unable to bridge the gap between what is happening at home and the issues the given organisation is concerned with. Their participation in the work of that organisation may later become formal, their contribution – minimal.

What we must avoid at all costs is repetition of this process within the enlarged European Union.

What I have just said should by no means be interpreted as supporting the view that enlargement is premature. In central and eastern Europe, we are telescoping decades and in fact centuries of change into a few short years. Attempting and achieving the impossible is nothing new for us. It's just that miracles take a little longer. We can become boring and predictable EU members, squabbling about the same things as everybody else. That's impossible, so it's easy. Or we can introduce new ideas into the EU and join forcefully and without inhibitions in the already ongoing debate about what sort of an organisation it should be. We need to change and the EU needs to change. We need an EU with a heart, a social conscience and courage – the courage of its convictions and principles. That requires a miracle, and that is why we need your vision, flexibility and adaptability to achieve that.

Council of Europe media standards relating to press freedom in the digital era

Remarks delivered during an ENPA-FAEP event: Press Freedom in the Digital Era, European Parliament, 2 May 2007.

When radio was being developed, press publishers in Great Britain and elsewhere insisted it should not broadcast any news before the evening, so that sales of newspapers would not suffer. Then, they learned to live and prosper alongside a medium that broadcast news from morning till night. They made no such demands when television came along.

I am saying this because the digital media, and the Internet especially, are still a voyage of discovery for us all. According to the First Law of Technology, a consistent pattern in our response to new technologies is that we simultaneously overestimate their short-term impact and underestimate their long-term impact. This voyage of discovery will last a long time and it is far too early to draw final conclusions. We are still trying to understand these media and to develop a proper frame of reference within which to consider them – and their regulation, if and when necessary.

The social value and importance of the Internet

However, we are receiving important pointers. Bill Gates has developed the concept of a “web lifestyle”, saying that “This is a lifestyle in which people take advantage of the Internet to lead more informed and productive lives, and have more fun ... people will naturally turn to the Internet first to get information, manage their finances, make better purchase and travel decisions and communicate with friends and others with whom they have common interests”. If we are going to transfer many of our activities to the web, we would expect the same rules to apply online, and the same level of legal and human rights protection, as off-line. Even bloggers, and no-one is more fanatical about their freedom than bloggers, are now beginning to recognise that they should develop a self-regulatory code of conduct. The first draft contains this principle: “Don’t say anything online that you wouldn’t say in person” (or, in other words, as it is explained in the draft, “when you write a blog, imagine you are talking to your own mother”). That underscores my point about the same rules applying online as off-line.

Exactly the same point is made by the European Internet Coregulation Network, broadly representing the industry itself, in a policy statement on Internet governance submitted to Commissioner Reding in 2005: “Internet is a social space which needs regulation in all its aspects according to common social values. Internet cannot evolve in the future if the social dimension of this space is not recognized. Most of the human activities are now transferred on the

internet and it implies new responsibilities for all the actors, public and private". Very much along the same lines, the Summit Meeting of the Council of Europe in Warsaw in 2005 said in its Action Plan that the organisation was going to dedicate itself to strengthening human rights in the information society, and in particular freedom of expression and information and the right to respect for private life. Similar points were made in Council of Europe contributions to the WSIS (World Summit on the Information Society) and to the Internet Governance Forum. They stress that Internet governance should be approached from a people-centred perspective and should 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.

In general terms, the Council of Europe views the Internet as a common asset which has great potential to serve the common good, positively affecting many aspects of life, including communication, information, knowledge, business and growth. Consequently, it believes that everyone should be entitled to expect the delivery of a minimum level of Internet services of public value and that the state will have to play a growing part in the delivery of the public service aspects of the Internet. However, this does not necessarily require a hands-on approach; in most cases, the role of facilitator and overseer will suffice. To ensure the delivery of public services by delegation, the state should facilitate and lead a multi-stakeholder framework within which the private sector can operate and, where necessary, should adopt measures to fill gaps left by private operators.

The Council of Europe wants to address both opportunities to exercise human rights, and challenges to this, created by the use of information and communication technologies and to develop standards to ensure respect for human rights and the rule of law in the information society. The 2005 Declaration of the Committee of Ministers on Human Rights and the Rule of Law in the Information Society identified a number of human rights which are affected, both positively and negatively, by the ICTs (Information and Communications Technologies). The list begins with the right to freedom of expression, information and communication, and includes also the right to respect for private life and correspondence; the right to education; the prohibition of slavery and forced labour, and the prohibition of trafficking in human beings; the right to a fair trial and to no punishment without law; the protection of property; the right to free elections; freedom of assembly.

This approach was confirmed by the European Court of Human Rights recently, when it found the British Government to be in breach Article 8 of ECHR ("Everyone has the right to respect for his private and family life, his home and his correspondence") in a case where a college monitored one of its employees' emails, Internet traffic and telephone calls.¹

1. Copland v. the United Kingdom (Application No. 62617/00): www.thegovernmentsays.com/cache/90069.html.

Developing and updating human rights standards for the digital media

One of the avenues pursued by the Council of Europe is to reassess and if necessary to revise or develop its existing human rights standards in terms of their applicability and effectiveness in the information society. This applies to the media field, as much as to any other, and I want to stress in this context that “the media” are now defined in Council of Europe documents as any means of communication for the periodic dissemination of information, over which there is editorial responsibility, irrespective of the means and technology used for delivery, which are intended for reception by, and which could have a clear impact on, a significant proportion of the general public.

Accordingly, a number of texts² have been and are being prepared to update Council of Europe standards and to apply them to circumstances created by the widespread use of digital technologies. They include:

Recommendation No. R(95)13 concerning problems of criminal procedural law connected with information technology

Recommendation No. R(99)5 for the protection of privacy on the Internet

Recommendation Rec(99)14 on universal community service concerning new communication and information services

General Policy Recommendation No. 6 of ECRI on combating the dissemination of racist, xenophobic and antisemitic material via the internet (adopted on 15 December 2000)

Recommendation Rec(2001)7 on measures to protect copyright and neighbouring rights and combat piracy, especially in the digital environment

Convention on Cybercrime (2002)

Recommendation No. R(2001)8 on self-regulation concerning cyber content (self-regulation and user protection against illegal or harmful content on new communications and information services)

Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (2002)

Convention on information and legal co-operation concerning “information society services” (2001)

Recommendation Rec(2004)16 on the right of reply in the new media environment

Recommendation Rec(2006)12 on empowering children in the new information and communications environment

2. www.coe.int/t/dghl/standardsetting/media/Doc/CM_en.asp.

Recommendation Rec(2007)2 on media pluralism and diversity of media content

Recommendation Rec(2007)3 on the remit of public service media in the information society

The terms of reference of the Group of Specialists on human rights in the information society³ include the following tasks in the next two years, emerging out of the Action Plan adopted by the Kyiv Ministerial Conference on Mass Media Policy in 2005:⁴

- preparation of draft guidelines on the roles and responsibilities of key state and non-state actors in the information society with particular regard to Article 10 of the European Convention on Human Rights;
- drafting a Committee of Ministers' recommendation updating Recommendation No. R(99)15 on media coverage of election campaigns, taking account of the development of digital broadcasting services, online media and other electronic communication platforms;
- preparation of a standard-setting instrument which promotes a coherent pan-European level of protection for children from harmful content when using new communication technologies and services and the Internet, while ensuring freedom of expression and the free flow of information;
- preparation of a report on the use and impact of technical filtering measures for various types of content in the online environment, with particular regard to Article 10 of the European Convention on Human Rights and, if appropriate, submission of concrete proposals (e.g. in the form of a draft standard-setting instrument) for further action in this area;
- examination of the issue of respect for human dignity in the new communication services and, if appropriate, submission of concrete proposals for further action designed to complement or reinforce existing standards in this area;
- preparation of a report on emerging issues and trends in respect of, on the one hand, the protection of intellectual property rights and the use of technical protection measures in the context of the development of new communication and information services (and the Internet) and, on the other hand, the fundamental right to freedom of expression and free flow of information, access to knowledge and education, the promoting of research and scientific development and the protection and promotion of the diversity of cultural expressions and artistic creation and, if appropriate, submission of concrete proposals for further action in this area;

3. www.coe.int/t/dghl/standardsetting/media/MC-S-IS/Mandat_en.asp.

4. [www.coe.int/t/dghl/standardsetting/media/Doc/MCM\(2005\)005_en.asp](http://www.coe.int/t/dghl/standardsetting/media/Doc/MCM(2005)005_en.asp).

- development of tools to assist key state and non-state actors in their practical understanding of, and compliance with, human rights and fundamental freedoms in the information society in particular with regard to Article 10 of the European Convention on Human Rights.

Freedom of expression

All this work notwithstanding, for the Council of Europe the point of departure and the final goal, when discussing human rights and the media is, of course freedom of expression and information, as laid down in Article 10 of the European Convention on Human Rights, and freedom of the media. This is why in 2003, the Committee of Ministers adopted a Declaration on Freedom of Communication on the Internet⁵. The declaration says that member states should not subject content on the Internet to restrictions which go further than those applied to other means of content delivery, that they should encourage self-regulation or co-regulation regarding content disseminated on the Internet, that their should be an absence of prior state control, and so on. This means, incidentally, that when the European Convention on Transfrontier Television is amended, its scope will be defined as in the draft Audiovisual Media Services Directive, and will not cover online versions of newspapers. Also the 2004 Declaration on Freedom of Political Debate in the Media⁶ can be applied to the Internet as much as to the traditional mass media. Yet another document is now being prepared, a draft recommendation on promoting freedom of expression and information in the new information and communications environment, which will spell out in detail what states can and should do, in active collaboration with other stakeholders, and by promoting the self- and co-regulation of the industry, to pursue that goal. According to this draft, the private sector should be encouraged to “acknowledge and familiarise itself with its evolving ethical roles and responsibilities, and to co-operate in reviewing and, where necessary, adjusting their key actions and decisions which impact on individuals rights and freedoms” and to “develop, where appropriate, new forms of self and co-regulation”.

Let me give you another example of the Council of Europe approach. The World Association of Newspapers is marking World Press Freedom Day this year by waging a Press Under Surveillance campaign and warning, in the words of Timothy Balding, its Chief Executive Officer, that “There is a legitimate and growing concern that in too many instances measures used to fight the war on terror are being used to stifle debate and the free flow of information about political decisions, or that they are being implemented with too little concern for the overriding necessity to protect individual liberties and, notably, freedom of the press”. The Council of Europe Committee of Ministers adopted in 2002 “Guidelines on human rights and the fight against terrorism”⁷ in which it called

5. [www.coe.int/t/dghl/standardsetting/media/Doc/H-Inf\(2003\)007_en.pdf](http://www.coe.int/t/dghl/standardsetting/media/Doc/H-Inf(2003)007_en.pdf).

6. <https://wcd.coe.int/ViewDoc.jsp?id=118995&Lang=en>.

7. <http://wcd.coe.int/ViewDoc.jsp?id=991179&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>.

for all measures taken by states to fight terrorism to respect human rights and the principle of the rule of law, while excluding any form of arbitrariness, and for “all measures taken by states to combat terrorism to be lawful”. Then, in 2005, the Committee of Ministers adopted a Declaration on Freedom of Expression and Information in the Media in the Context of the Fight against Terrorism,⁸ calling on member states, and others, not to introduce any new restrictions on freedom of expression and information in the media unless strictly necessary and proportionate in a democratic society and after examining carefully whether existing laws or other measures are not already sufficient; to refrain from creating obstacles for media professionals in having access to scenes of terrorist acts; and to respect strictly the editorial independence of the media, and accordingly, to refrain from any kind of pressure on them.

The multi-stakeholder approach

Mr Chairman, let me conclude by returning to the question of “how” to regulate, when regulation is indeed found to be necessary. In its 2006 submission to the Internet Governance Forum, the Council of Europe begins by saying that “States have an important role to play in Internet Governance” and this is immediately developed by recognising the accepted working definition of Internet governance as “the development and application by Governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet”. The submission notes that it is important for states to encourage self-regulation and co-regulation regarding content disseminated on the Internet and says that multi-stakeholder co-operation will no doubt remain the best way forward. Also, that a state can discharge many of its responsibilities by promoting new forms of solidarity, partnership and co-operation: “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”. The Council of Europe recognises in the document that the most democratically acceptable way forward is to draw on international conventions and practices when bringing all stakeholders together within a framework of shared expectations regarding the Internet and its governance.

The European Newspaper Publishers Association (ENPA) has observer status with the Council of Europe Steering Committee on the Media and New Communication Services⁹ and has made its views known as regards documents prepared by that committee. Its views are taken into consideration and have affected the contents of these documents, and the language used in them. This shows that the Council of Europe does more than preach a multi-stakeholder approach. It also practises it.

8. <http://wcd.coe.int/ViewDoc.jsp?id=830679&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>.

9. www.coe.int/t/dghl/standardsetting/media/CDMC/.