

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Recommendation Rec(2004)16¹ **of the Committee of Ministers to member states** **on the right of reply in the new media environment**

*(Adopted by the Committee of Ministers on 15 December 2004
at the 909th meeting of the Ministers' Deputies)*

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

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

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

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

Recalling, furthermore, that the European Convention on Transfrontier Television (ETS No. 132) refers not only to the right of reply but also to other comparable legal or administrative remedies;

Reaffirming that the right of reply should protect any legal or natural person from any information presenting inaccurate facts concerning that person and affecting his or her rights, and considering consequently that the dissemination of opinions and ideas must remain outside the scope of this Recommendation;

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

Considering that it is also in the interest of the public to receive information from different sources, thereby guaranteeing that they receive complete information;

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

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

Recommends that the governments of the member states should examine and, if necessary, introduce in their domestic law or practice a right of reply or any other equivalent remedy, which allows a rapid correction of incorrect information in online or off-line media along the lines of the following minimum principles, without prejudice to the possibility to adjust their exercise to the particularities of each type of media.

¹ When adopting this Recommendation, the Permanent Representatives of the United Kingdom and the Slovak Republic indicated that, in accordance with Article 10.2 c of the Rules of Procedure for the meetings of the Ministers' Deputies, they reserved the right of their Governments to comply or not with the Recommendation, in so far as it referred to online services.

Definition

For the purposes of this Recommendation:

The term “medium” refers to any means of communication for the periodic dissemination to the public of edited information, whether on-line or off-line, such as newspapers, periodicals, radio, television and web-based news services.

Minimum principles

1. Scope of the right of reply

Any natural or legal person, irrespective of nationality or residence, should be given a right of reply or an equivalent remedy offering a possibility to react to any information in the media presenting inaccurate facts about him or her and which affect his/her personal rights.

2. Promptness

The request for a reply should be addressed to the medium concerned within a reasonably short time from the publication of the contested information. The medium in question should make the reply public without undue delay.

3. Prominence

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

4. Free of charge

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

5. Exceptions

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

- if the length of the reply exceeds what is necessary to correct the contested information;
- if the reply is not limited to a correction of the facts challenged;
- if its publication would involve a punishable act, would render the content provider liable to civil law proceedings or would transgress standards of public decency;
- if it is considered contrary to the legally protected interests of a third party;
- if the individual concerned cannot show the existence of a legitimate interest;
- if the reply is in a language different from that in which the contested information was made public;
- if the contested information is a part of a truthful report on public sessions of the public authorities or the courts.

6. Safeguarding an effective exercise of the right of reply

In order to safeguard the effective exercise of the right of reply, the media should make public the name and contact details of the person to whom requests for a reply can be addressed.

For the same purpose, national law or practice should determine to what extent the media are obliged to conserve, for a reasonable length of time, a copy of information or programmes made publicly available or, at least, while a request for inserting a reply can be made, or while a dispute is pending before a tribunal or other competent body.

7. Electronic archives

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

8. Settlement of disputes

If a medium refuses a request to make a reply public, or if the reply is not made public in a manner satisfactory for the person concerned, the possibility should exist for the latter to bring the dispute before a tribunal or another body with the power to order the publication of the reply.