



MEMORANDUM
on the
draft Council of Europe Recommendation on the right of reply
in the new media environment

by
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I. Introduction

On 25 June 2003, the Council of Europe's Media Division released for comment a “draft Declaration on the right of reply in the new media environment.”¹ This is the third public version of the draft Recommendation.² The first two drafts, both entitled “on the right of reply in the on-line media”, envisaged the Recommendation as an ‘addendum’ for Internet-based publications to the 1974 Council of Europe Resolution on the right of reply, which was seen as applying only to off-line media.³ In response to comments received on the first two versions, this third version recommends a set of guidelines for a right of reply with regard to all media, on-line or off-line. As such, it will effectively supersede the 1974 Resolution.

This Memorandum analyses the guidelines proposed in the draft Recommendation against international standards and best practice on freedom of expression, setting out our concerns and providing recommendations and suggestions to aid further discussion. Our

¹ MM-PUBLIC(2003)004, available at http://www.coe.int/T/E/Human_Rights/media/.

² Although the numbering of the draft indicates that this is actually the fourth draft, only three have been released on the Council’s website.

³ Resolution (74)26 on the right of reply – position of the individual in relation to the press, adopted 2 July 1974. Although this Resolution was no doubt intended to only to cover the print and broadcast media, its wording is ambiguous and it arguably applies to on-line content as well.

main concern is about the wholesale extension of the right of reply to virtually all on-line publications. A mandatory right of reply is a mechanism that has been evolved in some European countries to allow individuals to reply to incorrect factual statements made about them in the mass media. Even in this limited sense, it is a controversial measure regarded by many as an unnecessary interference with editorial independence. We do not believe that it can be justifiably extended to a vast range of Internet content that cannot be classified as forming part of the ‘mass media’.

This Memorandum first sets out international standards on freedom of expression, including on the Internet and with regard to the right of reply. Then, it analyses the draft Recommendation in some detail.

II. The Guarantee of Freedom of Expression

II.1. The Importance of Freedom of Expression

The protection and promotion of human rights, including freedom of expression, is a key obligation for the Council of Europe.⁴ The *European Convention on Human Rights* (ECHR)⁵ was among the first human rights instruments to be adopted in the region and continues to be a foundation stone of European public policy. Freedom of expression is protected in Article 10 of the ECHR, which states, in Paragraph 1:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

Freedom of expression is a key human right, in particular because of its fundamental role in underpinning democracy. In its very first session, in 1946, the United Nations General Assembly adopted Resolution 59(I) which stated, “Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated.”⁶ In a similar vein, the European Court of Human Rights has repeatedly stated:

Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man ... it is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no ‘democratic society’.⁷

⁴ Statute of the Council of Europe, ETS No. 1, adopted 5 May 1949, entered into force 3 August 1949, Article 1.

⁵ ETS No. 5, adopted 4 November 1950, entered into force 3 September 1953.

⁶ Adopted 14 December 1946.

⁷ *Handyside v. United Kingdom*, 7 December 1976, Application No. 5493/72. para. 49. Statements of this nature abound in the jurisprudence of courts and other judicial bodies around the world.

The Court attaches particular value to the protection of speech on matters of public importance.⁸ Although the Court has often stressed the important role played by the media in a democratic society,⁹ it also places a high value on the freedom of expression of minority groups, activists or others who have an important but often controversial message to convey to the public. For example, in *Vgt Verein gegen Tierfabriken v. Switzerland*,¹⁰ it stressed the need for animal rights activists to be able to broadcast a short infomercial to a nation-wide audience, while in *Open Door Counselling and Dublin Woman Well Centre and Others v. Ireland*,¹¹ the Court protected the right of companies to make information regarding abortion available to the public.

II.2. Freedom of Expression and the Internet

Over the last decade, the Internet has become a key instrument for the exercise of the right to receive information, as well as for the right to disseminate information, opinions and ideas. The advent of the World-Wide Web and the establishment of newsgroups and bulletin boards have revolutionised publishing, bringing the ability to broadcast to an audience of millions to anyone with access to a computer, modem and telephone line. All such ‘publications’ are international; a web page uploaded in China, for example, can be read instantly all over the world.

Consequently, the diversity of content available over the Internet is immense, ranging from advice on gardening to space exploration and everything in between. As the US Supreme Court emphasised in the seminal case of *Reno v. ACLU*, “content on the Internet is as diverse as human thought.”¹² It is not just the mass media that publish on-line; the World-Wide Web houses personal websites that attract only a few hits per year alongside popular sites such as the BBC, opposition political parties alongside government departments and small community groups alongside big international organisations such as the Council of Europe.

It has long been established that the right to freedom of expression applies to all forms of communication, regardless of the technical means of dissemination involved.¹³ In 2001, the UN, OSCE and OAS special mandates on free expression adopted a Declaration emphasising “[the] potential [of the Internet] as a tool to enhance the right to freedom of expression and freedom of information” and stating: “The right to freedom of expression applies to the Internet, just as it does to other communication media.”¹⁴ More recently, on 28 May 2003, the Committee of Ministers of the Council of Europe adopted a Declaration laying down a number of basic principles to promote the use of the Internet

⁸ See, for example, *Dichand and others v. Austria*, 26 February 2002, Application No. 29271/95.

⁹ See, for example, *Castells v. Spain*, 24 April 1992, Application No. 11798/85, para. 43.

¹⁰ 28 June 2001, Application No. 24699/94.

¹¹ 29 October 1992, Application Nos. 1423/88 and 142335/88.

¹² 521 US 844 at 885 (1997).

¹³ See, for example, *Autronic AG v. Switzerland*, 22 May 1990, Application No. 12726/87 (European Court of Human Rights), para. 47.

¹⁴ Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 22 November 2001, UN Doc. E/CN.4/2002/75 (Annex V, p. 34).

as a means of expression, including that self-regulation of Internet content is to be preferred over State regulation.¹⁵

II.3. Restrictions on Freedom of Expression

Although the right to freedom of expression is a key right, it is not absolute. The second paragraph of Article 10 of the ECHR recognises that, in certain narrowly prescribed circumstances, it may be limited:

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority or impartiality of the judiciary.

It follows that any restrictions must meet a strict three-part test. First, the interference must be provided for by law. The Court has stated that this requirement will be fulfilled only where the law is accessible and “formulated with sufficient precision to enable the citizen to regulate his conduct.”¹⁶ Second, the interference must pursue a legitimate aim. The list of aims in Article 10(2) of the Convention is exclusive in the sense that no other aims are considered to be legitimate as grounds for restricting freedom of expression. Third, the restriction must be necessary to secure one of those aims. The word “necessary” means that there must be a “pressing social need” for the restriction. The reasons given by the State to justify the restriction must be “relevant and sufficient” and the restriction must be proportionate to the aim pursued.¹⁷

This test is mirrored in the *International Covenant on Civil and Political Rights*¹⁸ and cases decided under that treaty, as well as before the European Court, have made it clear that it represents a high standard which any interference must overcome:

Freedom of expression, as enshrined in Article 10, is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any restrictions must be convincingly established.¹⁹

The test applies to Internet publications as it does to other forms of expression.

II.4. The Right of Reply

The right of reply is a highly disputed area of media law. Some see it as a low-cost, low-threshold alternative to expensive lawsuits for defamation for individuals whose rights

¹⁵ *Declaration on freedom of communication on the Internet*, adopted 28 May 2003.

¹⁶ *The Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74, para. 49.

¹⁷ *Lingens v. Austria*, 8 July 1986, Application No. 9815/82 (European Court of Human Rights), paras. 39-40.

¹⁸ Adopted and opened for signature, ratification and accession by UN General Assembly Resolution 2200A (XXI), 16 December 1966, entered into force 3 January 1976.

¹⁹ *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88 (European Court of Human Rights), para. 63.

have been harmed by the publication of incorrect factual statements about them; others regard it as an impermissible interference with editorial independence.

The right of reply should be clearly distinguished from a right of correction. A right of correction is limited to pointing out erroneous information published earlier, with an obligation on the publication itself to correct the mistaken material. A right of reply, on the other hand, requires the publication to grant space to an individual whose rights have been harmed by a publication based on erroneous facts, to 'set the record straight'. As such, it is a clear interference with editorial freedom.

Because of its intrusive nature, in the United States a mandatory right to reply with regard to the print media has been struck down on the grounds that it is an unconstitutional interference with the First Amendment right to free speech. In *Miami Herald Publishing Co. v Tornillo*, the Supreme Court held:

[A mandatory right of reply] fails to clear the barriers of the First Amendment because of its intrusion into the function of editors. A newspaper is more than a passive receptacle or conduit for news, comment, and advertising. The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials - whether fair or unfair - constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time.²⁰

On the other hand, the *American Convention on Human Rights*,²¹ covering the entire continent, requires States to introduce a right of reply²² and in Europe, many countries guarantee some form of a right of reply in law.²³ However, a legally enforceable right of reply constitutes a restriction on freedom of expression as it interferes with editorial decision-making.²⁴ As such, it must meet the strict three-part test set out above and a number of minimum requirements should apply.

ARTICLE 19, together with other advocates of media freedom, suggests that a right of reply should be voluntary rather than prescribed by law. In either case, certain conditions should apply, namely:²⁵

- (a) A reply should only be available to respond to incorrect facts or in case of breach of a legal right, not to comment on opinions that the reader/viewer doesn't like or that present the reader/viewer in a negative light.
- (b) The reply should receive similar, but not necessarily identical prominence to the original article.

²⁰ 418 U.S. 241 (1974), p. 258.

²¹ OAS Treaty Series No. 36, adopted 22 November 1969, entered into force 18 July 1978.

²² *Ibid.*, Article 14.

²³ This is the case, for example, in France, Germany, Norway, Spain and Austria.

²⁴ See *Ediciones Tiempo S.A. v. Spain*, 12 July 1989, Application No. 13010/87 (European Commission of Human Rights).

²⁵ See also the conditions elaborated in Resolution (74)26, note 3.

- (c) The media should not be required to carry a reply unless it is proportionate in length to the original article/broadcast.
- (d) The media should not be required to carry a reply which is abusive or illegal.
- (e) A reply should not be used to introduce new issues or to comment on correct facts.

III. Analysis

The draft Recommendation proposes that a right of reply should be available to any person whose rights have been affected by inaccurate statements released in the media. Eight minimum principles are suggested, determining the scope of the right of reply, the promptness with which a reply should be published, its prominence, cases in which a reply may be refused and measures that should be taken to safeguard the exercise of the right of reply, among other things. In the following paragraphs, we will comment on each of these in detail.

III.1. Scope and Binding Nature of the Right of Reply

Under Principle 1 of the draft Recommendation, “[a]ny natural or legal person, irrespective of nationality or residence, should be given the possibility of reacting to inaccurate factual statements in the media which affect his/her personal rights.” The preamble stresses that a reply cannot be sought to a statement of opinion or an idea.²⁶ The unnumbered definitions section provides that the term “medium” should be understood as “any means of communication for the dissemination to the public of information at regular intervals in the same format, such as newspapers, periodicals, radio or television, or to any other service available to the public containing frequently updated and edited information of public interest.”

The preamble states that the right of reply is “a particularly appropriate remedy in the on-line environment due to the possibility of instant correction of contested information and the technical ease with which replies can be attached to it [sic]”.²⁷ The next paragraph makes it clear that the Recommendation should apply to all websites except those that do not contain frequently updated and edited information of public interest, “such as websites operated by individuals.”²⁸

The Recommendation is ambiguous on the key question of whether the right of reply should be legally enforceable. One paragraph in the Preamble states that it “can be assured not only through legislation but also through co-regulatory or self-regulatory measures.” However, another preambular paragraph recommends that “States should consider introducing measures in their domestic law,” while draft Principle 6 states that in order to safeguard the effective exercise of the right to reply, “national law should determine to what extent the media should be obliged to conserve a copy of information or programmes made publicly available”, strongly suggesting legal regulation.

Analysis

²⁶ Preamble, paragraph 5.

²⁷ Preamble, paragraph 6.

²⁸ Preamble, paragraph 7.

Our primary concern is that the draft Recommendation proposes an apparently legally enforceable right of reply with regard to all means of communication, without recognising the distinct characteristics of the Internet.

It has become trite to note that the Internet is unlike any other form of mass communication and cannot be regulated in the same manner as the broadcast sector or the print media. However, the draft Recommendation proceeds on the basis that all websites that contain frequently edited and updated information on matters of public interest should be seen as forming part of ‘the mass media’. The only exception it allows is for websites “operated by individuals.” This is a significant oversimplification of the enormous variety of content found on the Internet, with the result that an enormous range of information would be subject to the right of reply. As envisaged by the current draft, the scope of the right to reply with regard to Internet publications would be analogous to granting a right of reply in relation to every published book, and even to pamphlets.

Under the regime proposed by the draft Recommendation, websites such as those run by human rights organisations, the Council of Europe or political parties – which are all frequently updated, edited and contain information on matters of public interest – would be classified as belonging to the ‘mass media’ and be obliged to grant a right of reply to those who allege that their rights have been infringed by incorrect factual statements. To give a concrete example, the administrator of the website of a human rights organisation would have to grant space to the spokesperson of a military dictatorship or any undemocratic government to respond to alleged factual inaccuracies that may be impossible to verify. Or a government representative would be able to post a mandatory reply on the site of a political opposition party, to refute allegations of corruption. In the latter case, a refusal to comply might lead to reprisals being taken against the website, including it being ordered to shut down.²⁹

The scope for abuse of a right of reply, thus formulated, is significant. Governments or other powerful figures in society would be able to crack down on critical websites by launching abusive requests, using up the limited resources of such organisations. It is a well-known fact that defamation law is often abused for a similar purpose. The introduction of the current draft would hand repressive figures another tool with which to crack down on critical media, instead of introducing rules to control such undemocratic behaviour.³⁰

Furthermore, the draft Recommendation fails to take into account the fact that considerable sections of the World-wide web are not suitable for the sort of regulation proposed. Human-edited web directories such as Yahoo! or dynamically edited news sites such as Google News that crawl thousands of other news-sites to collect articles on the

²⁹ It is important to see this proposal in the context of media laws currently being adopted in many countries, which attempt to subject Internet publications to the same requirements as are imposed on print publications. Many countries, for example, have imposed or are looking at imposing licensing requirements on the print media.

³⁰ As recommended in *Defining Defamation: Principles on Freedom of Expression and Protection of Reputation*, ARTICLE 19: London 2000, Principle 19.

basis of predetermined criteria will fall within the scope of the draft Recommendation. However, they merely function as gateways to the web and it is neither realistic nor reasonable to expect them to grant a right of reply in regard to the information to which they refer visitors.³¹

It is crucial that the scope of application of the draft Recommendation should be limited to actual on-line mass media. The current definition of ‘medium’ as including all publications that are frequently updated and contain information on matters of public interest is significantly over-inclusive, embracing large sections of the world-wide web that in no way resemble mass media. Although we acknowledge that it may be difficult to come up with a watertight definition of mass media online, we believe that unless the scope of the draft Recommendation is significantly narrowed, it will represent an unacceptable restriction on freedom of expression. The definitions section should at least make it clear that the Recommendation will apply only to online mass media, and not to the categories of websites mentioned above, and some definitional criteria should be listed.

Generally, while we recognise that a right of reply is capable of contributing to professional, accurate media reporting,³² we do not believe that a mandatory right of reply as proposed by the draft Recommendation is justifiable under Article 10(2) of the ECHR. As set out in Section II.3 above, any interference with editorial freedom, part and parcel of freedom of expression, must be ‘necessary in a democratic society’, prompted by the existence of a ‘pressing social need.’ With regard to the Internet, ARTICLE 19 does not consider that there is a ‘pressing social need’ for the right of reply, just as it has never been considered necessary or appropriate to impose recognition of such a right on printed material beyond the mass media. An important part of the rationale for a right of reply with regard to print and broadcast media lies in the disadvantaged position of the individual with regard to these media; most individuals do not have access to the airwaves or to a printing press. With regard to most parts of the Internet, the situation is very different. An individual who is aggrieved by a publication has the possibility to broadcast his or her response to a significant audience, using newsgroups, his or her own website and mass email, to name but a few of the technical means at the Internet user’s disposal.

The eight pre-ambular paragraph of the draft Recommendation moots the idea that a right of reply could be achieved through self-regulatory measures.³³ We believe that as a matter of principle, a full opportunity should be given for self-regulatory measures to develop before resorting to State regulation. A number of websites already grant a right of reply or ask for general comments and reactions on a voluntary basis. To the extent that they help build up a loyal audience, such measures are self-promoting and we see no

³¹ See *Playboy v. Netscape and Excite* 55 F.Supp.2d 1670 (C.D.Cal. 1999). On the related issue of ISP liability, see the Council of Europe Declaration on Freedom of Communication on the Internet, note 15, Principle 6.

³² As even the US Supreme Court recognised in *Miami Herald Publishing Co. v. Tortillo*, note 20.

³³ The same paragraph also moots ‘co-regulation’, which implies joint regulation by the State, ISPs and possibly content providers.

reason for the Council of Europe to recommend the implementation of binding legal measures.

Another concern relates to the failure of the draft Recommendation to distinguish between the right of reply and the right of correction, or to take into account the idea of the latter as an alternative option. As noted above, a right of correction is a far less intrusive measure that, in many cases, will suffice to remove the ‘sting’ from any incorrect material disseminated through the mass media. The prime motivation behind both the right of reply and the right to correction is the promotion of accuracy in the media. As a less intrusive measure, which will achieve the same result as a full reply, the right to correction should be the preferred option.

Recommendations:

- No right of reply should be imposed on Internet content other than websites that form part of the mass media.
- The right to reply should be voluntary rather than mandatory, and the draft Recommendation should express a clear preference in that regard.
- The draft Recommendation should distinguish between a right of reply and the right of correction and consideration should be given to restricting its scope to the right of correction.

III.2. Conditions

The draft Recommendation proposes that a number of minimum conditions be attached to any right of reply. Principle 2 provides that a request for a reply should be submitted “within a reasonably short time from ... publication”; Principle 3 proposes that the reply should be given similar prominence to the original publication; and Principle 4 states that replies should be granted free of charge.

Analysis

These principles are largely in line with the standards ARTICLE 19 advocates for the exercise of a voluntary right of reply. However, in order for a Recommendation such as this to provide the sort of guidance to States that is needed in this controversial area of media law, far greater detail is needed. This is the case particularly with regard to the time limits for requesting a reply and the ‘prominence’ the reply should be given. With regard to the latter, a footnote mentions that this will be elaborated further in a future explanatory memorandum, particularly with regard to the Internet. While we welcome further elaboration, we recommend that greater detail be included in the operative part of the Recommendation. At a minimum, the Recommendation should specify the different meaning of ‘similar prominence’ in different media, namely print, broadcasting and the Internet.

With regard to time limits, the draft Recommendation should provide some guidance on what constitutes ‘publication’ and when the time limit for requesting a reply should start to run. There has been recent debate over whether the so-called ‘single publication rule’ should apply to Internet content, meaning that time limits start at the moment of first publication, or whether on-line material is considered to be ‘continuously published’,

meaning that time limits are irrelevant. The emerging view is that the single publication rule should apply;³⁴ a rule of continuous or multiple publication would “[expose] publishers to stale claims [and] a multiplicity of actions, leading to potential harassment and excessive liability, and draining of judicial resources.”³⁵ We recommend in this regard that the wording used in an earlier draft of Principle 2 be reinstated, which used the phrase ‘first publication’ rather than simply ‘publication’.³⁶ The wording of Principle 7, dealing with electronic archives, should be revised along similar lines.

Recommendations:

- The draft Recommendation should provide more detailed guidance on what the concept of ‘similar prominence’ means in relation to different media formats.
- The draft Recommendation should provide that the ‘single publication’ rule applies to all content on the Internet.

III.3. Exceptions

Under Principle 5, a reply may be refused in the following cases:

- i. if the length of the reply exceeds what is necessary to correct the contested information;
- ii. if the reply is not limited to a correction of the facts challenged;
- iii. if the reply constitutes a punishable offence;
- iv. if the reply is considered contrary to the legally protected interests of a third party;
- v. if the individual concerned cannot show the existence of a legitimate interest;
- vi. if the medium has corrected the inaccurate statements on its own initiative;
- vii. if the reply is in a different language from that in which the contested information was published; or
- viii. if the reply relates to truthful reports on public sessions of the public authorities or the courts.

Analysis

We welcome this clear statement of the exceptions to the right of reply, which is largely in line with international standards. However, we are not sure what is meant by the exception stated under viii., “if the reply relates to truthful reports on public sessions of the public authorities or courts.” We presume that this relates to the privilege that attaches in many countries to statements made in legislative bodies and the courts. Many countries have established a wide range of privileged occasions in relation to defamatory

³⁴ See, for example, *Tranchant v. Bardin*, Arrêt no. 6374, 16 October 2001 (Cour de Cassation, France) and *Firth v. New York* 2002 NY Int 88, 2 July 2002 (New York Court of Appeals). The New York Court of Appeals dismisses the 19th century case of *Duke of Brunswick v. Harmer*, 14 QB 185 (1849), which the UK Court of Appeal relied on to justify a multiple publication rule in *Loutchansky v. Times Newspapers*, [2001] ECWA Civ 1805.

³⁵ *Ibid.*, *Firth v. New York*, p. 6 of the uncorrected judgment. Available at <http://www.law.cornell.edu>.

³⁶ The current draft indicates earlier wording in crossed-out text.

statements, in recognition of the need for free discussion on those occasions.³⁷ ARTICLE 19 believes that a similar approach is warranted in relation to the right of reply and the Recommendation should make this clear.

In addition, the Recommendation should also provide that a reply may be refused if it is abusive. No one, for example, should be required to publish a reply that includes swear words or which is couched in a style which runs contrary to the standards of the media outlet.

Recommendations:

- The exception relating to “truthful reports on public sessions of the public authorities or the court” should be clarified and it should be clear that it covers a wide range of statements which it is in the public interest to protect.
- The draft Recommendation should allow media to refuse a reply that is abusive.

III.4. Safeguarding the Right of Reply

Principle 6 seeks to safeguard the effective exercise of the right to reply. It requires, first, that all media make public the name and contact details of the person to whom requests for a reply should be addressed, and, second, that all media should keep a copy of all information that has been made available to the public, at least during the period that a request for a reply can be made or while the request for a reply is pending before a court. If such a copy has not been kept, the draft Recommendation states that “this should be taken to mean that the medium concerned accepts that it published the information to which the insertion of a reply has been requested.”

Analysis

First, although many publishers will keep copies of material published as well as supporting material as a matter of good practice, for example to defend themselves against defamation actions, the presumption expressed in the last sentence of Principle 6 constitutes an unacceptable evidential presumption. It should be for the party requesting the reply to demonstrate a legitimate interest and, as part of that, to produce the contested material and to prove that it was published by the body in question.

Second, several of the other Principles refer to “practice” as well as “law”, to embrace the possibility of self-regulatory mechanisms. The drafting of Principle 6, however, only refers to “law”, indicating a mandatory right of reply. For the reasons outlined above, this should be reconsidered.

Recommendations:

- The party requesting the reply should be required to prove that the body in question published the contested material.
- The drafting of Principle 6 should be revised to allow for self-regulation in preference to a mandatory right of reply.

³⁷ See *Defining Defamation*, note 30, Principle 11.

III.5. Right of Reply and other Remedies

The draft Recommendation does not elaborate on how the right of reply should interact with other legal rights and remedies. For example, the draft Recommendation allows for the exercise of a right of reply in response to incorrect statements which affect personal rights. This means that there will often be an overlap with defamation law and in some cases, claimants, having exercised their right of reply, may go on to sue for monetary compensation. In such cases, the timely exercise of the right to reply should normally mitigate any damages that may be awarded.³⁸

Recommendation:

- The draft Recommendation should clarify how the right of reply interacts with the exercise of other legal rights, for example in defamation cases.

³⁸ See *Defining Defamation*, note 30, Principle 15.