

■ The Online Media Self-Regulation Guidebook

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Written in a question-and-answer format, this book is a continuation of “The Media Self-Regulation Guidebook,” published by the OSCE Representative on Freedom of the Media in 2008. The authors explore the best practices and mechanisms of self-regulation of Internet media in the OSCE region and consider the latest issues in journalism, self-regulation and ethics. For journalists, consultants, regulatory officials and undergraduate and graduate students.

The views expressed by the contributing authors in this publication are their own and do not necessarily reflect those of the OSCE Representative on Freedom of the Media.

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Foreword

Dunja Mijatović¹

Dear Readers,

This Guidebook tackles the issue of media self-regulation in the digital world. It is an effort to show the need for ethical standards in the Internet era and illustrate with specific examples how self-regulation mechanisms can protect media freedom in the digital age.

We live in a time in which everyone can take part in “the dialogue,” more than ever before. Media freedom and freedom of speech today means giving everyone, not just the few people who own or control traditional tools of mass communication, the chance to talk and share information. Everyone with a computer and an Internet connection can publish worldwide.

The digitalization process has greatly increased the amount of information available and makes government control of that data more complicated, if possible at all. The widespread availability of content deemed harmful has inspired concern as there is no common understanding of the rules that should internationally govern the Internet. Hence self-regulation appears to be a solution to increase online accountability while offering more flexibility than state regulation. And it is the only mechanism recognized a free-speech friendly.

Digitalization not only has changed the way people communicate, it has transformed profoundly and irreversibly the nature of journalism and ethics. While new media encourages people to speak their minds, democracy still demands independent journalists working to provide reliable and impartial news and analysis. A crucial task of self-regulatory mechanisms is to foster public trust in the media.

Media self-regulation cannot succeed in a repressive environment. However, where media freedom is guaranteed, self-regulation can help preserve the independence of media and protect it from government interference.

¹ Mijatović is Representative on Freedom of the Media for the Organization for Security and Co-operation in Europe.

My Office wants to support those who are engaged in journalism – online or off – who wish to unite in their professionalism and be accountable to the public.

This publication is an attempt to answer the most frequent questions about self-regulation that arise in new media. Who should follow journalism ethical standards in the digital era? Have journalism codes of ethics been adapted to the online environment? What kind of challenges does convergence bring to media self-regulation? What is the impact of the digitalization process on press councils?

The Guidebook does not focus on specific countries but rather on a wide range of issues, each highlighted in different chapters. It explains how the Internet dramatically empowers civil society to keep the media responsible by producing innovative forms of media accountability and how the Internet is transforming the institutionalized forms of media self-regulation that were specifically created for traditional media.

Written in a question-and-answer style, this publication follows-up on the successful Media Self-Regulation Guidebook, published in 2008. It is my hope that this new volume will have a similar resonance and will help readers to find solutions to their current concerns.

I would like to thank all of the experts who have written for this Guidebook for their impressive contributions.

Chapter 1: The Internet and the New Media landscape

Introduction

The Internet has a complex infrastructure and technology which enables users to access and exchange information globally. Today approximately 2.3 billion people worldwide are connected and are given new opportunities to access and share information, offering the promise of a truly democratic society taking shape of a joined global public community. The tremendous success of social networks during the past 10 years is, indeed, a significant illustration of this new environment. The Internet has substantially changed the way people consume media and has transformed the traditional partition of tasks among types of media. While media “convergence” has diluted long-established boundaries between print and audiovisual media, it also created new opportunities for media pluralism because there is no scarcity of frequencies and other resources in the online world.

The widespread availability of harmful and illegal content on the Internet has stirred up concerns among governments and civil society representatives. Even if the benefits from the free flow of information outweigh the dangers of misusing the Internet, the responsibility for illegal and harmful content found there remains a major issue, especially because the Internet permits anonymity. In this context, the question should not be on whether governments should regulate the Internet but rather, on what and to what extent should content be regulated; and to what effect?

With new technologies radically reshaping the media landscape, traditional regulatory assumptions have been called into question and, in many cases, existing rules have become counterproductive. Has governmental regulation proved to be efficient and, if not, are there alternative free speech-friendly methods that could be more efficient?

1/ Media convergence

By Christian Möller

What is the Internet?

The Internet as a “network of networks” enables users to access and exchange information globally, wherever they are. Little more than a computer or a smartphone and a connection to the network – be it dial-up, DSL, cable or WiFi – is needed to access the Web. The Internet has existed for more than 40 years and the World Wide Web (WWW) for nearly 20 years. Notwithstanding it is still considered “new media” and not all answers on how to regulate the Internet have been found. The complex nature of the Internet means there is regulation on at least three different levels or layers: first, the technical layer of cables and switches, second the protocol layer of IP addresses and Transmission Control Protocol (TCP) and, third, on the content level.

The Internet explained

- The Internet is a network of networks which connects millions of computers globally.
- The information that travels over the Internet does so via a variety of languages known as protocols.
- The World Wide Web is a way of accessing and sharing information through HTTP protocol. It also utilizes browsers to access Web documents containing graphics, sounds, texts and videos.

How does the Internet work?

To briefly explain the underlying infrastructure and technology: it mainly consists of cables, switches, DNS servers, backbones, routers and a number of technical devices that belong to private companies, telecoms, universities and government networks. This hardware forms the physical body of the Internet. The dramatic increase in Internet traffic over the past decades has made the Internet become the network of networks it is today. Institutions like the Internet Corporation for Assigned Names and Numbers (ICANN) deal with the technical functioning of the Domain Name System (DNS) establishing new standards in so-called Requests for Comments (RfC) – and apparently did a pretty good job so far in providing

more than 2.26 billion people worldwide with Internet access.¹ ‘Rough consensus, running code’ was one of the principles used to keep the Internet up and running by defining lowest common denominators for technical standards and interfaces.

ICANN

To reach another person on the Internet you have to type an address into your computer - a name or a number. That address must be unique so computers know where to find each other. ICANN coordinates these unique identifiers across the world. Without that coordination, we wouldn't have one global Internet.

In more technical terms, the Internet Corporation for Assigned Names and Numbers (ICANN) coordinates the Domain Name System (DNS), Internet Protocol (IP) addresses, space allocation, protocol identifier assignment, generic (gTLD) and country code Top-Level Domain (ccTLD) name system management and root server system management functions. These services were originally performed under a U.S. Government contract by the Internet Assigned Numbers Authority (IANA) and other entities. ICANN now performs the IANA function.

Source: <http://www.icann.org/en/>

Has the Internet changed the production and consumption of media-like content?

In many ways, yes. Today, the Internet offers numerous new ways to communicate and share ideas, many of which we could not have imagined just a few years ago and many more to come that we cannot envision today. Innovative technologies combined with already existing features are used to form new Internet services which can be used by journalists and citizens alike.

What is media convergence?

To “converge,” according to *The New Oxford Dictionary of English* is when “several people or things come together from different directions so as eventually to meet.” Digital or media convergence thus, according to *Britannica Online*, is a “phenomenon involving the interlocking of computing and information technology companies, telecommunications networks, and content providers from the publishing worlds of newspapers, magazines, music, radio, television,

¹ *Internet World Stats* Retrieved 19 September 2012 from <http://www.internetworldstats.com/stats.htm>

films and entertainment software.” Only a decade ago, one needed a printing press, a television studio or a radio station, including transmitters, in order to communicate a message. Today the Internet allows for all forms of media to be distributed simultaneously on one single device. Analogue media has been replaced by digital technologies and combines formerly separate media forms such as text, audio, pictures and video to multimedia content.

So, convergence is mainly a technical matter?

Not only. Different technology platforms such as satellite, terrestrial and cable merge on the Internet; at the same time, formerly different media forms – radio, TV, newspapers – converge to multimedia content. The senders and producers of (editorial) content have also changed. A few years ago, only professional journalists were able to publish information; today everybody can create content and distribute it at a very low cost to a global audience.

What does this convergence mean for editorial content and media regulation?

It has a huge impact. Traditionally, entry barriers into the media sector were very high. Technology was complicated and expensive; also bandwidth and frequencies to disseminate information were scarce resources. This also legitimized and gave reason to regulate many forms of media and content. Media regulatory authorities granted licenses to radio and TV stations in order to ensure a maximum degree of pluralism within the limited resources of the frequency spectrum. In the digital age, there is no scarcity of frequencies on the Internet and the market share of individual media providers online cannot be compared to the impact large broadcasters had in the 1980s.

Who are the main actors of the Internet?

In 2006, the Time magazine chose “You” as the Person of the Year. The cover of the magazine featured an iMac computer monitor with a reflective Mylar pane appearing as the window of an online video player, intended to reflect the image of whoever picks up the magazine as online content.² This “You” referred to the millions of people who contribute to the user-generated content of Wikipedia, YouTube, MySpace, Facebook, the GNU/Linux operating system and multitudes of other Web sites featuring user contributions.³ User-generated content (UGC)

² You (Time Person of the Year). (23 August 2012). In *Wikipedia, The Free Encyclopedia*. Retrieved September 19, 2012, from [http://en.wikipedia.org/w/index.php?title=You_\(Time_Person_of_the_Year\)&oldid=508761170](http://en.wikipedia.org/w/index.php?title=You_(Time_Person_of_the_Year)&oldid=508761170)

³ Lev Grossman (13 December 2006). «Time’s Person of the Year: You» In *Time*. Retrieved September 19, 2012 from <http://www.time.com/time/magazine/article/0,9171,1569514,00.html>

was – and still is – one of the buzzwords for new possibilities that the technical innovation of the Internet (the so-called Web 2.0) offer to all users. Today, everybody can produce their own media or media-like content and distribute it on the Internet without significant financial investment or technical skills. This does not make user-generated content professional journalism, let alone valuable content, but the basic human right to freedom of expression is not reserved for editorial offices or traditional media outlets. It is important to remember that the right to freedom of expression also applies to individual users and citizens, online as well as offline.⁴



Source: Wikipedia

⁴ On 5 July 2012, the UN Human Rights Council (HRC) adopted by consensus a key resolution on the "Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development". Article 20 of this Resolution is about the promotion, protection and enjoyment of human rights on the Internet.

What other institutional and corporate actors are there on the Internet?

Other actors, besides the users that were lauded by the Time magazine in 2006, are changing quickly – and they have an enormous effect. Facebook and Twitter, for example, did not even exist 10 years ago, yet today more than 1.5 billion people across the globe are users. Hosting and computing the information and data of millions of people requires a high degree of accountability and responsibility on the side of these corporations. Challenges reach from privacy, data protection, and protection of minors to issues such as freedom of expression and freedom of assembly. The corporate social responsibility (CSR) of the private sector in the field of human rights is a topic that will be increasingly debated in the years ahead.

Who will regulate user-generated content?

This is still very much debated. The decreasing level of state control and government regulation in the media sector should be welcomed, as it removes entry barriers and allows more people to express themselves freely. On the other hand, this development requires more from the individual user when it comes to self-regulation as well as professional and personal considerations on media ethics. To ensure pluralism in the digital age, these concepts, together with a robust enforcement of the human right to freedom of expression, are crucial to address unwanted or offensive content more effectively.

Who is responsible for offensive comments posted on the Internet: The author or the publisher?

There has not yet been a common agreement reached on people's rights and responsibilities on the Internet. A recent example is the satirical video posted on the Internet that was considered blasphemous by some and was explained as a reason to protest violently in parts of the world. Such occurrences demonstrate the transition from editorial oversight to user-generated content and raise the issues of corporate social responsibility and challenges posed by private-sector arbitration regarding free-speech related issues. Google, for example, in recent years has tried to protect free expression by denying requests to self-censor its search engine in China and by launching its real-time Transparency Report. The report lists the number of content withdrawals requested by countries and how Google responded to such requests. On September 15th, 2012, Google asserted: "We work hard to create a community everyone can enjoy and which also enables people to express different opinions. This can be a challenge because what's OK in one country can be offensive elsewhere. This video (The Innocence of Muslims) – which is widely available on the Web – is clearly within our guidelines and so

will stay on YouTube. However, we've restricted access to it in countries where it is illegal such as India and Indonesia as well as in Libya and Egypt given the very sensitive situations in these two countries. This approach is entirely consistent with principles we first laid out in 2007. [...] We will, at times, restrict content on country-specific domains where a nation's laws require it in response to local government requests."⁵

International Mechanisms for Promoting Freedom of Expression JOINT DECLARATION ON FREEDOM OF EXPRESSION AND THE INTERNET

The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information,

Adopt, on 1 June 2011, the following Declaration on Freedom of Expression and the Internet:

Intermediary Liability

a. No one who simply provides technical Internet services such as providing access, or searching for, or transmission or caching of information, should be liable for content generated by others, which is disseminated using those services, as long as they do not specifically intervene in that content or refuse to obey a court order to remove that content, where they have the capacity to do so ('mere conduit principle').

b. Consideration should be given to insulating fully other intermediaries, including those mentioned in the preamble, from liability for content generated by others under the same conditions as in paragraph 2(a). At a minimum, intermediaries should not be required to monitor user-generated content and should not be subject to extrajudicial content takedown rules which fail to provide sufficient protection for freedom of expression (which is the case with many of the 'notice and takedown' rules currently being applied).

Source: www.osce.org/fom

⁵ YouTube restricts video access over Libyan violence (13 September 2012) CNN. Retrieved September 20, 2012 from <http://edition.cnn.com/2012/09/12/tech/web/youtube-violence-libya/index.html>

What efforts are made at an international level?

Not until the UN World Summit on the Information Society (WSIS) and the following Internet Governance Forum (IGF) took place, did the UN get involved in discussions on regulating the Internet. After some hefty debate, it was decided that the concept of Internet governance extends beyond the purely technical realm. It addresses questions of access, openness, security and, thus, also deals with privacy and human rights. Internet governance, as defined at the World Summit, is “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.”⁶ As an inclusive multistakeholder forum, the IGF is open to all participants.

The Internet Governance Forum

The IGF is a forum for multi-stakeholder dialogue on public policy related to Internet governance issues, such as the Internet’s sustainability, robustness, security, stability and development.

The United Nations Secretary General formally announced the establishment of the IGF in July 2006 and the first meeting was convened in October/November 2006.

The purpose of the IGF is to maximize the opportunity for open and inclusive dialogue and the exchange of ideas on Internet governance issues.

Source: <http://www.intgovforum.org/cms/faqs>

What is the role of national governments in Internet regulation?

National governments play an important role in Internet regulation. With their executive power and, as legislators, they shape the conditions for the use of the Internet and can rule out content such as child pornography or inciting hatred. This has become more difficult with the advent of the Web 2.0 and the increasing number of users globally that create content on the Internet. Such technological developments do not necessarily change the role of national legislators and certainly do not justify their fractioning of the global network of the Internet into national segments. Instead, new forms of international collaboration, self-

⁶ Tunis Agenda for the Information Society (18 November 2005) *World Summit on the Information Society*. Retrieved 19 September 2012 from <http://www.itu.int/wsis/docs2/tunis/off/6rev1.pdf>

regulation, corporate responsibility in the field of human rights and media literacy and ethics of the individual user should be fostered. The Internet as a truly global medium is an important tool for the right to seek, receive and disseminate information regardless of frontiers. As such, the Internet must remain whole and free.

2/ New forms of journalism

By Christian Möller

What does 'Web 2.0' mean?

The term Web 2.0 doesn't actually describe a new technology or a new technical platform. The term was coined by Tim O'Reilly in his groundbreaking 2005 article "What is Web 2.0?"⁷ The article lays out a number of ideas and forms of use that illustrate the Web 2.0 idea. O'Reilly explains; "Like many important concepts, Web 2.0 doesn't have a hard boundary, but rather, a gravitational core'. [...] It's rather an 'attitude, not a technology".⁸

One of these new forms is the possibility to produce user-generated content; other such forms include blogs, or wikis.

What are those attitudes?

A Web 2.0 characteristic is the increased connectivity and mobile Internet usage which enables many users to create content. Taxonomy, i.e. the labeling, tagging and categorizing by a publisher or author, became what is now known as 'folksonomy' (a term that is a portmanteau of "folk" and "taxonomy").⁹

Tags and keywords have been used in library catalogues for centuries and, of course, on the Internet. These tags are used to further describe content, sort it and make it retrievable and have traditionally been added by the content creator, author or maybe a librarian. Today, just as "folksonomy" indicates, tags are being added by the consumer or reader (not the content creator). Flickr, YouTube and other Web 2.0 applications where the user can add their own tags or keywords describing a photo, book review, movies or restaurants are good examples.

These services and applications are improving the more people use them – which is another built-in principle of the world of the Web 2.0. Other paradigms include participation instead of publishing, or wikis instead of centralized content management systems.

⁷ Tim O'Reilly (30 September 2005) *What Is Web 2.0. Design Patterns and Business Models for the Next Generation of Software*. Retrieved 19 September 2012 from <http://oreilly.com/web2/archive/what-is-web-2.0.html>

⁸ Ibid.

⁹ Folksonomy. (2012, September 3). In *Wikipedia, The Free Encyclopedia*. Retrieved September 19, 2012, from <http://en.wikipedia.org/w/index.php?title=Folksonomy&oldid=510537193>

Are social networks part of the Web 2.0?

At the time O'Reilly published his article in 2005 and the *Time* magazine made "You" (the user) *Person of the Year* in 2006, people weren't talking about social networks or social media as they do today. Facebook was founded in 2004, shortly followed by Twitter and others. Today, these applications form an integral part of the Web 2.0 – and the Internet as a whole. Such applications are these days also utilized by journalists for research and distribution of editorial content.

What is the role of social media?

Facebook, Twitter & Co. add an additional dimension to the Internet. The term social media refers to the use of Web-based and mobile technologies to turn communication into an interactive dialogue. They can be defined as a group of Internet-based applications that build on the ideological and technological foundations of the so-called Web 2.0, which establish a venue for the creation and exchange of user-generated content.¹⁰

Enabled by ubiquitously accessible and scalable communication techniques, social media substantially changes the way of communication between organizations, communities, as well as individuals. It can take on many different forms such as magazines, Internet forums, Weblogs, micro-blogging, wikis, podcasts, photographs or pictures, videos, social bookmarking or social networking.¹¹

Is there a common universal definition of who is a journalist?

No. And there shouldn't be one. Everyone is entitled to freedom of expression, the right to seek, receive and impart information regardless of frontiers – which is the basic job description of a journalist. To define, beyond this fundamental right, who qualifies as a "journalist" and who doesn't is a subjective judgment or merely a description of a person's gainful occupation. Basically, it is of no relevance for the exercise of the right to freedom of expression or the production and publication of content on the Internet.

Why is there a controversy over the term 'citizen journalism'?

The controversy over the term "citizen journalism" exists because many professional journalists believe that only a trained journalist can understand the rigors and ethics involved in reporting the news. Conversely, there are many

¹⁰ "Social media", *Wikipedia, The Free Encyclopedia*, <http://en.wikipedia.org/w/index.php?title=Social_media&oldid=458549677> (accessed September 2012)

¹¹ "Social media", *Wikipedia, The Free Encyclopedia*, <http://en.wikipedia.org/w/index.php?title=Social_media&oldid=458549677> (accessed September 2012)

trained journalists who practice what might be considered citizen journalism by writing their own blogs or commentaries online outside of the traditional journalism hierarchy.¹²

How do 'citizen journalists' use the Internet?

Blogging, vlogging - blogging videos, aggregating news, sharing articles online or syndicating content are some of the forms of journalism that the innovative technology of the Web 2.0 allows for and that are sometimes referred to as citizen or grassroots journalism. Mark Glaser suggests that: "the idea behind citizen journalism is that people without professional journalism training can use the tools of modern technology and the global distribution of the Internet to create, augment or fact-check media on their own or in collaboration with others. For example, you might write about a city council meeting on your blog or in an online forum. Or you could fact-check a newspaper article from the mainstream media and point out factual errors or bias on your blog. Or you might snap a digital photo of a newsworthy event happening in your town and post it online. Or you might videotape a similar event and post it on a site such as YouTube. All these might be considered acts of journalism, even if they don't go beyond simple observation at the scene of an important event".¹³

Or, in short: "citizen journalism is when the people formerly known as the audiences employ the press tools they have in their possession to inform one another."¹⁴

Do 'citizen journalists' actually qualify as 'journalists'?

Most media freedom defenders believe that there should be no definition of who is a journalist. It is however interesting to know that according to the Council of Europe, "any natural or legal person who is regularly or professionally engaged in the collection and dissemination of information to the public via any means of mass communication" qualifies as a journalist.¹⁵

This would include bloggers who publish news articles regularly. At the same time, the Council of Europe suggests that since the Internet is increasingly important as a means of mass communication, there should be a debate on whether the protection of journalists' sources should be enlarged to other people

12 Glaser, Mark (2006) Your Guide to Citizen Journalism. In: *Media Shift*, 27. September 2006. <<http://www.pbs.org/mediashift/2006/09/your-guide-to-citizen-journalism270.html>> (accessed September 2012)

13 Glaser, Mark (2006) Your Guide to Citizen Journalism. In: *Media Shift*, 27. September 2006. <<http://www.pbs.org/mediashift/2006/09/your-guide-to-citizen-journalism270.html>> (accessed September 2012)

14 Prof. Jay Rosen, pressthink.org

15 Recommendation No. R(2000)7 on the right of journalists not to disclose their sources of information.

engaged in the dissemination of information.¹⁶

In a world where individuals communicate on public or semi-public platforms, the line between professional journalism and other forms of content production is not easily drawn. Also, collaborative works, such as wikis, make it difficult to identify a single author.

What are the rights of non-journalistic content producers?

Freedom of the media and freedom of expression are universal rights belonging to every individual in the world. They apply to all forms of media, no matter whether online or offline, whether professional or citizen journalism, whether print media or social media. Freedom of the media as a human right is not reserved for professional journalism, media companies or editorial offices. This right cannot be interpreted only in the context of traditional media, but applies to any form of

UN Human Rights Council (HRC) resolution on promotion, protection and enjoyment of human rights on the Internet 5 July 2012

The Human Rights Council,
(...)

1. *Affirms* that the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one's choice, in accordance with articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights;
2. *Recognizes* the global and open nature of the Internet as a driving force in accelerating progress towards development in its various forms;
3. *Calls upon* all States to promote and facilitate access to the Internet and international cooperation aimed at the development of media and information and communications facilities in all countries;
4. *Encourages* special procedures to take these issues into account within their existing mandates, as applicable;
5. *Decides* to continue its consideration of the promotion, protection and enjoyment of human rights, including the right to freedom of expression, on the Internet and in other technologies, as well as of how the Internet can be an important tool for development and for exercising human rights, in accordance with its programme of work.

¹⁶ PACE Doc. 12443 The protection of journalists' sources, Committee on Culture, Science and Education Report, 1 December 2010

journalistic work that is meant for public distribution. As it is a basic human right, there cannot be different subsets of quality, for traditional media or new media.

Are there differences between user-generated content and traditional forms of journalism?

Some traditional journalists tend to belittle users that create content as hobby writers (a man with a garden hose does not become a fire fighter). However, experience proves that today bloggers also perform editorial activities. One of the most famous examples certainly is the Huffington Post which was founded by Arianna Huffington in 2005 and was sold to AOL in 2011. There are endless examples of this, *inter alia*, the German watchblog BildBlog or tech blogs such as Mashable. Other blogs or user-generated content on the Internet certainly lack journalistic quality – then again, this is of course also true for some “traditional” journalism. Tabloids and the yellow press do not always champion investigative research and have been told so repeatedly by the European Court of Human Rights.

Can you state some examples for this?

In some cases, traditional media have reported and repeated stories they had originally found on the net. For example the story of ‘A Gay Girl in Damascus’ hit the headlines of many major news outlets across the world¹⁷ – and it needed bloggers to do the investigative research on their end, in order to primarily set the facts straight¹⁸. Or as one of the bloggers put it: “It is a reminder that it does not always take enormous resources to cast light on important stories. It does take a willingness to ask questions that may not have occurred to others.”¹⁹

Another example from Germany is that traditional media in their coverage used a wrong name for the then Minister for Economy, Karl-Theodor zu Guttenberg. This was due to using false information retrieved from Wikipedia without fact checking it. Apart from the remarkable lack of editorial diligence, this also demonstrated the

17 A Gay Girl in Damascus becomes a heroine of the Syrian revolt (6 May 2011) *The Guardian*. Retrieved 20 September 2012 from <http://www.guardian.co.uk/world/2011/may/06/gay-girl-damascus-syria-blog> or Gay blogger ‘abducted’ in Syrian capital (13 June 2011) *Aljazeera*. Retrieved 20 September 2012 from <http://www.aljazeera.com/NEWS/MIDDLEEAST/2011/06/2011671229558865.html> or Fears grow for missing Syrian ‘Gay Girl’ blogger (7 June 2011) CNN. Retrieved 20 September 2012 from http://articles.cnn.com/2011-06-07/world/syria.blogger.missing_1_security-agents-blogger-president-bashar?_s=PM:WORLD and many more

18 Liz Henry: Painful doubts about Amina (7 June 2011) *bookmaniac.org* Retrieved 20 September 2012 from <http://bookmaniac.org/painful-doubts-about-amina/> or Amina Arraf. *The Electronic Intifada*. Retrieved 20 September 2012 from <http://electronicintifada.net/tags/amina-arraf>

19 Benjamin Doherty: Reflecting on the Amina hoax - coverage, analysis and investigation (6 June 2011) *The Electronic Intifada*. Retrieved 20 September 2012 from <http://electronicintifada.net/blogs/benjamin-doherty/reflecting-amina-hoax-coverage-analysis-and-investigation>

volatile factual correctness of user-generated content. Internet literacy apparently is something not only needed by users but also by professional journalists.

The same politician, Karl-Theodor zu Guttenberg, resigned a while later as German Minister of Defence after the collaborative effort of Web users in a dedicated wiki proved that parts of the Minister's doctoral thesis were fraudulently copied from unreferenced sources. This initiative demonstrated both the power of crowd-sourcing and online collaboration through Web 2.0 applications and the lack of accountability of some user-generated content.

Whereas traditional media usually have a physical address, an editor-in-chief and a responsible publisher, the creators of online content can remain anonymous or even hide their electronic traces. Anonymity or pseudonymity in itself are not bad things and can be considered legitimate and useful for authors in repressive regimes, but editorial quality always needs personal accountability. This can, of course, also be done on the Internet and users can attribute themselves to the content they create online.

What is journalism then?

Much of the content produced by users on the Internet is not meant to be journalism. So, rather than judging by the origin of content, the content itself should qualify as editorial, and this definition should be broadly applied when it comes to journalistic privileges such as the protection of sources or access to information.

3/ Legal questions and implications

By Andrei Richter

What are the legal guarantees for freedom of the Internet and new media based on, if nothing is said about them in existing legislation?

National constitutions and international covenants on human rights may not mention the Internet for the simple reason that they were adopted before its emergence. Yet they all speak of freedom of expression and freedom of conscience and speech.

Freedom of conscience means the ability of a person to form independently (without coercion) and to hold his point of view, his own opinion and develop his internal spiritual world. To the extent that manifestations of thought are opinions and beliefs, freedom of thought is close to freedom of expression and freedom of belief. Freedom of thought incorporates guarantees of the non-interference in the formation of one's own opinions and beliefs and the rejection of ideological and political *diktat* and violence and control over the individual.

Freedom of speech, in turn, means the ability of a person to independently (without coercion) communicate with others including participating in discussions and debates, receiving and imparting to others his position and the right to learn about others' positions. Freedom of appeals, complaints and proposals correlate with this; as do petitions sent to governmental authorities and the freedom to vote in elections and referenda. Freedom of speech is practically identical with freedom of expression. Freedom of speech is a sign of a democratic country which is interested in equal access for its citizens to discuss and resolve urgent problems of society and state.

Freedom of thought and speech, the expression of one's opinion, is inseparable from the right to seek, receive, produce and disseminate information, that is, the *right to freedom of information*. A key element of freedom of information is the right to receive it, and correspondingly, the obligation of the state to provide citizens with the information it holds, including that in electronic data bases. The right to freedom of information can be exercised by any lawful means, including by the Internet.

What relationship does freedom of the Internet have to freedom of mass information?

In many OSCE participating States, the freedom of each person to seek, receive, produce and disseminate mass information by any lawful means is guaranteed. *Freedom of mass information* means the ability of a person, with the help of special technical means, to disseminate his own thoughts and opinions among a sufficient number of people to satisfy his desire to participate in civic dialogue and influence policy. Through the exercise of this freedom, he also has some influence as on decision-making affecting matters in the public interest, and gains the ability to seek, receive, produce and disseminate information about current events unhindered. In the modern world, the Internet is increasingly among such technical means. In practice, this means that no one has the right to demand from Internet users any special permission as a prerequisite to seek, receive, produce and disseminate mass information.

What, in practice, constitutes the practical guarantees of freedom of mass information on the Internet?

The guarantees can consist of pluralism in media ownership and a prohibition of monopolization by the state or a few private owners of ideological and political views disseminated. It also is the absence of prohibitions and restrictions on citizens' practice of journalism, for example, requirements for special education, citizenship and the like. It also means recognition of the right of reply by any person in the media in the event that inaccurate information has been disseminated.

Regarding the Internet, a legal guarantee includes the right to create and register sites and domain names and have the ability to use the services of providers without discrimination and to preserve anonymity to the outside world in using those services -- unless it violates the law.

Do the agreements adopted by the United Nations guarantee freedom of the Internet?

According to the International Covenant on Civil and Political Rights, which was passed in 1966 and went into effect 10 years later, Article 19 guarantees the following freedoms:

1. *Everyone shall have the right to hold opinions without interference.*
2. *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*
3. *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*
 - (a) *For respect of the rights or reputations of others;*
 - (b) *For the protection of national security or of public order (ordre public), or of public health or morals.*

We see that, in accordance with point 2 of Article 19, everyone's right to freedom of expression includes freedom of information. It is guaranteed regardless of state borders and means of exercise. Although the International Covenant on Civil and Political Rights passed before the emergence of the Internet, this fact should not serve as a basis for rejecting application of its principles to the new realities or to introduce additional restrictions on freedom of expression and freedom of information on the Internet.

A resolution by a UN charter body, the *Human Rights Council*, stated that "the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one's choice, in accordance with Articles 19 in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights." The resolution was proposed and supported by 80 UN member states. The Human Rights Council is a political body which reviews key problems in this area, and passed the resolution at its 20th session on 5 July 2012 by consensus (without a vote).

What are the lawful restrictions on freedom of expression on the Internet?

We see that point 3 of Article 19 of the International Covenant on Civil and Political Rights speaks of the possible restrictions on freedom of expression

which – if they are established in a given state – must be prescribed by law and must be necessary for the purposes indicated.

Whether or not these restrictions are to be introduced is left to the discretion of the states themselves. If they do introduce them, they are not obliged to do this in all the purposes enumerated in Article 19. Here national traditions play a role as do cultures and the degree of democratic maturity of the country and so on. The measures taken must have the nature of *restrictions* on freedom in fact, and not a complete *prohibition* of the enjoyment of it.

Taking into account that the Internet today is the most important form of exercising the right to freedom of expression and the right to freedom of information, national laws that adversely affect the exercise these rights on the Internet must correspond only to these purposes and not go beyond their bounds.

Restrictions must not be an instrument of persecution of the political opposition or suppression of criticism, restrictions on the citizen's information rights or the violation of the rights of groups of the population needing protection. In this connection, the UN Human Rights Council, in another resolution ("Freedom of Opinion and Expression," No. 12/16, 2009) called on all UN member states to refrain from introducing restrictions not in conformity with Point 3 of Article 19 of the International Covenant on Civil and Political Rights, including restrictions regarding:

(i) Discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups;

(ii) The free flow of information and ideas, including practices such as the banning or closing of publications or other media and the abuse of administrative measures and censorship;

(iii) Access to or use of information and communication technologies, including radio, television and the Internet.

What is the basis of the obligation of states to develop freedom on the Internet?

No explanation is required because the International Covenant on Civil and Political Rights serves not to limit but develop such rights. By virtue of this function, it imposes on the UN member states an obligation to pass legislative or other measures necessary for the exercise of the rights recognized in the Covenant, including freedom of expression (Point 2, Article 2). Thus, international law interprets guarantees of rights and freedoms as the obligation of every state to conduct policy which:

- 1) respects rights and freedoms;
- 2) defends rights and freedoms from threats by third parties;
- 3) promotes the implementation of rights and freedoms in practice.

The last element of this triad is likely the most important in the modern world. It means the state is obliged to create the conditions for the exercise by citizens of their right through, for example, provision to them of technical capacities and the development of the infrastructure of telecommunications. The state cannot completely remove itself and say: If you want to use the Internet to express your opinion, then create everything that is needed for that.

A market state must create and develop favorable legal and economic conditions so that private companies can be involved in the development of the Internet. A socially oriented state must be involved in the promotion of computer and Internet literacy and must help to create national Web resources, including the digitalization of information preserved in government archives. In respecting the rights and freedoms of its citizens, a democratic state should not engage in censorship of the Internet content or limit the freedom of expression outside of the above-mentioned purposes.

What are the requirements of European international law?

The activity of the Council of Europe is founded on a human rights act: The European Convention on Human Rights and Fundamental Freedoms (ECHR). This regional document (it is called the European Convention on Human Rights) is a legally binding treaty.

Article 10 of the European Convention on Human Rights guarantees freedom of expression in a formulation close to Article 19 of the International Covenant on

Civil and Political rights, reviewed in detail above:

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.

Point 2 of Article 10 provides a detailed standard for restriction of the right to freedom of expression which undoubtedly relates to regulation not only of mass media, but the Internet:

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 and impartiality of the judiciary.

This stipulation is interpreted as criteria with three components, according to which any restriction by the 47 countries of the Council of Europe must:

- a) be prescribed by law;
- b) pursue one of the goals indicated;
- c) are necessary in a democratic society.

Do the resolutions of the European Court of Human Rights have any relationship to new media?

The resolutions passed in the 1950 Convention have not frozen in the mid-20th century, but are developing through amendments and through interpretation by the bodies of the Council of Europe and, above all, by decisions of the European Court of Human Rights (ECHR) created under it. The member states of the Council of Europe recognize the jurisdiction of this court as binding on issues of interpretation and application of the European Convention on Human Rights and its protocols in cases of alleged violation of the treaty provisions by a country. Complaints to the ECHR are lodged if all the remedies for defense are exhausted in one's own country. In its decisions, the Court (which is located in Strasbourg) may require a member country to review specific judicial decisions and amend the norms of national legislation that violate the rights of specific persons.

The practice concerning relations in new media and on the Internet related to application of the three elements of this criterion in fact says that any legitimate restriction on freedom of expression must pass this test.

The ECHR has stated that the first condition of the three will be fulfilled only if the corresponding law is generally accessible, and “*is formulated with precision, sufficient in order to enable the citizen to regulate his behavior*”. The second criterion notes that interference can only be exercised for the sake of one of the purposes outlined in Point 2 of Article 10; this list is exhaustive, and thus any interference which is not aimed at the achievement of one of these purposes violates the article of the Convention. The third condition: Interference must only be what is necessary in a democratic society. The word “necessary” means that interference must be produced by “a real social need”. The reasons cited by the state in justification of the interference must be “relevant and sufficient.” In the event of a dispute in the ECHR, the state must demonstrate that the interference is commensurate with the pursued aim.

One of the key concepts of Article 10 which is, at the same time indefinite is the justification for the restriction of the freedom by the necessity for the purposes of democracy. The ECHR notes that although the word “necessary” in the sense of Article 10 (point 2) is not a synonym of the adverb “irreplaceable,” it does not possess the broad definition of words such as “acceptable,” “customary,” “appropriate,” “reasonable” or “desirable,” and that “necessary” indicates the existence of an “urgent social need.”

It also follows from the Court’s decisions that *necessity* in the interests of democracy is defined by the following two principles:

- the restriction of the freedom must be narrow and proportionate to the need for fulfilling the lawful purpose;
- for the application of the restrictions as “necessary,” it is not sufficient to have only a link to the list of reasons for possible restrictions indicated in Point 2 of Article 10.

In recent years, the ECHR has ruled several times on the application of Article 10 to the Internet. In its resolutions, the ECHR does not say anything about the Internet that fundamentally differs from what it said in similar cases involving

traditional media and journalists. It is the same approach, with references to the same cases; it is the same precedent.

What is netiquette? Does it guarantee protection from external governance of the Internet?

The concept that the Internet is autonomous is popular, and that means it is free from outside governance. One of the bases for that belief is the highly developed self-governance of the Web.

The so-called “Netiquette” was the first to appear in this system of self-norms -- net etiquette, that is, rules of behavior on the Web.

Netiquette was proposed and formally approved in 1995 by a very important document of self-governance, from the perspective of the Internet community -- the “request for comments” RFC No. 1855.

Requests for comments or RFCs are documents containing technical specifications, standards and rules, which are widely applied on the Internet.

The majority of early RFCs were created in universities in California, and before his death in 1998, John Postel was the permanent and only editor. Subsequently, the Internet Society (ISOC) assigned the editing and publication of the RFCs to the Institute of Information Sciences of the University of Southern California.

The Internet Society, a non-commercial organization, officially owns the rights to all the RFC documents and puts quite a bit of effort into the practical adoption of the Internet standards described in the RFCs. Founded in 1992, the Internet Society has more than 55,000 individual members and more than 130 participating organizations and has more than 90 chapters in various countries of the world. It represents an international network of corporations, noncommercial organizations and individuals.

Standards are published in the form of RFC documents as well as conceptions, proposals of new directions in research of the Net, historical references and obituaries, the results of technical experiments, guides for adopting new technologies and the like. As a result of discussions about the RFCs, a certain tradition of governance of the Internet has been formed.

How an RFC Standard is Made

Despite the name, requests for commentary (RFC) are seen as accepted standards of the Internet. According to RFC, 2026 a standard is created in the following way:

1. An Internet Draft is brought for general discussion. The drafts do not have an official status and are removed from the base six months after the last change.
2. If a draft turns out to be sufficiently successful and non-contradictory, it obtains the status of a Proposed Standard and an RFC sequential number.
3. Then it is turned into a Draft Standard which is recommended to everyone, and to which only minor corrections can be made.
4. The last stage is the Internet Standard. These are rules with a great and successful experience of application and a substantiated formulation. Parallel to the RFC numeration they obtain their own STD numeration. Only a few dozen RFCs have achieved this level out of thousands.

RFC No. 1855 is a 20-page document formulating the rules that are recognized as the chief ethical code of the Web. The author of these guidelines is Sally Hambridge from the corporation Intel, one of the leading companies involved in the Internet. Likely the most important rule in RFC No. 1855 is: “Be conservative in what you send and liberal in what you receive.” The list of netiquette rules includes also statements about the need to respect copyright and prohibit spam.

The self-governance of the Internet and the introduction of ethical norms in the 1980s and the first half of the 1990s were enabled by the fact that the Internet was not a widespread phenomenon and users were people with higher education, using the Web for enhancing their knowledge, conducting research and holding scientific discussions. They were in a position to independently create and respect civilized rules for using Internet services.

In the mid-1990s, the situation changed radically: The number of Internet users began to grow in geometrical progression, and for many people it was a new form of entertainment. The Internet industry grew rapidly, satisfying these new needs. This industry often created conditions for violating national legislation and public morals. The turbulent spread of Internet casinos, pornographic sites, and xenophobic calls to violence also provoked concern.

Children quickly adapted to the Internet, at first as a technical means of learning and later as they would with a new toy. The question arose of the duties not only of parents and teachers but also the state to protect minors from information harmful to them.

Who should define the parameters of external governance of the Internet?

Because of the global nature of the Internet, which has no state boundaries, a discussion has emerged about the permissibility and necessity of externally regulating the Internet. An important role in this discussion has begun to be played by the International Telecommunications Union (ITU), a specialized institution of the UN in the field of information and communication technologies (ICT). The ITU determines the radio frequency spectrum, which is necessary today for Internet wireless services and mobile telephones; it develops technical standards enabling effective interoperability of networks and technologies and it strives to improve access to ICT in “information-poor” regions. The ITU strives to become a forum at which the technical and political questions related to the Internet are discussed. However, for now the basic areas of competence of the ITU in this field are assistance in overcoming the gap in digital technologies, international and regional cooperation and management of the use of the radio frequency spectrum and, development of standards and dissemination of information.

A very important result of the discussions of the late 1990s and early 2000s was the understanding shared by many states and international organizations that, at a global level, the Internet should be regulated by three players with equal rights. The fact that the first player was governmental bodies surprised no one: governments have always signed international agreements; people then in turn demanded implementation from them. The second important player which should take part in the regulation of the Internet is business. This premise was also a new element, although the practice of lobbying by business groups of their interests, including at a global level, was never denied. But business was never allowed directly to participate in the adoption of international agreements. The third player of multilateral governance was also unusual – civil society. In this case, the term meant primarily those non-governmental organizations that represent the interests of Internet users. But not only such organizations, but any other organizations of civil society involved in activity influenced by ICT. Today it is hard to name an organization of civil society that does not get some advantage from the existence of the Internet.

The revolutionary nature of the approach consists not only of the fact that business and civil society have been admitted to the process of making decisions, although before it was possible to consult with them, and in some cases was necessary to do so. They have become players alongside government bodies with equal rights. None of the three sides can impose their opinion on the other two. And not a single decision about governance of the Internet at an international level can be passed without discussion on a transparent and democratic basis and without the consent of the other three sides. As a consequence, the principle of multilateral governance of the Internet at an international level has been refined.

What is “soft law”?

In the 2000s, an important principle of application of so-called “soft law” was affirmed regarding the international regulation of the Internet. “Soft law” is a term that means recommended norms, and consists of creating a certain code, not compulsory law, by which the Internet would work, and to help formulate user traditions for the Internet. The purpose of soft law is to prompt Internet users, Internet companies, Internet providers and civil society to create these traditions, toward self-regulation.

The purpose of applying “soft law” as such is the wish not to harm the possibilities of the Internet, to create political conditions for its free and dynamic development, in order that an even greater number of people could utilize the volume of knowledge which the Internet represents. The chief danger here acknowledged is the creation of borders in the Internet, the blocking of the abilities of the population of this or that state to use all the information and knowledge within it. There is also another danger – turning it into a worldwide garbage dump of content which must be avoided by raising Internet literacy, trust toward the Web and the development of elementary rules of self-regulation.

It can be said that the soft law of Internet governance has formulated common principles for the majority of states and peoples. Among these is consent to the multilateral nature of its regulation. The principle of preservation of the existing “Internet architecture” is also recognized. Such architecture means that in cyberspace, there is no headquarters on a national or global level. The Web is transparent and open for everyone; it has no “secret department” and secret services. There is no body that guides the players on the market of services, or which censors information or interferes with competition. The end users received information and communicate with one another without interference. The provider

of services does not interfere, but only helps. He always connects to the Web when users are prepared to pay for that. He does not have the right to create barriers for users merely because they are a member of a certain social or ethnic group and so on. The Internet's architecture allows for everyone to communicate with everyone else without outside control and obtain access to any material and telecommunications service.

For this reason, among others, a summit was held under the auspices of the UN on the information society, an absolutely new phenomenon in international policy. The World Summit on the Information Society (WSIS) was held at the highest level in two stages, in Geneva (2003) and in Tunis (2005).

At the Geneva meeting the Working Group on Internet Governance (WGIG) was created. The chief purpose of the group is dialogue and achievement of consensus on various issues of regulations and self-regulation.

What does the Forum on Internet Government Issues decide?

The WGIG organizes the Internet Governance Forum (IGF) every year which enables the expansion of the agenda and taking into account of the widest spectrum of voices in passing decisions. All of the Forum's sessions are broadcast on the Internet which expands the number of people who take part in the discussion of the issues of governance. Through a special platform, any user can virtually take part in the meetings, sending in questions and audiovisual statements to the moderator of the meeting. They are heard in the hall, and the speakers reply to them. This is a large international forum, it is usually opened by heads of state, and ministers of communication participate. In 2012, IGF was held in Baku and was devoted to the topic of Internet government for sustainable humanitarian, economic and social development.

The forum creates so-called "dynamic coalitions". A dynamic coalition consists of Internet users and organizations that unite in a virtual group to discuss various ideas, and to draft topics and statements related to Internet governance. There are about a dozen groups that are active today, including the coalition for freedom of expression and media freedom on the Internet. Their activity promotes a combination of flexibility to governance and maintaining stability in development and measures of increasing trust in the Internet.

International discussion on governance of the Internet affects three spheres which require joint political decision. These are human rights, security and economics. How can human rights be defended and developed with the help of the Internet? How can freedom on the Internet be secured without enabling criminals to disrupt public and personal security? How can the Internet be used to develop the national and global economy, and to develop the post-industrial information society?

What is Internet governance?

From the perspective of the Council of Europe, Internet governance is usually understood as the development, and the application by government bodies, the private sector and civil society of norms and rules, procedures of passing decisions, and programs that have influence on the development and use of the Internet, commensurate with their place and role in society, through shared principles. Quite a few acts in the nature of a recommendation have been passed by various bodies of the Council of Europe, established on the common standards of Internet government based on the fundamental principles of the Convention on Human Rights and Fundamental freedoms.

CM/Rec(2011)8, a recommendation of the Council of Europe's Committee of Ministers to the member states *on the protection and promotion of the universal nature, integrity and openness of the Internet*, adopted several months before the passage of a similar resolution of the UN Human Rights Council (see above) indicated the very important principle of Internet governance in Europe:

The right to freedom of expression, which includes the freedom to hold opinions and to receive and impart information and ideas without interference, is essential for citizens' participation in democratic processes. This right to freedom of expression applies to both online and offline activities, regardless of frontiers. In a Council of Europe context, its protection should be ensured in accordance with Article 10 of the Convention and the relevant case law of the European Court of Human Rights.

Internet Governance Principles

1. Human rights, democracy and the rule of law

Internet governance arrangements must ensure the protection of all fundamental rights and freedoms and affirm their universality, indivisibility, interdependence and interrelation in accordance with international human rights law. They must also ensure full respect for democracy and the rule of law and should promote sustainable development. All public and private actors should recognise and uphold human rights and fundamental freedoms in their operations and activities, as well as in the design of new technologies, services and applications. They should be aware of developments leading to the enhancement of, as well as threats to, fundamental rights and freedoms, and fully participate in efforts aimed at recognising newly emerging rights.

2. Multi-stakeholder governance

The development and implementation of Internet governance arrangements should ensure, in an open, transparent and accountable manner, the full participation of governments, the private sector, civil society, the technical community and users, taking into account their specific roles and responsibilities. The development of international Internet-related public policies and Internet governance arrangements should enable full and equal participation of all stakeholders from all countries.

3. Responsibilities of states

States have rights and responsibilities with regard to international Internet-related public policy issues. In the exercise of their sovereignty rights, states should, subject to international law, refrain from any action that would directly or indirectly harm persons or entities outside of their territorial jurisdiction. Furthermore, any national decision or action amounting to a restriction of fundamental rights should comply with international obligations and in particular be based on law, be necessary in a democratic society and fully respect the principles of proportionality and the right of independent appeal, surrounded by appropriate legal and due process safeguards.

4. Empowerment of Internet users

Users should be fully empowered to exercise their fundamental rights and freedoms, make informed decisions and participate in Internet governance arrangements, in particular in governance mechanisms and in the development of Internet-related public policy, in full confidence and freedom.

5. Universality of the Internet

Internet-related policies should recognise the global nature of the Internet and the objective of universal access. They should not adversely affect the unimpeded flow of transboundary Internet traffic.

6. Integrity of the Internet

The security, stability, robustness and resilience of the Internet as well as its ability to evolve should be the key objectives of Internet governance. In order to preserve the integrity and ongoing functioning of the Internet infrastructure, as well as users' trust and reliance on the Internet, it is necessary to promote national and international multi-stakeholder co-operation.

7. Decentralised management

The decentralised nature of the responsibility for the day-to-day management of the Internet should be preserved. The bodies responsible for the technical and management aspects of the Internet, as well as the private sector should retain their leading role in technical and operational matters while ensuring transparency and being accountable to the global community for those actions which have an impact on public policy.

8. Architectural principles

The open standards and the interoperability of the Internet as well as its end-to-end nature should be preserved. These principles should guide all stakeholders in their decisions related to Internet governance. There should be no unreasonable barriers to entry for new users or legitimate uses of the Internet, or unnecessary burdens which could affect the potential for innovation in respect of technologies and services.

9. Open network

Users should have the greatest possible access to Internet-based content, applications and services of their choice, whether or not they are offered free of charge, using suitable devices of their choice. Traffic management measures which have an impact on the enjoyment of fundamental rights and freedoms, in particular the right to freedom of expression and to impart and receive information regardless of frontiers, as well as the right to respect for private life, must meet the requirements of international law on the protection of freedom of expression and access to information, and the right to respect for private life.

10. Cultural and linguistic diversity

Preserving cultural and linguistic diversity and fostering the development of local content, regardless of language or script, should be key objectives of Internet-related policy and international co-operation, as well as in the development of new technologies.

Declaration by the Committee of Ministers on Internet governance principles (Adopted by the Committee of Ministers on 21 September 2011 at the 1121st meeting of the Ministers' Deputies)

What does the Council of Europe say about observing human rights on the Internet?

Recommendation SM/Rec(2007)16 of the Council of Europe's Committee of Ministers to the participation states *on measures to increase the value of the Internet as a public service* states that the Council of Europe's participating states must pass or develop political decisions for preserving, and when it is possible, strengthening the defense of human rights and the observation of the rule of law in the information society. In that connection, special attention is devoted in particular to:

- *the right to freedom of expression, information and communication on the Internet and via other ICTs promoted, inter alia, by ensuring access to them;*
- *the need to ensure that there are no restrictions to the above mentioned right (for example in the form of censorship) other than to the extent permitted by Article 10 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights;*
- *the freedom for all groups in society to participate in ICT-assisted assemblies and other forms of associative life, subject to no other restrictions than those provided for by Article 11 of the European Convention on Human Rights ("Freedom of Assembly and Association") as interpreted by the European Court of Human Rights;*

In March 2012, the member states of the Council of Europe approved a joint *Strategy for Internet Governance* whose purpose was to promote and protect human rights, the rule of law and democracy in the online space. Based on the *Declaration on Principles for Internet Governance*, the Strategy provides 40 directions of action separated into six areas (openness of the Internet, users' rights, data protection, cybercrime, democracy and culture, children and youth). It is to be implemented over the course of four years -- from 2012-2015 -- in close cooperation with various partners, including representatives of the private sector and civil society.

Do the OSCE participating states have obligations to preserve Internet freedom?

The Organization for Security and Co-operation in Europe (OSCE) devotes particular attention to Internet development. In 2004, at a meeting of foreign

ministers of the participating states, a decision of the OSCE Permanent Council passed shortly before that was approved, in which these countries obligated themselves to “take action to ensure that the Internet remains an open and public forum for freedom of opinion and expression, as enshrined in the Universal Declaration of Human Rights, and to foster access to the Internet both in homes and in schools.” With this document, the OSCE Representative on Freedom of the Media was appointed and continues to play an active role in promoting the guarantee of both freedom of expression and Internet access and to continue to monitor events in this connection in all the participating states.²⁰

How does the CIS propose regulating the Internet?

The priorities of 11 OSCE participating states are also reflected in decisions taken by the Commonwealth of Independent States (CIS). In 2011, the CIS Parliamentary Assembly in St. Petersburg adopted a model law for the CIS, “On the Fundamentals of Internet Regulation.” The legal significance of this ought not to be overestimated, but it does represent a curious political vision of how the Internet should be regulated. The model law is called thus because by itself, it is not a source of law -- it is only a model national act which is proposed to be reviewed and passed by each separate CIS country, including Russia. Notably, the model law states that the regulation of relations related to use of the Internet must be implemented in observance of the following fundamental principles:

- *guarantee of rights and liberties of citizens, including the right to use the Internet and access to the information placed on it;*
- *limitation of the sphere of Internet regulation only by those topical areas with regard to which there is lacking or cannot be applied by virtue of the requirements of existing legislation norms and rules established at the international level or passed by self-regulating organizations of users and Internet service providers.*

For the first time at an important international level it was acknowledged that new human rights had emerged: to the use of the Internet and to access to the information placed on it. The second important principle which must be noted is that the sphere of government regulation of the Internet by law must be restricted -- restricted by the fact that the law does not invade a sphere where norms and rules operate which are adopted by self-regulating organizations, that is,

²⁰ *Freedom of Expression, Free Flow of Information, Freedom of Media: CSCE/OSCE Main Provisions 1975-2011*, Vienna: OSCE Representative on Freedom of the Media, 2011. p. 32. See: <http://www.osce.org/fom/31232>

the Internet community itself. The law should not regulate the sphere which is regulated by the rules of the Internet itself. The more the self-government rules of regulation of the Internet, the less will be regulation on the part of the law.

What is recognized as cybercrime?

The international regulation of the Internet is not limited only to “soft law”. A model applied in practice of criminal and legal regulation of relations on the Internet is the Convention on Cybercrimes (crimes in cyberspace) passed in Budapest on 23 November 2001. Members of the Council of Europe and also the US, Japan, the UAR and Canada took part in its drafting. The Convention went into effect on 1 July 2004, and today has been signed by 47 states and has entered into force in 37 of them (unfortunately, despite membership in the Council of Europe, it was not signed by Andorra, San Marino, Monaco and Russia).

The purposes of the Convention are to enable international cooperation in combating crimes on the Web and passing harmonized legal measures for their prevention. States that have signed this Convention are obliged to combat unlawful use of the Web for falsifying data bases, distributing computer viruses, causing damage to intellectual property, and distributing child pornography.

The Convention requires that each of the signatories classify as criminally punishable the actions of the preparation, offer or provision, the distribution, transfer or receipt of materials connected to child pornography, through a computer system, or the possession of such materials in a computer system or device for computer data.

The participants are also required to classify as criminal acts the violation of copyright and related rights in the meaning of the relevant international agreements, when such actions are committed deliberately, on a commercial scale and by means of a computer system.

How does the Convention on Cybercrimes work in practice?

The Convention obliges state parties to ensure conditions for Internet providers in the course of the necessary time period (not more than 90 days) to archive certain computer data, including traffic data, if the need arises to inspect them by the appropriate authorities.

Each of the Convention signatories must take such measures to enable national authorities to secretly gather or record in real time *traffic* data related to certain operations in transfer of information over computer networks on its territory. In serious crimes, such ability must be provided regarding the interception of the *content* of transmitted information as well.

The Convention parties must provide the broadest possible cooperation with one another for the purposes of investigating or judicially prosecuting cybercrimes.

Through which legislation are racist statements on the Internet prosecuted?

In 2006, the Optional Protocol to the Convention on Cybercrime went into effect regarding the criminalization of acts of a racist or xenophobic nature made with the use of computer systems. It is already signed by 35 states and has gone into force in 20 of them.

This protocol extends the obligations imposed by the Convention as well to any written materials, depiction or other representation of ideas or theories that propagandize, enable or incite hatred, discrimination or violence against a person or group of persons, if as a pretext to this factors based on race, color of skin, national or ethnic origin and also religion.

Essentially, this act recognizes at an international level the following criminal acts:

- distribution of racist and xenophobic materials by means of computer systems;
- threat to commit a serious criminal act motivated by racism and xenophobia;
- public insult, motivated by racism and xenophobia;
- denial, excessive minimalization, approval or justification or genocide or crimes against humanity;
- aiding or abetting the commission of the above-mentioned crimes.

The Convention's contribution to international law consists of at least explaining what is, in fact, a criminally punishable act when distributing materials on the Web. There are three such cases: child pornography, violation of copyright on a commercial level and distribution of racist/xenophobic materials -- and also incitement to these actions and aiding in their commission. The commonly-accepted list ends there; we do not find anything about the justification of terrorism; there is nothing about extremism; and no political crimes.

Chapter 2: Self-regulation of content by the online industry

Introduction

Prior to the Internet era, information and content were made available mainly through broadcast and print and remained easily under the control of national governments. Today Web 2.0 has globalized information, encouraged new forms of journalism that are interactive and immediate and given the means to publish to citizens. National governments have, consequently, lost some of the control they had on content read and produced by citizens. If the Internet has dramatically increased the prospects for freedom of expression, the widespread availability of various content, including sexually explicit content or content deemed harmful for children, has also inspired concerns. For this reason, many argue that Internet content requires more strict regulation – which is quite impracticable since the Internet is a global, open environment and there is no common understanding of the rules that should internationally govern it.

The regulation of online content is challenging and more and more states are adopting laws aimed at regulating the web, thereby threatening media pluralism. To avoid state interference with the right to freedom of expression online, some have been encouraging the online industry to address illegal content or copyright issues on the cyberspace through “self-regulation”. Also, users have been encouraged to better control the content available to themselves and, most importantly, to their children. While some argue that such solution is the preferred one, others argue that this kind of self-regulation lacks the procedural fairness and protection for fundamental right that are encouraged by independent and parliamentary scrutiny. While self-regulation was traditionally used to allow the Internet industry to manage their networks efficiently and protect their consumers from problems like spam, there is a growing trend of Internet intermediaries being pushed to police and punish their own consumers under the flag of “self-regulation.”

By Joe McNamee

What is the architecture of the Internet?

The Internet is a network of interconnected networks – an open architecture offering an “any-to-any” communications infrastructure. Interconnection at multiple levels is therefore by definition essential to the Internet. It is this openness that gives the Internet its resilience, its value for civil liberties and, indeed, its value for the economy. It is interesting to note that both activists and online businesses exploit the same unique characteristic of the Internet – its openness. Activists can communicate their message to the world; e-commerce companies can offer their services to the world. Regulatory or “self-regulatory” experiments that touch upon this core value of the Internet must be considered in this light.

When are Internet service providers liable for users’ content?

This varies from country to country. The basic principle adopted initially in the European Union and United States was that Internet service providers should be liable if they were either directly complicit with the user in producing the content in question or where they both had a direct control over the data (an Internet hosting provider, for example) and had actual knowledge of the illegality of the content. This approach was crucial in for the growth and, particularly, the economic success of the Internet in the EU and US.

This principle is increasingly being eroded by the use of injunctions to impose filtering, blocking and surveillance measures on Internet service providers as well as extra-judicial imposition of such measures (either spontaneously by the provider or as a result of government or other pressure)²¹. While the European Court of Justice has established some valuable limits on the use of injunctions in relation to online activity (in the *Scarlet/Sabam* and *Netlog/Sabam* cases in particular)²², there is a worrying trend for the possibility of injunctions being included in trade agreements (such as ACTA). Exporting the European Union’s

²¹ An injunction is a court order that requires a party to do or refrain from doing specific acts. It is an extraordinary remedy, reserved for special circumstances in which the temporary preservation of the status quo is necessary. An injunction is therefore usually issued only in cases where irreparable injury to the rights of an individual would result otherwise. It must be readily apparent to the court that some act has been performed, or is threatened, that will produce irreparable injury to the party seeking the injunction.

²² *Scarlet vs Sabam*, 24 November 2001 and *Sabam vs Netlog*, 16 February 2012. In both cases ruled by the European Court of Justice, Sabam had asked for an injunction requiring suspicion less and open-ended filtering of citizens’ use of Internet services (Web hosting for Netlog and peer-to-peer networks for Scarlet), paid for by the Internet service provider. In the Netlog case, the Belgian courts had wanted to oppose the injunction while they wanted to support the injunction in the Scarlet case.

In both cases, the rulings of the Court were based on the Charter of Fundamental Rights of the EU and emphasized the dangers of the use of injunctions in the digital environment. It proved that it is necessary to use law to implement any proposed restriction on the right to communication or privacy online.

injunctions regime without exporting its fundamental right safeguards is reckless at best and, at worst, a breach of the EU's own international obligations to uphold human rights. It also risks stunting the growth of the online economy in less developed countries and exports restraints on free speech to countries that do not have mechanisms to balance fundamental rights with various corporate and government interests.

Lack of clarity regarding liability is also having the impact that Internet companies are increasingly using “self-regulation” as a form of “self-defense.” Through their terms of service, they increasingly give themselves the power to delete, block or censor almost anything, at their own discretion, undermining predictability and free speech. One leading international company, in its terms of service for application developers, gives itself the right to “remove or suspend the availability of any app” “for any reason or no reason.”

Are web portals or search engines subject to any kind of regulation or self-regulation?

It is a truism that search engines and web portals have an influence on the prioritization of content found on the Internet. Citizens find content through these services and they must be organized so that *something* is at the top of the list of search results. It is therefore also a truism that search engines and Web portals must find a way of regulating this internally – self-regulating, in other words. The question for society is whether such services, particularly when they control a larger part of the market, are transparent and neutral.

The situation regarding regulation is more complex. In the European Union, the L’Oreal/eBay²³ case in the European Court of Justice created a possibility for liability of such companies, where the service was “active.” However, the Court failed to provide adequate guidance on this concept, meaning that the courts in different EU Member States have interpreted this approach differently. Essentially, even though the tipping point is very unclear, the principle is that the less neutral

23 L’Oreal v. eBay, Judgment of the Grand Chamber of the European Court of Justice, 12 July 2011. The case concerned the advertisement and sale of goods on the online market place eBay. L’Oreal claimed that eBay is liable for infringements of L’Oreal’s trademarks committed by sellers on the eBay Web site. The decision clarified the scope of the liability exemptions for intermediary service providers. The court indeed ruled that an operator of an online marketplace cannot rely on the liability exemption if it played an ‘active role’ that would give ‘it knowledge of, or control over, the data relating to the offers for sale’. The ECJ also confirmed that the operator may be held liable if it is aware of facts or circumstances from which the illegal information is apparent and fails to remove this information from its Web site.
<http://curia.europa.eu/juris/document/document.jsf?sessionId=9ea7d2dc30db1e149ecd04654f6f9d47e9a88a095446.e34KaxiLc3qMb40Rch0SaxuKxb0?text=&docid=107261&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1599782>

the service is, the more likely the provider will be held liable for the content. This, in turn, means that the liability regime is increasingly uncertain, increasing the risk of ad hoc preemptive censorship by the companies providing the services.

How do Web portals and search engines guarantee online pluralism?

Search engines and portals whose algorithms are neutral and do not prioritize on the basis of commercial interests, politics, etc., help to maintain the openness that is at the core of the Internet's success. While these algorithms are commercially sensitive and therefore difficult to verify, there needs to be constant vigilance to ensure a maximum of transparency and neutrality.

What is network neutrality?

This is the essence of the Internet's openness – it is the principle that a network provider must not prioritize (or de-prioritize) traffic on the basis of its origin, destination or purpose, except for compelling security reasons.

International Mechanisms for Promoting Freedom of Expression JOINT DECLARATION ON FREEDOM OF EXPRESSION AND THE INTERNET

The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information,

Adopt, on 1 June 2011, the following Declaration on Freedom of Expression and the Internet:

Network Neutrality

- a. *There should be no discrimination in the treatment of Internet data and traffic, based on the device, content, author, origin and/or destination of the content, service or application.*
- b. *Internet intermediaries should be required to be transparent about any traffic or information management practices they employ, and relevant information on such practices should be made available in a form that is accessible to all stakeholders.*

Source: www.osce.org/fom

Who should take user-generated content down when illegal?

This depends on the type of content. Trivial offences can be resolved by interaction with the person that uploaded the content in question. Criminal offences need to be dealt with on a case-by-case basis. Sometimes, it would be appropriate for the service provider to suspend the content, if the content represented an imminent physical threat to one or more people. Sometimes, it is more important not to “tip off” the criminal and therefore the priorities of law enforcement authorities must be considered.

The logical reaction is that the most objectionable material should be removed by Internet companies as quickly as possible. However, this approach is fraught with risks – both for free speech and, perversely, for fighting the illegal activity. The less legal oversight there is before material is removed, the more likely it is that perfectly legal material will be removed too, unfortunately to the detriment of free speech. Furthermore, the faster content is removed, the greater the risk that this superficial (the site could be uploaded elsewhere five minutes later) action will replace rather than complement the activities of law enforcement officials.

How to deal with hate speech on the Internet?

This is a difficult question to answer, because the concept of “hate speech” varies significantly from one country to another. Research indicates that hate speech is often put online in order to attract attention. This means that there is a very delicate line between effectively implementing the law and creating counterproductive effects. Not enough research has been conducted on this issue, meaning rule-of-law based approaches are consistently falling short. On the other hand, there is an increasing tendency to abandon the rule of law completely and hand over decisions on such issues to the hands of Internet companies.

Internet companies can only take superficial action (removal of a site, which can be uploaded in seconds somewhere else). Relying on the Internet companies to take on the roles of being judge, jury and executioner for online content is a bad solution, even from their perspective, as it is not part of their business activity or skills. It is also a bad solution for victims because temporary removal from site A, before it is uploaded again to site B, is of no use. The only winner on the approach is the hate speech distributor, who no longer needs to worry about court-imposed sanctions.

In a way, the solution can probably be found in looking at how this is dealt with in more traditional media. For example in 2001 the UN, OSCE and OAS Special Mandates on the right to freedom of expression set out a number of conditions which hate speech laws should respect²⁴:

- No one should be penalised for statements which are true
- No one should be penalised for the dissemination of hate speech unless it has been shown that they did so with the intention of inciting discrimination, hostility or violence
- The right of journalists to decide how best to communicate information and ideas to the public should be respected, particularly when they are reporting on racism and intolerance
- No one should be subject to prior censorship
- Any imposition of sanctions by courts should be in strict conformity with the principle of proportionality.

To which European Digital Rights would like to add that citizen-journalists should not be treated differently from professional journalists.

How to deal with the anonymity of illegal online content?

There is very little purely anonymous illegal online content; there is simply a lack of effective law enforcement cooperation to identify offenders when this is appropriate. This being the problem, this is what needs to be solved. However, instead of solving the real problem, the “easy” solution of making it more and more difficult to protect one’s identity online is the approach increasingly preferred by policy-makers. Privacy is crucial for freedom of speech, any attempt to restrict anonymous speech online would be vastly disproportionate, simplistic and misguided.

What are the benefits and disadvantages of self-regulation of the online industry?

The basic rule that needs to be respected is that the more internal the self-regulatory process is, the more effective, the more proportionate and the more

²⁴ International mechanisms for Promoting Freedom of Expression, Joint Declaration about Racism and the Media, July 2001, <http://www.article19.org/data/files/pdfs/igo-documents/three-mandates-statement-1999.pdf>

respectful of fundamental rights it will be. For example, a sector of industry could adopt a self-regulatory code to ensure that their privacy policies are clear and follow an identical methodology (thereby allowing users to make an informed choice between different providers). This process would be entirely internal, with a clear goal where the entity being regulated is the company *itself*.

On the other hand, a self-regulatory approach where companies agree to remove possibly illegal websites is fundamentally different. The rules being implemented were not developed by the company and the company is not regulating itself but its own customers. When the rules are not those of the company, when the policy objectives of the rules are not those of the company, when the company is not regulating *itself*, this is an entirely different process from “self-regulation” and would be more appropriately described as “private law enforcement.” Many of the problems that arise in policy development in this area stem from the failure of policymakers to appreciate this important distinction.

What are the dangers of the online industry self-regulation?

There are multiple dangers inherent in the private law enforcement approach. In particular:

1. The only actions that an Internet intermediary can ever take are superficial – it cannot arrest anybody and it cannot prosecute anyone.
2. Internet intermediaries are private companies whose priority is to make profits and stay in business, not to protect freedom of expression. They will “err on the side of caution,” as the risks created by deleting perfectly legal content are generally lower than the risks created by leaving legal content online – particularly in citizen-facing and “free” services.
3. There is a permanent and significant risk that resource-limited law enforcement authorities will de-prioritize particular online offences if they believe that they can rely on Internet intermediaries that temporarily has made the problem “go away.”

Is using filtering software by parents a kind of self-regulation of the Internet?

Parents are not regulating themselves so, no, it is not “self-regulation.” Depending on the age of a child, it may be more or less appropriate for a parent to filter their children’s Internet connection. However, it is never pedagogical best practice

to prevent a child from facing a particular danger. At some stage a parent must, reluctantly, let go of a child's hand and let him or her cross the road on their own. The challenge is managing the risk appropriately and educating, ultimately, allowing the child to manage risks autonomously.

We all have a primal (and healthy) desire to protect children as much as possible. However, child protection online is very often counter-intuitive – such as the study by the independent UK Office for Standards in Education, which found that weak filtering of children's Internet connections was better for child safety than strong filtering. It is very important, therefore, to move away from “gut feeling” regulation of children's online activities and towards a more diligently evidence-based approach.

Should new media be self-regulated?

The question is more interesting than the response in this case. Is there any form of journalism that does not “self-regulate?” Every blog has a particular linguistic register, every writer adapts his or her style to their imagined reader and every writer “self-regulates” his or her writing in ways that seek to avoid or to invite controversy. Should new media outlets self-regulate content that is being produced in their name, in order to maintain a particular level of quality, linguistic style or thematic focus? Absolutely – it would be absurd to argue to the contrary. Should blog services be policing blogs to preemptively censor, delete or disconnect bloggers based on rules in their terms of service, setting a stricter and less transparent standard than democratically approved laws? Absolutely not – there are good reasons why every major human rights instrument explicitly says that restrictions on fundamental freedoms, such as freedom of communication, must be based on law.

Industry self-regulation of content: The example of the UK Internet Watch Foundation

By Susie Hargreaves, Chief Executive of the IWF

The Internet Watch Foundation (the IWF) is a UK charity which has been established by the online industry to deal with a very specific area of unlawful content: child sexual abuse content (CSAC), also known generally as child pornography.

History of the IWF

The IWF was set up in 1996 by the Internet industry in the UK after discussions with the police and government departments. The Internet was still relatively young then and police believed that Internet service providers might have been committing an offence by the fact that they carried newsgroups which were posting indecent images of children. In the UK, possession of CSAC is a criminal offence and “Possession” includes viewing on the Internet. So, back in 1996, Internet service providers were concerned to ensure that neither they nor their innocent customers would be criminally liable if they carried or inadvertently viewed CSAC. Both government and the police supported the industry’s endeavours to tackle this issue on a self-regulatory basis, working in partnership with law enforcement, but separate from it.

The IWF was established to be an independent body with the job of receiving, assessing and tracing complaints from the public about child sexual abuse content. Since its formation, the IWF has operated this Hotline service for the public to report potentially criminal content and, in partnership with the police, to provide a “notice and takedown” service to advise Internet service providers to get the content removed.

In its first year, the IWF processed about 1,300 reports and had five funding members. In 2011, nearly 42,000 reports were processed and there are around 100 members. This exponential growth in reports arises not only from the increased sophistication of criminals on the Internet, but also its improved ability to track them.

How it operates

The first priority of the IWF is to identify CSAC that is hosted in the UK and to get it taken down as fast as possible. It has been so successful over the years that the amount of UK hosted content has gone down from about 18% in 1996 to under 1% now. Material found on UK hosts is taken down in under 1 hour. This achievement is only possible because of

the close partnership arrangements with the police and industry. All potentially criminal content is shared with the police who confirm its assessment and capture what they need for the purposes of any criminal investigation. The industry then acts immediately to remove the content.

In 2009, with the agreement of the industry, the IWF also took on responsibility for identifying and issuing take-down notices for illegal extreme pornography, although in fact it has so far only dealt with a handful of such cases.

As well as its domestic Hotline service, it also produces a list of URLs – that is, specific web addresses – of child sexual abuse content hosted outside the UK. This list is distributed to service providers, search companies, hosting sites and filtering companies to use to block or filter access to this content. Although most of the users of the list are UK-based, the list is increasingly being used in other countries. As part of the INHOPE consortium of 40 Hotlines around the world, the list is amalgamated with those of other Hotlines to form a universal list used globally.

The use of the list for blocking is the most contentious element, and the one which has raised most concerns about possible conflicts with the European Convention on Human Rights. The IWF team of analysts process reports constantly and update the list of URLs twice daily. The list is dynamic and varies in size from 300 to 600 URLs. In the UK, the list is applied by broadband providers covering 98% of the UK residential market. In so doing, it prevents inadvertent access to CSAC. What it does not do is prevent a determined paedophile from finding technical means to overcome the block. What it is good at doing is setting up an extremely effective filter that you have to be determined to evade – and by finding the blocked content, you are deliberately committing a criminal offence.

Why self-regulation?

First, self-regulation requires the support of the bulk of the industry to work, and getting that support means that the industry will co-operate, rather than fight, the regulator. Because of the tremendous support it gets, the IWF is able to operate with a staff of only 20. It relies heavily on the technical and other expertise that lies within the Internet industry. If something needs to be done, the industry will do it for us.

Second, self-regulation ensures that the IWF model remains relevant as it is able to react to changes in the online environment much faster than it would if the IWF was bound by statute.

Third, the industry tells that it is far more trusted than the police. Whereas they will act on the IWF advice immediately, they claim that they would not feel comfortable being directed by the police to remove content.

And fourth, self-regulation protects the industry's self-determination. One must not lose sight of the fact that the Internet industry is a commercial business. Internet companies are profit-oriented and need to steer a line between doing what their customers want and meeting the demands of government and other stakeholders. Through self-regulation, the industry can act as an arbiter between state objectives and user demands.

Criticisms of our model:

• A threat to freedom of expression

Some allege that by removing or blocking content, the IWF is breaching human rights, in particular Article 10. Here it is necessary to be aware of some of the models used by criminals to put their content on the Internet. They may 'hijack' legitimate sites, for example posting photographs or videos hidden deep within a hosting provider whose business is providing web space for regular businesses and users. As well as breaking the criminal law, this breaches the contractual terms of the hosting sites and the ISPs. The arguments become far more complex than just looking at freedom of expression issues, and raise questions of commercial contracts as well. But nonetheless, one can ask the fundamental questions:

Do purveyors of CSAC have a 'right' to impart criminal images? No

Do paedophiles have a 'right' to receive images? No.

Do Internet providers have a 'right' to prevent the abuse of their services? Yes.

And one must not also lose sight of the children who have suffered abuse. Don't they too have rights not to have the images of their abuse spread across the Internet?

• No judicial authority

Some question how the IWF, as an NGO, can have the authority to identify and classify material as potentially criminal. They argue that this is a role that can only be performed by a judge or the police.

Of course, ultimately, it is only the courts that can determine the legality or otherwise of content. But imagine how the courts would react if they were asked to rule on 49,000 cases of potentially illegal child sexual abuse content a year. The IWF model is, in that respect, much faster. But it is no cavalier, and it is no amateur.

For our notice and take down work, the IWF staff undergoes rigorous training with police and it continues to work closely with them. It reports content to the UK and foreign law enforcement agencies and hotlines. Its work is regularly inspected by police, legal and child protection experts and it has explicit endorsement by both the UK government and the European Commission. Although it applies the UK's sentencing guidelines when assessing content, it sets a higher threshold for action. Therefore, content which is borderline or would only carry the lightest sentence if found criminal by a court will not be actioned by the IWF. But does it have legal authority to issue a list for blocking? The UK government has strongly indicated it will legislate unless ISPs apply the IWF list but underlined that it wants the IWF to do this work. Given government, industry and law enforcement preference for the IWF to compile and circulate the list, this is virtually legal authority.

Many of the IWF Members have also chosen to apply the list voluntarily abroad. With the support of other Hotlines, the IWF sometimes lets companies outside the UK know that their service is hosting CSAC. Of course it only has advisory status in other countries, but experience demonstrates that Internet companies are grateful to know they have been abused by criminals.

- **Incorrect assessment and overblocking**

You may have heard of what tends to be called "the Wikipedia incident" in 2008. In that case, the IWF took advice three times from the police who confirmed the image in question, an illustration from a record sleeve, was illegal under UK law. The IWF put the URL on its list, but the technical implementation to protect the security of the Wikipedia site coupled with the design of many filtering solutions led to the entire Wikipedia domain being locked to Editors. The IWF has since reassessed its procedures so it is better able to look at overall context and predict when listing a URL may result in technical overblocking by some ISPs who have less robust systems than others.

- **Lack of transparency**

Another complaint about our model is a lack of transparency.

Clearly, the IWF cannot publish its list, as not only would that make it easy for paedophiles to find material, but publication under UK law would in itself be illegal as it would constitute "advertising."

It does however publish the criteria our analysts use to identify CSAC. The IWF assesses child sexual abuse content according to the levels detailed in the Sentencing Guidelines Council's Definitive Guidelines of the Sexual Offences Act 2003.

In addition, it publishes and operates an appeals process to cover any situation where someone considers a URL has been incorrectly assessed.

<http://www.iwf.org.uk/accountability/complaints/content-assessment-appeal-process>

However, it is fair to say that unless you know that something has been blocked, it is rather difficult to appeal against the blocking. At the moment, if a user tries to access a blocked site, they may find a “Splash Page,” which makes clear that access is denied because the URL has been classified by the IWF as potentially criminal content. However, it is just as likely that they will get a bland notice, typically a “404 Notice” which just says the file has not been found. The IWF would like to see a situation where anyone who tries to access a blocked site finds out why access is denied. However, at the moment, there are some genuine problems about the use of splash pages. Currently, some ISPs have technical difficulties identifying which URLs are blocked because they are on the list, as compared to those that are blocked for other reasons (e.g. Spam and Phishing). They may have to find a solution soon, though, as the new EC Directive on combating the sexual abuse, sexual exploitation of children and child pornography require transparency on blocking.

ISPs and other Internet companies already have a significant role mediating what it accesses: from regulating the flow of traffic to manage the pressure on networks, to removing spam and phishing, to – in the case of Google for example – applying default search filters and “smart filters” to give search results their algorithms predict we want, to removing content when informed it is defamatory. The companies do this as a response to both customer influence and government pressure – and as a way of increasing the appeal of their service and therefore their profitability.

The ultimate question is: Do we, as consumers and as citizens, prefer our internet to be mediated by the State or by commercial enterprises? Is the mediation of content a matter solely for democratic decision-making or do we trust companies to make moral and editorial judgements on our behalf? Is this, ultimately, a question for us as citizens, or us as consumers – or can the two be combined?

Chapter 3: Ethics and digital journalism

Introduction

The Internet and the digital media are transforming, profoundly and irreversibly, the nature of journalism and its ethics. While the Internet encourages new forms of journalism that are interactive and immediate, citizens are also given an opportunity to create and share information globally. The core ethical principles of journalism have been adopted for traditional media during the last century. Today a central question is to what extent their ethical standards can be applied across the new information landscape.

At a time when traditional media are truly suffering from the economic crisis and from the migration of the audience to online media, it is particularly important that traditional and widely accepted values of professional journalism are fostered to guarantee a free and responsible digital journalism. In that respect, this chapter will highlight new challenges with the mix of traditional journalism and online journalism. The culture of traditional journalism, relying on values such as balance and impartiality, is increasingly in conflict with the culture of online journalism based on immediacy, transparency and, in many cases, partiality.

A decade ago only a limited number of people wondered who was a journalist. Now, everyone particularly the media audience can play a role in gathering, preparing and disseminating acts of journalism. Everyone with a modem can be a potential publisher. As a result the digital revolution raises the question of ethics for everyone in the civil society.

Journalism is becoming global. And with global impact and reach comes the question of the necessity of global media responsibility.

By Aidan White

Who should follow journalism ethical standards in the digital era?

Everyone who is engaged in forms of journalism - gathering and distributing information for public consumption – should be ethical and responsible.

Journalism has become more complex and much more democratic. Today the audience plays an important part in news gathering and news dissemination. People also use new technologies to engage in journalism on their own.

New concepts have arisen such as networked journalism and data journalism, which are new ways of co-operating in telling stories and providing intelligent analysis of enormous amounts of information.

This new media landscape requires more self-regulation which is seen as the best way to follow media ethical standards. Most press councils now include online services provided by media houses in the scope of their work.

Self-regulation is evolving as journalism on the Internet expands. Many new online services are not covered by industry regulators, but that should not make them or their journalists exempt from applying the basic ethical standards that media have always followed.

Are ethical standards different for online media compared to traditional media?

No. These days journalists share the public information space with tweeters, bloggers, citizen journalists, and social media users, but the ethical challenges of journalism – to tell the truth, to do no harm, and to be accountable and independent – are the same as they always have been. Ethical standards should be applied by everyone working in the news and public information field, across all platforms of media. However, because of the fast-changing media environment, new guidelines might supplement the established principles that governed the non-digital media.

What is the added value of journalism at a time when everyone can create information?

The Internet has changed almost every aspect of journalism – the gathering, editing and dissemination of information has become a sophisticated and complex business often carried out at breakneck speed.

Journalists are bombarded by information from all directions and they have less time to verify facts, pictures and statements than before. They produce stories in converged newsrooms where text, audio and video are mixed and matched for a demanding audience. This is exciting but it has a downside.

The ascendancy of this new media culture, particularly through social networks and online services, has occurred at a time when traditional forms of media are cutting back. The Internet has broken previously successful media business models. Now more journalists work in precarious employment positions and media are investing less in journalism – both in training and investigative reporting. All of this makes journalism a fraught and high-pressure activity.

No one can predict how journalism will finally evolve, but the process of change is a bumpy ride. The only certainty is that democracy needs informed citizens and ethical journalism is the only independent guarantor of reliable and useful information to ensure prosperous democracy.

What are the most important ethical standards for journalism in the digital era?

All ethical standards are important, but in the digital era, journalists have to be particularly careful when it comes to privacy and verifying information they receive.

Have journalism codes of ethics been adapted to the new online environment?

Many media are introducing new guidelines on the use of social networks and are trying to improve their capacity to moderate the increasing volume of the online conversation with readers, viewers and listeners. But beware, this is expensive.

How to identify reliable sources of information on the web?

In order to cover very quickly breaking news or major disasters, media organizations are more and more willing to collaborate with citizens who can capture events on their mobiles before journalists and transmit those to the newsroom. However, journalists need to check the profiles of sources in order to ensure that they are who they claim to be. Moreover, journalists should never quote from the web without seeking to verify sources. Newsrooms need to put in place processes to verify citizen-supplied material.

A few online tricks to identify if an online photo is legitimate

- First, click through to see if you can find the original source of the photo. Ask the person who shared the photo where they found it.
- Do a reverse image search on TinEye (an Internet search engine) to see if the photo has been used online in the past.
- Or, download Google's reverse image search plugin to see if that photo was posted online in another context.

Source: Metropolis, Blog of the Wall Street Journal

How to correct online errors

Journalists benefit from admitting their mistakes. The Internet provides excellent opportunities to clarify and correct errors of fact. A regular column updating and clarifying earlier published reports can be helpful. Even though most journalists don't like to admit errors, a swift correction is a sign of professionalism and helps build trust.

How to deal with the anonymity of online content?

The Internet has created a culture of freedom of information that increased levels of anonymity. It often shows disregard for creators' rights and permits plagiarism. People and places are not always what they appear to be. The issue of anonymity on the net has indeed become controversial because of the reckless behavior of so-called "Internet trolls" -- people who hide their identity when making abusive, often bullying and offensive attacks on people. Even the most ardent fans of Internet freedom believe that some ethical limits need to be imposed, although this would be problematic if it compromises the rights of vulnerable people who need identity protection.

People used to say: "Don't believe everything you read in the newspapers," and this is even more applicable for information on the Internet. Never accept first impressions and find out who is behind a name and an organization. If a journalist need to use content that is unverified, a "health warning" should be issued explaining where the information comes from and why it might be unreliable.

How to increase the quality and responsibility of online media?

The answer is education, education, education. We can call it raising-awareness, but in the end we all have to relearn the value of truth-telling and apply it to the Internet and online journalism. Online media should be encouraged to set

standards and apply them to their work. Many of the high profile services – the Huffington Post, for example – are already doing this.

Journalism must always be a quality brand defined by ethical standards. Online media should be encouraged to embrace these values and to act responsibly.

Journalists don't have to follow in the organizational footsteps of traditional media, but news and information providers in the digital age should recognize that journalism worthy of the name is based upon principles and standards. It is a key to success in the crowded news market.

How private is the internet?

The culture of the Internet is rooted in notions of free access and open information, but it has both a private and a public face. It can be used for personal communications and for public expression. Users can set their own privacy controls.

When is it acceptable to publish the personal emails of powerful people?

In March 2012, the Guardian decided to publish the private e-mails of the Syrian president Assad and his wife, which raised various ethical questions. The Guardian answered those questions explaining how it verified the authenticity of the e-mails and why it decided to publish those.

The Guardian: We believe a number of disclosures, including evidence of Assad taking advice from Iran and receiving detailed briefings on the situation in Homs, are of clear public interest. Given the nature of the Assad regime's brutal crackdown on the Syrian people, we believe the more detailed picture of the workings of Assad's inner circle that emerges from the mails, and the extent to which he and his wife have managed to sustain their luxurious lifestyle, are also of public interest. The Guardian did not solicit the material.

We have chosen not to publish personal information, including photographs and video footage belonging to the wider Assad family that does not relate to the activities of the first family and the way Syria is governed. We have retracted details of third parties in the e-mails we have published online and in print.

Source: The Guardian

<http://www.guardian.co.uk/world/2012/mar/14/how-know-assad-emails-genuine?newsfeed=true>

Why should journalists be careful about third-party content?

People have a right to exercise control on how their information will be reused by others. Journalists should therefore respect the conditions people set for the use of their creative work.

Creative Commons (<http://creativecommons.org>) enables everyone – professionals and others – to share their creativity and knowledge through free legal tools.

Can journalists freely use information and material uploaded by users on social networks?

Journalists like others are free to roam the online world, but they need to be particularly Internet-savvy. They should respect the privacy standards that users apply to their online material. If they have reason to believe that the information gathered originates from a private space they must ask the source for permission to use it.

Material uploaded on Twitter and Facebook is normally free to use, but in order to avoid the spreading of rumour and speculation the audience should always be informed about the source of the information. The only exception to this is when there is a pressing public interest or professional reason for not revealing a source. Remember: journalism is about transparency, disclosure and reliability.

BBC Guidelines on the use of material from social media

7.4.8 Although material, especially pictures and videos, on third party social media and other websites where the public have ready access may be considered to have been placed in the public domain, re-use by the BBC will usually bring it to a much wider audience. We should consider the impact of our re-use, particularly when in connection with tragic or distressing events. There are also copyright considerations.

Guidance: Summary of main points

- Don't assume that pictures from the Internet show what or who they purport to show - verify them to ensure due accuracy.
- The ease of availability of pictures on social media and personal websites does not remove our responsibility to consider the sensitivities in using them, balancing these with any public interest the pictures may serve.
- What was the original intention in publication? The publication of a picture on a personal website or social networking site does not necessarily mean the owner of that picture intended it to be available for all purposes and circumstances - or understood that it could be.
- Is it likely that the individuals in the picture will have consented, either explicitly or tacitly, to its publication and public accessibility on the Internet?
- We have a responsibility to consider the impact our re-use of a picture to a much wider audience may have on those in the picture, their family or friends - particularly when they are grieving or distressed.
- We should take care that photos taken from social media and personal websites do not assume another, possibly incorrect, meaning or imply unfounded suggestions when lifted from those websites and shown in the context of a particular news story.
- When pictures or video show illegal/anti-social activity, we should avoid becoming simply a stage on which lawbreakers can perform.
- The re-use of material from the Internet can raise legal issues of privacy and copyright. Advice is available from BBC Lawyers.

Source: <http://www.bbc.co.uk/guidelines/editorialguidelines/page/guidance-social-media-pictures>

Are there rules for journalists making personal and professional use of social media?

Most media recognize that social networks are now an integral part of everyday life for millions of people around the world. Social networks are therefore an essential tool for reporters to gather news and share links to published work. However, when journalists make personal comments on controversial issues and news events, it can cause problems. This is why many news media have rules and guidelines that encourage journalists to take active part in social networks and, at the same time, assess limits to how they can express themselves.

Some typical guidelines are²⁵:

1. Only one account per social network is recommended, and identify yourself as a journalist and for which media you work.
2. Do not include political affiliations in profiles and do not post material expressing political views or which may compromise editorial independence.
3. Do not post abusive comments and assume that your post will always be available to the target of your comment.
4. Customise your privacy settings to clearly determine what is to be shared and with whom, but remember, virtually nothing is truly private on the Internet.
5. Don't break news on social networks. A piece of information may be compelling and urgent enough to be considered breaking news, but journalists should use their news judgment and check with their editors before putting out exclusive content on social media.
6. Check sources. It can be difficult to verify the identity of people on social networks, but sources there should be vetted.
7. Never simply lift quotes, photos or a video from a social network site and attribute them to the name on the profile or feed where you found the material.
8. Keep track of responses and complaints and report them to your editor. Social network messages may feel like private chat, but whenever controversy arises, the editor is likely the best person to reply to them.

²⁵ This is an example from the Associated Press to its employees.
http://www.ap.org/Images/SocialMediaGuidelinesforAPEmployees-RevisedJanuary2012_tcm28-4699.pdf

Digital Publishing Guidelines of the Washington Post

Third-Party Content

We should assume that our audience will hold us accountable for third-party content on washingtonpost.com, whether it is embedded, copied or simply paraphrased. So follow common-sense rules: Don't embed a video without having watched the entire clip. Know exactly what a block of foreign-language text says before excerpting it. Look at the entire Web page you link to before posting a link to ensure that other headlines and posts, side modules or ads are appropriate.

If the content we link to — or another part of that Web page — does not meet our standards for potentially offensive material, it still may be acceptable to post the link, based on its news value. But we should let users know what they will see before they click the link. (For example: "Warning: Some images on this site contain graphic images of war.")

Giving credit

When linking to, embedding, aggregating or simply referring to non-Post content on washingtonpost.com, the first and best rule to remember is a paraphrased version of the Golden Rule: Use and credit the content the way you'd expect other sites to use and credit Post content. Misuse of non-Post content can cause serious harm to our reputation and expose the company to liability.

On any part of washingtonpost.com that is supplemented by third-party content, we must include attribution as a matter of course. It gives our users important information, makes us more transparent and properly credits other news organizations.

We should give credit every time we embed, excerpt or paraphrase others' work on our site — no matter the platform the third-party used (print, blog, Twitter, etc.). We should give credit by both naming the content source and linking to the specific piece of content, if possible. When a story is being reported by many sources, we should link and credit the original report whenever it is possible to determine that source.

Using third-party copyrighted material

The copyright statute protects any original expression that is recorded in some way, such as text, sound recording and video recording. Facts cannot be copyrighted. Ideas cannot be copyrighted. But the original expression of an idea is protected by copyright as soon as it's recorded. Once copyrighted, the work is protected from unauthorized copying, display, or use in a derivative work. A content creator does not need to register a work with the U.S. Copyright Office or include a copyright notice in order for it to be protected. Copyright terms are very lengthy. They can last more than 100 years before a work falls into the public domain.

When determining whether we can use third-party content, the first question is whether the content is copyrighted. The answer is probably yes. We should assume that a work is subject to copyright protection unless it's a federal government work or it's really, really old, in which case it may have passed into the public domain. You should consult with the Legal Department if you are at all uncertain about whether specific content is protected by copyright.

We can use copyrighted content if we have permission to do so or if we are making “fair use.” Permission can be obtained directly from the copyright owner in writing or orally. Permission can also be provided from terms of use published on the content creator's Web site. For example, a third party's Web site may contain a legal notice that gives permission to users to copy or redistribute the content so long as the source is credited. Permission can also be implied (or not) from the context in which the work appears (e.g., press kits).

EXAMPLE: Showing embedded videos from YouTube. The fact that YouTube has provided an embed code for a video does not mean that the copyright owner has given permission for the video to be streamed on the Web. In many cases, a person other than the copyright owner has posted the video to YouTube, without the copyright owner's permission. The Legal Department should be consulted if there is any question about whether we have express or implied permission to use a copyrighted work.

“Fair use” is a defense to using copyrighted work without permission. Unfortunately, there is no clear answer as to what sort of use constitutes a fair use. Courts look at multiple factors. Typically, courts weigh at least four of them. First, the purpose and character of the use. For example, is the use in the nature of commentary, criticism, or news reporting — which favors a finding of fair use — or is the use merely a reproduction of the original work (even if part of a news article). Second, the nature of the copyrighted work. Is the work highly creative or factual? Third, the amount/substantiality of the portion used in relation to the copyrighted work as a whole. It's difficult to establish fair use if you copy an entire work, though possible (e.g., Google Images thumbnails have withstood legal challenge). Fourth, what is the effect of the use on the potential market for, or value of, the copyrighted work?

Courts consider whether the use would displace sales of the original work and also whether there is a market to pay for licenses. Ultimately, it is very difficult to predict whether a court will find “fair use.” The U.S. Copyright Office sums it up well: “The distinction between ‘fair use’ and infringement may be unclear and not easily defined. There is no specific number of words, lines, or notes that may safely be taken without permission.” The Legal Department should therefore be consulted whenever we wish to make use of copyrighted work and we have not obtained permission.

Here are some common misperceptions about copyright law:

- “It’s on the Web, so it’s okay to use.” To the contrary, there have been many lawsuits over the use of text and graphics from Web sites.
- “It’s on a user-generated content (UGC) site, so it’s free to use.” Not necessarily so. To take one example, a Creative Commons license does not guarantee that we can use an image on our Web site without permission. If you are at all uncertain about a photo’s origins, consult a photo editor. We should be especially cautious with these types of photos, seeking photo advice before publishing:
- Professional sports / sports events.
- White House photo ops.
- Celebrity handout photos.
- Corporate logos.
- Graphic images with nudity, violence or otherwise potentially offensive content.

The following Creative Commons licenses, however, do currently permit publication on commercial sites:

- “Public domain.”
- “Creative Commons, licensed for attribution.”
- “Creative Commons, attribution share alike.”
- “Creative Commons, attribution no derivatives.”

The terms of these licenses should be reviewed prior to publication of a specific image to make sure that they have not changed since the publication of these guidelines. If you have a question about whether we can publish a specific item of user-generated content, you should consult the Legal Department.

- *“The photo [or other content] is clearly attributed to the source, so there’s no copyright issue.”* Not so. Providing a clear and conspicuous credit to the person who created the content is not a legal defense to using that content without permission. As the U.S. Copyright Office says: “Acknowledging the source of the copyrighted material does not substitute for obtaining permission.”
- *“I used less than 30 seconds of the video” or “I used less than 250 words.”* Wrong. There is no 30-second rule or 250-word rule, or any other bright-line rule, about what constitutes “fair use” of copyrighted content.
- *“It’s in the public domain.”* Unless it’s a federal government work, or a work that is really, really old, it’s probably not in the public domain.

It is imperative that you notify the Legal Department and an editor immediately if someone is claiming that we are misusing someone else's content.

In this era of digital media, third parties may also make improper use of Post copyrighted content. If you discover possible instances of plagiarism, copyright infringement or other misuse of Washington Post content, logos and other intellectual property, especially on the Web, please send an e-mail to copycat@washpost.com. Please include the following information in the e-mail: (1) a link to or copy of the material that you believe is infringing on our intellectual property; (2) a link to or copy of the original Washington Post material (e.g., our article) that you believe is being misused; and (3) any other information that you think may be helpful or relevant (e.g., how or when you became aware of the misuse). The drop box is monitored by News and the Legal Department.

Source: <http://www.washingtonpost.com/wp-srv/guidelines/third-party-content.html>

Chapter 4: Media self-regulation mechanisms in the online world

Introduction

“Media self-regulation is a joint endeavor by media professionals to set up voluntary editorial guidelines and abide by them in a process open to the public. By doing so, the independent media accept their shared responsibility for the quality of the public discourse in the nation, while fully preserving their editorial autonomy in shaping it.”²⁶

The digitalization process has greatly increased the amount of media content available and makes legal supervision of the media more and more complicated. In that context, media self-regulation appears to be a solution to increase online media accountability while offering more flexibility than state media regulation.

The digitalization process is having an impact on the idea of media self-regulation. The traditional and institutionalized forms of media self-regulation that were specifically created for traditional media need to adapt to the new media landscape. Ombudspersons and press councils are progressively changing their statutes and their methods of operation to supervise online media. This comes with many challenges and questions. The Internet also dramatically empowers civil society to keep the media responsible and produce innovative forms of media accountability.

²⁶ Miklós Haraszti, *The Media Self-Regulation Guidebook*, Office of the OSCE Representative on Freedom of the Media, 2008

1/ The merits of media self-regulation in the Internet era

By Adeline Hulin

Why is media self-regulation good for online media freedom?

The Internet has caused enthusiasm and concerns. More and more governments try to protect their citizens from content considered harmful. History has shown, however, that legislation pursuing legitimate goals can easily cause negative side effects, including becoming a tool for suppressing opposition and critics. Self-regulation is a way to prevent governments from interfering extensively with media content offline, as well as online.

Does media self-regulation mean no media regulation?

No. There will always be a need for legal guarantees to media freedom just as legal definitions of the necessary restrictions are needed. However, to keep media fulfilling its role as watchdog of governments, it needs as little state interference as possible. Self-regulation can help prevent unnecessary media legislation and provide an alternative to courts for resolving media content complaints. The public can still choose to take matters to court - this remains a core human right.

Why do media ethical standards matter at the time of the Web 2.0?

Web 2.0 has generated a variety of new online competitors to traditional media. However, despite the multiplication of information sources through all kinds of user generated content, people continue to turn to traditional media for trustworthy information. The role of traditional media to provide fact-based information and analysis is therefore emphasized on the Internet. In this context, media professionals need to give guarantees about their credibility, which can be achieved through committing to norms of ethical behavior.

How can media self-regulatory bodies make a difference in the digital era?

The digitalization process has greatly increased the amount of media content available. This new environment makes legal supervision difficult and therefore opens up new prospects for media self-regulation. First, because at a time of rapid and constant change of media technology, self-regulation offers more flexibility compared to the option of state regulation. Second, because courts need, by definition, more time to deal with such issues, a burden which can be decreased by self-regulatory bodies. In addition, self-regulation is less costly for governments and society.

What are the practical implications of the digitalization for media self-regulation instruments?

On the one hand, traditional and institutionalized forms of media self-regulation mechanisms, such as ombudspersons or media councils, need to adapt to the new media landscape. On the other hand, the Internet dramatically empowers the society to keep the media responsible and produces innovative forms of media accountability.

Can innovative forms of media accountability on the Internet supplant conventional forms of media self-regulation?

The Internet offers new opportunities for the transparency of journalism and the responsiveness to audience criticism. However, media self-regulation is more than just being responsible to the audience and exchanging views and opinions with users; the core of it is about media professionals being committed to sound ethical principles.

Are there arguments against media self-regulation?

There certainly are. The News of the World²⁷ phone-hacking scandal in the United Kingdom has revealed the weaknesses of self-regulation. In the UK, the system has been criticized for being inefficient. Critics of media self-regulation blame this system for being a kind of a “self-service” where the media industry protects its own interests instead of those of the public. To avoid such situations, provisions for transparency and efficiency need to be reinforced.

How can the efficiency of a voluntary system be ensured?

Not all media will choose to belong to such a self-regulatory regime. Some may say that it is indeed those who hardly need it that will adhere to it. Still, quality media are not protected from mistakes either.

Which media should be covered?

For a long time, self-regulation was tailor-made for print media. Because of the licensing process, broadcast media required more specific oversight. This supervision is usually granted through official regulations that, in some countries, are combined with an oversight by a self-regulatory body dealing with

27 From 2006, allegations of phone hacking began to engulf the newspaper News of the World. These culminated in the revelation on 4 July 2011 that, nearly a decade earlier, a private investigator hired by the newspaper had intercepted and deleted the phones of a missing British teenager and of families of British soldiers killed in action. Amid a public backlash and the withdrawal of advertising, News International announced the closure of the newspaper on 7 July 2011.

complaints about ethical behavior. With the growth of the Internet, self-regulation mechanisms now all take into consideration complaints about the content published on the Internet pages of traditional media.

Should online media become members of self-regulatory bodies?

Some media councils have enlarged their membership to include pure online media, also called pure-players, which are online media Web sites without print editions. This helps recognize the professionalism of those new media that provide reliable information on the Internet. However, this also considerably increases the workload of self-regulatory bodies which do not necessarily have the adequate financial and human resources to supervise an increased amount of content.

What kind of challenges does the convergence bring to media self-regulation?

With the increasing convergence of online and offline media, the traditional division of media dissolved. A self-regulatory body may now supervise material it has not traditionally dealt with, such as audiovisual material offered on a newspaper's Web site. A television service can be launched on the Internet without licensing. This demonstrates that, as most individuals use a combination of media platforms, media regulation and media self-regulation should be technology neutral and focused on the content and not on the type of platform.

What role do governments play when it comes to self-regulation mechanisms in the online world?

Governments should not have a role in self-regulation mechanisms. However, in some countries such as Denmark, the self-regulatory body is recognized by law and can accept funding from the government, although this requires mechanisms to guarantee the independence of the body from the authorities. Such scenarios are defined as statutory self-regulation.

What are the main self-regulation mechanisms?

Codes of practice are the most common form, usually accompanied by mechanisms to enforce respect for the codes, such as press or media councils.

What areas should be covered by Internet media self-regulation mechanisms?

The areas covered by self-regulation mechanisms should be decided by media professionals in their respective codes of editorial conduct and statutes. Media

self-regulation should cover all dimensions of the daily work of a journalist, from gathering to reporting information, including visual content. Due to the fact that the Internet affects the way journalists work, media self-regulation mechanisms should take this new environment into account.

Innovative forms of media self-regulation on the Internet

By Matthias Karmasin, Daniela Kraus, Andy Kaltenbrunner and Klaus Bichler

Many new trends have emerged in journalism lately due to the advent of the Internet, especially the Web 2.0. Over the same period questions like media outlets' responsibility and accountability towards stakeholders have gained importance, e.g. as a result of the phone-hacking-scandal of the British newspaper News of the World.

One of the biggest advantages of the technological progress is the possibility to equally include users and media professionals in media production and self-regulation on the Internet. Most instruments are easily implemented and cost-efficient. A third advantage is that these tools help raise the quality of journalism and facilitate a trust relationship with the audience by creating better dialogue between the public and media organizations.

These tools also create transparency, one of the key quality criteria in journalism and enable the audience to gain insight into the processes of news production (Meier 2009:4). Heikkilä and Domingo (2012: 43) distinguish three forms of transparency: **actor transparency** (who stands behind the news), **production transparency** (information about sources and professional decisions) and **responsiveness** (dialog with the audience).

This can be done through different innovative online forms of media self-regulation. Some of these instruments and their approaches are presented here.

Actor Transparency

Actor transparency reveals users who produce the news. This includes the disclosure of ownership, the publishing of company guidelines or codes of ethics, as well as information about the journalists themselves. This can be easily achieved by publishing all this information on the medium's Web site. Another option to enhance actor transparency is publishing the name of the author(s) in a byline.

An inexpensive way to enhance actor transparency is the creation of official social media profiles for journalists and staff (in addition to their private account). This splitting of the private and professional accounts can encourage journalists to use their accounts as a channel of professional communication and enhance their dialog with users.

Production Transparency

Production transparency offers information about sources and professional decisions. This can easily be done by quoting sources, offering direct links or citing the news agency. Different forms of company blogs are already proven, easy implemented and inexpensive tools. Their aim is to give insight into the newsroom work and to reveal how news is produced. This can be done via editorial blogs of a news show/newspaper, like the Editors' Blog of the BBC News (<http://www.bbc.co.uk/blogs/theeditors/>) where different journalists comment news production, or, alternatively, via blogs of a specific journalists/editors-in-chief/media managers, e.g. the *Internal-blog* of the Swiss local newspaper Südostschweiz (<http://www.suedostschweiz.ch/community/blogs/interna>) or the blog of Mario TedeschiniLalli, media manager at La Repubblica (<http://mariotedeschini.blog.kataweb.it/>).

Another approach that reveals news production processes is the open newsroom conference. The Italian newspaper La Repubblica makes its most important editorial meetings available online. Even they are not streamed live, the users can see how journalists justify their choices, comment the news and discuss the paper's issue (<http://video.repubblica.it/rubriche/repubblica-domani>).

A further aspect of production transparency is an open-error management policy. Making mistakes is part of the job of a professional journalist, so why not talk about it publicly? There are plenty of tools already available and working, such as the correction button at the Berliner Morgenpost ("Leiderfalsch" <http://www.morgenpost.de/berlinaktuell/article1077710/>), the error buttons at the two Swiss newspapers Tagesanzeiger (<http://www.tagesanzeiger.ch>) and 20Minuten (<http://www.20min.ch>, <http://www.20min.ch/ro/>) or the correction box on the Dutch public service broadcaster NOS Web site (www.nos.nl/nos/herstel/).

Responsiveness

Responsiveness means an active and fair dialogue with users and an “open newsroom” policy. Therefore it is overlapping with actor and production transparency. There are different tools giving insights to news making and news production. An effective tool is a live chat with editors as done by the French online paper rue89 (<http://www.rue89.com/participez-a-la-conference-de-redaction-en-ligne>). Every Thursday at 10 a.m. it offers its readers the possibility to interact with a journalist. As it is a rotating system users have the possibility to talk with editors from the different departments.

The news list of the Guardian shows that there are formats that are easy and inexpensive to establish to be transparent and to get into dialogue with the users alike. On this Web site users are able to see which stories are discussed or produced by the newspaper’s staff, where the input for stories comes from or what the editors think about their coverage. The readers get a notion of how the news they see or read becomes news and they can post what they think of the stories and suggest sources or ideas on Twitter or e-mail (<http://www.guardian.co.uk/help/insideguardian/2011/oct/10/guardian-newslist>).

An even more sophisticated example is the eEditor at the Web site of Norran, a Swedish local newspaper (<http://norran.se/>). It is a chat box (live-chat) featured on the front page. Every day from 6 a.m. to 9 p.m./11 p.m., an editor is at the receiving end of this communication tool, where users can suggest topics or ideas for stories, report mistakes, ask questions or give feedback. This innovative instrument aggregates the functions of an ombudsperson, a correction button and a form for user-generated content. It includes users in the production and feedback process alike.

One of the most interesting approaches needing good planning is done by the Finnish public broadcaster YLE2 (<http://yle.fi/uutiset/puheenaiheet/>). An 8-minutes part of the daily prime time live current affairs program on YLE TV2 is completely focused on citizens’ perspectives. Lay people can suggest topics, comment on newsroom ideas and act as contributors through Facebook, Twitter or Google+. The team shows how user integration in the times of Web 2.0 helps to harvest the users’ ideas, receive feedback and produce public value together.

Sidestep: External Tool

Next to these company internal innovations one can find new tools that empower the audience in the process of media (self-)regulation. “Everyone’s an ombudsman outside the paper. Is there a shared watchdog role for the public? Of course, there is. There always has been. Only now those watchdogs have a voice via blogs.” (Jarvis 2007). Since the

advent of the Internet, the audience has the possibility to raise its voice inexpensively, technically easily, and with the possibility of reaching a lot of other interested people. They can get active on their own via blogs and/or social networks and criticize the media. Different examples of reflected media watchblogs can be found in all media cultures: MediaBugs, USA (<http://mediabugs.org/>), BildBLOG, Germany (<http://www.bildblog.de/>), Merkintöjämediasta, Finland (<http://outi.posterous.com/>) or kobuk, Austria (<http://www.kobuk.at/>).

A slightly different approach is undertaken by the Spanish non-profit initiative of Nextmedia, run by journalists and Web developers which created Fixmedia.org. Fixmedia.org invites citizens to report errors in news by filling out a simple form. The users can share their suggestions for fixing the story with other users and then vote for the “fix”. The project’s aim is to raise awareness among citizens for quality in journalism and critical consumption of media (<http://fixmedia.org>).

Conclusion

These examples should give an idea of innovative forms of media self-regulation on the Internet and how such tools can be used by journalists, media managers and users alike. This collection also wants to show that there are tools out there, already working and ready to implement in your country or your company.

Although most of the mentioned tools are technically easy and inexpensive to implement, there are some pitfalls. First, a culture sensitive adoption to your media environment and to your company is important.

The most important principle of success of media accountability online tools is continuity. If those tools lack continuity, e.g. offering only one blog post a month or answering the users only after days, the audience will not take notice of it nor will they start interacting. Furthermore, especially for an advanced user-inclusion process, journalism training is essential. As research shows, preparation and training is essential to deal fairly with users.

Nevertheless, the inclusion of media users into the process of media accountability is important. Online tools show a great and inexpensive opportunity to do so. These tools may not substitute traditional organizations of media accountability, such as press councils or codes of ethics, but they can perfect them.

This article is based on the “Best Practice Guidebook: Media Accountability and Transparency across Europe”, a collection of mainly online instruments dedicated to media accountability and quality assurance for media managers. The guidebook was one

of the results of the MediaAcT project “Media Accountability and Transparency in Europe”, a comparative research effort on media accountability systems in EU member states as indicators for media pluralism in Europe. The project was funded by the European Union Seventh Framework Programme and analyzed the development and impact of established and innovative media accountability systems. The complete guidebook is available for free at www.mediaact.eu.

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2/ News Ombudsmen in the digital age

By Jeffrey Dvorkin

Isn't an Ombudsman something left over from the age of print?

It certainly is. A news Ombudsman is employed by a media organization to act as the agent of and for the public to assure that the public's legitimate points of view and concerns are heard and addressed by the journalists and the management. A news Ombudsman has proven value for print, broadcast and online information services. In a digital age, "Cyberombudsmen" are now extending the concept of media accountability in new ways and on new platforms.

What is the daily work of an Ombudsman?

It varies with the flow of the news and the specific issues that pique the interest or the ire of the public. It is overwhelmingly an Internet-driven job. People can – and do – contact the Ombudsman via e-mail. They do so at all hours so the job is reading everything and responding as much as possible to let people know that their message has been received. Not all e-mail complaints are valid; the Ombudsman should be free to decide which complaints and concerns deserve a response. The obligation of first response is determined by the Ombudsman, who sends the complaint to the appropriate journalist or manager. That person then must reply (politely, we hope) in a timely manner to explain the reasoning behind the journalism and acknowledge when the listener/viewer/reader has got it right. If the complainant is still dissatisfied, the Ombudsman then does his/her own inquiry and publishes the results online. It is up to management to take whatever corrective measures are deemed appropriate.

Do media still need Ombudsmen?

More than ever. Mainstream media are under increasing financial challenges, often leaving them editorially weakened and more susceptible to political and economic pressures. An Ombudsman is how a news organization can stay close to its audience by assuring credibility with the public.

Is the role of the Ombudsman the same online as well as offline?

Yes, generally. It's clear that the role of the Ombudsman is evolving into something more than a defensive or reactive responder. The Ombudsman has a primary obligation to the public and the reasoning should be as transparent and accountable as possible. At the same time, the Ombudsman can play a more useful role offline by assuming the role of "trusted adviser" to the newsroom and

to management by pointing out where the training needs are and how the public's perception of the media is changing.

How will the role of the Ombudsman change in the digital age?

Right now, news Ombudsmen should consider themselves to be “Cyberombudsmen.” That means being more pro-active in scouring the Web for postings that can help media do a better job. It's like playing offense and not always defense when it comes to identifying ethical issues in journalism. It's being a more effective linkage among the public, the media and the blogosphere. It's being a true agent for “citizen journalism.”

In this digital age, how has that connection between the media and the audiences changed?

Many news organizations are struggling to survive economically. They are looking for new models that will return the news business to profitability. Unfortunately, some news organizations are neglecting their civic obligations to their public in their search for ratings and circulation. An Ombudsman, acting in the best interests of the public, is a timely reminder that good journalism and financial success are not mutually exclusive.

How does the Cyberombudsman communicate with the public? In what way is it different in the digital age?

Every Ombudsman decides how best to proceed. Mostly, they respond by publishing emails and letters on the Web site often without comment, so that the audience feels that they are being acknowledged. When a more specific response is required, the Ombudsman sends an e-mail to the complainant and if he/she thinks the issues are important, can ask the audience member if she/he might agree to be quoted in the Ombudsman's column, either in the newspaper, on the air or online. Most of this is evolving to the Internet.

In an age of “citizen journalists” when some claim we don't need professionals anymore, do we still need Ombudsmen? Won't “letters-to-the-editor” do just as good a job?

An existential question, for sure! But it's not an “either-or” situation. Good journalism needs more involvement from the public just as it needs more quality professionals able to do excellent journalism. The digital age has brought a new partnership between media and the public and an Ombudsman is there to be that trusted link for the public between the inside-journalists and the outside-journalists.

What about bloggers and other media critics? Are they replacing Ombudsmen?

Bloggers bring many advantages to mainstream media. They offer fresh perspectives outside the newsroom culture. They can be closer to the news events and they are cheaper by offering their ideas and opinions at no cost to the news organization.

What's the downside of blogging?

Here's where an Ombudsman can help: An Ombudsman can make sure that the bloggers' information is accurate and fair. S/he can ask the tough question of the blogger: "How do you know?" Blogging is often about opinion and not always about the facts. An Ombudsman can make sure that the information coming from cyberspace is reliable and useful to the readers, listeners and viewers in mainstream media and elsewhere.

How does the Ombudsman do that?

We can suggest that bloggers adhere to a set of journalistic and media standards. The Organisation of News Ombudsmen (ONO) is eager to help do that and we can refer bloggers to ethics sites such as [Cyberjournalist.net](http://www.cyberjournalist.net)²⁸. Maintaining the quality of our journalism is not just a professional issue. The public understands that there is a close relationship between good journalism and strong democratic institutions. This is an issue of increasing importance in the blogosphere and Twitter sphere.

What sanctioning measures can be taken by an Ombudsman?

Ombudsmen are not in management and that is deliberate. Ombudsmen operate in an area of moral persuasion. Their authority is based on the strength of their ideas and approaches to problem solving. They can recommend but not enforce. Management has the right to accept or ignore an Ombudsman's recommendation. Drawing the public's attention to a question of journalistic error is in many ways more powerful than any management sanction.

Have people's complaints changed in the new Internet environment?

The Internet has raised both the expectations and the ability of the public to interact with newsrooms. People are hungry to know why a certain story was written and why another was ignored. This curiosity has always been there. But the invention of email and the power of the blogosphere have increased that

²⁸ <http://www.cyberjournalist.net/news/000215.php>

ability of the public to connect with the media dramatically.

Should a Cyberombudsman be a blogger or a journalist?

He or she can be both with a deep knowledge of how the Internet is changing all media and the public's relationships with media both new and mainstream. It's an exciting time to be a journalist with all these new tools at our command. It's even more interesting to act as a news Ombudsman: It's a front-row seat for the greatest experiment in social interaction in history.

Does increased public scrutiny in the online world guarantee the Ombudsman's independence and influence on journalists?

Increased public scrutiny makes the Ombudsman's job both more challenging and more fraught. The public is increasingly media-literate and they are quick to sense when the media and the Ombudsmen are doing less than expected. That may guarantee neither independence nor influence.

The Organization of News Ombudsmen (ONO)

Formed in 1980, ONO is a nonprofit corporation, registered in the State of California, with an international membership of active and associate members. It maintains contact with news ombudsmen worldwide, and organizes conference for discussion of news practice and issues connected with the news ombudsmen's profession. ONO members frequently take part in conferences on matters of journalistic standards, ethics and values.

The purposes of ONO are the following:

- To help the journalism profession achieve transparency and accountability to better serve the needs of information-seeking citizens.
- To establish the highest standards of news ombudsmanship.
- To establish and spread the value of news ombudsmen in all media platforms.
- To provide a forum for exchanging experiences, information and ideas among its members and the public at large.

Source: ONO, *The Modern News Ombudsmen: a User's Guide*
<http://newsombudsmen.org/>

3/ Press councils adapting to the digital era

By Adeline Hulin

What is the impact of the digitalization process on press councils?

The digitalization process has dramatically changed the media landscape and has inevitably affected the functioning of press councils. While press and media councils were mainly created to handle users' complaints about traditional media, these bodies currently try to adapt to the online media landscape. Newspapers have significantly invested in the online sphere to the extent that some even have ceased their print edition. As a result, more and more complaints filed with press councils relate to online editorial content which has not necessarily appeared in the print editions of the newspapers concerned.

How is this being reflected in the work of press councils?

Web sites of newspapers and magazines are now supervised by all press councils together with audio and video material on newspapers' and magazines' Web sites. Moreover, more and more press councils are extending their jurisdiction to pure online media (online only).²⁹

Does this mean that press councils are supervising pure online media?

Press councils accept complaints about the online content of traditional media but not necessarily complaints about pure online media. Differing cultural contexts mean that the extension of the press council supervision to online only media is sometimes voluntary (as when online Web sites apply for membership of a press council) and sometimes automatic. In countries where the press council can supervise all media regardless of their adherence to the system, it is up to the press council to decide which media will be supervised³⁰. However, in countries where press councils are only allowed by their statutes to supervise those media who voluntarily adhere to the system, pure online media have to opt to before they come under its supervision. News sites are therefore encouraged to volunteer to become part of the system as a way of demonstrating to readers that they adhere to high ethical standards. In the United Kingdom, the Huffington Post, for instance, is currently under the jurisdiction of the UK Press Complaints Commission.

²⁹ Such as in Azerbaijan, Cyprus, Denmark, Finland, Hungary, Ireland, Kosovo, the Netherlands, Sweden, United Kingdom

³⁰ For instance in Belgium and the Netherlands which now also supervise purely online media

The right to complain to the German Press Council in the digital era Amendment to the Complaints Procedure

Section 1 – Right of complaint

- (1) Anyone is entitled to complain generally to the German Press Council about publications or proceedings in German press undertakings issuing periodical printed matters and/or operating telecommunications media with journalistic and editorial contents and other providers of telecommunications media with journalistic and editorial contents which are not broadcasting. Furthermore, anyone who is of the opinion that the processing of personal information for journalistic or editorial purposes within the context of research or publication violates the right to data protection may also submit a complaint.

Source: *Der Presserat* <http://www.presserat.info>

The jurisdiction of the Danish Press Council

The press council handles complaints against mass media covered by the Danish Media Liability Act, section 1 which applies to:

- Newspapers, daily papers, weekly magazines, local papers, professional papers and other domestic, periodical publications which are published at least twice a year.
- Denmark's Radio (Danish Broadcasting Corporation), TV2, TV2's regional enterprises, and any other undertaking authorized in Denmark to broadcast radio or television activities.
- Some electronic information systems, especially news websites, news agencies, telephone papers and talking papers which are registered with the press council. (Most of the major mass media have registered their news websites)

Source: *Danish Press Council*, <http://www.pressenaevnet.dk/Information-in-English.aspx>

What about supervising Web portals?

Though providing access to information, Web portals are not necessarily producing editorial content. Therefore the question is one of deciding whether providing access to information should be considered an editorial function. In cases when an editorial choice is made to decide which information will

be available on the portal, those Web portals could theoretically be under the supervision of a self-regulatory body. In practice, Web portals are, up to now, rarely under the control of a press council.³¹

Are online media being represented among press councils' board members?

In a majority of OSCE participating States, the content of online media can be supervised by a press council. However, those online only media are not automatically represented among the body's board members. This would necessitate a change of the statutes of press councils, a process already foreseen by many but which would be very time consuming in the light of the legal complexities arising from the modification of statutes, articles of association and the like.

Why online media are not automatically represented among press councils' board members?

When establishing the statutes of press councils, online media were often not taken into account since they were, in the period concerned, not so developed³². In general, press councils are under the scrutiny of a basic foundation composed of board members responsible for running the organization and managing its finances. In some countries, the board members are not representatives of media but rather representing media associations³³. The procedures for adherence by online media to existing press councils will therefore depend, in part, on whether existing press councils are constituted by media trade associations or by individual media. There is no evidence that, as yet, the purely online media in any country have joined together in an association to pursue common interests and establish standards.

Have press councils changed ethical guidelines to adapt to the new Internet environment?

Although the Internet environment has had a huge impact on the way journalists work and therefore on the daily work of press councils, this has not necessarily been translated into new ethical guidelines in many countries. However, some press councils have proceeded with some changes which vary from one country to another.

31 Except in Azerbaijan, Bosnia and Herzegovina, Belgium, Kosovo, Finland and Hungary

32 In Ireland for instance, the press council was originally established by three trade associations, those for national newspapers, regional newspapers and magazines. There is not yet a comparable organization for online media.

33 In Cyprus for instance, the press council has three founding organizations: the written press publishers, the electronic media owners association and the journalists association.

What guidelines have mainly been changed?

The guidelines that have been mostly changed refer to the handling of non-editorial material on media Web sites, for instance regarding the moderation of user-generated comments on a media Web site. In the Flemish part of Belgium, the code of ethics includes now a paragraph about online forum which underlines that editors should moderate their online forum with complete independence and are responsible for what has been moderated.

***Third parties responses on media websites:
New guidelines of the Press Council in the Netherlands***

5.4. The editorial office has a responsibility for responses by third parties that appear below articles on its website, but with a view to the nature of the Internet, the editorial office cannot be expected to check all these responses in advance. However, the editorial office can decide to remove previously placed responses.

5.5. If a response to an article on the website contains a serious accusation or a defamatory expression towards one or more known individuals, the editorial office, on the request of the person(s) involved, must investigate whether there are actual grounds for the accusation or allegation and, if this is not the case, remove the response.

Source: Raad voor de Journalistiek, <http://www.rvdj.nl/>

Are press councils accepting complaints about content which has not necessarily been produced by a journalist?

As it is quite impossible to precisely define who is a journalist, the criterion for accepting a complaint should not rely on whether the content is produced by a journalist or not. Obviously though, a press council cannot supervise all types of online content. The criteria should rather take into account if it is editorial material. Information available through media or treated in an editorial manner (research of truth, treatment of sources, independence) are material that could fall under the jurisdiction of a press council. For instance, in the United Kingdom, editors and publishers are required to ensure that the code of practice is observed not only by the editorial staff but also by external contributors, including non-journalists. This covers freelancers, photographers, authors of readers' letters or citizen journalists.

What about user-generated material?

All complaints should be derived from editorial material. If user-generated content has been pre-mediated by a media and therefore has been subject to editorial review, this can fall under the jurisdiction of a press council. For instance, most press councils accept complaints about reader comments posted on media Web sites if those have been pre-edited before published. Comments posted in chatrooms or unedited, unmoderated blogs fall outside the scope of the jurisdiction of a press council.

Guidelines for Finnish media professionals on user-generated content

This Annex has been prepared as a supplement to the Guidelines for Journalists and is binding on all members of the Council for Mass Media's associations and other signatories of the Basic Agreement. The specificity of the Annex is intended to highlight its separation from the Guidelines for Journalists, relating to editorial content. This concerns material that is editorially prepared, ordered, processed and selected for publication on journalistic principles or with journalistic emphasis. The Annex concerns content generated by the public on websites maintained by the media. This should not be regarded as editorial material.

The Council and the chairperson may deal with the activity of an editorial office in administering online forums containing material generated by the public only from the point of view whether the editorial office has complied with the principles of this Annex. The principles of the Annex in applying to the prior and subsequent moderation of public online forums are dealt with equally.

The approach of the Annex has been taken for reasons of expediency. The Guidelines for Journalists have been revised at intervals of 6 to 13 years. The online environment is changing and developing extremely quickly. Due to its specificity, the Annex can be altered without amending the Guidelines.

1. The editorial office shall monitor their websites and try to prevent the publication of content that violates privacy and human dignity. In addition to discrimination, the violation of human dignity includes for example content that incites violence and stirs up hatred towards an individual or group.
2. The editorial office shall promptly delete content that comes to its attention that violates privacy and human dignity.

3. Online forums directed at children and the young must be monitored particularly carefully.
4. The public must be given the opportunity to inform editorial offices of inappropriate content in such a way that the informant receives due confirmation.
5. A clear demarcation must be kept on media websites between forums reserved for the public and editorial content.

Adopted by the meeting of the CMM Management Group 5 September 2011- The Annex went into effect on 1 October 2011, with the exception of point 4 which went into effect on 1 December 2011.

Source: Council for Mass Media in Finland, <http://www.jsn.fi/en/>

How is the moderation of online users content being carried out?

There are three types of moderation:

- Pre-moderation: (checking incoming reactions for admissability before inclusion on the Web site).
- Active moderation: (reading submissions prior to publication and publishing only selectively).
- Post-moderation: (removing inappropriate material as soon as possible).

Guidelines for Belgium media for removing user-generated content

On discussion forums, opinion contributions are firstly the responsibility of the author of the said contribution, but the medium publishing the contributions is also professionally and ethically responsible for proper moderation of the forum.

The following methods can be implemented for the timely removal of inappropriate material as quickly as possible.

- The prior registration of users
- The clear reference on the site to the terms and conditions of use
- The use of an electronic filter triggered by certain terms
- The option to report inappropriate reactions to a forum mediator
- The moderation prior to publication and continuous discussion guidance when concerning sensitive topics

Source: Raad voor de Journalistiek, <http://www.rvdj.be/>

How do press councils handle bloggers?

Theoretically, a press council would be able to deal with blog-related complaints if the bloggers considers themselves to be journalists, proactively claim their adherence to the council's editorial code of ethics, and are prepared to pay an appropriate subscription to the press council. Moreover, some press councils deal with contents of a blog if it is made available through a media and has been premediated by the editorial staff of that publication. The press council in the Netherlands is a good example of that: they have dealt with complaints against specific Web sites/shoklogs after³⁴ ensuring that the information was presented as editorial material rather than entertainment and was made available on a Web site that allowed the identification of the names of the editorial staff.

Have press councils changed their time limits for complaints?

Most press councils impose time limits on complaints and this rule applies equally for online and offline media. Time limits on complaints vary though from one country to another. In Cyprus the limit is one month; in Germany it is one year. The publication date for online material is usually defined as the date when the content was posted online. Through the Internet, articles remain live much longer and this is becoming an issue. In the United-Kingdom, the Press Complaint Commission has decided to consider the act of downloading an article as a sort of republication. Material that is available on a news Web site can be subjected to complaints outside of the relevant time limits. For the Flemish part of Belgium similar complaints will be accepted as long as the information remains online. In Ireland, since a change in the law in 2009, the date of publication of an online article is taken to be the date on which it was posted to the Web. This is relevant not only for civil law (legal action for defamation has to be taken within one year of publication) but for the Irish Press Council, which insists that complaints be made within three months of publication.

What are the most frequent complaints about online media?

At the moment, most complaints concern inaccuracies and violations of privacy. With the success of social networks, private information is more easily accessible to journalists whom to a higher degree use them in their daily work. Press councils are increasingly dealing with complaints about journalists using material posted on social network sites. Another issue relates to copyright and allegations of plagiarism, as, with the availability of considerable amounts of material on the internet, much expensively produced editorial content is reprinted without attribution or recognition of intellectual property rights.

³⁴ A 'shoklog' is a deliberately provocative or outrageous blog [a blend of shock and (web)log]

Privacy, public interest and social networking in the UK

In the United Kingdom, the principles set out in the Editors' Code of Practice must remain at the heart of journalists' approach to using material they obtain from social networking sites. This means it is not enough simply to say: "I found it on a website, therefore I can republish it to 5 million people". Instead, journalists will have to consider a number of issues - issues that will also be considered by the PCC at adjudication. For instance:

1. What is the quality of the information (how personal is it; what is the context)?
2. Who uploaded the material?
3. What settings have been used to protect privacy?
4. What is the public interest?

What this means in practice can be demonstrated by various rulings made by the PCC. Most recently, the Commission emphasized the right of newspapers and magazines to use material from social networking sites when reporting on a death, as long as they approach matters sensitively: *"Newspapers still remained entitled, when reporting the death of an individual, to make use of publicly available material obtained from social networking sites. However, editors should always consider the impact on grieving families when taking such information (which may have been posted in a jocular or carefree fashion) from its original context and using it within a tragic story about that person's death"*. (Rundle v Sunday Times, 4 January 2010)

In another case, the Commission rejected a complaint from a teenager whose photograph had been published by Loaded (a British magazine for men), after initially appearing some years

before on her own Bebo (a social networking website) profile. However, this was more than simply a case of a magazine using an image it had obtained straight from a social networking site. It turned out that the image - and others of the complainant - had been circulated online to a quite remarkable degree. At the time of complaint, there were 1,760,000 matches that related to her and 203,000 image matches of her as the “Epic Boobs” girl (which was how the magazine had described her). Moreover, the complainant’s name had been widely circulated and achieved over 100,000 Google hits, including over 8,000 photographs.

In its ruling, the Commission said this was an important point: “...*the magazine had not accessed material from a personal site and then been responsible for an especially salacious means of presenting it; instead it had published a piece discussing the fact that this material was already being widely used in this way by others.*”

Ultimately, while the Commission had sympathy with the complainant, it had to consider - as required by the Editors’ Code - the extent to which the material was already in the public domain: “*The Commission did not think it was possible for it to censure the magazine for commenting on material already given a wide circulation, and which had already been contextualised in the same specific way, by many others. Although the Code imposes higher standards on the press than exist for material on unregulated sites, the Commission felt that the images were so widely established for it to be untenable for the Commission to rule that it was wrong for the magazine to use them.*” (A Woman v Loaded, 11 May 2010)

Source: The UK Press Complaints Commission, <http://www.pcc.org.uk/>

Are press councils accepting complaints about journalistic material produced in another country?

Compared to the old model of the print press, it is difficult to trace the origin of online information. Press councils therefore usually accept complaints about online content no matter where it has been produced under the condition that the Web site hosting the content is registered within the respective country.

Should press councils deal with journalistic material posted on Facebook, Twitter or Youtube?

If material on Facebook or Youtube is derived from a news site, the complaint should be directed toward the Website that published the editorial content first. However, a rising issue is that more and more journalists use social media to promote and share their work while also using it for private communication. The line between the journalism and private spheres is being erased and that creates

The Netherlands Press Council rules on the use of Twitter by a journalist

RvdJ 2011/38: Kamperman et al. vs. Vorkink

Vorkink, a journalist, used his private twitter account to post the following message:
“Panic old leadership research team firework disaster. Detective Kamperman attempts to mislead media. Follow news RTV Oost.”

In this case, the press council accepted a complaint regarding the tweet. The press council found that the journalist acted in his journalistic capacity and not as private individual. The council also took into account that the journalist’s Twitter profile mentioned that he was an investigative journalist at RTV Oost. His profile also contained a link to the site of RTV Oost and in the aforementioned tweet - sent shortly after the broadcast of 30 November 2010 – he repeatedly referred to the reports of *RTV Oost* on this issue. Posting the offending tweet should therefore be regarded as an act of the defendant in the exercise of his journalistic profession and therefore can fall under the jurisdiction of the press council.

In addition, the name of one of the complainant was mentioned in the tweet and associated with improper practices without solid basis. Although the press council welcomed that the journalist apologized to the complainant and made his messages unreadable, the press council considered that Vorkink acted unethically by spreading the tweets and thus that the complaint was well founded.

Source: Press Council of the Netherlands, <http://www.rvdj.nl/>

difficulties for press councils when it comes to identify what should be under its supervision. Most press councils have decided not to consider such complaints. However some press councils have already ruled on complaints about the use of social network for journalistic purpose. The Dutch Press Council has for instance ruled out about the use of Twitter by journalists. An issue that remains to be resolved is whether Facebook or Twitter material generated by journalists is or should be amenable to supervision or regulation in all cases, because they are journalists, or whether such material should be supervised by a press council only when it is published on the official Web site of the newspaper or other media for which the journalist works.

What has the Internet changed regarding the spreading of journalists' mistakes?

The Internet allows a fast transmission of information and therefore mistakes from journalists are now quickly transferred and duplicated. The good news is, however, that, contrary to print media (when you had to wait for the next edition to provide a correction) the Internet allows for an immediate correction. But it is very difficult to estimate how many people have read the mistake and moreover, even with a correction, a mistake can stay in the cyberspace for ever as no information is deleted from the Internet.

How to offer a fair correction in the digital era?

The guidelines provided by the press council of Finland about the fair correction are very interesting, and most other press councils agree with them.

It states:

- Media should not correct a false online story by removing it or replacing it with another one;
- Media should correct the story and clearly mention that there has been a mistake in the previous article;
- Media should provide a link between the corrected article and the article with a mistake.

Should there be a change of press councils' sanction to link it to the damage caused on the Internet?

Most press councils still rely on moral sanctions, particularly “critical adjudications” and a right of reply which the offending media should publish. However, the publication of a critical adjudication or of any other sanction such as correction or an apology can be less prominent on the Internet than in a print

edition. For this reason guidelines regarding the online prominence of upheld adjudications have been adopted in the UK .

United Kingdom PCC Guidelines about online prominence

One of the key functions of the Press Complaints Commission is the negotiation of published remedies to complaints, in the form of letters, corrections and apologies. Clause 1 (Accuracy) of the Code requires that corrections and apologies be published with “due prominence.” In print editions, over 80% of texts negotiated through the PCC appear on the same page as, or on an earlier page, than the original article, or in a designated corrections column.

The prominence of online publication is an area that has previously been less well-defined. This note sets out some of the issues that editors should take into consideration when proposing the prominence of online corrections and apologies. It is clear that different publications will have adopted different practices in this area, with the possibility of texts appearing as stand-alone items, at the head of the original story or in designated corrections columns.

The starting point for the Commission will be that, if an article appears in print and online, the proposed remedy will often appear in both media. This note is not designed to be prescriptive, and will take into account the existence of differing practice. The test, in the end, will be whether the requirement of “due prominence” is met. The following points are relevant:

- Negotiation is a key part of the PCC process, and discussion between complainant, editor and PCC will be necessary in the placement of online - as offline - corrections and apologies. Clause 1 (Accuracy) of the Code states: “in cases involving the Commission, prominence should be agreed with the PCC in advance”.
- Readers will access information on newspaper and magazine Web sites via different means (such as searches or links), so there is not automatically a correlation between the original location of an article and the placement of a correction or apology. The existence of a paywall may impact on how a site is initially accessed, and this should be taken into account. However, for stand-alone corrections and apologies, editors should give consideration to appropriate placement on the relevant section where the original article appeared (such as the “news” or “show business” section, for example).
- If the resolution to a complaint is a stand-alone text (an apology, correction or letter), it will generally be appropriate to link to the original article under complaint (should it still be published online) and for the original article to link back to it. If the original article has been removed, then how long the apology, correction or letter should remain online should be the subject of negotiation with the PCC.

- Corrections or apologies that appear on the original article should be clearly marked.
- If the outcome of a complaint is that the text of the article is significantly amended, then consideration should be given to the publication making explicit reference to the existence of the alteration. How quickly the text has been amended will be a factor in this consideration.
- Care must be taken that the URL of an article does not contain information that has been the subject of successful complaint. If an article is amended, then steps should be taken to amend the URL, as necessary.
- Online corrections and apologies should be tagged when published to ensure that they are searchable.

Online prominence of upheld adjudications

When a complaint is upheld by the PCC, the editor is obliged to publish it with “due prominence.” Here is some guidance about online publication:

- As with corrections and apologies, consideration must be given to the adjudication appearing in the relevant section of the Web site. This can be discussed in advance with the PCC.
- If an article has been found to be in breach of the Code by the PCC, it should either be removed from the archive and replaced by the adjudication, or a link to the upheld adjudication should be prominently displayed on the article itself. This can be discussed in advance with the PCC.
- The adjudication, when published, should be tagged to ensure that it is searchable.

Source: The UK Press Complaints Commission, <http://www.pcc.org.uk/>

Are press councils communicating differently since the Internet arrived?

The Internet is a wonderful tool for press councils to raise awareness about their work. Many press councils use social networks to share their adjudications of complaints, such as on Twitter and sometimes on Facebook.

The Press Council of Bosnia and Herzegovina adapting to the digital era

By Ljiljana Zurovac, Executive Director of the Press Council in Bosnia and Herzegovina

The Press Council in BiH was established in 2000 by international organizations and the country's associations of journalists. It was re-established in 2006 by the ten biggest print media owners in BiH, as a genuine self-regulatory body for the whole country. From 2010, news Web portals also have the right to become members of the Press Council. The structure of the Press Council consists now of the Assembly, gathering all members, the Board of Directors consisting of nine editors-in-chief and owners of print and online media, the Complaints Commission consisting of nine representatives of journalists, lawyers, judges and academics and an operative Secretariat with three full-time and three part-time employees. It built its name and it has to continue to develop.

Through the decision of the Board of Directors, the Press Council broadened its mandate to online media/Web portals in September 2010. In accordance with that, the Press Code was revised to become the Code for Press and Online Media, thus extending the application of journalism ethical standards to online media. Also, a set of rules for Web portals wishing to become members of the Press Council was established. To become a member, a portal must have an editorial staff list with clearly stated contacts, an editor-in-chief and at least two professional journalists. It must also endorse the Code for Press and Online Media and accept the principles of media self-regulation. Eventually, it has to be registered as an Ltd. and not as an association or an NGO; it cannot be a property of a political party or a marketing agency.

However, regarding complaints from citizens about reporting on Web portals and interventions of the *Complaints Commission* of the Press Council in BiH, the rule remains the same as the print medias: the Press Council accepts all complaints, regardless if a portal is a member of the Press Council or not. The decisions of the *Complaints Commission* are distributed to all media and are placed on the Web page of the Press Council in BiH, www.vzs.ba, and are also distributed through the Facebook Page of the Press Council.

Web portals have a great interest in cooperating with the Press Council. The fact that there are many conditions to become a member of the Press Council is greatly limiting its membership but does not affect the professional cooperation with most Web portals in the country. Many editors of Web portals are in constant contact with the Press Council, they follow the Code for Print and Online Media and publish decisions of the *Complaints Commission* and other information regarding the Press Council, stressing their readiness to improve their level of professional reporting. Precisely with that goal in mind, the Press Council held several seminars and consultation meetings for the editors and journalists of online media on the topics of media ethics and responsibility of reporting, self-regulation of media and addendums to the Press Code, about the regulation of User Generated Content (UGC) – comments of anonymous visitors on Web portals, about media law and criminal Law, as well as an international conference on copyrights and protection of intellectual property in online media.

As a part of its regular educational programs for judges and prosecutors, the Press Council launched an additional program, “You Are Not Invisible,” which creates a common platform for the Press Council, the judiciary and the police, in cooperation with the editors of Web portals, to prevent the spreading of hate speech on Web portals through UGC. In 2012, following a number of complaints from citizens regarding hate speech and threats aimed at certain individuals in editorial texts and in the comments of some Web portals, several criminal charges have been raised against identified commenters and editors of the texts in question.

Following its motto “Citizens and Journalists Fighting Together for Truth,” with the objective to better inform citizens of their democratic right to complain and react, including reacting to reporting on Web portals, the Press Council in 2012 started a radio show called “Your Voice in the Media.” The show is about media ethics, media self-regulation, the right to complain, media problems, the culture of communication in public discourse and in UGC or on Web portals. It is also about the dangers of the spreading of hate speech, the protection mechanisms for the journalists and freedom of expression. The show is broadcast on local radio stations and on the Public Broadcasting System, and also through the educational Web portal of the Press Council www.edukacija.vzs.ba and the Press Council’s Facebook Page <http://www.facebook.com/VijeceZaStampuBiH?ref=ts&fref=ts>

Area of activity of modern press councils in Europe³⁵

By Olga Mamonova

	Year Founded	Print	Radio	Television	Internet sites of print media	Online media
Austria	1961, 2010					
Azerbaijan	2003					
Armenia	2007					
Belgium (FL) [*]	1995, 2002					
Belgium (FR)	2009					
Bulgaria	2005					
Bosnia and Herzegovina	2000					
Great Britain	1953, 1991					
Germany	1956					
Denmark	1964, 1992					
Ireland	2007					
Iceland	1965					
Spain (Cat)	1997					?"
Cyprus	1997					
Kosovo	2006					
Lithuania	1996					
Luxembourg	1979					
Malta	1999					
Moldova	2009					
Netherlands	1948, 1960					
Norway	1928					
Slovakia ^{***}	2002					
Slovenia	1995					?****

³⁵ The table is based on the book: Мамонтова О.И. Совет по прессе как институт саморегулирования СМИ. – LAP Lambert Academic Publishing, 2012

	Year Founded	Print	Radio	Television	Internet sites of print media	Online media
Turkey	1988					
Ukraine	2001					
Finland	1968					
Montenegro	2008					
Switzerland	1977					
Sweden	1916					
Estonia-1****	1991					
Estonia-2	2002					

Note to the table:

The overwhelming majority of press councils include online mass media in the sphere of their competence. We should note that most press councils were created in a period preceding the era of the developed Internet; however at a certain point online mass media were included as well in their sphere of competence. Moreover, according to these tables, the press councils are far more eager to include online media in their membership than co/self-regulation bodies for televisions and radio broadcasting.

* The press council for the Flemish community of Belgium is also responsible for advertising content in the mass media

** No exact information available

*** No information available

**** No exact information available

***** As a result of the conflict in 2001 between journalists and publishers who were members of the press council that had existed since 1991 (Estonia-1 in the Table), a second press council was created in 2002. At the present, there are two mechanisms of media self-regulation in the country, one supported by the Union of Journalists of Estonia and one supported by the publishers of Estonian newspapers.

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BBC Editorial Guidelines: <http://www.bbc.co.uk/guidelines/editorialguidelines/>

EthicNet, a collection of codes of journalism ethics in Europe, <http://ethicnet.uta.fi/>

Ethical Journalism Network: <http://www.ethicaljournalismnetwork.org/>

European Journalism Centre: <http://www.ejc.net/ejc/>

Media Accountability Systems website of the The Donald W. Reynolds Journalism Institute (USA):

<http://www.rjionline.org/media-accountability-systems>

Organisation of News Ombudsmen: www.newsombudsmen.org

Press Complaints Commission (UK): <http://www.pcc.org.uk/>

Pressens Opinionsnämnd (Sweden): <http://www.po.se/english>

Presserat (Germany): <http://www.presserat.info/>

Public Collegium on Press Complaints (Russia): <http://www.presscouncil.ru/>

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