



United Nations
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**THE IMPORTANCE
OF SELF REGULATION
OF THE MEDIA IN UPHOLDING
FREEDOM OF EXPRESSION**

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FOREWORD

The freedom of expression is a pivotal component of our individual development – as human beings and as “political animals” – and to improve and radicalize democracies.

The invention of the press therefore constitutes the turning point for the debates about freedom of expression. Guaranteeing each individual's right to freely seek, receive or impart information while interacting with other individuals ceased to be enough. It was necessary to go beyond, upholding this right allied by an intermediary that radically magnified the outreach of opinions, information and ideas: the mass media.

Under this perspective, many foundational pillars of the contemporary debate on human rights (the Glorious, American and French Revolutions; the writings of John Milton, Alexis of Tocqueville and John Stuart Mill, among others) dedicated substantial attention to freedom of expression and its links to the mass media.

The idea of a free, independent, plural, and diversified media has become the ideal to be achieved in order to fully ensure the right to seek, receive and impart information. Finding the appropriate format for State participation in this equation of fostering media systems endowed with these characteristics have quickly constituted one of the most relevant pieces of the puzzle.

This challenge became particularly complex when broadcasting took over the system's leading role in the beginning of the 20th Century. The possible hypothesis that each legitimate interest from the different social groups might have been voiced in their own newspapers did not prove to be true in

relation to television and radio. The electromagnetic spectrum is a finite public resource and needs to be regulated, at least as far as frequencies are concerned.

Therefore, media regulation started its development hand in hand with guaranteeing, promoting, and protecting freedom of expression. In fact, the ultimate goal for regulating media should be to protect and deepen this fundamental right.

For this reason, the most important international instruments on human rights (the United Nations Charter; the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the Conventions on the Rights of the Child, on the Protection and Promotion of Diversity and Cultural Expressions, on the Elimination of All Forms of Racial Discrimination, and on the Rights of Persons with Disabilities) address to the matter in different perspectives. The same holds true for regional human rights instruments and for legal instruments of the world's most consolidated and longevous democracies.

The internal “division of labor” of the United Nations System has delegated to UNESCO the responsibility of working through international cooperation to guarantee that freedom of expression is effectively ensured through a free, plural, independent and diversified media system, among others. To fulfill this mandate the Organization has availed itself of different strategies. One of the most recent and comprehensive ones is the delivery of a set of indicators to assess media development in various nations (See: *Media Development Indicators: a framework for assessing media development*).

In light of the elements proposed by the *Media Development Indicators*, UNESCO in Brazil, in partnership with Ford Foundation, decided to offer a high-level technical contribution to the discussion that Brazilian society has to a greater or lesser extent been waging over its media system, at least since its Constituent Assembly. Among the highlights over the last years' discussions are: the final format of the Social Communication Chapter in the Brazilian Constitution, regulation of the articles in the Child and Adolescent Statute on relations between children and the media, the creation of the Social Communication Council, the opening of the sector to foreign capital, the cancelling of the Press Law, the definition of digital television as well as paid audiovisual services model, and a new regulatory framework for communication.

In this sense, we offer to the key players involved in building the different aspects of a regulatory policy for the media sector a three-article-series of studies that may be useful to decision-making processes, which will need to be taking place in the coming years.

Upon request to UNESCO international consultants Toby Mendel and Eve Salomon, who have together worked on similar issues in more than 60 countries, have signed two texts of this series:

1. *The Regulatory Environment for Broadcasting: an International Best Practice Survey for Brazilian Stakeholders*. The authors discuss how media regulation is addressed in the international arena and in 10 democracies (Canada, Chile, France, Germany, Jamaica, Malaysia, South Africa, Thailand,

United Kingdom and United States) as compared to the Brazilian status quo. To do so they build upon the following central axes: Independent Regulatory Authorities, Concessions, Content Regulation and Self-regulation, Public Broadcasters, Community Broadcasters and Ownership regulation. After each thematic session, they have discussed major recommendations for the Brazilian case.

2. *Freedom of Expression and Broadcasting Regulation* defends that regulatory policy must focus on strengthening freedom of expression.

In addition, the UNESCO international consultant Andrew Puddephatt weaves a discussion on The Importance of Self Regulation of the Media in Upholding Freedom of Expression. It is this article that our esteemed readers hold in hands.

Finally, we would like to highlight that a particular discussion about internet regulation was not included in these studies. This is an ongoing debate for the UN System; therefore regulatory international standards are not clearly defined. However, we believe that the general principles of freedom of expression, of a transparent and independent regulatory policy and of a fully protection of human rights should also be a central component of the debate about internet.

We hope the three above mentioned articles will provide an effective reference tool to support the ongoing debate on the matter in the Brazilian public sphere.

Enjoy your reading!

The Importance of Self Regulation of the Media in upholding freedom of expression

Andrew Puddephatt

Introduction – the importance of freedom of expression

Freedom of expression has long been regarded as a fundamental right, one which is important in itself and also helps to defend other rights and freedoms. There are three reasons why freedom of expression is so crucial. Firstly it is a human need to be ourselves and have our own identity, and the ability to express ourselves in words, music, dance or any other form of expression is central to the realisation of our humanity. Secondly it is a foundation for other rights and freedoms as without freedom of expression it is not possible to organise, inform, alert, or mobilise in defence of human rights. Thirdly, as Amartya Sen has persuasively argued it's the pre condition of social and economic development as transparent and open communications are necessary to ensure economic and social development that benefits everyone¹.

The importance of the right to freedom of expression is reflected by its widespread protection in international law at the global and regional level. The right is protected in all significant international and regional human rights treaties, including Article 19 of the Universal Declaration of Human Rights (UDHR) and Article 19 of the International Covenant on Civil and Political Rights (ICCPR). It is also protected in regional treaties: by Article 13 of the American Convention on Human Rights; by Article 9 of the African Charter (elaborated by a specific declaration agreed in October 2002); and Article 11 of the

European Convention on Human Rights (ECHR). Its significance is uncontested.

If it is to be fully realized, however, freedom of expression requires a public dimension—a means of communication—in order to facilitate the exchange of opinions, ideas and information. It follows that free expression activists have focused a great deal of attention on the structure and regulation of the media environment, for it is these that provide the principal platforms for public expression, from books and newspapers to the broadcast media.

How freedom of expression is supported – the UNESCO framework

Free expression has always required a means of communication to be effective, otherwise communication is confined to those we can immediately speak with. A megaphone goes farther than a human voice, a radio transmitter even further. These platforms have changed over the centuries, from wall paintings to print, through radio to analogue television. This means that the media must have the freedom to provide the means of information exchange, debate and opinion that is necessary to enable us to realise our freedom of expression in the fullest sense. It is inevitable therefore that free expression activists have always concerned themselves with the operations of the media and its ability to function free from repression and government control.

Much attention has been paid to the norms and standards that freedom of expression requires in the

1. *Development as Freedom*, Amartya Sen, OUP 1999.

traditional media world. The consensus is that a media environment capable of supporting free expression will have a number of characteristics: it will be a diverse media environment, part public, part private and part community; a plurality of different media outlets; and a system that is broadly self-regulating with the exception of broadcast media (where spectrum has been limited and a regulatory body allocates bandwidth). Media professional will have sufficient training to understand and implement the demands of their profession and there will be adequate access to the means of the communication for people as a whole. This framework is elaborated in detail in UNESCO's Media Development Indicators² adopted by UNESCO in 2008. The analysis sets out five major categories of indicators that can be used to analyse the media development of a country. Each category is broken down into a number of component issues which in turn contain a series of broad indicators.

Media independence – what is the role of the state?

In the past many advocates have argued for minimal state interference in the media as the necessary condition for a media environment that can support democracy. This argument has particular currency in the United States with its First Amendment statement that "Congress shall make no law... abridging freedom of speech or the press..."³ Others, including UNESCO have argued that the construction of a modern media environment capable of supporting democracy and good governance may require a proactive role by the state – in providing infrastructure, funding a public broadcaster, ensuring the right kind of regulatory environment. Norris and Zinnbauer⁴ argue that independent journalism, as a potential check on the abuse of power, is a necessary but not sufficient means of strengthening good governance and promoting human development. They suggest that these goals are achieved most effectively under two further conditions. Firstly, in societies where channels of mass communications are

free and independent of established interests; and secondly, where there is widespread access to these media. Both of these may require some action by the state.

UNESCO's approach takes as its starting point that any attempt to measure media development must embrace issues of both independence and access as well as the absence of restrictions on the media. What matters is the extent to which all sectors of society, especially those who are most disadvantaged or marginalised, can access the media to gain information and make their voices heard. Limited access to – or lack of engagement with – the media is a function of poverty and poor education. It may also be caused or exacerbated by language, gender, age, ethnicity or the urban-rural divide. Whatever the cause, it contributes to an environment that can undermine democratic development.

However, the absence of state intervention on its own is no guarantee of a rich media environment. On the contrary: to promote a media environment characterised by pluralism and diversity, state intervention is necessary. To guarantee pluralism requires provisions for public broadcasting, commercial broadcast and print media and community-based broadcast and print media. As well as investment in human resources, specifically in building the professional capacity of media workers, both journalists and media managers, through academic and vocational training, 'on-the-job' development and the development of professional associations.

Infrastructure capacity is also crucial: promoting a diverse media environment requires money to flow into supporting the means of communication, including broadcast reception quality, the provision of electricity supplies and access to telephones and the Internet, all of which may require state support. In many parts of the world there is little or no access to the means of communication – in such environments, formal freedoms mean little.

To ensure media pluralism may require the application of competition law by the state to prevent

2. http://portal.unesco.org/ci/en/ev.php-URL_ID=26032&URL_DO=DO_TOPIC&URL_SECTION=201.html

3. <http://www.law.cornell.edu/constitution/constitution.billofrights.html>

4. Norris, Pippa and Dieter Zinnbauer (2002), *Giving Voice to the Voiceless: Good Governance, Human Development & Mass Communications, UNDP Human Development Report Office* (available at: http://hdr.undp.org/docs/publications/background_papers/2002/Norris-Zinnbauer_2002.pdf)

monopoly. In the past many countries have sought to prohibit a company from occupying a dominant market share or cross media ownership (where a company owns newspapers, television and radio stations). This can be necessary to ensure freedom of expression.

In addition where bandwidth – analogue spectrum for the most part – it is accepted that there needs to be a state mechanism to allocate that bandwidth.

“ The main justification argued by governments is that broadcasting uses spectrum, and spectrum is a public resource, allocated to nations in accordance with complex international agreements. As such, it is a scarce resource: there is only so much spectrum available for broadcasting use in each country. And therefore, because it is a scarce resource, it is valuable. ... It is therefore reasonable for the State, as the owner of spectrum, to place obligations on broadcasters who use that resource.”⁵

Finally many countries accept that were one form of media is overwhelmingly powerful and influential in a democracy the state may have a role in requiring this dominant media to display a degree of balance in reporting. In the case of public service media this requirement is particularly important to avoid accusations of government or factional political control of the media⁶.

The other circumstances where the state plays a role, through its judicial arm, is in the regulation of content in certain limited circumstances. Freedom of expression is not an absolute right and it can be restricted to protect the rights of others for example by prohibiting speech that incites violence or hatred against a particular racial group; to protect children from sexual exploitation or to protect the reputation of individuals from false accusations. The accepted

practice is for such restrictions to be narrowly defined and only applied by the courts where there is a clear public interest in so doing.

The media as a platform and a social actor

With these exceptions however, the consensus is that the state should stay out of regulating media because of its importance in supporting the human right to freedom of expression. Media outlets are crucial to the exercise of freedom of expression because they provide the public platform through which this right is effectively exercised⁷. The idea of media as a platform for democratic debate embraces a wide variety of overlapping media functions. Media outlets are channels through which citizens can communicate with each other, acting as a facilitator of informed debate between diverse social actors, encouraging the non-violent resolution of disputes. The media disseminates stories, ideas and information and acts as a corrective to the “ natural asymmetry of information”⁸ between governors and governed, and between competing private agents. The media can also function as a watchdog, promoting government transparency and public scrutiny of those with power through exposing corruption, maladministration and corporate wrongdoing, and thereby be a tool to enhance economic efficiency. The media can be a national voice, a means by which a society or a country can learn about itself and build a sense of community and of shared values, a vehicle for cultural expression and cultural cohesion within nation states.

However the media may potentially fulfil any or all of these functions, or none of them. In some contexts, the media may serve to reinforce the power of vested interests and exacerbate social inequalities by excluding critical or marginalised voices. In more

5. UNESCO, Guidelines for Broadcast Regulation, 2nd edition, written by Eve Salomon (<http://unesdoc.unesco.org/images/0018/001832/183285e.pdf>)

6. *ibid*

7. What follows is a synthesis of various reports on the media and democratic development, including: Article 19 (2004), *Freedom of Expression and the Media*, written for the British Council (www.britishcouncil.org/governance-foe-booklet.doc); Islam, Roumeen (2002), 'Into the Looking Glass: what the media tell and why' in *The Right to Tell: The Role of Mass Media in Economic Development*, Washington, DC: The World Bank Institute (http://www-wds.worldbank.org/external/default/main?pagePK=64193027&piPK=64187937&theSitePK=523679&menuPK=64187510&searchMenuPK=64187283&siteName=WDS&entityID=000094946_02111404075733); Global Forum for Media Development (2006); Norris Pippa and Dieter Zinnbauer (2002); UNESCO-Centre for Peace and Human Security, Sciences Po -Paris (2006), *Press Freedom and Poverty: an analysis of the correlations between the freedom of the press and various aspects of human security, poverty and governance*, UNESCO-CPHS Research Project, prepared by Anne-Sophie Novel (http://gem.sciences-po.fr/content/publications/pdf/novel_pressfreedom_poverty__150606.pdf).

8. Islam, Roumeen (2002), 'Into the Looking Glass: what the media tell and why' in *The Right to Tell: The Role of Mass Media in Economic Development*, Washington, DC: The World Bank Institute (available at: <http://64.233.183.104/search?q=cache:XUOfPOiFzVUJ:www.worldbank.org/wbi/RighttoTell/righttotellOverview.pdf+right+to+tell&hl=en&gl=uk&ct=clnk&cd=1>)

established democracies, the role of the media has come under attack from those who believe it is undermining democracy through the trivial, antagonistic and personalized nature of its coverage⁹. At its most extreme, the media can promote conflict and social divisiveness, particularly in a non-pluralistic media environment¹⁰.

We think of the media as a place in which journalists convey ideas, information and stories to the listener, viewer or reader. If the views they present are representative of society as a whole then they are fulfilling our individual human rights, as readers/consumers, to freedom of expression. But this representation is only part of what they do. The other element is their own views and interests as journalists. The media, in reporting events, creates a social environment in which parties to the various debates in society, including the journalists themselves represent their own views. The media thus becomes an actor when it takes an editorial position, or when the broadcast media focus on certain issues or take a particular perspective. The idea that the journalist sits outside of the events they are covering, simply representing our rights to freedom of expression is only part of the picture.

Media constitute a space in which the debates and issues of a society can be articulated but are inevitably themselves actors in that conflict. To use sociological terms the media are both structure and agency. Policy makers tend to focus on the media's role in constituting the public sphere of society – how that can be fostered and nurtured in a way as to permit the expression of the fullest range of views. By public sphere is meant that range of communication outlets and media which enable a society to view the representations of itself. To function properly a public sphere must have free flowing access to information, and enable the views of ordinary citizens to be heard. In the words of Jurgen Habermas it is "a discursive arena that is home to citizen debate, deliberation, agreement and action"¹¹. But it is also important to understand the role of the media as a social actor in itself, a partisan participant in the very debates that it covers, shaping them by commission or omission. If the state has no role in requiring the media to act

in a responsible manner in the coverage of events, to ensure that it does not abuse the power it carries as a structure by exploiting its role as an agency, how is the media's own accountability to be achieved? The answer has been self regulation. This is particularly important in countries where the media are linked to prominent business interests of political parties.

What is self regulation and its advantages?

What do we mean by self regulation? Self regulation is combination of standards setting out the appropriate codes of behaviour for the media that are necessary to support freedom of expression, and process how those behaviours will be monitored or held to account. The benefits of self regulation are well rehearsed. Self regulation preserves independence of the media and protects it from partisan government interference. It could be more efficient as a system of regulation as the media understand their own environment better than government (though they may use that knowledge to further their own commercial interests rather than the public interest). As the media environment becomes global (through the development of the internet and digital platforms) and questions of jurisdiction become more complex then self regulation can fill the resulting gap. It is less costly to government because industry bears the cost and can be more flexible than government regulation. Self regulation may also encourage greater compliance because of peer pressure (although there is also evidence that regulation or the threat of regulation is more likely to secure compliance). Self regulation can also drive up professional standards by requiring organisations to think about and even develop their own standards of behaviour.

Journalists codes of conduct

For many years self regulation was deemed to be the professional responsibility of journalists themselves and a variety of attempts have taken place to codify the responsibility of journalists, often through the medium of their professional associations. While various existing codes have some differences, most share common elements including

9. Lloyd, John (2004) "What the Media is doing to our politics" Constable.

10. Thompson, Mark (1999) "Forging War: The Media in Serbia, Croatia, Bosnia, and Herzegovina" London: University of Luton press.

11. Villa, Dana R. "Postmodernism and the Public Sphere." *American Political Science Review*, Vol. 86, No. 3 (September 1992).

the principles of truthfulness, accuracy, objectivity, impartiality, fairness. The earliest attempts to draft a code of ethics seem to be the Code of Journalistic Ethics adopted by the first Pan-American Press Conference held in Washington in 1926. It was adopted as policy by the Inter-American Press Association at a conference held in New York in October 1950.

The first International Federation of Journalists, established in 1926 but dissolved after the Second World War, took various steps aimed at self-regulation by the profession, including the establishment of an International Court of Honour in The Hague in 1931 and the adoption of a professional code of honour in 1939. Refounded in 1952, it developed a professional ethical code for journalists and adopted a declaration of journalists' duties in 1954, at its Second Congress¹². Subsequently six journalists' trade unions of the European Community adopted a Declaration of Duties and Rights of Journalists in November 1971¹³. A range of national media institutions have developed their own codes of conduct, for example the Swiss Press Council¹⁴.

These codes tend to focus upon certain accepted principles – a respect for truth and for the right of the public to truth; the right to fair comment and criticism; factual and objective reporting; the use of fair methods to obtain information; the willingness to correct mistakes; respecting the confidentiality of sources. These draw upon what is usually regarded as the essential elements of journalism – for example as sketched out by Bill Kovach and Tom Rosenstiel¹⁵ which they define as:

- Journalism's first obligation is to the truth.
- Its first loyalty is to the citizens.
- Its essence is discipline of verification.
- Its practitioners must maintain an independence from those they cover.
- It must serve as an independent monitor of power.
- It must provide a forum for public criticism and compromise.
- It must strive to make the news significant, interesting, and relevant.

- It must keep the news comprehensive and proportional.
- Its practitioners must be allowed to exercise their personal conscience.

The limitation of codes of conduct is that they are difficult to uphold. They are essentially professional codes adopted voluntarily by journalists but without sanction if breached. It would be possible for a journalist association to expel a member who consciously breached such a code but that would not necessarily prohibit them from working as journalists. Moreover journalists often have little power within their organisations. Decisions about what stories to cover, how much budget is allocated to each story, what prominence is given are usually made by editors or senior managers. Media owners can use their power to influence how news is reported and published and shape the priorities of the media organisation. In such circumstances a journalist code of ethics will be relatively powerless.

Editorial independence

Alongside journalists codes of ethics therefore it is helpful to have guarantees of editorial independence so that the journalist are able to operate free of direct control of the commercial interests of the owners. Editorial independence is taken to mean the right of journalists to decide what to cover, how to cover it and where to place the story in a newspaper, magazine or broadcast, regardless of the views of the owners. In most countries editorial independence is undefined in that there are relatively few formal codes specifying what it might mean. A notable exception is the agreement between the then National Association of Norwegian Newspapers (now the Norwegian Media Businesses' Association) and the Association of Norwegian Editors. They adopted a declaration on the rights and duties of the editors in 1953, which is known in Norway as the Redaktørplakaten or Editors' Code¹⁶. This code includes the following:

"The editor shall promote the freedom of opinion and in accordance with the best of his/her abilities and strive for what he/she feels serves society.

12. See Appendix for the text of the code.

13. <http://www.rjionline.org/mas/code-of-ethics/journalists-union-declaration>

14. http://ethicnet.uta.fi/switzerland/declaration_of_the_duties_and_rights_of_a_journalist.

15. Bill Kovach and Tom Rosenstiel (April 24, 2007). "The Elements of Journalism; What Newspeople Should Know and the Public Should Expect, Completely Updated and Revised". journalism.org. Retrieved 18 October 2010.

16. <http://www.informaworld.com/smpp/content~db=all~content=a788048456~frm=titlelink>

Through his/her paper the editor shall promote an impartial and free exchange of information and opinion.”

It also assumes that the editor is legally responsible for the content of the media they edit. Although this was a voluntary agreement in recent years there has been an attempt to make it legally binding.

Other codes of editorial independence, such as the IFJ’s non binding code specify that editorial independence includes the right of the editorial council to be consulted on decisions, personnel policies, the right of the journalist to refuse an assignment if the assignment proves to breach journalists professional ethics, the right to define editorial policy and content of the paper/broadcasting station.

Professional guidelines

A third element of professional self regulation is the professional guidelines adopted by media organisations as a matter of editorial policy. Perhaps the best example of this is the various guidelines adopted by the BBC which are meant to govern its output. The overarching framework of the BBC guidelines is a statement of values¹⁷:

“ We must therefore balance our presumption of freedom of expression with our responsibilities, for example to respect privacy, to be fair, to avoid unjustifiable offence and to provide appropriate protection for our audiences from harm”

There is a conscious balance here between freedom and responsibility, a recognition that the freedom of the media to operate independently of government control, has to sit alongside some responsibilities in the exercise of that freedom. There are detailed guidelines that cover issues such as accuracy, fairness, impartiality, privacy, the avoidance of harm, the responsibilities of the media during elections, conflicts of interest and the coverage of sensitive issues such as conflict, young people, religion, crime and sexuality.

In the private sector the Guardian’s editorial code states that its purpose is “ to protect and foster the bond of trust between the Guardian and its readers” . The code is voluntary and does not form part of the terms and conditions of the journalists – rather it is

meant to define the culture of journalism at the paper. The code covers professional practice and issues such as conflicts of interest. However, adherence to the Press Complaints Commission Code of Practice (see below) is written into the terms of employment of journalists at the Guardian.

Another example of voluntary guidelines is that drawn up by the NGO Article 19 which produced a set of guidelines to govern election broadcasting particularly aimed at emerging transitional democracies¹⁸.

Implementing standards

There are three interlocking aspects to professional self regulation which reinforce each other and which form a comprehensive approach to professional self regulation:

- Journalists’ codes of ethics
- Standards that ensure editorial independence
- Media organisations own guidelines on the coverage of events
- Inevitably this brings up questions of process – how are these self adopted codes upheld – do they rely solely upon the power of moral exhortation or can they be given force in some way.

In many sectors of commercial life, self regulation is entrusted to a body of industry professionals to administer. Inside a media organisation the classic approach is to have a media Ombudsman – employed by the media company to receive and investigate complaints from newspaper readers or listeners or viewers of radio and television stations about accuracy, fairness, balance and good taste in news coverage. They can recommend appropriate remedies or responses to correct or clarify news reports. One of the earliest examples of such a position was the Asahi Shimbun newspaper in Tokyo which set up a committee in 1922 to receive and investigate reader complaints. The first newspaper ombudsman in the U.S. was appointed by the Courier-Journal and The Louisville Times in June 1967. News ombudsmen today are found throughout North and South America, Europe, and parts of the Middle East and Asia. The Ombudsman of the Guardian newspaper in

17. <http://www.bbc.co.uk/guidelines/editorialguidelines/page/guidelines-editorial-values-introduction/>

18. <http://www.article19.org/pdfs/tools/electionbroadcastingtrans.pdf>

the UK publishes a regular list of corrections and clarifications that respond to complaints upon coverage in the newspaper and also has the power to adjudicate more serious complaints and change the editorial policy¹⁹.

Complaints mechanism can also be set up at the industry level, complementing the process within the media organisation. Many countries have press or media councils representing the media industry and established with the aim of both defending their interests and improving professional standards. In the UK, the government threatened to regulate the media's conduct after several high profile abuses of accepted journalist standards. To avoid regulation the newspaper industry established a Press Complaints Commission and Code of Practice²⁰ to allow members of the public to bring a complaint against a publication that had signed up to the Code of Conduct. The Code covers the usual areas – accuracy, respect for privacy, non harassment, reporting of young people, sexuality, crime and so on. The Commission has no legal powers – all newspapers and magazines voluntarily contribute to the costs of, and agree to abide by the findings of the Commission. In recent years about 9 out of 10 complaints have been resolved to the complainants satisfaction; although the MediaWise Trust, set up to campaign for “victims of media abuse”, has claimed that ordinary journalists voices, and those of the general public, are insufficiently represented on the Commission and that its rulings tend to favour the powerful rather than the poor²¹.

The Global Reporting Initiative

In recent years a more comprehensive approach is being developed through the Global Reporting Initiative. The GRI is probably the world's most common standard that ensures companies publicly report on all aspects of their economic, environmental, and social performance. The GRI seeks to make this “sustainability” a routine part of the company activity much like their financial reporting. According to the GRI²²

“Sustainability reports based on the GRI Framework can be used to demonstrate organizational commitment to sustainable development, to compare organizational performance over time, and to measure organizational performance with respect to laws, norms, standards and voluntary initiatives.”

The assumption behind the GRI is that greater transparency will act as an incentive to improve standards across the fields of environmental sustainability and corporate social responsibility. The most recent figures published by the GRI show that over 1000 organisations used GRI guidelines in their reporting in 2008²³.

GRI is currently developing sustainability reporting guidelines for the media sector in partnership with Ibero-American New Journalism Foundation, the Avina Foundation and the Program for Journalism Studies of Javeriana University in Columbia. The guidelines are being drawn up by a range of media organisations and global stakeholders. Among the partners involved in the production of the guidelines are the Australian Broadcasting Corporation, the BBC, Bertelsmann, Gestelevision Telecinco from Spain, an NGO alliance the Global Forum for Media Development, Grupo Clarin from Argentina, the International Federation of Journalists (IFJ), The Guardian newspaper from the United Kingdom, TNT Broadcasting Network from the Russian Federation, Transparency International, Vivendi in France and Warner Bros. Entertainment Inc. from the USA²⁴.

Using the UNESCO media framework indicators, the draft indicators will spell out the responsibilities of media organisations to support freedom of expression, ensure transparency of ownership and provide access to communications. Scheduled for public launch in late 2011 they could provide a useful supplement to other forms of self regulation by spelling out the obligations of media companies themselves, as distinct from their journalist or editors.

19. See <http://www.guardian.co.uk/news/2006/may/25/leadersandreply.mainsection?INTCMP=SRCH> for an example

20. <http://www.pcc.org.uk/cop/practice.html>

21. <http://www.mediawise.org.uk/>

22. <http://www.globalreporting.org/AboutGRI/WhatsGRI/>

23. http://www.globalreporting.org/NR/rdonlyres/E8B6ED9E-1A29-4154-A6DA-F14E6F71A2C9/3830/GRI_Year_In_Review_241209.pdf

24. <http://www.globalreporting.org/ReportingFramework/SectorSupplements/Media/#MSS3>

Role of internet as digital platform and implications for self regulation

The communications environment has been transformed by the ability to turn different kinds of information, whether voice, sound, image or text into digital code, accessible by a range of devices from the personal computer to the mobile phone. The emergence of the internet has transformed communication capacity from something essentially local (be it a locality or a country) into a medium that is truly global.

In their first incarnation, the internet and web were hailed as offering a new global, boundless space able to evade traditional censorship. John Gilmore, a libertarian activist and founder of the Electronic Frontier Foundation (whose name suggests its perspective), was quoted in Time magazine as saying "The Net interprets censorship as damage and routes around it".²⁵ Today, of course, the net has become a more contested, enclosed and nationalized space, but both the libertarian possibilities and the new forms of domination and control have recast the challenge to freedom of expression in the modern era.

What are the characteristics of this space that impact upon free expression rights? As a network of networks, the internet is an international platform which has no overarching jurisdiction. No single entity governs the totality of the internet: governance is provided by different components and institutions operating in very different jurisdictions. A program can be made in the Ukraine, uploaded onto a U.S. server, and downloaded in Ghana.

The international jurisdictional bodies such as the Internet Corporation for Assigned Names and Numbers (ICANN),²⁶ the International Telecommunication Union (ITU), and the World Wide Web Consortium (W3C),²⁷ like the national bodies which administer the national domains, are concerned with the efficient working of the system, its functionality, rather than governing the environment in the way that regulators govern broadcast media. Consequently, there is a

jurisdictional vacuum over content on the web. If there is a need for any state intervention it is not clear how such authority should be appropriately applied given that there is no means of regulating content internationally, nor any consensus on the norms that need to be applied. As a consequence a great deal of emphasis has been placed upon the importance of self regulation on line.

However there are dangers in this approach. There are no accepted self regulatory standards that have been developed for the internet environment. Consequently self regulation – principally by companies, takes place in a vacuum where it is shaped by commercial interties or private pressure from governments. For example Internet Service Providers (ISPs), which traditionally expected to be mere conduits for the services they carry are being asked to collect data on their users (for example by the EU Data Retention Directive 2006/24/EC) and even monitor browsing histories through voluntary agreements with governments that have no legal scrutiny²⁸. The lack of overt legal guidance and understandable wariness about carrying controversial material leads to overzealous actions by ISPs themselves and a willingness to take down controversial material simply if someone complains²⁹. This results in what is, in effect, a broad regime of censorship that contrasts with the narrow interpretations of the law and careful application of standards expected in the offline world. This underlines the importance of any system of self regulation being undertaken in accordance with transparent and clear norms.

Conclusion

In summary it is important to recognise the dual character of the media and its implications. Firstly it is a site which permits the free exchange of ideas and opinion necessary in a democracy and which is therefore deserving of the highest protection and freedom from state interference. Secondly it is a social actor in its own rights, who's choices about whether or how to cover events and whose editorial position

25. First quoted by Philip Elmer-DeWit, "First Nation in Cyberspace", Time Magazine, 6 December 1993.

26. <http://www.icann.org/> ICANN was founded in 1998.

27. <http://www.w3.org/> Founded in 1994, W3C is administered by a consortium of research institutions and universities.

28. *The Slide from "self regulation" to corporate censorship*, European Digital Rights, Joe MacNamee, 2010.

29. *ibid*

can also shape events and in that way is required to act in a socially responsible fashion. It is this dual character that makes an effective form of self regulation so essential.

Self regulation is not a simple matter however; it places requirements upon every level of the media organisation, on the journalist themselves, on their editors and managers, on the approach of the media organisation to the production of content and the overall behaviour of the media company. The fast evolving nature of online media, and the complex jurisdictional questions thrown up by a globalised environment, place self regulation at the heart of the evolving media landscape.

There are two overarching principles if we accept that self regulation is the necessary alternative to state control of the media. Firstly all media actors, professional or business have obligations to uphold in exchange for the freedom of state interference that they rightly claim. These obligations should be centred on the need to protect and promote freedom of expression. Secondly, all such obligations should be made explicit and transparent and be the subject of regular reporting in the public sphere. Both conditions are essential if self-regulation is to protect freedom of expression and not just the interests of companies themselves.

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APPENDIX

IFJ Code of Ethics

1. General Principles:

1.1 The International Federation of Journalists representing more than 450,000 journalists in over 100 countries, believes that professional journalists, organised in free and independent trade unions, play a key role in the creation and maintenance of a democratic media culture.

1.2 The IFJ believes that democracy depends upon the extension of freedom of expression and social justice worldwide. The IFJ insists that democracy depends upon an understanding of the special and particular role of the media in democratic society.

1.3 The IFJ believes that media must respect the professional and ethical principles of press freedom upon which the freedom of expression and opinion relies.

The IFJ defines press freedom as:

“ that freedom from restraint which is essential to enable journalists, editors, publishers and broadcasters to advance the public interest by publishing, broadcasting or circulating facts and opinions without which a democratic electorate cannot make responsible judgments.”

The IFJ believes this freedom can only be expressed when there exists:

- a) A free, independent and media reflecting diversity of opinion;
- b) A free flow of information enabling full democratic exchange in all communities, whether they be based on geography, ethnic origins, shared values or common language;
- c) Statutory defence and protection of citizens’ rights to freedom of information and the right to know;

d) Respect for the professional status and independent role of journalists.

1.4 The IFJ considers that the treatment of news and information as a commodity must not override or interfere with the duty of journalists to inform their audience and that media must be administered according to the highest standards of transparency and openness.

1.5 The IFJ believes in the coexistence of public service and private broadcasting in order to protect independence, pluralism and variety in programming to the enrichment of all sections of society.

1.6 The IFJ affirms that responsibility for ethical conduct and maintenance of the highest standards in journalism rests with media professionals.

1.7 The IFJ strongly believes that the law should not interfere in matters which are the proper responsibility of working journalists: namely, the preparation, selection and transmission of information.

2. Access to the profession

2.1 Access to the profession should be free. The professional level of future journalists should be as high as possible.

2.2 Trainee journalists must undergo proper training under conditions agreed by publishers and journalists’ unions.

2.3 Appointments are restricted to qualified journalists, that is, persons who have minimum professional qualifications agreed by journalists’ unions and media organisations. Such qualified journalists should be recognised as such in collective agreements. Employers accept that is the duty of the media in general and the employer in particular to reflect the society it serves.

3. Clause of conscience

3.1 Journalists must have the right to act according to their conscience in the exercise of journalism. In case of fundamental change in the political, philosophical or religious line of the employer, a journalist may put an end to his or her contract, without notice, and be paid compensation equivalent to what he or she would have received in case of termination of his or her contract by the employer.

3.2 No journalist should be directed by an employer or any person acting on behalf of the employer to commit any act or thing that the journalist believes would breach his or her professional ethics, whether defined by a code of ethics adopted by journalists collected at national level or that would infringe the international Code of Principles for the Conduct of Journalism as adopted by the IFJ. No journalist can be disciplined in any way for asserting his or her rights to act according their conscience.

4. Editorial independence

4.1 Common minimum standards of editorial independence should apply in all media.

4.2 These minimum standards must include:

- the Editorial staff represents the moral and intellectual capital of publishing houses and broadcasting station;
- the right of the editorial council to be consulted on decisions which affect:
 - appointment and dismissal of the editor-in-chief;
 - definition of editorial policy and content of the paper/broadcasting station;
 - personnel policies;
 - transfer/change of tasks of the journalists in the editorial department;
- the right of the editorial council to be heard on matters of grievances concerning editorial policy;
- the right of the journalist to refuse an assignment if the assignment proves to breach journalists professional ethics as laid down in the union's code of conduct;
- the right of the editorial staff to prevent interference of management of third parties on the editorial content;
- the right of journalists in Europe to equal pay and equality in career development.

- In case of grievances the editorial council, the editor in-chief and management hold bona fide negotiations. Representatives of the journalists associations and unions can be involved in the negotiations in line with existing labour/press legislation.

5. Self-regulation and ethics of journalism:

5.1 The IFJ believes that codes of ethics or codes of conduct must be drawn up by the professionals themselves.

5.2 The IFJ Code of Conduct, first adopted in 1954, provides a code of ethics adopted by all national representative journalists organisations in Europe. Therefore, the IFJ Code of Conduct provides the basis for a common understanding on ethical issues through voluntary adoption of journalists and publishers. In this area IFJ sees no active role for national governments.

IFJ Declaration of Principles on the Conduct of Journalists

“ This international Declaration is proclaimed as a standard of professional conduct for journalists engaged in gathering, transmitting, disseminating and commenting on news and information in describing events.

1. Respect for truth and for the right of the public to truth is the first duty of the journalist.
2. In pursuance of this duty, the journalist shall at all times defend the principles of freedom in the honest collection and publication of news, and of the right of fair comment and criticism.
3. The journalist shall report only in accordance with facts of which he/she knows the origin. The journalist shall not suppress essential information or falsify documents.
4. The journalist shall use only fair methods to obtain news, photographs and documents.
5. The journalist shall do the utmost to rectify any published information which is found to be harmfully inaccurate.
6. The journalist shall observe professional secrecy regarding the source of information obtained in confidence.
7. The journalist shall be aware of the danger of discrimination being furthered by the media, and shall do the utmost to avoid facilitating such discrimination based on, among other things, race, sex, sexual orientation, language, religion, political or other opinions, and national or social origins.

8. The journalist shall regard as grave professional offences the following:

- plagiarism;
- malicious misrepresentation;
- calumny, slander, libel, unfounded accusations;
- acceptance of a bribe in any form in consideration of either publication or
- suppression.

9. Journalists worthy of the name shall deem it their duty to observe faithfully the principles stated above. Within the general law of each country the journalist shall recognise in professional matters the jurisdiction of colleagues only, to the exclusion of every kind of interference by governments or others."

(Adopted by 1954 World Congress of the IFJ.
Amended by the 1986 World Congress.)

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