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**Open Journalism**

*The Road Travelled and the Road Ahead*

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■ Open Journalism:

# The Road Travelled and the Road Ahead





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# Contents

|  |           |
|--|-----------|
| <b>Preface &amp; Acknowledgements</b>  | <b>1</b>  |
| <b>1. Introduction</b>   | <b>3</b>  |
| <b>2. The Road Travelled and the Road Ahead: Overview of Issues and Activities</b> | <b>5</b>  |
| <b>3. OSCE Open Journalism Expert Meetings</b>                                     | <b>13</b> |
| 3.1 General Introduction   | 13        |
| 3.2 First Expert Meeting on Open Journalism  | 14        |
| 3.3 Second Expert Meeting on Open Journalism                                       | 23        |
| 3.4 Third Expert Meeting on Open Journalism  | 29        |
| 3.5 15 Recommendations to OSCE Participating States on Open Journalism             | 37        |
| <b>4. Open Journalism: Selected Practices from Across the OSCE</b>                 | <b>41</b> |
| <b>5. Appendices</b>   | <b>59</b> |
| Joint Declaration on Freedom of Expression and the Internet                        | 59        |
| OSCE RFOM Communiqué 05/2014   | 64        |
| OSCE RFOM Communiqué 07/2014   | 66        |
| OSCE RFOM Communiqué 01/2016   | 68        |

## **Preface & Acknowledgements**

I would like to warmly thank the (current and former) staff of the Office of the OSCE Representative on Freedom of the Media, in the first place, for having given me the privilege of being involved in their Open Journalism project (2014–2015).

I am also very grateful to Frane Maroevic and Jennifer Adams for inviting me to prepare this publication to wrap up and look beyond the original project. I appreciated their efficiency and the refreshing broadmindedness that they showed by embracing the suggestion to involve students from the specialised masters programmes in Information Law offered by the Institute for Information Law (IViR), Faculty of Law, University of Amsterdam.

I am also very grateful to Sejal Parmar for her very helpful comments on a draft version of this text.

Tarlach McGonagle

Amsterdam, December 2017.

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# 1. Introduction

The Office of the OSCE Representative on Freedom of Media organised a series of three expert meetings on Open Journalism in Vienna on 5 May 2014, 19 September 2014 and 9 December 2015. Invited experts from a variety of professional and geographical backgrounds participated in the three meetings. The theme of Open Journalism was explored from a range of complementary angles and participants sought to identify key issues, problems and (possible) solutions. The three expert meetings have been summarised in Section 3 of the present publication.

After each of the expert meetings, the OSCE Representative on Freedom of the Media issued a Communiqué recalling the broad lines of the discussion at the given meeting and formulating a number of specific recommendations for OSCE participating States. Those recommendations have been gathered in Section 3.5 of the present publication. The integral texts of the three Communiqués have been included as Appendices. The Communiqués on fundamental media freedom issues were introduced in 2014 as a new instrument to address and provide recommendations to the OSCE participating States on challenges to media freedom in the region. They offer a broader perspective than the interventions on individual cases.<sup>1</sup>

Also included as an Appendix is another text dealing with very relevant focuses: the 2011 Joint Declaration on Freedom of Expression and the Internet by 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.

The present publication has a Janus-like function. It looks back on and reflects on a highly successful series of expert meetings and related work carried out by the Office of the OSCE Representative on Freedom of the Media between 2014 and 2015. At the same time, it also looks forward, wondering how the regulatory, ethical, technological and market-related challenges facing Open Journalism can be overcome in the future. The present publication also has a stock-taking function, briefly surveying selected issues relating to Open Journalism in Section 2 and selected current practices across the OSCE region in Section 4.

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<sup>1</sup> For an overview, see: <http://www.osce.org/fom/119497>.

## **2. The Road Travelled and the Road Ahead: Overview of Issues and Activities**

*“Listening to the news! Again?”*

*“Well, it changes every day, you see”, said Harry.<sup>1</sup>*

Nowadays, the very idea of news having a daily life-cycle may seem quite other-worldly – either a throw-back to the past or a quaint practice from Hogwarts School of Witchcraft and Wizardry. It is in striking contrast to the reality of the rolling, 24/7 dynamics of modern-day news, journalism and media production and consumption. That is not to say that particular types of media which have daily editions or instalments have become irrelevant or obsolete. On the contrary, daily newspapers or daily current affairs shows on radio and television continue to hold sway. But they also have their own websites and, more often than not, a wider social media presence as well. The point is rather that all around them, news is constantly being reported, commented on, packaged into different formats and distributed in a multitude of directions across the world. “Breaking news” has become the new norm and it cannot be fast enough.

This new and still-evolving media ecosystem is much more complex than anything we have seen before. Internet, social media and mobile telephony have enabled growing numbers to express themselves and reach (potentially) the whole connected world with their individual messages. Such mass self-communication, as it is sometimes called, was unthinkable in the past when the wide dissemination of any message depended on first getting it through the editorial control processes of large, institutionalised media. So-called one-to-many communication is now complemented by many-to-many communication. All of this makes it easier for individuals, groups and organisations to participate more fully and more meaningfully in public debate on matters of interest and importance to society than was possible in the past. This is, of course, a great boon for democracy.

The downside to these enhanced communicative opportunities, however, is the growing prevalence – some would say pervasiveness – of salacious, harmful and illegal content online. Much of the content circulated online does little, if anything, to advance democratic ideals or debate. This can lead to what Alexander Meiklejohn – the renowned proponent of self-government – described as “unregulated talkativeness”.<sup>2</sup> Such a cacophony was an outcome that he would have preferred to avoid, favouring instead situations in which “everything worth saying shall be said”.<sup>3</sup> Low-level speech, denoting that it has little democratic value and should only be afforded a low level of constitutional and/or legal protection, is prominent in the

1 J.K. Rowling, *Harry Potter and the Order of the Phoenix* (London, Bloomsbury Publishing, Plc., 2013), p. 11.

2 Alexander Meiklejohn, *Free Speech And Its Relation to Self-Government* (Harper & Bros., New York, 1948), p. 25.

3 *Ibid.*

online environment. Moreover, it is often sharp, vulgar and offensive and there appears to be a resignation that this type of speech is a typical and enduring feature of the Internet and its vastness.

There is nothing new about the paradox that new communications technologies can have effects that are both empowering and disruptive in democratic terms.<sup>4</sup> The key challenge is to figure out which regulatory and ethical standards should guide their development. These are very pressing questions for journalism and Open Journalism in the current media ecosystem.

Journalism can be distinguished from other types of expression due to its main purposes and the ethical standards that should shape the pursuit of those purposes. Journalism is all about rigorously and scrupulously seeking out “the best obtainable version of the truth”, as Carl Bernstein has put it.<sup>5</sup> This ongoing quest for “the best obtainable version of the truth” serves democracy well; it helps to hold public authorities and other powerful forces in society to account and it helps to expose wrongdoings on their part. This explains why journalists, the press and the media more generally are often described as public watchdogs or the Fourth Estate (which keeps the other three estates or branches of institutional State power in check).

Open Journalism is an umbrella term that covers a variety of collaborative and cooperative forms of journalism, for instance between professional journalists and recognised experts on the topics they are covering, or between professional journalists and members of the general public. There is no fixed or authoritative definition of the term, but the notion of participation is key. The term also denotes an opening up of journalism and the recognition that a growing number of actors engage in the activity of journalism. What has changed is the nature of the relationship between journalists and the public. Journalism is no longer the preserve of professional journalists and there can be interaction with the public during all stages of the news production process. That interaction can continue after the publication of the news item, for example by posting comments about the item or by post-publication verification and fact-checking.

Open Journalism is a very natural thematic focus for the OSCE Representative on Freedom of the Media. It intersects with many of the Office’s other thematic strongholds, including:

- Safety of Journalists;
- Safety of Female Journalists Online (SOFJO);

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4 See, for example: Ithiel de Sola Pool, *Technologies of Freedom* (The Belknap Press of Harvard University Press, Cambridge, Massachusetts and London, England, 1983).

5 Carl Bernstein, “The Idiot Culture: Reflections of post-Watergate journalism”, *The New Republic*, 8 June 1992, pp. 22–26 at 24.

- Media freedom on the Internet;
- Media pluralism and independence, and
- Media self-regulation.

Efforts to ensure the safety of journalists are a constant in the work of the Representative on Freedom of the Media, from interventions in and statements on individual cases and structural problems, to expert multi-stakeholder events and discussions,<sup>6</sup> information-sharing, awareness-raising and campaigning, to creating resources to deal with relevant problems.<sup>7</sup> If the safety and security of journalists and others who wish to contribute to public debate cannot be effectively guaranteed in practice, then there will be a significant chilling effect on their willingness to engage in different forms of Open Journalism.

The same is true – and indeed, often amplified – in respect of the safety of female journalists online. A high-profile example from *The Guardian* illustrates the specific problem of abusive, hateful and threatening “below the line” comments by third parties targeting female journalists. After exposing the extent of abusive comments responding to content on its own webpages and the statistical evidence that such comments overwhelmingly targeted female writers (‘The dark side of Guardian comments’), *The Guardian* launched its The Web We Want initiative. Katharine Viner, Editor-in-chief of *The Guardian*, describes it as:

an attempt to imagine what the digital world could and should be: a public space that reflects our humanity, our civility and who we want to be. It asks big questions of all of us: as platform providers, as users and readers, as people who write things online that they would never say in real life.<sup>8</sup>

SOFJO is an expanding focus in the current work of the OSCE Representative on Freedom of the Media, for example the Communiqué on the growing safety threat to female journalists online and a set of Recommendations issued following the Expert Meeting New Challenges to Freedom of Expression: Countering Online Abuse of Female Journalists. The Office has also overseen the preparation and publication of an edited collection of essays, *Countering Online Abuse of Female Journalists*. A range of other resources and materials are available in the webfolders, SOFJO and Digital Threats Targeting Female Journalists.

6 E.g. the conference - Journalists’ Safety, Media Freedom and Pluralism in Times of Conflict, Vienna, 15 June 2015.

7 William Horsley, *Safety of journalists Guidebook* (2nd edition) (Vienna, OSCE Representative on Freedom of the Media, 2014).

8 Katharine Viner, ‘How do we make the Guardian a better place for conversation?’, *The Guardian*, 22 April 2016.

Defending media freedom, independence and pluralism are also all very much core activities of the OSCE Representative on Freedom of the Media and as with the above examples, a similarly varied range of measures is used to defend those values, including online.<sup>9</sup> Indeed, the online dimension to media freedom and pluralism is a crucial enabler of Open Journalism. An open Internet is conducive to the open civic spaces in which Open Journalism can thrive. Thus, various resources developed or facilitated by the OSCE Representative on Freedom of the Media can offer relevant insights and guidance, such as the 2013 Social Media Guidebook and the 2016 Media Freedom on the Internet: an OSCE Guidebook.<sup>10</sup>

The position of Open Journalism as an intersectional focus of the OSCE Representative on Freedom of the Media's activities makes a strong case for continuing to explore its relevance in a structured way. The high-level discussions at the three expert meetings have provided much food for thought, but various regulatory, ethical, technological and market-related questions persist.

The United Nations Human Rights Committee has stated emphatically in its General Comment No. 34 that "Journalism is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere".<sup>11</sup> Similarly, a growing line of jurisprudence from the European Court of Human Rights (ECtHR) underscores the importance of public debate for democratic societies. It has also explicitly recognised the value to public debate of contributions from a wide range of actors besides journalists and the media, including individuals, civil society organisations, academics, bloggers and social media users.<sup>12</sup> A very far-reaching principle in this connection can be found in the Court's *Dink* judgment:<sup>13</sup>

States are obliged to put in place an effective system of protection for authors and journalists as part of their broader obligation to create a favourable environment for participation in public debate by everyone and to

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9 See, for example: the conference, Internet 2013: Shaping Policies to Advance Media Freedom, OSCE Office of the Representative on Freedom of the Media, Vienna, 14–15 February 2013.

10 Christian Möller and Mike Stone, Eds., *Social Media Guidebook* (Vienna, OSCE Representative on Freedom of the Media, 2013); Yaman Akdeniz, *Media Freedom on the Internet: an OSCE Guidebook* (Vienna, OSCE Representative on Freedom of the Media, 2016).

11 Human Rights Committee, *General Comment 34: Article 19 (Freedoms of Opinion and Expression)*, UN Doc. CCPR/C/GC/34, 12 September 2011, para. 44.

12 For references and commentary, see: Tarlach McGonagle, 'Positive obligations concerning freedom of expression: mere potential or real power?', in Onur Andreotti, Ed., *Journalism at risk: Threats, challenges and perspectives* (Strasbourg, Council of Europe Publishing, 2015), pp. 9–35, available at: <https://rm.coe.int/1680706afe>.

13 *Dink v. Turkey*, nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, § 137, 14 September 2010.

enable the expression of opinions and ideas without fear, even when they are contrary to those held by the authorities or by a significant section of public opinion and even if they are annoying or shocking for the latter.<sup>14</sup>

The above are all very important statements of principle, but they require further operationalisation and exploration. How can a favourable or enabling environment for Open Journalism be guaranteed in the future? How will regulation (including self- and/or co-regulation) shape the field? What duties and responsibilities can we expect the different actors involved – journalists and their non-journalist collaborators, as well as media organisations and online actors such as Internet intermediaries – to uphold? How will ongoing technological and market-related dynamics shape the evolution of Open Journalism?

It will also be important to ascertain what is happening at the frontline of Open Journalism in OSCE participating States. The snapshots provided in Section 4, below, are interesting, but incomplete. Other data provides complementary insights. In recent years, social media have seen a rapid growth in usage for news consumption. The first main finding of the Reuters Institute's Digital News Report 2016 was: "across our entire sample, half (51%) say they use social media as a source of news each week".<sup>15</sup> The 2017 Report finds that this growth is flattening in some markets, such as Sweden and Germany.<sup>16</sup> A reason for this could be the increased popularity of messaging apps such as WhatsApp for news. WhatsApp's popularity as news source is mainly outside the OSCE region (Latin America and South-East Asia) but in Spain, use of the messaging app for news has increased from 24% to 32%.<sup>17</sup> Facebook's global popularity is however unrivalled, with both the social network and its accompanying messaging app being used as news media. 80% of the respondents use a Facebook product weekly for any purpose.<sup>18</sup>

Participation in online news varies substantially by country but in general sharing or commenting on news has been stationary in most countries over the past year. In Southern European countries such as Portugal and Italy, a relatively high percentage of the population shares news weekly, 51% and 47% respectively. This includes both sharing on social media and on websites of news organisations. In Northern European countries this percentage is generally lower, 18% in Germany and 22% in

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14 Author's translation.

15 Nic Newman and others, *Reuters Institute Digital News Report 2016*, Reuters Institute for the Study of Journalism, Oxford 2016, p. 7.

16 Nic Newman and others, *Reuters Institute Digital News Report 2017*, Reuters Institute for the Study of Journalism, Oxford 2017, p. 11.

17 *Reuters Institute Digital News Report 2017*, p. 12.

18 *Reuters Institute Digital News Report 2017*, p. 12.



the Netherlands.<sup>19</sup> The main reasons for not sharing or commenting are a lack of interest and a preference to discuss news stories face-to-face.<sup>20</sup>

The picture sketched here is that the general public includes a large number of “media omnivores” who have a varied media and informational diet.<sup>21</sup> It remains to be seen whether the potential of Open Journalism to influence those diets and contribute to the overall health of democracy can be realised in practice.

Quality journalism today faces many political, legal, economic and other challenges, prompting those involved in producing quality journalism to - at least partly - re-think their purpose, re-invent their practices, and re-assert the importance of their role in democratic societies. This soul-searching is unlikely to lead to obvious outcomes or easy solutions. The playwright Arthur Miller once quipped that a good newspaper is a nation talking to itself. The quip holds true in a multi-media ecosystem as well. For a nation to talk to itself, filter bubbles will have to be burst or reduced, echo chambers transcended and shared points of reference for society re-affirmed. Journalists and other actors contributing to public debate will have to cultivate relationships with readers, viewers and users in order to sustain conversations. They will have to fight for truth and trust in the face of a barrage of disinformation and so-called “fake news” in public debate. This is where Open Journalism can truly come into its own: by engaging members of the public; opening up to their input – through providing eye-witness accounts, expert information and fact-checking.

These different forms of input by members of the public are neatly captured in *The Guardian's* award-winning video advertisement about open journalism.<sup>22</sup> The famous story of the three little pigs is utterly transformed at top-speed by interactive journalism. The pigs no longer control their own narrative; their story is rewritten by the masses. As the plot unfolds, the familiar tale is transformed by analysis and insights provided by journalists, public opinion, expert commentary and social mobilisation.

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19 Reuters Institute Digital News Report 2017, p. 44.

20 Reuters Institute Digital News Report 2017, p. 45.

21 William H. Dutton, ‘Fake news, echo chambers and filter bubbles: Underresearched and overhyped’, *The Conversation*, 5 May 2017.

22 “The Guardian open journalism – Three Little Pigs advert”, available at: [www.guardian.co.uk/media/video/2012/feb/29/open-journalism-three-little-pigs-advert](http://www.guardian.co.uk/media/video/2012/feb/29/open-journalism-three-little-pigs-advert). See further: Tarlach McGonagle, ‘User-generated Content and Audiovisual News: The Ups and Downs of an Uncertain Relationship’, in Susanne Nikoltchev, Ed., *Open Journalism, IRIS plus 2013-2* (Strasbourg, European Audiovisual Observatory), pp. 7-25, available at: <https://www.ivir.nl/publicaties/download/IRIS-plus-Open-journalism.pdf>.

To conclude, much ground has already been covered by the initial Open Journalism project, but a systematic mapping, analysis and dissemination of good, promising and best practices across the OSCE region would be very welcome. There are many twists and turns in the road ahead, some of them treacherous, but others will certainly lead to splendid new vistas of collaborative journalism and in turn enhance the quality and pluralism of public debate.

### **3. OSCE Open Journalism Expert Meetings**

### 3.1 General introduction

“The creation and distribution of news isn’t changing – it has already changed”.<sup>1</sup> Due to technological developments, many actors are able to contribute to the public debate, and there are growing alternatives to institutionalized news-making processes. The three expert meetings organized by the Office of the OSCE Representative on Freedom of the Media in 2014 and 2015 aimed to generate an in-depth and wide-ranging discussion on the concept of Open Journalism amongst experts, policymakers and regulators from the OSCE and participating States. Open Journalism refers to the reliance on user-generated content; it encourages citizens to participate in public debate by contributing to and helping to shape the news-making process.

This section provides a summary of each of the three expert meetings. The summaries seek to offer a flavour of the presentations and discussions, but not to present comprehensive coverage. Interested readers are encouraged to watch the video recordings and consult the additional resources collected at the dedicated Open Journalism section of the website of the OSCE Representative on Freedom of the Media: <http://www.osce.org/fom/open-journalism>.

Each summary concludes with a brief focus on some of the common themes that were explored. Occasionally, extra references have been provided, including references to developments that have taken place since the expert meetings, in the hope that those references will prove of use and interest to readers.

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1 Dunja Mijatović, Opening Remarks, First Expert Meeting on Open Journalism.

## 3.2 First Expert Meeting on Open Journalism

Vienna, 5 May 2014

*“The open exchange of information, ideas and opinions has the power to change the world for the better.”<sup>2</sup>*

During the first expert meeting, three aspects of Open Journalism were explored:

1. The opportunities of Open Journalism to establish an open discussion/platform characterized by pluralistic information;
2. The societal, legal, regulatory and ethical issues that Open Journalism brings along;
3. The challenges that Open Journalism brings to the profession of traditional journalists.

### Session 1 – What is open journalism?

Moderator: Geneva Overholser – Professor, School of Journalism, USC Annenberg

Speakers: Jon Henley – Features Editor, *The Guardian*  
Tarlach McGonagle – Senior researcher, Institute for Information Law (IViR)  
Aidan White – Director, Ethical Journalism Network  
Galina Timchenko – Former editor of Lenta.ru

The main questions of this session were as follows:

- How would you define Open Journalism?
- How different is it from the traditional journalism and traditional media?
- How widespread is Open Journalism?
- What is its future?
- What should be the response of the traditional media, confrontation or cooperation?
- What is the perception of Open Journalism by the public?

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<sup>2</sup> *Ibid.*, minute 5:30.

The first speaker, Jon Henley, emphasized that due to Open Journalism, the relationship between journalists and readers has changed radically. Nowadays, readers act as fact-checkers in areas of their expertise, can contribute to journalistic content by providing ideas, but also act as distributors by sharing journalistic articles online. He gave three reasons why Open Journalism is valuable. First, it is effective as it produces informed work. Secondly, it is beneficial because it builds trust and engagement between media organizations and readers. And lastly, it is essential, as the audience demands it. He stressed the importance of continuing to use traditional journalistic skills and judgements, such as objectivity, accuracy and balance.

Tarlach McGonagle gave insights into the legal aspects of Open Journalism. He stressed that legal issues and principles can facilitate the roadbuilding exercise for journalism, but can also shut down its potential. In the context of law- and policy-making, he encouraged to look beyond strict definitions of journalism, which could hamper the potential benefits of Open Journalism. Accordingly, he discussed the role of new actors in the public debate, and stated that they might not be comparable with institutionalized forms of media/professional journalists. Nevertheless, they make legitimate contributions to circulating information and ideas, and thereby enhance public debate and participation in public debate. Therefore, he suggested that it is important to consider how these actors contribute to public debate, and how they can be positioned in a broader whole.

He identified the challenge of creating a system in which Open Journalism can be accommodated in such a way that it will guarantee the protection of the right to freedom of expression. McGonagle stated that the case-law of the ECtHR can be useful to face the challenges of the changed nature of journalism. For instance, the Court has ruled that in order to carry out democracy-enhancing functions, journalists and the media should be given an enhanced level of freedom of expression. These enhanced freedoms are given due to the reach and impact of audiovisual media, their role of public watchdog, and their role of providing a public forum. As was pointed out by Henley, the latter, in particular, is of increasing importance: journalists and the media can provide a forum which enables interaction and a true exchange of ideas.

McGonagle proceeded by pointing out what these enhanced freedoms entail: freedom to report and comment on matters of public interest<sup>3</sup>; presentational and editorial freedom;<sup>4</sup> recourse to exaggeration and provocation;<sup>5</sup> protection of

3 *Bergens Tidende and Others v. Norway*, App. No. 26132/95, 2 May 2000, *Bladet Tromsø and Stensaas v. Norway* [GC], App. No. 21980/93, 20 May 1999, *Thorgeir Thorgeirson v. Iceland*, App. No. 13778/88, 25 June 1992.

4 *Jersild v. Denmark*, App. No. 15890/89, 23 September 1994.

5 *Prager and Oberschlick v. Austria*, App. No. 15974/90, 26 April 1995.

sources;<sup>6</sup> protection against search and seizure;<sup>7</sup> protection against physical violence and intimidation;<sup>8</sup> various rights in times of crisis and in war situations.<sup>9</sup> Recently, one of the most important findings of the ECtHR was the freedom to express oneself without fear.<sup>10</sup> This freedom is important in the context of Open Journalism, in particular in conflict situations in which there are real threats to the safety of individuals and journalists contributing to public debate.

In McGonagle's opinion, the above-mentioned roles and rights of journalists and the media have been true in the past, and are still true today. Nevertheless, there are a number of practical and technological developments that are worth considering, because of the changes they bring in the context of news-making. McGonagle restated the observation which was made earlier by Henley, namely that there is a greater diversity of actors involved which contribute to public debate. Moreover, there are growing alternatives to the institutionalized structures and processes of news-making. Accordingly, there is a greater scope for individual participation in journalistic activities, and the activities of the media more broadly. Lastly, there is a greater diversification in types of content. For instance, alternative and valid inputs into public debate could include individual blogs, but also research and fact-checking conducted by NGOs. This leads to competition, complementarity and collaboration between all these different actors.

McGonagle then provided examples of recent journalistic activities, such as the Snowden files at *The Guardian*<sup>11</sup> and the David Miranda case.<sup>12</sup> They served as good illustrations of the new dimensions which are at play: different people are involved in the journalistic processes, such as whistle-blowers, but also people who are not

6 *Goodwin v. the United Kingdom*, App. No. 17488/90, 27 March 1996, *Voskuil v. the Netherlands*, App. No. 64752/01, 22 November 2007, *Tillack v. Belgium*, App. No. 20477/05, 27 November 2007, *Sanoma Uitgevers BV v. the Netherlands* [GC], App. No. 38224/03, 9 September 2010, *Ressiot and Others v. France*, App. No. 15054/07 and 15066/07, 28 June 2012.

7 *De Haes and Gijssels v. Belgium*, App. No. 19983/92, 24 February 1997, *Ernst and Others v. Belgium*, App. No. 33400/96, 15 July 2003, *Roemen and Schmit v. Luxembourg*, App. No. 51772/99, 23 February 2003.

8 *Özgür Gündem v. Turkey*, App. No. 23144/93, 16 March 2000 and *Dink v. Turkey*, App. No. 2668/07, 14 September 2010.

9 *Sürek and Özdemir v. Turkey*, App. Nos. 23927/94 and 24277/94, 8 July 1999, *Sürek v. Turkey* (no. 4), App. No. 24277/94, 8 July 1999, *Erdoğan and İnce v. Turkey*, App. Nos. 25067/94 and 25068/94, 8 July 1999.

10 *Dink v. Turkey*, App. No. 2668/07, 14 September 2010.

11 See *The Guardian*, 'The Snowden Files', <https://www.theguardian.com/world/series/the-snowden-files>.

12 See BBC News, 'David Miranda detention: Q&A', 19 February 2014, <http://www.bbc.com/news/uk-23782782> and more recently, *The Guardian*, 'Terrorism Act incompatible with human rights, court rules in David Miranda case', 19 January 2016, <https://www.theguardian.com/world/2016/jan/19/terrorism-act-incompatible-with-human-rights-court-rules-in-david-miranda-case>.

themselves journalists but may be carrying information on behalf of journalists, and those who are somehow involved in the broader activities of information- and news-gathering. This shows that parameters have expanded enormously.

McGonagle then considered how the ECtHR would “go about” creating a system that would reflect and engage with these changed realities, while being strategic in extending traditional freedoms into a more modern context, based on the doctrines connected to the European Convention of Human Rights (ECHR). According to the *living instrument* doctrine, the ECHR has to grow with time: it was never intended to be static. Moreover, the ECHR guarantees rights that are *practical and effective*, not theoretical or illusory.<sup>13</sup> While this applies to all rights, it is particularly true for the right to freedom of expression. The right to freedom of expression belongs to everyone, both in offline and online environments. He pointed out that freedom of expression will only be meaningful when there is a proper understanding of the implications of technology.<sup>14</sup> It is important that we build on these freedoms in the changed communications environment.

As set out earlier, one of the primary reasons for granting these enhanced freedoms of expression for media, was that the media were dominant players in public debate. The ECtHR also expects them to engage in *responsible journalism*. McGonagle referred to an argument which is often made by the next speaker, Aidan White, namely that the best survival strategy for journalists is to do what they do best: contextualize, interpret, analyze, interrogate, investigate, etc. These duties and responsibilities go alongside journalists’ rights. When extending the freedom of expression online, this must be taken into account. McGonagle wrapped up his presentation by looking at the future of law- and policy-making. According to McGonagle, we must keep an eye on the above-mentioned principles in order to ensure that journalism retains its value in the changed communicative circumstances.

The discussion then moved from the legal implications to the ethical implications. The moderator, Geneva Overholser, pointed out that although the changes in the nature of journalism have not caused us to give up on the ethical underpinnings of journalism, they do make it a challenge to stick with them.

The next presentation was by Aidan White, Director of the Ethical Journalism Network (EJN), who explored the opportunities and challenges of Open Journalism and made suggestions on how to face the latter. White continued the point that the notion of partnership with the audience has changed the communications

<sup>13</sup> *Airey v. Ireland*, 9 October 1979, Series A no. 32, para. 24.

<sup>14</sup> The ECtHR has found that the ability to access the Internet, in particular Google sites, is very important for the participatory nature of freedom of expression: *Ahmet Yıldırım v. Turkey*, no. 3111/10, § 54, ECHR 2012.



infrastructure. He said that Open Journalism brings many opportunities: it strengthens free expression and access to the media; limits the arrogance and elitism of the media establishment; provides new opportunities for stylish and engaging forms of story-telling, and taps into revolutionary changes that are enduringly taking place in human communications. Although Open Journalism is valuable, stimulating, and gives momentum for pluralism and democracy, he acknowledged that we do not know the outcome of these developments.

While technology has given many opportunities, in the current media environment we also face important challenges. For instance, across the world we can identify a collapse of independent (commercially-funded) media. Moreover, investment in investigative journalism, which has the important task of exposing corruption, misuse and abuse of power, is decreasing. He also identified the commercial challenges to editorial independence, caused by a massive expansion in corporate communications in PR and governmental investment in local/state communications. He observed that due to the collapse of journalism, commercial PR is filling the vacuum, which can ultimately endanger journalism and democracy. White also noted the exploitation of the journalistic workforce, as levels of corruption have increased, and young journalists are often exploited due to a lack of jobs. He said that due to the emergence of rapid journalism in a competitive environment, media companies are driven by clicks before content, and journalists have less control over content.

White also proposed how the media can respond to these challenges. He suggested the following: the ethical base of the media should be rebuilt; the media should challenge their internal resistance to change; the media's governance and internal regulation should be strengthened, and the media should work with their audiences and social media. In meeting these challenges, White identified particular activities which the OSCE can take out.<sup>15</sup>

According to White, the essential question which must be answered is: "who is going to pay for journalism in the future?" He concluded that we must remember that journalism is distinct from free expression. Journalism distinguishes itself from other content, due to the values on which it is built. Journalistic activities are constrained by ethical codes (accuracy, impartiality, independence, accountability) and humanity (journalists should be aware of the consequences of their publications, and take action to make sure that they do no harm). He advised that we must not discuss the "death of journalism and media", but instead return to thinking about

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15 Launch debates among journalists, editors, owners and with civil society, promote self-regulation at enterprise and national level, investigate and publish information on the state of the media, focus on transparency: ownership and media relations with policies: who owns media, organize training and awareness-raising ethical journalism, limit the use of law, and ensure no political hands are involved process of regulation of journalism, and promote regional co-operation: respect national goals but no compromise on fundamental right to act according to conscience and respect core values.

the responsible use of information in all parts of society – specifically, and most importantly, within journalism itself.

### Session 1 – Discussion

In the discussion, the speakers agreed that it is more difficult to define what a “journalist” is, than to define what “journalism” is. All speakers saw Open Journalism as a tool to allow journalists to improve their work. Nevertheless, journalists must continue to use traditional journalistic skills and disciplines, such as verification, objectivity, balance and accuracy. In the end, these values distinguish journalism from many other types of expression.

### Session 2 – Role of journalists

|            |  |
|------------|--|
| Moderator: | Geneva Overholser – Professor, School of Journalism, USC Annenberg   |
| Speakers:  | Attila Mong – Deputy Editor, atlatzo.hu<br>Boro Kontic – Director, Media Centre, Sarajevo<br>Tim Karr – Senior Director of Strategy, Free Press<br>Juan Luis Manfredi Sánchez – journalist and professor at the University of Castilla La Mancha |

In this session, the following questions were discussed:

- What is journalism in the new media environment?
- Is the concept of traditional newsgathering and news dissemination still valid or useful?
- How has traditional journalism changed with the development of the Internet and social media?
- What are its current techniques?
- What is the role of a journalist in the current media environment?
- What are the new challenges and opportunities for the journalists?
- How do they interrelate with the audience?
- Is there still a need for professional journalists or are they being replaced by social media and automated news portals?

Attila Mong explained how Open Journalism has shaped the activities of *atlatszo.hu*. The organization does not define itself as part of journalism, but rather as part of a transparency movement. It has an activist approach, by being a mix of an anti-corruption/transparency watchdog and an investigative journalism site, and offering source protection to whistle-blowers. Its operation is driven by openness: the audience is invited to participate by liking, giving expert advice, filing freedom of information requests, and leaking and telling their own stories of corruption. *Atlatszo.hu* does the verification, investigation of these raised issues, and engages in an active public debate.

Boro Kontic stressed that discussions must take the diversity of technological developments in countries into account. For instance, in many developing countries traditional media remain the main actors in news distribution.

Tim Karr stated that in Free Press' fight for everyone's right to connect and communicate, the issues of Internet freedom and press freedom have begun to overlap. Firstly, he stressed that the right to carry out journalistic activities must be protected, regardless of who is doing it. Secondly, he argued that many acts of journalism are shared on the Internet. Although the Internet has enabled online pro-democracy movements, he also showed concern for the increased vulnerability of journalists who contribute to the online public debate.

Karr noted that we need structures in the "feedback loop" of Open Journalism, which is built upon devices, applications, networks, and the audience. He outlined that devices can be spied upon, applications can be suspended, networks can be blocked, and the digital divide can cause the exclusion of some people from the feedback loop. Therefore, he proposed the following policy measures to protect Open Journalism:

1. everyone's right to record on their devices must be ensured;
2. platforms must be pressured to be transparent about every decision to block content, and establish and enforce corporate standards for protecting free speech;
3. States must pass better laws for data protection, enforce net neutrality, and amend laws that allow mass surveillance; and
4. community networks must be supported, as worldwide only 40% of people have access to the Internet.

Juan Luis Manfredi Sánchez agreed that new technologies enable the media to communicate with people via new channels. People act as members of networks, instead of merely being passive readers of news. He raised several concerns, such as: who is paying for journalism? In that context, he warned of the struggles of local

media to survive in a competitive economic environment. In order to continue to promote free speech, they must be sustained and protected.

## **Session 2 – Discussion**

In the discussion, the speakers agreed that journalists carry out many vital roles for democracy, as they act as reporters, activists, verifiers, and moderators of public debate. They recognized that the role of journalists has been strengthened, as journalists can reach people through different channels. Moreover, they have become more responsible for understanding what the public wants. Examples were given of how entrepreneurial journalism is responding to the economic crisis and how journalists are becoming their own brands. The discussion ended with an agreement that the process of defining what is/is not a journalist is not helpful. Instead, the act of journalism must serve as the framework, within which a person is not required to have certain credentials or a professional training.

## **Closing remarks**

Andrey Rikhter closed the workshop by recalling that the seminar showed that Open Journalism has affected the traditional profession of journalism. The Internet and social media have broken the monopoly which the media had on the truth. Readers, formerly known as the audience, have become watchdog of the watchdog, messenger of the messenger, and an alternative voice to traditional journalism and media. Rikhter reminded the participants that journalism, unlike all other crafts, is an open profession by definition. It is not a sacred profession, and we must think about responsibilities in a very wide sense of this word. He stated that Open Journalism can be divided in two categories: “quality Open Journalism” and “yellow Open Journalism”. The latter is also known as popular journalism, which may constitute the majority of Open Journalism (he pointed out that the same is true for traditional journalism). Lastly, Rikhter identified the issue of whether quality Open Journalism calls for higher levels of protection by the OSCE (and promotion by NGOs and other media freedom organizations). He concluded that this legal question would be left open for the next expert meeting.

## **Common themes**

Existing legal frameworks, in particular the case-law of the ECtHR, can be useful to face the challenges for journalism which were discussed. The nature of journalism has changed, and new (online) actors also make valuable contributions to public debate. They should be granted some degree of the enhanced levels of freedom of expression and journalistic freedom that were traditionally offered to the media

and journalists. Rather than defining who a “journalist” is, we must define what the act of “journalism” is. Journalism is distinct from free expression, and distinguishes itself from other types of expression due to its codes of ethics. However, journalism is facing many (financial) challenges in the current media environment. High quality investigative journalism and local media must be able to survive in a competitive environment. Journalists are increasingly vulnerable in the (online) environment. States, private actors and civil society must cooperate to ensure their safety.

### 3.3 Second Expert Meeting on Open Journalism

Vienna, 19 September 2014

The first expert meeting of the Open Journalism project brought together a group of experts with diverse backgrounds, both geographically and professionally, to discuss the effect of non-traditional and user-generated content, as well as the challenges it poses for traditional print and broadcast journalists.

The second expert meeting focussed on the human rights and legal implications of Open Journalism. The presentations and discussions focussed on new ways to protect media pluralism and the rights of non-traditional voices online.

#### Session 1 – New voices of open journalism

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| Moderator: | Geneva Overholser – Professor, School of Journalism, USC Annenberg   |
| Speakers:  | Wolfgang Kleinwächter – Professor, Aarhus University<br>Yaman Akdeniz – Professor, Bigli University, Istanbul<br>Begaima Usenova – Director, Media Policy Institute, Kyrgyz Republic<br>Gill Phillips – Director of Editorial Legal Services, <i>The Guardian</i> (pre-recorded video statement) |

This session started with a pre-recorded video statement by Gill Phillips. Phillips explained how Edward Snowden’s revelations and the Arab Spring showed how Open Journalism can benefit a newspaper. Open Journalism allows for a 360-degree exploration of topics. Open Journalism provides a rich tapestry for journalism, but it also involves challenges. Open Journalism stretches the definition of a journalist, and raises the question at what point should non-journalists participating in a story be afforded legal protection similar to a journalist?

Globalization and the emergence of the Internet also raise legal questions concerning territoriality, can newspapers be sued anywhere? Open Journalism is not only collaboration between audience and newspaper, but also between newspaper and newspaper. *The Guardian*, for example, has benefitted immensely from collaboration with *The New York Times* during the Snowden revelations, as free speech protection in the US is stronger than in the UK.

Phillips went on to explain that for the journalists involved, the functional capabilities of the Internet have challenged the way they conduct their reporting. Online

articles allow for comments where journalists can be criticized or fact-checked. This also means that journalists participating in Open Journalism have to verify online news sources such as tweets or videos. They have to make decisions on whether the source is genuine, appears genuine enough, and they have to place caveats when in doubt.

Wolfgang Kleinwächter gave a historical perspective on Open Journalism. Kleinwächter approached the topic from an Internet governance perspective. He sees the human rights dimension as a bridge to Open Journalism. A 2012 UN Human Rights Council Resolution affirmed that people enjoy the same human rights offline and online.<sup>16</sup> In line with this assertion, there is no need to invent new rights for free speech online, he submitted. Article 19 of the Universal Declaration of Human Rights (“UDHR”) says it all.<sup>17</sup> There are two aspects to Article 19: the individual dimension and institutional dimension. The individual dimension entails freedom of speech. The individual owns the right to free expression, the freedom to seek, receive and impart information. The state protects this right. The institutional dimension is freedom of the press. It is the responsibility of the media to serve the individual. When approached from this angle, new media are not very different from traditional media and there is no pressing need for new legislation.

He observed that all the media legislation (to protect these individual rights) was based on paper publications and 20<sup>th</sup>-century technologies characterized by broadcasting time and frequencies. These limitations produced a certain type of journalist, one who had to make qualitative selections. The new media are unlimited and non-territorial. While traditional media had a territorial relationship, new media are not bound to a physical territory. These developments have (dramatic) consequences for regulation. National jurisdictions are not necessarily undermined, but broadened to a global context. Kleinwächter argued that these developments have “materialized” Article 19 UDHR – which starts with “everyone” and ends with “regardless of frontiers”. These elements of the provision are now more relevant than ever. Sovereignty and territoriality have to be put into the context of a global world. With this globalization, the burden of quality selection has shifted from the journalist to the end-user. The risk of this is user confusion and the collapse of existing media. The user has to find a way to avail him-/herself of the quality media reporting he is used to. Existing media that are based on the system of limited publishing resources have to adapt to a reality of the near boundless possibilities of online news reporting. Kleinwächter concluded that for the governance of - and on - the Internet, a multi-stakeholder approach is needed between governments, the private sector, civil society and the technical community.

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16 UNHRC, ‘Resolution on The promotion, protection and enjoyment of human rights on the Internet’ (29 June 2012) A/HRC/20/8.

17 UDHR (adopted 10 December 1948) UNGA Res 217A (III), Article 19.

Yaman Akdeniz explained the need to work with social media platforms when engaging in Open Journalism, or “citizen journalism”, as he called it. The new media’s global reach enables this citizen journalism and provides access to alternative and dissenting views. Social media platforms also have certain limitations. They are private rather than public. Private corporations generally lack transparency, invoke questions about accountability, and use terms and conditions. These terms and conditions also include community guidelines and complaint- and removal policies. Moreover, users may have limited rights with regard to, for instance, free expression or privacy. These online media can also be blocked by States, as happened in Turkey with both Twitter and YouTube. With new media, States are not the only party blocking. Twitter has, for instance, adopted specific “country withheld content” policies. Under these policies, certain popular accounts that were critical of the Turkish government have been withheld, rendering them inaccessible in Turkey. These restrictions of freedom of expression are often neither clear nor transparent. Governments sometimes take it one step further when they criminally prosecute operators of social media platforms for unlawful dissemination, or individual users for Tweeting or posting on Facebook. This shows that social media platforms are the weakest link in the multi-stakeholder approach to Internet Governance.

Begaim Usenova highlighted aspects of Internet freedom in the Kyrgyz Republic, where the blocking of webpages from, for instance, Russia has happened in the past. This happened following a legislator’s recommendation to do so. Afterwards, laws were adopted to ensure that only courts can block websites. She also emphasized the Kyrgyz Republic’s dependence on Russia and the prevalence of Russian viewpoints in national media. Polls tend to show a Russian perspective.

## Session 2 – Protection of online media freedom

Moderator: Geneva Overholser – Professor, School of Journalism, USC Annenberg

Speakers: José Alberto Azeredo Lopes – Professor, Catholic University of Porto

Tarlach McGonagle – Senior researcher, Institute for Information Law (IViR)

Irina Levova – Russian Association of Electronic Communications

David Goldberg – Information rights academic and activist

In order to protect the freedoms involved in public debate, we first have to protect the outer boundaries of freedom of expression. Tarlach McGonagle argued that this outer wall does not only contain media actors within the “traditional” notion of



media, such as journalists. It also encompasses everyone else involved in contributing to public debate, including other (media) actors such as whistle-blowers and bloggers. Online dissemination of information on matters of public interest should be protected under the same legal statutes as traditional media and journalism. The European Convention on Human Rights is a living instrument. It has to be interpreted in light of present day conditions to be relevant in every individual case. The right to freedom of expression also has to be practical and effective in present day conditions. This can lead to different emphases depending on what actor in public debate invokes the right to freedom of expression. The ECHR imposes both negative and positive obligations on States. Negative obligations are situations where a State must refrain from restricting the right to freedom of expression, positive obligations entail a duty to create a favourable environment for participation in public debate for everyone and to enable the expression of ideas and opinions without fear, with emphasis on “for everyone”.<sup>18</sup>

In positioning where the outer wall of protection of freedom of expression lies, McGonagle gave a number of examples of positive obligations that have been recognised by the ECtHR. These include guaranteeing the safety and physical integrity of everyone contributing to public debate; putting in place effective criminal laws and ensuring their enforcement; taking preventive operational measures when States are made aware of threats to anyone contributing to public debate, and the adoption and enforcement of effective corrective and investigative measures. States also have the obligation to eradicate impunity, where crimes against journalists go unpunished, and to refrain from unlawful detention or arbitrary arrest or to restrict freedom of movement in any way. Finally, States must prevent a chilling effect, where the way media actors are treated discourages others from participating in public debate.

This chilling effect occurs in a number of ways. Misuse or abuse of existing legislation, sanctions, intimidation or violence, from any source, surveillance and tracking, a culture of impunity or the threat or likelihood of any of these actions can have a deterrent effect for freedom of expression. A chilling effect leads to censorial tendencies, self-censorship and an inability to contribute to public debate in an optimal way.

José Alberto Azeredo Lopes discussed the question whether protections and privileges of professional journalists can be extended or re-interpreted with regard to Open Journalism activities. Journalists, under the freedom of the press which stems from freedom of expression, can be seen as “Citizens Plus”. They have specific statutory rights and duties that the normal citizen does not have. This raises the question of what the definition of a journalist is. Who can invoke these rights and who

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<sup>18</sup> *Dink v. Turkey*, App. No. 2668/07 and others, 14 September 2010, § 136.

carries the obligation to fulfil these duties? Does a person disseminating information of public interest on social media legally qualify as a journalist? This question requires defining what “information” is and what “information of public interest” is. The devil is in the details. It is difficult in concrete cases to distinguish between information of public interest, and information which interests the public.

There are arguments for accepting a certain recognition of rights, duties, and privileges of journalists for all actors of new media. Firstly, the emergence of a global public sphere renders it difficult to make a clear distinction between journalists and other actors. Secondly, citizen involvement in the professional dissemination of information is a reality. Finally, the journalistic profession is subject to a new form/level of accountability; inaccuracies in publications immediately get contested and corrected in the online sphere.

Extending the scope of journalistic protection also carries certain risks. The first of these is the horizontal myth. While there are undoubtedly many citizens who contribute to public debate in a meaningful way, the group of citizens participating in public debate as a whole should not be put on the same level as traditional journalists. A recent study in the US on the Snowden case showed that important topics were mainly discussed outside of social media.<sup>19</sup> This risks a “spiral of silence”. In other words, social media are used for sharing entertaining content but not for discussing matters of public interest. The second risk is that if everyone is recognised as a journalist, no one is really. If anyone can invoke the rights, duties, and privileges of journalists, there no longer is a specific right to freedom of the press.

Azeredo Lopes concluded with reference to the criteria for being subject to the Portuguese media regulator. The legal framework applies to natural or legal persons who, on a regular basis disseminate any content which is subjected to editorial treatment and organised coherently. This means for instance that bloggers will not be regulated under this provision, as there is no editorial control.

David Goldberg referred to the adequacy of legal provisions, raising the example of freedom of information laws in Baltic countries. Investigative journalists did not seem convinced that the laws would be helpful, since common practice in those countries was to nurture contacts with well-placed individuals and to receive the information through those channels. These freedom of information laws were, however, the starting point of what has now become Open Journalism. Goldberg called this process “disintermediation”.

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19 Keith Hampton and others, ‘Social Media and the Spiral of Silence’, PEW Research Center, August 2014.

When discussing what Open journalism is, there should also be a debate on what “good” Open Journalism is. Goldberg named a number of starting places for guidance on how to shape a code of ethics for open journalism in the BBC’s user-generated content policy and *The Guardian’s* community standards and participation guidelines.<sup>20</sup> A recent study on user-generated content in news concluded that news managers need to understand the implications of integrating user-generated content for their staff, their audiences and the people who create the content.<sup>21</sup> Finally, Goldberg raised the importance of responsible usage of user-generated content. If the content creators endangered themselves or broke the law to create the content, it should not be used.

### Common themes

The main focus of the second expert meeting was the growing importance of new media as opposed to traditional media. New media offer a multitude of possibilities for the field of journalism, such as the facilitation of collaborative work through the Internet and the practically unlimited resources of a digital age - as opposed to traditionally finite resources of newspaper space or broadcasting time. However, journalism via new media also carries certain risks. Unlimited media resources have decreased quality reporting, and shifted the onus of content selection from editors to consumers. Collaborative work between professional journalists and citizens also brings problems for verification of sources. Irrespective of the risks and possibilities, new media have brought journalists and consumers closer together through the immediacy of feedback and fact-checking.

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20 The BBC’s Guidance Note User-Generated Content; The Guardian’s Community standards and participation guidelines.

21 Claire Wardle, Sam Dubberley, and Pete Brown, ‘Amateur Footage: A Global Study of User-Generated Content in TV and Online-News Output’, TOW Center for Digital Journalism, April 2014.

### 3.4 Third Expert Meeting on Open Journalism

Vienna, 9 December 2015

The first expert meeting of the project on Open journalism on 5 May 2014 brought together experts from throughout the OSCE region to discuss the practice of terminologies related to the notion and effect of user-generated materials on traditional media, as well as the challenges it brings to traditional print and broadcast journalists.

The second expert meeting on 19 September 2014 focussed on human rights and legal implications of Open Journalism. The presentations and discussions stressed the need for protection of new voices as well as exploring the best ways to protect media freedom online.

In her opening remarks, the then OSCE Representative on Freedom of the Media, Dunja Mijatović, stressed the importance of not defining journalism as a key take-away from the previous meetings. A broader interpretation of journalism will include actors participating in Open Journalism. While technological changes mean that journalism and media are irreversibly changing, our human rights remain the same and our rights offline and online are the same.

The third expert meeting focussed on how intermediaries affect the way Open Journalism content is distributed, and the relationship between intermediaries, public authorities, and the adequate protection of human rights in the area of Open Journalism. Issues such as anonymity and hate speech on Internet platforms, the avoidance of private censorship, and the pressure State authorities can exert on intermediaries were addressed. Mijatović explained that these intermediaries include search engines, micro-blogging websites, and social media platforms.

Before the first session started, a pre-recorded video statement by David Kaye, UN Special Rapporteur on Freedom of Expression, was shown. Kaye raised a couple of questions concerning freedom of expression in a media context: (i) what standards should the ICT sector be using for regulating content and for regulating their own activities with or in repressive States?, and (ii) what obligations do States owe various stakeholders when it comes to promoting and protecting freedom of expression in the ICT sector? These questions concern the well-established notion of public space and public forum, when these spaces are privately owned.

#### Session 1 – Role and importance of intermediaries in open journalism

|            |   |
|------------|---|
| Moderator: | Yaman Akdeniz – Professor, Bigli University, Istanbul           |
| Speakers:  | Gabriella Cseh – Head of CEE Policy, Facebook                   |
|            | Bill Echikson – Founder and Director, E+Europe                  |
|            | Miquel Peguera – Professor of Law, Open University of Catalonia |

Yaman Akdeniz, moderator of this session, kicked off the session by underlining that not only States have certain obligations when it comes to protecting freedom of expression, but companies (including those operating transnationally online) have obligations as well. These can be both negative, to refrain from violating rights, and positive, to ensure the effective exercise of rights. Akdeniz went on to provide an answer to the first question that David Kaye posed by referring to the following international instruments: the UN Global Compact “Protect, Respect and Remedy” framework,<sup>22</sup> the OECD “Guidelines for Multinational Enterprises”,<sup>23</sup> the ILO “Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy”.<sup>24</sup>

Miguel Peguera spoke next, on the topic of intermediary protection from a legal perspective. Intermediaries are at risk of liability for content they store or disseminate. Many legal systems, such as the US and in Europe, have adopted measures to protect intermediaries from liability by designating them as safe harbours. In the European Union (EU), this principle is laid down in the E-Commerce Directive (“ECD”).<sup>25</sup> The protection that intermediaries are granted under the ECD has a number of weaknesses. First, there is no protection from injunctions. Secondly, the Court of Justice of the European Union (“CJEU”) is restrictive in the interpretation of the safe harbour provision. The main obstacle is that the intermediary’s activity must be of a mere technical, passive and automatic nature. This means the intermediary has neither knowledge of, nor control over, the information stored or transferred. Thirdly, the “actual knowledge” as a key requirement for an intermediary’s obligation to act is not defined in the ECD. Moreover, the relationship of the actual knowledge criteria to the “awareness of facts or circumstances that reveal the presence of illegal material” criteria is unclear. Fourthly, the EU system lacks a notice and takedown system that provides appropriate safeguards against abuse or an opportunity for the user to defend the legality of content. Finally, there is no specific protection for hyperlinking to illegal material.

The legal framework of the ECD has been interpreted and referred to by the CJEU and the European Court of Human Rights (“ECtHR”), respectively. Peguera first discussed the landmark case of *Delfi v. Estonia*.<sup>26</sup> In this case, the Grand Chamber of the ECtHR deemed the restriction of comments on an Internet news portal a

22 United Nations – ‘Guiding Principles on Business and Human Rights Implementing the United Nations “Protect, Respect and Remedy” Framework’.

23 Organisation for Economic Co-operation and Development – ‘Guidelines for Multinational Enterprises’.

24 International Labour Organization – ‘Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy’.

25 Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.

26 *Delfi v. Estonia* [GC], App. No. 64669/09, 16 June 2015.

permissible interference with the freedom of expression in the particular circumstances of the case. This outcome appears to be hard to reconcile with the principles behind the E-Commerce Directive. In other cases, the ECtHR has found a violation of the freedom of expression of users of online media.<sup>27</sup> Another development is the recognition of a “right to be forgotten” by the CJEU in the *Google Spain* case.<sup>28</sup> This “right” entails that individuals may request removal of certain search engine results, without the need to prove actual harm. Peguera pointed out that Google’s transparency report stated that since the judicial recognition of this right, Google has received requests to delist over one million URLs, and has granted around 42% of these.<sup>29</sup> The EU’s General Data Protection Regulation (“GDPR”) also contains a right to be forgotten which is broader than the previously mentioned one.<sup>30</sup> Peguera argued that the GDPR can be perceived as a threat to media freedom. This right does not require delisting of a search result, but the entire removal of the webpage. Another threat to media freedom is the linking to copyright infringing material, though it is unclear what the legal qualification of such an act is, which brings uncertainty.

Gabriella Cseh approached the topic of human rights in an online context from the perspective of an intermediary. Intermediaries can play an important role in the exercise of freedom of expression, for instance in areas where traditional journalists are not present. Intermediaries will need to process various sorts of speech, ranging from benign messages to messages amounting to hate speech. It is important to provide guidance and clarity in the processes that govern the removal of content. The exercise of determining when content is hate speech or illegal for other reasons is hardly ever clear-cut and requires in-depth knowledge of the language and cultural background.

Cseh highlighted a number of threats that have emerged in recent years that restrict freedom of speech online. A first threat is the tendency to adopt overly broad restrictions to freedom of speech, such as the restriction of content that is offensive or sensitive. In some instances, these measures are adopted as a means to provide higher levels of security against perceived terrorist threats. A second threat is the imposition of liability on intermediaries for expressions made by their users. Thirdly, intellectual property and cyber security legislation are increasingly used as grounds for *de facto* speech restrictions. From an intermediary’s perspective, there is a need

27 E.g. *Cengiz and Others v. Turkey*, App. Nos. 48226/10 and 14027/11, 1 December 2015.

28 *Google Spain v. AEPD and Mario Costeja González*, C-131/12 (CJEU, 13 May 2014).

29 Google Transparency Report - Search removals under European privacy law (please note: this is a current version of the report).

30 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

for policy that is principled, implementable, and explicable. These principles must apply globally and be technically achievable.

Bill Echikson opened his presentation by noting that when he first became involved with Internet policy issues in 2008, freedom of expression was of primary concern in the discussion. Nowadays, it seems that freedom of expression is forgotten and takes a third place behind privacy and security. Herein also lies a threat to media freedom: lack of awareness of the nature of the threats to the media. Echikson went on to follow up on the right to be forgotten from the *Google Spain* case and the GDPR which Peguera first mentioned. The danger lies in the broad definition that the GDPR introduces for such a right. There appears to be no room in these discussions for a right to be remembered.

In Echikson's opinion, all the developments that Peguera mentioned previously mean that we are moving towards an obligation for intermediaries to proactively screen content. This is worrisome as the current legal framework, one of only imposing a duty to take down content when there has been notice, has created a favourable environment for growth of the Internet. Echikson opined that when European law- and policy-makers place emphasis on privacy and security over free expression, intermediaries will be more willing to comply with restrictions on freedom of speech.

### **Discussion**

Over the course of the first session on the role and importance of intermediaries in Open Journalism, gaps in current legislation and potential sources of inspiration for future legislation were discussed. During the discussion following the presentations, Ranking Digital Rights posed a number of critical questions that new principles, either of a self-regulatory nature or government-imposed regulation, should aim to provide answers to. These questions saw to the process of content restriction through enforcement of community standards and terms of service. What are the criteria for such restrictions? What information regarding specific restrictions should be disclosed by platforms, and to whom? What avenues are open to individuals for filing grievance when content they are in some way involved with is restricted?

### **Common themes**

A recurrent theme during the third expert meeting was the absence of a clear legal system governing an Internet intermediary's liability for content that is shared or hosted on its platform. A second theme was the uncertainty regarding the threshold of requiring intermediaries to actively intervene in content on their platforms.

Lastly there was a focus on restrictions of online free speech through court or government-imposed provisions, such as the right to be forgotten in the recent *Google Spain* ruling and the (then) pending GDPR.

## Session 2 – Relationship between intermediaries and State authorities in the area of open journalism

|            |  |
|------------|--|
| Moderator: | Wolfgang Kleinwächter – Professor of International Communication Policy and Regulation, Aarhus University  |
| Speakers:  | Tim Karr – Senior Director of Strategy, Free Press<br>Ben Wagner – Director, Center for Internet and Human Rights<br>Irina Levova – Founder and Strategy Director, Internet Research Institute |

Wolfgang Kleinwächter opened the session by stating that the Internet is managed in a multi-stakeholder environment, in which civil society, governments and private companies have to work together. The particularities of this multi-stakeholder model still need to be carved out and implemented. This session focused on the role of the private sector and governments in the area of Open Journalism, and set out to discuss the following questions: How should intermediaries be protected from pressure coming from State authorities? How should intermediaries handle requests coming from State authorities? What are the implications in this area of the ruling on the “right to be forgotten” and the *Delfi* case? Are there possible forms of fair cooperation between intermediaries and State authorities?

The first speaker, Tim Karr, highlighted the importance of the basic open protocol (which became the World Wide Web): its openness. Due to the process of “disintermediation”, traditional distribution channels no longer had full control over information dissemination, and people could interact more directly with sources. “Disintermediation” enabled bloggers to offer alternative outlets to the mainstream media. However, the process of “reintermediation” put social media companies and Internet access providers in a powerful position. Due to “reintermediation”, public discussion has been privatized on the private platforms of social media companies.

Karr identified that two challenges for Open Journalism arise due to the powerful position of Internet intermediaries: 1) Internet intermediaries act in their own interest: their decision-making about content is based on their corporate Terms of Service, rather than the right to freedom of expression; 2) Internet intermediaries also act in the interest of governments as they are subjected to governmental requests for surveillance and content removal. Multiple initiatives have been set up



to face these challenges, such as the Manila Principles.<sup>31</sup> Lastly, Karr claimed that in order to guarantee that these platforms ensure the fundamental rights of users, Internet users must be invited as stakeholders in the multi-stakeholder debate.

According to Ben Wagner, the Manila Principles are not being followed, as Internet intermediaries have their own internal frameworks, which govern the regulation of content on their platforms. He expressed concern that the transparency reports of Internet intermediaries do not provide accountability, and that their content regulation is not based on a common international framework which provides comparable standards of removal. In order to know what form of regulation is most appropriate, he claimed that we must first get insight into the current regulation of online content by enforcing more transparency on Internet intermediaries.

Subsequently, Irina Levovo set out the Russian approach to Internet regulation. She gave multiple examples of Russian legislation, and of what kind of measures Russia is taking to regulate online content. During the discussion that followed her presentation, no clear agreement was reached on the preferred (broadness of) state legislation.

## Discussion

In the afternoon discussion, the speakers stressed the importance of protecting companies from being held legally liable for user-generated-content, in light of the *Delfi v. Estonia* judgment by the ECtHR.<sup>32</sup> It was pointed out that such responsibility could lead to excessive removal of user-generated content in order to avoid liability.

Moreover, the concern was expressed that governments increasingly exercise control over online content by influencing the content regulation of Internet intermediaries, and by outsourcing their surveillance activities.<sup>33</sup> As the responsibility to uphold human rights lies with the state, this may not be passed on to the private

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31 The Manila Principles were developed by civil society, and aim to give policymakers and intermediaries a framework which they can use when they set up policies, legislation, and practices regarding intermediary liability for user-generated content. The Manila Principles have the objective to stimulate liability regimes which protect the fundamental rights of users. For more information see <https://www.manilaprinciples.org/>.

32 *Delfi AS v. Estonia* [GC], App. No. 64569/09, ECtHR 2015. More recently, the liability of Internet intermediaries was discussed in: *MTE and Index.hu Zrt v. Hungary*, App. No. 22947/13, ECtHR 2 February 2017 and *Rolf Anders Daniel Pihl v. Sweden*, App. No. 74742/14, ECtHR 9 March 2017.

33 For more on this topic, see P. Leerssen, 'Cut Out By The Middle Man: The Free Speech Implications Of Social Network Blocking and Banning In The EU', *JIPITEC*, 2015-2, pp. 99–119.

sector, and governments must also follow due processes regarding content removal.<sup>34</sup>

Furthermore, traditional media companies had a strong sense of responsibility and followed journalistic codes of ethics. However, multiple speakers claimed that corporate social responsibility is not the priority of Internet intermediaries, as they have strong commercial interests. Therefore, it was suggested that Internet intermediaries could follow similar codes of ethics. No clear agreement was reached on whether or not Internet intermediaries should be granted a public service role.

From the perspective of the user, media literacy was identified as a vital ingredient in the process of strengthening the position of users, and it was stressed that public education is needed in all communities. The discussion revealed the importance of taking on a multi-dimensional approach, which is built upon legislation, technical solutions, accountability mechanisms, voluntary initiatives such as the Global Network Initiative,<sup>35</sup> and global standards put forth by civil society, such as the Manila Principles. The speakers agreed that ultimately, all stakeholders must enhance their cooperation to serve the rights and freedoms of users, which will strengthen Open Journalism.

### Closing remarks

In her closing remarks, Dunja Mijatović, then OSCE Representative on Freedom of the Media, recalled that the OSCE launched this series of workshops in order to respond to the problems that OSCE States are facing in relation to Open Journalism. She stated that from a freedom of expression and freedom of the media perspective, we need to consider the desirability of more accountability and transparency from Internet intermediaries very carefully. If State responsibilities are given to private actors, it is questionable whether mechanisms will exist to protect individuals, and safeguard free expression and freedom of the media. In Mijatović's opinion, free speech cannot be adequately protected by private companies.

Mijatović pointed out that journalism is affected by all issues that were discussed, namely access to information, source protection, but also the dissemination of

34 In this context, it was suggested that Internet intermediaries would only have to follow decisions of content-removal based on a ruling of independent courts, rather than requests of governments. A new Brazilian law was given as an example of a best practice: Law No. 12.965, 23 April 2014 (known as the 'Marco Civil da Internet' (PT)/the 'Brazilian Civil Rights Framework for the Internet' (EN)).

35 In 2008 the self-regulatory body 'The Global Network Initiative' was set up to react to the increasing influence of governments on the removal of content on the platforms of Internet intermediaries. It aims to ensure that removal requests are being processed in a fair and transparent manner. For the principles and guidelines, see <https://globalnetworkinitiative.org/implementationguidelines/index.php>.

information in general due to the powerful position of Internet intermediaries. She stated that when States intervene in activities of intermediaries, in particular by requesting the removal of content, we must remind ourselves that the following principles should always apply: the rule of law, proportionality, due process, and the role of judicial oversight.<sup>36</sup> In sum, she warned that we should not give responsibility to private actors at the expense of free speech and freedom of the media.

### **Common themes**

Recurrent points included the view that Internet intermediaries should be shielded from liability for user-generated content. State laws which enforce such liability are considered undesirable. The right to freedom of expression and freedom of the media should be the starting point in the drafting of recommendations, especially regarding transparency and accountability of Internet intermediaries. The dangers of privatization of public discourse were also underscored. Concern was expressed at the power of private companies and their ability to merely act in their own interest and in the interests of governments, rather than in the interests of the user. The practice of governments trying to outsource their core functions and responsibilities to Internet intermediaries was also noted as a matter of concern. By way of push-back, it was re-affirmed that human rights which apply offline are also relevant for the online environment.

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<sup>36</sup> Mijatović noted that an increasing number of States is giving powers to quasi-judicial agencies, without judicial oversight.

### 3.5 15 Recommendations to OSCE participating states on open journalism

| <b>Communiqué 05/2014 (First Expert Meeting)</b>  |  |
|---|--|
| 1   | The participating States need to acknowledge that journalism has irreversibly changed and that new actors are contributing to the public debate through the media.   |
| 2   | The participating States need to refrain from trying to define who is a journalist. It was difficult to define who is a journalist 25 years ago; it is even more complex today.  |
| 3   | The new media actors need to enjoy at least some of the protection and privileges that were in the past only granted to traditional media.   |
| 4   | There is a clear need to improve “media and Internet literacy” in order for the public to have a better understanding of the new environment and to enable to critically assess where the information is coming from.  |
| <b>Communiqué 07/2014 (Second Expert Meeting)</b> |  |
| 5   | The participating States need to recognise that the new participants in journalism act as public watchdogs, contribute to a free and open society, make systems of government more accountable, and foster democratic development by connecting people and building bridges between nations.                         |
| 6   | The participating States need to ensure that the Internet remains an open platform for free flow of information and ideas, and that any proposals to regulate the Internet properly respect and promote freedom of expression and freedom of the media.  |
| 7   | Online content should be dealt with as any other form of expression, and there is therefore no need to create new principles of regulation to deal with illegal or harmful content.  |
| 8   | The new media actors should also enjoy some if not all of the privileges that were in the past only granted to traditional journalists. They might include, but not necessarily be limited to confidentiality of sources, media accreditation, information requests, and perishability of news.                      |
| 9   | The existing national systems of media self-regulation should be open to new media actors.   |
| <b>Communiqué 01/2016 (Third Expert Meeting)</b>  |  |
| 10  | Public authorities should protect freedom of expression, media freedom and the free flow of information in all the facets and areas of the online world. The important presence and role of intermediaries should not endanger the openness, diversity and transparency of Internet content distribution and access. |

|    |   |
|----|---|
| 11 | Excessive and disproportionate provisions regarding content takedown and intermediaries' liability create a clear risk of transferring regulation and adjudication of Internet freedom rights to private actors and should be avoided. States should also discourage intermediaries from automatizing decisions with clear human rights implications. |
| 12 | International documents on human rights responsibilities for non-state actors, as well as multi-stakeholder debates and initiatives such as the Manila Principles, should be given due consideration in this area.  |
| 13 | The legitimate need to protect privacy and other human rights should not undermine the principal role of freedom of the media and the right to seek, receive and impart information of public interest as a basic condition for democracy and political participation.  |
| 14 | Making private intermediaries more transparent and accountable is a legitimate aim to be pursued by participating States through appropriate means. However, this must not lead to excessive control by public authorities over online content.   |
| 15 | Decisions addressed to intermediaries establishing restrictions or ordering the takedown of Internet content should be adopted according to law, by judicial or other independent adjudicatory authorities, following due process and with full respect to the principles of necessity and proportionality.   |



## **4. Open Journalism: Selected Practices from Across the OSCE**

## Introduction

This section has been written in December 2017 and has had the benefit of being able to draw on the output of the Open Journalism project run by the OSCE Representative on Freedom of the Media between 2014 and 2015. It provides an overview of selected interesting and promising practices concerning Open Journalism from a number of the OSCE participating States. Those practices include domestic legislation, court judgments, regulatory authority decisions and guidance, and initiatives of media organisations. While modest in scope, and in no way representative of the 57 participating States of the OSCE, the overview provides a quick snapshot of a range of noteworthy practices across the OSCE. The overview has been compiled on the basis of desk research and it has been arranged on a country-by-country basis and in alphabetical order. The countries in which relevant practices have been identified are: France, Ireland, Montenegro, the Netherlands, Poland, Romania, Serbia, the United Kingdom and the United States.

The OSCE Representative on Freedom of the Media has described Open Journalism as the “ongoing media development, made possible by the Internet, in which editorial offices more frequently rely on users to provide them with information, give ideas and comments on stories even before they are published, and also assist in processing various documents”.<sup>1</sup> The OSCE Representative on Freedom of the Media has issued a number of recommendations on Open Journalism for participating States, including that “participating States need to acknowledge that journalism has irreversibly changed and that new actors are contributing to the public debate through the media”.<sup>2</sup> This section will therefore discuss the selected practices in light of the OSCE Representative on Freedom of the Media’s recommendations,<sup>3</sup> and make relevant references to these recommendations.

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- 1 Dunja Mijatović, OSCE Representative on Freedom of the Media, “The Main Challenges for the OSCE Representative on Freedom of the Media,” (2013) 24 *Security and Human Rights* 325, p. 327. See also Tarlach McGonagle, “User-generated Content and Audiovisual News: The Ups and Downs of an Uncertain Relationship,” in *Open Journalism, IRIS plus 2013-2* (2013, European Audiovisual Observatory, Strasbourg), <http://www.obs.coe.int/documents/205595/865106/IRIS+plus+2013en2+LA.pdf/31de1179-1b3e-4a11-90a2-3433fe592d17>.
  - 2 OSCE Representative on Freedom of the Media, Communiqué 05/2014 Recommendations by OSCE Representative on Freedom of the Media on Open Journalism, 22 May 2014, <http://www.osce.org/fom/118873>. See also, OSCE Representative on Freedom of the Media, 2nd Communiqué on Open Journalism 07/2014, 28 November 2014, <http://www.osce.org/fom/128046>; and OSCE Representative on Freedom of the Media, Communiqué No.1/2016 3rd Communiqué on Open Journalism, 29 January 2016, <http://www.osce.org/fom/219391>.
  - 3 See also, Martin Scott, *Guidelines for broadcasters on promoting user-generated content and media and information literacy* (2009), Commonwealth Broadcasting Association and Unesco, <http://www.unesco.org/new/en/communication-and-information/resources/publications-and-communication-materials/publications/full-list/guidelines-for-broadcasters-on-promoting-user-generated-content-and-media-and-information-literacy/>.



## France

An issue concerning Open Journalism that has been highlighted by the OSCE Representative on Freedom of the Media concerns how to “make the mix of journalism and user generated content reliable and trustworthy” and enhance “respect for ethical rules in the new environment”.<sup>4</sup> Media organisations and social media platforms have been partnering in a number of countries in order to ensure that content is more reliable and trustworthy, and an illustrative example is that of France. In 2017, Facebook partnered with eight French media organisations (Le Monde, Agence France-Presse, BFM-TV, France Télévisions, France Médias Monde, L’Express, Libération, and 20 Minutes) to enable users to flag information considered to be fake.<sup>5</sup> The links flagged are gathered together on a portal to which the partner media organisations have access and are able to check the information. If two partner organisations determine that the reported content is fake and post a link that attests to this, the content will then be visible to users with an icon indicating that two “fact-checkers” question the truthfulness of the information. If a user wishes to share the content, a window will open with a warning. It will not be possible to use such content for advertising on Facebook. Additionally, sites circulating fake information will have reduced visibility.<sup>6</sup> Moreover, Google (through its media division Google News Lab) and the media network First Draft announced in 2017 the launch of CrossCheck, a collaborative checking tool.<sup>7</sup> This is to contain the circulation of misleading and false information. Sixteen editorial teams have joined the new effort (including AFP, Les Echos, Le Monde, France Télévisions, and La Provence). Members of the public will be able to report dubious content encountered on the Internet or social networks, or ask questions on a specialist platform so that CrossCheck’s partners can investigate and reply to requests directly on the platform.<sup>8</sup>

A further issue relating to Open Journalism in France concerns the use by traditional media organisations of social media during coverage and reporting of terrorist attacks. In this regard, the national audiovisual regulatory authority in France (Conseil Supérieur de l’Audiovisuel) (CSA) adopted a set of guidelines on audiovisual coverage of terrorist acts, and the increasing role of social networks.<sup>9</sup> Notably, the

4 OSCE Representative on Freedom of the Media, Communiqué 05/2014 Recommendations by OSCE Representative on Freedom of the Media on Open Journalism, 22 May 2014, <http://www.osce.org/fom/118873>.

5 Amélie Blocman, “Facebook and Google join forces with French media to combat fake news,” IRIS 2017-3/4, <http://merlin.obs.coe.int/iris/2017/3/article14.en.html>.

6 *Ibid.*

7 CrossCheck, <https://firstdraftnews.com/about/crosscheck-newsroom>.

8 Amélie Blocman, “Facebook and Google join forces with French media to combat fake news,” IRIS 2017-3/4.

9 Conseil Supérieur de l’Audiovisuel, Précautions relatives à la couverture audiovisuelle d’actes terroristes, 25 October 2016, <http://www.csa.fr/Espace-juridique/Codes-de-bonne-conduite-et-textes-de>

guidelines state that publishers should exercise particular caution when deciding to use images or sounds from amateur recordings, by reinforcing verification processes, and contextualizing them.<sup>10</sup> The guidelines state that amateur footage of terrorist attacks should only be paid for in exceptional circumstances.<sup>11</sup>

Finally, it should also be noted that in 2013 the CSA revised its decision to ban specific references to social networks in radio and television broadcasts.<sup>12</sup> As Blocman notes, it had become a frequent occurrence for channels to refer viewers to the pages devoted to their programmes on social networks such as Facebook, or to invite them to respond with a Tweet. However, radio and television broadcasts had only been allowed to use the generic term “social networks”. In May 2011, the CSA indicated that it considered referring viewers or listeners to a social network without mentioning its name was informative, whereas giving the actual name of the social network constituted advertising, which contravened the provisions of Article 9 of the Decree of 27 March 1992 prohibiting surreptitious advertising - a position that was criticised by the profession at the time.<sup>13</sup> The CSA now allows social networks to be named in reference to a source of information.

## Ireland

Ireland has been embracing and fostering Open Journalism, while also confronting some of its challenges. First, as the OSCE Representative on Freedom of the Media has noted, the “audience is now participating in the news-making and distribution and a growing number of alternatives to traditional media actors are all contributing to the public debate”.<sup>14</sup> In this regard, some of the traditional media in Ireland have adopted guidelines to reflect Open Journalism. For instance, the national public service broadcaster, RTÉ, as part of its Journalism Guidelines, gives detailed Guidance on Reporting from the Internet and Social Media Services.<sup>15</sup>

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precautions-relatives-a-la-couverture-audiovisuelle/Precautions-relatives-a-la-couverture-audiovisuelle-d-actes-terroristes. See Amélie Blocman, “CSA adopts guidelines on audiovisual coverage of terrorist acts,” IRIS 2017-1:1/14, <http://merlin.obs.coe.int/iris/2017/1/article14.en.html>.

- 10 Conseil Supérieur de l’Audiovisuel, Précautions relatives à la couverture audiovisuelle d’actes terroristes, 25 October 2016.
- 11 Amélie Blocman, “CSA adopts guidelines on audiovisual coverage of terrorist acts,” IRIS 2017-1:1/14, <http://merlin.obs.coe.int/iris/2017/1/article14.en.html>.
- 12 Amélie Blocman, “Referring Viewers to a specific Social Network Constitutes a Form of surreptitious Advertising,” IRIS 2011-7:1/22, <http://merlin.obs.coe.int/iris/2011/7/article22.en.html>.
- 13 *Ibid.*
- 14 OSCE Representative on Freedom of the Media, Communiqué 05/2014 Recommendations by OSCE Representative on Freedom of the Media on Open Journalism, 22 May 2014, <http://www.osce.org/fom/118873>.
- 15 RTÉ, *Journalism Guidelines*, September 2014, <https://static.rasset.ie/documents/about/rte-journalism-guidelines-2014.pdf>.

The national regulatory authority for broadcasting, the Broadcasting Authority of Ireland (BAI), also pays attention to Open Journalism. Its Code of Fairness, Objectivity & Impartiality in News and Current Affairs requires broadcasters to have in place “appropriate policies and procedures for handling contributions via social media”.<sup>16</sup> Further, under the BAI’s guidelines on election coverage, “additional steps should be implemented by broadcasters to ensure that on-air references to social media are accurate, fair, objective and impartial”.<sup>17</sup>

The Irish courts have also addressed the issue raised by the OSCE Representative on Freedom of the Media that “new media actors need to enjoy at least some of the protection and privileges that were in the past only granted to traditional media”.<sup>18</sup> In this regard, the Irish High Court has held that a blogger also enjoys a right to protection of sources, including being “entitled to assert an immunity from disclosure”.<sup>19</sup> As the High Court noted, “the traditional distinction between journalists and laypeople has broken down in recent decades, not least with the rise of social media”.<sup>20</sup> However, Ireland has also dealt with some of the challenges associated with open journalism, where a candidate in the Irish presidential elections initiated legal proceedings against RTÉ over a televised election debate.<sup>21</sup> In December 2017, RTÉ settled the case, issued an apology and paid undisclosed damages.<sup>22</sup> The claim centres on RTÉ’s 2011 presidential election debate, when the presenter had questioned the candidate about a statement concerning him that had been made on the supposed official Twitter account of another candidate. It later turned out that the tweet had been attributed, in error, to the official Twitter account of the other candidate. In 2012, the Broadcasting Authority of Ireland held that the broadcast, of what amounted to unverified information at the time of broadcast, from a source wrongly accredited by the presenter, was unfair to the complainant, and violated the Broadcasting Act 2009.<sup>23</sup>

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16 Broadcasting Authority of Ireland, Code of Fairness, Objectivity & Impartiality in News and Current Affairs, April 2013, section 15, <http://www.bai.ie/en/download/129469/>.

17 Broadcasting Authority of Ireland, Rule 27 Guidelines General Election Coverage, November 2015, section 8, <http://www.bai.ie/en/download/128775/>.

18 OSCE Representative on Freedom of the Media, 2nd Communiqué on Open Journalism 07/2014, 28 November 2014, <http://www.osce.org/fom/128046>.

19 *Cornec v. Morrice & Ors* [2012] IEHC 376, para. 68, <http://www.bailii.org/ie/cases/IEHC/2012/H376.html>.

20 *Ibid.*, para. 65.

21 Ronan Ó Fathaigh, “High Court refuses to strike out presidential candidate’s claim over televised election debate,” IRIS 2017-6:1/21, <http://merlin.obs.coe.int/iris/2017/6/article21.en.html>.

22 RTÉ, “RTÉ apologises and pays Gallagher settlement over tweet,” 19 December 2017, <https://www.rte.ie/news/2017/1219/928417-sean-gallagher-rte/>.

23 Damien McCallig, “Broadcast of Unverified “Tweet” Unfair to Presidential Candidate,” IRIS 2012-5:1–27, <http://merlin.obs.coe.int/iris/2012/5/article27.en.html>.

## Montenegro

The OSCE Representative on Freedom of the Media has noted the challenges in making “the mix of journalism and user generated content reliable and trustworthy”, and in ensuring “respect for ethical rules in the new environment”.<sup>24</sup> In 2016, the Agency for Electronic Media of Montenegro adopted a Rulebook on electronic publications which introduces specific rules for the functioning of online media.<sup>25</sup> The Rulebook defines electronic publications as editorially-shaped Internet pages and/or portals that contain programme content with audio or video materials that are transmitted to the public, as well as electronic versions of print media and/or media information which are made available to the general public.<sup>26</sup> Besides the prohibition to spread hate speech and violence, the provider is obliged to respect the privacy and dignity of an individual<sup>27</sup> and citizens.<sup>28</sup> Interestingly, when content appears to report about wrongful acts or contains negative information concerning any individual or organisation, that person has to be given the opportunity to provide comments and its views on this report.<sup>29</sup> Moreover, a provider of electronic communications needs to adopt a set of rules and measures in relation to the comments section. First, the clear and precise rules for posting comments need to be in place and be easily accessible and visible. Secondly, anonymity is not allowed and the electronic publication is under an obligation to hold a register and collect the personal information of the person posting comments. In addition, within 60 minutes after publication,<sup>30</sup> a service provider has to remove the content that is not in line with the Rulebook on electronic publications.<sup>31</sup>

24 OSCE Representative on Freedom of the Media, Communique 05/2014 Recommendations by OSCE Representative on Freedom of the Media on Open Journalism, 22 May 2014, <http://www.osce.org/fom/118873>.

25 Daniela Brkic, “Rulebook on electronic communications comes into force,” IRIS 2016-5/22, <http://merlin.obs.coe.int/iris/2016/5/article22.en.html>.

26 *Ibid.*

27 The Rulebook on electronic publications, Article 16, [http://www.ardcg.org/index.php?option=com\\_docman&task=doc\\_download&gid=1682&Itemid=26](http://www.ardcg.org/index.php?option=com_docman&task=doc_download&gid=1682&Itemid=26).

28 *Ibid.*

29 *Ibid.*, Article 17(3).

30 *Ibid.*, Article 34(2).

31 *Ibid.*, Articles 32–36.

## The Netherlands

As in many other countries, the traditional media in the Netherlands use user-generated content, such as comments, tweets, photos and tips from citizens. For instance, the Dutch Broadcast Foundation NOS has a network of people, selected by and under the responsibility of the special editorial office, NOS Net.<sup>32</sup> Over 100 “news partners”, which have widely varied backgrounds, share news, knowledge and experience with the broadcaster. Many Dutch newspapers, such as *Het Financieel Dagblad*,<sup>33</sup> *De Telegraaf*,<sup>34</sup> *Nu.nl*,<sup>35</sup> and *Het NRC Handelsblad*,<sup>36</sup> have even created, next to the general option to post reader comments, (online) publication platforms for citizen journalists. As *Het Financieel Dagblad* mentions, it sees the Internet as an “interactive medium where readers and the editors can meet”.<sup>37</sup> However, the editors do have the final say and therefore editorial control over the newsfeed. In addition, newspapers have all kinds of self-regulation and bind readers and citizen journalists, to terms and conditions to ensure the quality of the news.<sup>38</sup>

A positive development in respect of Open Journalism is the introduction of the Publeaks platform.<sup>39</sup> This platform provides counter-surveillance technical tools to facilitate secure and confidential communications between journalists from a wide variety of media organisations and their sources. Strengthening the cooperation of citizen journalists is one of the central pillars of Publeaks, because “society depends on engaged citizens to raise concerns for the public good”.<sup>40</sup>

Not only media organisations, but also the Dutch Journalism Fund (Stimuleringsfonds voor de Journalistiek) acknowledges citizen journalism. The Dutch Journalism

32 NOS, NOS Net, <https://over.nos.nl/uw-reacties/nos-net>.

33 *Het Financieel Dagblad*, “Terms for the submitted articles for the Opinion & Dialogue section,” <https://fd.nl/frontpage/incoming/1088401/voorwaarden-voor-bijdrage-aan-opinie>.

34 For information on the online publication platform of *De Telegraaf*, see <http://www.telegraaf.nl/watuzegt/>; and for information on the online publication platform of *Telegraaf Media Groep*, see <http://www.dichtbij.nl/>.

35 For information about the online publication platform of *Nu.nl*, see: <https://www.nu.nl/nieuw-nuij.html>.

36 *Het NRC Handelsblad*, “Send letters and articles to the opinion editorial office of Het NRC Handelsblad,” <https://www.nrc.nl/opinie-contact/>.

37 *Het Financieel Dagblad*, “Terms and conditions of use,” <https://fd.nl/service/voorwaarden#aanwelke-voorwaarden-moeten-reacties-op-fd-nl-voldoen>.

38 See for instance: *Het NRC Handelsblad*, “The NRC-Code,” [https://www.nrc.nl/static/front/pdf/NRC%20Gedragscode%20HR%20\(006\).pdf](https://www.nrc.nl/static/front/pdf/NRC%20Gedragscode%20HR%20(006).pdf); *Telegraaf Media Group*, “Terms and conditions of use,” <https://www.tmg.nl/nl/algemene-gebruiksvoorwaarden>.

39 For information about Publeaks in English, see: <https://www.somo.nl/support-us/publeaks/>.

40 Publeaks, <https://www.publeaks.nl/>; <https://www.publeaks.org/>; Corine de Vries, Teun Gautier en Mieke van Heesewijk, “Publeaks, a hatch that protects the source and the journalist”, 8 November 2013, Villamedia, <https://www.villamedia.nl/artikel/publeaks-een-luik-dat-de-bron-en-de-journalist-beschermt>.

Fund gives a high priority to research and development of hyper-local news, and in line with this, citizen journalism.<sup>41</sup> Therefore, it funds journalistic innovations such as Newsroom Enschede,<sup>42</sup> Studio040,<sup>43</sup> Correlations,<sup>44</sup> Zoetermeer Actief Mijn Wijk,<sup>45</sup> and Media Valley<sup>46</sup> - applications and tools which make citizens the (ears and eyes of) editors for local news.<sup>47</sup>

A new concept and real success in the field of Open Journalism is *De Correspondent*.<sup>48</sup> *De Correspondent* is a Dutch platform that was launched in 2013 with a record-breaking crowdfunding campaign. It recently started working with Jay Rosen (Professor of Journalism, New York University) to bring its model for journalism to the US and beyond. The platform features content such as articles and documentaries written by journalists who are committed to collaborate with their readers. Every publication is shaped by, but is also the start of, a conversation between readers, experts and sources. “Because”, as *De Correspondent* explains, “true insight into the forces that shape our world only comes when we’re all included in the conversation”.<sup>49</sup> The editors are therefore not classical journalists, but so-called

41 Stimuleringsfonds voor de Journalistiek, “The Dutch Journalism Fund,” <https://www.svdj.nl/dutch-journalism-fund>; drs. A. Kasem, ir. M.J.F. van Waes and drs. K.C.M.E. Wannet, “Scenarios for the future of journalism” Stimuleringsfonds voor de Journalistiek April 2015, p. 5, 21, 27–30, 46–50, <http://www.journalistiek2025.nl/bundles/svdjui/documents/Scenario-onderzoek-SvdJ.pdf>.

42 *Newsroom Enschede*, “The Dutch Journalism Fund invests heavily in Newsroom Enschede,” <http://www.tvenschedefm.nl/stimuleringsfonds-investeert-fors-in-newsroom-enschede/content/item?794301>.

43 For information about *Studio040* (a city broadcaster of Eindhoven), see: <https://www.studio040.nl/>; Joost Pool, “Studio040,” *Licht op Eindhoven* 2017/79, p. 34–35, [https://issuu.com/arrogantmedia/docs/licht\\_op\\_eindhoven\\_januari\\_2017/35](https://issuu.com/arrogantmedia/docs/licht_op_eindhoven_januari_2017/35).

44 For information about Correlations (an online world map to find journalists etcetera), see: <http://www.correlations.nl/>; Stimuleringsfonds voor de Journalistiek, “Correlations.nl is live!,” 4 September 2014, <https://www.svdj.nl/nieuws/correlations-nl-is-live/>.

45 See for more information about *Zoetermeer Actief Mijn Wijk* (neighbourhood news provided by residents): <http://www.zoetermeeractief.nl/> and <http://democraticchallenge.nl/experiment/zoetermeer-actief-mijn-wijk/>.

46 *Media Valley* is a platform where citizens can publish their stories. See <https://www.facebook.com/mediavalleylimburg/>.

47 A. Kasem, ir. M.J.F. van Waes and K.C.M.E. Wannet, “Scenarios for the future of journalism” *Stimuleringsfonds voor de Journalistiek* April 2015, p. 21, <http://www.journalistiek2025.nl/bundles/svdjui/documents/Scenario-onderzoek-SvdJ.pdf> (attachment (Bijlage 521379) to *Kamerstukken II*, 2014/15, 32 827, no. 71).

48 See for information about *De Correspondent* in English: <https://thecorrespondent.com/>.

49 Leendert van der Valk, “Every publication on De Correspondent is a start of a conversation with readers, experts and sources”, *Nieuwe Journalistiek*, January 2016, <http://nieuwejournalistiek.nl/startup-decorrespondent/2016/01/15/elke-publicatie-op-de-correspondent-is-de-start-van-een-gesprek-met-lezers-experts-en-bronnen/>.

“discussion leaders”.<sup>50</sup> By way of example, the comments underneath articles of *De Correspondent* also belong to the journalistic product.

Finally, the OSCE Representative on Freedom of the Media has recommended that participating States “need to refrain from trying to define who is a journalist”<sup>51</sup> and this view has been reflected in the Netherlands in relation to protection of sources. The Dutch Government has introduced a Bill to amend the Intelligence and Security Services Act 2002, to provide that intelligence services will need the permission of a court before attempting to uncover a journalist’s source.<sup>52</sup> The Government has also introduced another Bill to amend the Dutch Code of Criminal Procedure and it provides that journalists and commentators (“publicisten”) have a right to protection of sources. Notably, a legal definition of the notion of a “journalist” is explicitly excluded from both bills, on the basis that source protection in the context of criminal procedures should not be limited to those that are involved in reporting professionally or on a paid basis. It is stated that the public debate is no longer confined to the traditional media but also takes place outside this structure, for example, on websites and blogs.<sup>53</sup> This also reflects the OSCE Representative on Freedom of the Media’s recommendation that “new media actors should also enjoy some if not all of the privileges that were in the past only granted to traditional journalists”, including “confidentiality of sources”.<sup>54</sup>

## Poland

An important feature of Open Journalism, as described by the OSCE Representative on Freedom of the Media, is that “new platforms and tools equip practically everyone to create and share sound, text and images”.<sup>55</sup> In this regard, the newspaper *Gazeta Wyborcza* launched its BIQdata.pl platform,<sup>56</sup> which is a digital data journalism platform, and allows digital subscribers to explore and engage with the data

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50 *De Correspondent*, “Our story so far,” <https://thecorrespondent.com/>.

51 OSCE Representative on Freedom of the Media, Communiqué 05/2014 Recommendations by OSCE Representative on Freedom of the Media on Open Journalism, 22 May 2014, <http://www.osce.org/fom/118873>.

52 Kamerstukken II, 2014/15, 34 027, no. 2.

53 Kelly Breemen, “Dutch legislator proposes two bills on the protection of journalistic sources,” IRIS 2014-10/26, <http://merlin.obs.coe.int/iris/2014/10/article26.en.html>. Kamerstukken II, 2014/15, 34 032, no. 1; Kamerstukken II, 2014/15, 34 032, no. 2; Kamerstukken II, 2014/15, 34 032, no. 3 - Memorie van Toelichting.

54 OSCE Representative on Freedom of the Media, 2nd Communiqué on Open Journalism 07/2014, 28 November 2014, <http://www.osce.org/fom/128046>.

55 OSCE Representative on Freedom of the Media, Communiqué 05/2014 Recommendations by OSCE Representative on Freedom of the Media on Open Journalism, 22 May 2014, <http://www.osce.org/fom/118873>.

56 BIQdata.pl, <http://biqdata.wyborcza.pl/biqdata/0,0.html>.

and content.<sup>57</sup> This reflects that “even in the case of traditional media, the Internet offers a method of distribution which enables access to information and resources as well as a more interactive framework for dialogue between media outlets and consumers”.<sup>58</sup>

Regarding protection of journalistic sources, a number of news organisations explicitly inform readers on how to share confidential stories and material with journalists. For example, the online news organisation Oko.press advises readers on how to submit confidential mail through encrypted email, and providing Oko.press’s encryption key.<sup>59</sup> Readers are also advised on how to share information anonymously through the Signal platform using the Tor Internet browser.<sup>60</sup>

## Romania

A further issue concerning Open Journalism, and highlighted by the OSCE Representative on Freedom of the Media, concerns “how to make the mix of journalism and user generated content reliable and trustworthy” and enhance “respect for ethical rules in the new environment”.<sup>61</sup> In Romania, the fact-checking platform Factual.ro has been established.<sup>62</sup> The platform makes its methodology publicly available.<sup>63</sup> It is targeted at citizens and it has a team of editors and experts. This initiative also aligns with “the clear need to improve media and Internet literacy in order for the public to have a better understanding of the new environment and to enable to critically assess where the information is coming from”.<sup>64</sup>

It has been noted that a number of broadcasters in Romania “encourage viewers who witness events of public interest to upload their personal footage to their websites”, and viewers upload videos or pictures to a broadcaster’s Facebook page.<sup>65</sup>

57 Catalina Albeanu, “Polish newspaper launches interactive data journalism site,” journalism.co.uk, 26 September 2014, <https://www.journalism.co.uk/news/polish-newspaper-launches-interactive-data-journalism-platform/s2/a562598/>.

58 OSCE The Representative on Freedom of the Media, 2nd Communiqué on Open Journalism 07/2014, 28 November 2014, <http://www.osce.org/fom/128046>.

59 OKO.press, Kontakt, <https://oko.press/kontakt/>.

60 OKO.press, Kontakt, <https://oko.press/kontakt/>.

61 OSCE Representative on Freedom of the Media, Communiqué 05/2014 Recommendations by OSCE Representative on Freedom of the Media on Open Journalism, 22 May 2014, <http://www.osce.org/fom/118873>.

62 Factual, <http://www.factual.ro/>.

63 Factual, Consultă Metodologia, <http://www.factual.ro/despre/>.

64 OSCE Representative on Freedom of the Media, Communiqué 05/2014 Recommendations by OSCE Representative on Freedom of the Media on Open Journalism, 22 May 2014, <http://www.osce.org/fom/118873>.

65 Cristina Gelan, “Romanian Television in the Social Media Era,” European Journalism Observatory, 5 December 2012, <http://en.ejo.ch/digital-news/romanian-television-in-the-social-media-era>.



This development reflects the OSCE Representative on Freedom of the Media's view that the "audience is now participating in the news-making," as "new actors are contributing to the public debate through the media".<sup>66</sup>

### Serbia

The OSCE Representative on Freedom of the Media has noted that the "audience is now participating in the news-making and distribution and a growing number of alternatives to traditional media actors are all contributing to the public debate".<sup>67</sup> In Serbia, there are several non-binding self-regulatory media instruments pertaining to regulate the scope of work of new media actors. The Association of Online Media has published the internal codex that sets out certain rules and guidelines for all online media actors. There are several relevant elements such as the obligation of media actors to undertake fact-checking before publishing news. In particular there is a set of rules for the verification of information that is available on social media. The media actors should verify if the information is available on other (more credible) websites and even to try to contact a person who posted information. If the proposed means fail, it is recommended to avoid publishing the information.<sup>68</sup> The journalists and other media actors publishing blogs and personal opinions should "seek to base its opinion on their knowledge, experience and objective processing of the facts".<sup>69</sup> The Codex recommends the creation of internal rules for the posting of user-generated content, followed by information concerning the moderation technique (pre- or post-moderation), including mechanisms for removal of unlawful content, and an explanation after the removal.<sup>70</sup> Interestingly, there is an entire section proposing measures for improved information security that recommends that online media actors should apply the rulebook on security of communication, including the use of encryption and other means of protecting communication.<sup>71</sup>

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66 OSCE Representative on Freedom of the Media, Communiqué 05/2014 Recommendations by OSCE Representative on Freedom of the Media on Open Journalism, 22 May 2014, <http://www.osce.org/fom/118873>.

67 *Ibid.*

68 Codex of the Association of the online media, 2017, <http://www.aom.rs/kodeks-asocijacije-onlajn-medija/>.

69 *Ibid.*, p. 10, The Guidelines for the application of the codex of journalist of Serbia, paragraph: verification of the sources from Internet and social networks, <http://www.savetzastampu.rs/latinica/smernice-za-primenu-kodeksa-novinara-srbije-u-onlajn-okruzenju>.

70 *Ibid.*, p. 12. See similarly: The Guidelines for the application of the codex of journalist of Serbia, paragraph: User Generated Content.

71 *Ibid.*, p. 22.

In 2011, the Independent Association of Journalists launched, after organising several public debates on civil journalism,<sup>72</sup> a platform focusing on media literacy,<sup>73</sup> as well as the ethical guidelines for journalists in the online environment.<sup>74</sup> Interestingly, traditional journalists as well as bloggers and well-known Twitter users, took part in the creation process of the Ethical guidelines for professional journalists in the online sphere.<sup>75</sup> Besides recognising that social networks are part of the public domain and as such require journalists to behave professionally, the media actors are recommended, among other things, to use social media “as a tool” for the interaction with the audience, and importantly to look for the opportunities to include the audience in a professional way in their work.<sup>76</sup> In parallel, media actors should seek to get permission from content owners before publishing their statements, videos, images, etc.<sup>77</sup>

In terms of the good practices, the public broadcast service, though it has not published internal documents in this field, includes citizens in its work. A well-known daily television show covering events and news from the local municipalities in Belgrade has dedicated a special segment of its show, as well as a part of the public broadcaster’s website, to citizen reporters.<sup>78</sup> The contribution of citizens varies from video reports on the problems with local infrastructure to interesting pictures from daily life.

The investigative journalistic media outlet, Crime and corruption reporting network (KRIK),<sup>79</sup> has developed various methods of working and benefiting from the contribution of citizens. For instance, after KRIK published a story about the mayor of Belgrade, the mayor’s press service did not make public information about places where the mayor would show up and give a statement. That was a moment when citizens were regularly informing KRIK about the mayor’s movement and public appearances. Stories published by KRIK are often critical of the government and the process of collection of information is largely facilitated by the citizens and their anonymous statements and reports that usually contain (mostly confidential) internal documents. These documents and statements serve as a good signal for their research work and their authenticity is regularly verified. Sometimes, this information shows

72 Vojislav Stevanović, Civil journalism in Serbia, report from the public debate in the media center, 2011, <http://www.mc.rs/vojislav-stevanovic-gradjansko-novinarstvo-u-srbiji.2592.html>.

73 See <http://www.medijskapismenost.net/>.

74 See <http://www.medijskapismenost.net/dokument/Eticke-preporuke-za-novinare-u-online-sferi>.

75 Independent Association of Journalists (NUNS), Ethical guidelines for professional journalists in the online sphere, available at: [http://www.medijskapismenost.net/download/Eticke\\_preporuke\\_za\\_novinare.pdf](http://www.medijskapismenost.net/download/Eticke_preporuke_za_novinare.pdf).

76 Ethical guidelines for journalists in online environment, p. 4.

77 *Ibid.*, p. 6.

78 Gledaoci - reporteri, <http://www.rts.rs/page/magazine/sr/news/257/gledaoci-reporteri>.

79 See further: <https://www.krik.rs/en/> (in English).

that a person is very well acquainted with the topic of their research, and this information may also come through a comments section available on their website. Comments sections are also relevant because after publishing a story, comments may be useful as they can include insider information from people that they did not come across during the research, bringing more valuable insights for their news.<sup>80</sup>

### The United Kingdom

In the United Kingdom, traditional media and the media regulatory body have adopted a number of policies and initiatives on Open Journalism. Importantly, the communications regulatory authority, Ofcom, published an informative 70-page report on the value of user-generated content in broadcasting.<sup>81</sup> In this regard, many media organisations have specific editorial guidelines on the use of social media and user-generated content. For example, not only does the public service broadcaster, the BBC, have a specific section on user-generated content online in its editorial guidelines,<sup>82</sup> it also has comprehensive guidance on user contributions in news output.<sup>83</sup> Similarly, the public service commercial broadcaster, Channel 4, has also published its Guidance in relation to publishing social media comments on-air and online,<sup>84</sup> with similar guidance also being included in the commercial broadcaster Sky News's Editorial Guidelines.<sup>85</sup>

*The Guardian* newspaper has established its online GuardianWitness platform for user-generated content.<sup>86</sup> Readers can contribute video, pictures and stories, with posts being reviewed prior to publication. Moreover, in relation to protection of journalistic sources, *The Guardian* has also published guidelines for contacting *The Guardian* confidentially, or anonymously, through services such as encrypted mail, SecureDrop (an open source project by the Freedom of the Press

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80 Information and examples have been shared with the author of this section of the report through a non-formal communication with a journalist working at KRIK. The journalist permits the publication of the aforementioned information.

81 Turner Hopkins, Report for Ofcom: The Value of User-Generated Content, 21 June 2013, [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0016/32146/content.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0016/32146/content.pdf).

82 BBC, Editorial Guidelines - User Generated Content Online, <http://www.bbc.co.uk/editorialguidelines/guidelines/interacting-with-our-audiences/phone-in-programmes>.

83 BBC, User Contributions in News Output, <http://www.bbc.co.uk/editorialguidelines/guidance/user-contributions-news/guidance-full>.

84 Channel 4, Guidance in relation to publishing social media comments on-air and online, July 2016, <http://www.channel4.com/media/documents/Publishing%20social%20media%20comments%20guidance%20note.pdf>.

85 Sky News, Editorial Guidelines, [https://news.sky.com/docs/sky\\_news\\_editorial\\_guidelines.pdf](https://news.sky.com/docs/sky_news_editorial_guidelines.pdf).

86 GuardianWitness, <https://witness.theguardian.com/about>.

Foundation),<sup>87</sup> and WhatsApp.<sup>88</sup> Finally, it should also be noted that some media organisations in the UK have altered how readers may comment on stories online, with *The Guardian* announcing in 2016 that in relation to articles dealing with certain subjects (“race, immigration and Islam”), “comments would not be opened on pieces on those three topics,” unless the moderators know they have “the capacity to support the conversation and that they believed a positive debate was possible”.<sup>89</sup>

## The United States

Turning to the United States, many media organisations have established mechanisms which reflect the OSCE Representative on Freedom of the Media’s view that the “audience is now participating in the news-making” as “new actors are contributing to the public debate through the media”.<sup>90</sup> In this regard, *The New York Times* has established its online Reader Center, “helping The Times build deeper ties with our audience”,<sup>91</sup> and where readers, listeners and viewers can submit stories, suggestions, insights, and analysis through *The New York Times* digital platform and on social media.<sup>92</sup> *The New York Times* also operates a Bulletin Board within its Reader Center, where journalists address reader feedback.<sup>93</sup> Similarly, the broadcaster CNN also operates its online iReport, where readers can upload reports, pictures and videos, and CNN posts assignments.<sup>94</sup> Further, readers and viewers are encouraged to use the hashtag #CNNiReport when sharing stories on social media, including breaking news, and a CNN producer may follow up with these readers and viewers.<sup>95</sup> Moreover, the Associated Press (AP) has been offering media organisations eyewitness content, which includes photos and videos on breaking news, often shared on

87 Guardian SecureDrop, <https://securedrop.theguardian.com/>.

88 *The Guardian*, “Guidelines for contacting the Guardian on WhatsApp,” 12 August 2015, <https://www.theguardian.com/info/2015/aug/12/guidelines-for-contacting-the-guardian-on-whatsapp>.

89 Stephen Pritchard, “The readers’ editor on... handling comments below the line,” *The Guardian*, 31 January 2016, <https://www.theguardian.com/commentisfree/2016/jan/31/readers-editor-on-readers-comments-below-the-line>.

90 OSCE Representative on Freedom of the Media, Communiqué 05/2014 Recommendations by OSCE Representative on Freedom of the Media on Open Journalism, 22 May 2014, <http://www.osce.org/fom/118873>.

91 *The New York Times*, Reader Center: We Want to Hear From You,” 8 August 2017, <https://www.nytimes.com/2017/08/08/reader-center/we-want-to-hear-from-you.html>.

92 *The New York Times*, “Introducing the Reader Center,” 30 May 2017, <https://www.nytimes.com/introducing-the-reader-center>.

93 *The New York Times*, Reader Center: Bulletin Board, <https://www.nytimes.com/series/bulletin-board>.

94 CNN, iReport, <http://edition.cnn.com/specials/opinions/cnnireport>.

95 <http://edition.cnn.com/2015/11/11/opinions/assignment-breaking-news-cnnireport-ireport/index.html>.

social media platforms.<sup>96</sup> Via its new service, AP Social Newswire, media organisations are able to watch how AP editors tag (for example as “authenticated”), and note content. It enables media organisations to watch how AP editors are verifying user-generated content live, and thereafter including it in their own newsfeed.<sup>97</sup> Thus, the AP Social Newswire gives media organisations insight into the process of the verification of eyewitness content.

A further notable initiative is the series “We’re Here To Stay,” set up by the US edition of *The Guardian*. The series invites young immigrants, who came to the US as children, but are in danger of losing their legal right to remain in the US, to guest-edit the online newspaper.<sup>98</sup> Normally their voices do not get heard in the national conversation, and therefore the project aims to share their perspectives, and include them in the practice of journalism. The series provides personal stories of their background, views on politics, dreams, but also their fears for the future. Moreover, it enables them to spell out which public interest matters they find important, and should be covered in *The Guardian*.<sup>99</sup> The guest-editors stated that the media often do not describe them accurately. Subsequently, they created a list of ten tips for journalists who report on stories of young immigrants.<sup>100</sup>

Another initiative, led by Eyewitness Media Hub,<sup>101</sup> focusses on the protection and education of journalists who work with eyewitness content. User-generated content, including photos, videos, and audio, often captures explicit and distressing events. Not only the welfare of eyewitnesses can be overlooked, but also the traumatising effects eyewitness content can have on journalists. In response to this, Eyewitness Media Hub started a research project which resulted in a set of principles which journalists can follow when reviewing user-generated content.<sup>102</sup> For

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96 AP Social Newswire, <https://www.ap.org/discover/social-newswire>.

97 Shan Wang, ‘The Associated Press is adding more user-generated social content (verified, of course) into its wire services’, 16 May 2017, <http://www.niemanlab.org/2017/05/the-associated-press-is-adding-user-generated-social-content-verified-of-course-into-its-wire-services/>.

98 *The Guardian*, ‘We’re Here To Stay: Dreamers take over Guardian US’, 11 December 2017, <https://www.theguardian.com/us-news/series/were-here-to-stay>.

99 *Ibid.*

100 Itzel Guillen, Irving Hernandez and Allyson Duarte with Guardian editors, ‘Ten things the media should do – and not do – when reporting on Dreamers’, 11 December 2017, <https://www.theguardian.com/us-news/2017/dec/10/dreamers-journalism-ten-tips>.

101 Eyewitness Media Hub was founded in 2014 by former fellows of the Tow Center for Digital Journalism, with support of the Open Society Foundation and Storyful. The creation of Eyewitness Media Hub resulted from the research project ‘Amateur Footage: A Global Study of User-Generated Content’, funded by Tow Center for Digital Journalism, see Tow Center for Digital Journalism, ‘Grant Awarded to Eyewitness Media Hub’, <https://towcenter.org/research/amateur-footage-a-global-study-of-user-generated-content/>. The report can be found at <http://usergeneratednews.towcenter.org>.

102 Laura Hazard Owen, ‘User-generated content can traumatize journalists who work with it — a new project aims to help’, 4 August 2015, <http://www.niemanlab.org/2015/08/user-generated-content-can-traumatize-journalists-who-work-with-it-a-new-project-aims-to-help/>.

instance, the principles outline the importance of considering the well-being of eyewitnesses, and being transparent about how their content will be used.<sup>103</sup>

Further, a number of other media organisations, including *The New York Times* and *The Washington Post*, have partnered with the Mozilla Foundation and Knight Foundation on the Coral Project,<sup>104</sup> which helps news sites accept and manage reader submissions on a large scale.<sup>105</sup> In 2017, *The New York Times* increased the amount of articles open for reader comments, and announced its partnership with Google, using “machine learning technology to prioritize comments for moderation, and sometimes, approves them automatically”.<sup>106</sup> Moreover, *The New York Times* has published its Social Media Guidelines, to underscore the “newsroom’s appreciation for the important role social media now plays in our journalism”, and includes advice for its journalists, such as “exercise caution when sharing scoops or provocative stories from other organizations that *The New York Times* has not yet confirmed”.<sup>107</sup> However, it should also be noted that a number of media organisations have closed reader comment sections completely, including CNN,<sup>108</sup> Reuters,<sup>109</sup> and NPR.<sup>110</sup>

Finally, regarding protection of journalistic sources, a number of news organisations explicitly inform readers on how to share confidential stories and material with journalists. For example, *The Washington Post* online offers readers several ways “to securely send information and documents to Post journalists,” including by end-to-end encrypted messaging apps (such as Signal, Peerio, and WhatsApp), by encrypted email (using *The Washington Post*’s encryption key), and SecureDrop (an open

103 For all six principles, see Medium, Eyewitness Media Hub, ‘Eyewitness Media Hub launch Guiding Principles for Journalists’, 9 September 2015, <https://medium.com/@emhub/eyewitness-media-hub-launch-guiding-principles-for-journalists-54aafc786eeb>.

104 Coral Project, <https://coralproject.net/about.html>.

105 The New York Times Company, “Mozilla, The New York Times and The Washington Post launch new media collaboration to create an online community platform for reader comments and contributions,” 19 June 2014, <http://investors.nytc.com/press/press-releases/press-release-details/2014/Mozilla-The-New-York-Times-and-The-Washington-Post-launch-new-media-collaboration-to-create-an-online-community-platform-for-reader-comments-and-contributions/default.aspx>.

106 Bassey Etim, “The Times Sharply Increases Articles Open for Comments, Using Google’s Technology,” *The New York Times*, 13 June 2017, <https://www.nytimes.com/2017/06/13/insider/have-a-comment-leave-a-comment.html>.

107 *The New York Times*, “The Times Issues Social Media Guidelines for the Newsroom,” 13 October 2017, <https://www.nytimes.com/2017/10/13/reader-center/social-media-guidelines.html>.

108 Doug Gross, “Online comments are being phased out,” CNN, 21 November 2014, <http://edition.cnn.com/2014/11/21/tech/web/online-comment-sections/>.

109 Reuters, “Editor’s note: Reader comments in the age of social media,” 7 November 2014, <http://blogs.reuters.com/great-debate/2014/11/07/editors-note-reader-comments-in-the-age-of-social-media/>.

110 Scott Montgomery, “Beyond Comments: Finding Better Ways To Connect With You,” NPR, 17 August 2017, <https://www.npr.org/sections/thisisnpr/2016/08/16/490208179/beyond-comments-finding-better-ways-to-connect-with-you>.

source project by the Freedom of the Press Foundation).<sup>111</sup> Similarly, *The New York Times* online allows readers to share a “confidential news tip,” including through the messaging apps WhatsApp and Signal, and through encrypted email, using *The New York Times’* encryption key.<sup>112</sup> *The Wall Street Journal* provides similar guidelines.<sup>113</sup>

## Conclusion

In light of some of the best practices mentioned in this brief overview, a number of general conclusions may be drawn. First, it does seem that regulatory authorities, legislatures, and courts in participating States of the OSCE are adopting policies and decisions reflecting the reality that “journalism has irreversibly changed and that new actors are contributing to the public debate through the media”.<sup>114</sup> This is evidenced in areas such as protection of sources, the use of user-generated content by media organisations and the role of social media by those media organisations.

Second, many media organisations have established mechanisms to reflect the OSCE Representative on Freedom of the Media’s view that the “audience is now participating in the news-making”, as “new actors are contributing to the public debate through the media”.<sup>115</sup> Media organisations not only have specific editorial guidelines on the use of social media and user-generated content, but have established their own platforms to facilitate readers contributing video, pictures and news.

Finally, as the OSCE Representative on Freedom of the Media has recognised, intermediaries “have become one of the main platforms facilitating access to media content as well as enhancing the interactive and participatory nature of Open Journalism”.<sup>116</sup> Notably, some media organisations in the participating States discussed above have entered into partnerships with some of these intermediaries, in order to allow “practically everyone to create and share sound, text and images”, contribute to the public debate and “perform the role of a public watchdog”.<sup>117</sup> Further, media organisations are also partnering with intermediaries in other respects, including to manage reader comments, and ensure accuracy and trust in news.

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111 *The Washington Post*, Confidential Tips, <https://www.washingtonpost.com/anonymous-news-tips/>.

112 *The New York Times*, News Tips, <https://www.nytimes.com/newsgraphics/2016/news-tips/>.

113 *The Wall Street Journal*, Tips, <https://www.wsj.com/tips>.

114 OSCE Representative on Freedom of the Media, Communiqué 05/2014 Recommendations by OSCE Representative on Freedom of the Media on Open Journalism, 22 May 2014, <http://www.osce.org/fom/118873>.

115 *Ibid.*

116 OSCE The Representative on Freedom of the Media, Communiqué No.1/2016 3rd Communiqué on Open Journalism, 29 January 2016, <http://www.osce.org/fom/219391>.

117 OSCE Representative on Freedom of the Media, Communiqué 05/2014 Recommendations by OSCE Representative on Freedom of the Media on Open Journalism, 22 May 2014, <http://www.osce.org/fom/118873>.





## 5. Appendices

## 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,**

*Having discussed these issues together with the assistance of ARTICLE 19, Global Campaign for Free Expression and the Centre for Law and Democracy;*

*Recalling and reaffirming our Joint Declarations of 26 November 1999, 30 November 2000, 20 November 2001, 10 December 2002, 18 December 2003, 6 December 2004, 21 December 2005, 19 December 2006, 12 December 2007, 10 December 2008, 15 May 2009 and 3 February 2010;*

*Emphasising, once again, the fundamental importance of freedom of expression – including the principles of independence and diversity – both in its own right and as an essential tool for the defence of all other rights, as a core element of democracy and for advancing development goals;*

*Stressing the transformative nature of the Internet in terms of giving voice to billions of people around the world, of significantly enhancing their ability to access information and of enhancing pluralism and reporting;*

*Cognisant of the power of the Internet to promote the realisation of other rights and public participation, as well as to facilitate access to goods and services;*

*Welcoming the dramatic growth in access to the Internet in almost all countries and regions of the world, while noting that billions still lack access or have second class forms of access;*

*Noting that some governments have taken action or put in place measures with the specific intention of unduly restricting freedom of expression on the Internet, contrary to international law;*

*Recognising that the exercise of freedom of expression may be subject to limited restrictions which are prescribed by law and are necessary, for example for the prevention of crime and the protection of the fundamental rights of others, including*

children, but stressing that any such restrictions must be balanced and comply with international law on the right to freedom of expression;

*Concerned* that, even when done in good faith, many of the efforts by governments to respond to the need noted above fail to take into account the special characteristics of the Internet, with the result that they unduly restrict freedom of expression;

*Noting* the mechanisms of the multi-stakeholder approach of the UN Internet Governance Forum;

*Aware of* the vast range of actors who act as intermediaries for the Internet – providing services such as access and interconnection to the Internet, transmission, processing and routing of Internet traffic, hosting and providing access to material posted by others, searching, referencing or finding materials on the Internet, enabling financial transactions and facilitating social networking – and of attempts by some States to deputise responsibility for harmful or illegal content to these actors;

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

### 1. General Principles

- a. Freedom of expression applies to the Internet, as it does to all means of communication. Restrictions on freedom of expression on the Internet are only acceptable if they comply with established international standards, including that they are provided for by law, and that they are necessary to protect an interest which is recognised under international law (the ‘three-part’ test).
- b. When assessing the proportionality of a restriction on freedom of expression on the Internet, the impact of that restriction on the ability of the Internet to deliver positive freedom of expression outcomes must be weighed against its benefits in terms of protecting other interests.
- c. Approaches to regulation developed for other means of communication – such as telephony or broadcasting – cannot simply be transferred to the Internet but, rather, need to be specifically designed for it.
- d. Greater attention should be given to developing alternative, tailored approaches, which are adapted to the unique characteristics of the Internet, for responding to illegal content, while recognising that no special content restrictions should be established for material disseminated over the Internet.

- e. Self-regulation can be an effective tool in redressing harmful speech, and should be promoted.
- f. Awareness raising and educational efforts to promote the ability of everyone to engage in autonomous, self-driven and responsible use of the Internet should be fostered ('Internet literacy').

## 2. 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).

## 3. Filtering and Blocking

- a. Mandatory blocking of entire websites, IP addresses, ports, network protocols or types of uses (such as social networking) is an extreme measure – analogous to banning a newspaper or broadcaster – which can only be justified in accordance with international standards, for example where necessary to protect children against sexual abuse.
- b. Content filtering systems which are imposed by a government or commercial service provider and which are not end-user controlled are a form of prior censorship and are not justifiable as a restriction on freedom of expression.
- c. Products designed to facilitate end-user filtering should be required to be accompanied by clear information to end-users about how they work and their potential pitfalls in terms of over-inclusive filtering.

## 4. Criminal and Civil Liability

- a. Jurisdiction in legal cases relating to Internet content should be restricted to States to which those cases have a real and substantial connection,

normally because the author is established there, the content is uploaded there and/or the content is specifically directed at that State. Private parties should only be able to bring a case in a given jurisdiction where they can establish that they have suffered substantial harm in that jurisdiction (rule against 'libel tourism').

- b. Standards of liability, including defences in civil cases, should take into account the overall public interest in protecting both the expression and the forum in which it is made (i.e. the need to preserve the 'public square' aspect of the Internet).
- c. For content that was uploaded in substantially the same form and at the same place, limitation periods for bringing legal cases should start to run from the first time the content was uploaded and only one action for damages should be allowed to be brought in respect of that content, where appropriate by allowing for damages suffered in all jurisdictions to be recovered at one time (the 'single publication' rule).

## 5. 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.

## 6. Access to the Internet

- a. Giving effect to the right to freedom of expression imposes an obligation on States to promote universal access to the Internet. Access to the Internet is also necessary to promote respect for other rights, such as the rights to education, health care and work, the right to assembly and association, and the right to free elections.
- b. Cutting off access to the Internet, or parts of the Internet, for whole populations or segments of the public (shutting down the Internet) can never be justified, including on public order or national security grounds. The same applies to slow-downs imposed on the Internet or parts of the Internet.
- c. Denying individuals the right to access the Internet as a punishment is an extreme measure, which could be justified only where less restrictive

measures are not available and where ordered by a court, taking into account the impact of this measure on the enjoyment of human rights.

- d. Other measures which limit access to the Internet, such as imposing registration or other requirements on service providers, are not legitimate unless they conform to the test for restrictions on freedom of expression under international law.
- e. States are under a positive obligation to facilitate universal access to the Internet. At a minimum, States should:
  - i. Put in place regulatory mechanisms – which could include pricing regimes, universal service requirements and licensing agreements – that foster greater access to the Internet, including for the poor and in ‘last mile’ rural areas.
  - ii. Provide direct support to facilitate access, including by establishing community-based ICT centres and other public access points.
  - iii. Promote adequate awareness about both how to use the Internet and the benefits it can bring, especially among the poor, children and the elderly, and isolated rural populations.
  - iv. Put in place special measures to ensure equitable access to the Internet for the disabled and for disadvantaged persons.
- f. To implement the above, States should adopt detailed multi-year action plans for increasing access to the Internet which include clear and specific targets, as well as standards of transparency, public reporting and monitoring systems.

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**Organization for Security and Co-operation in Europe  
The Representative on Freedom of the Media  
Dunja Mijatović**

**Communiqué 05/2014**

**Recommendations by OSCE Representative on Freedom  
of the Media on Open Journalism**

The media landscape across the OSCE region is changing faster than ever before. While technological changes mean that journalism and media are irreversibly changing, our basic human rights remain the same.

Today there is a greater plurality of actors engaged in the media landscape. New platforms and tools equip practically everyone to create and share sound, text and images. The audience is now participating in the news-making and distribution and a growing number of alternatives to traditional media actors are all contributing to the public debate. They have the reach, impact and perform the role of a public watchdog, a role that is progressively been recognized by Council of Europe and other international organizations and institutions, including the OSCE Representative on Freedom of the Media.

In order to assist the OSCE participating States to take advantage of, and to tackle the challenges posed by these changes, the OSCE Representative on Freedom of the Media launches a series of Expert Meetings on Open Journalism. In the first meeting that took place on 5 May 2014 the discussion helped to define the issues we are dealing with when we talk about Open Journalism and to highlight some of the topics that will be the subject of more detailed discussions and recommendations at a future date.

Issues covered included:

How has the job of journalists changed, methods to support new forms of journalism, the way the public debate is now also shaped by other actors, applicability of international standards on freedom of expression and freedom of the media, how to make the mix of journalism and user generated content reliable and trustworthy,

respect for ethical rules in the new environment, economic transformation of the media landscape and implications for pluralism.

As a conclusion to this session the OSCE Representative on Freedom of the Media issues the following recommendations to the participating States:

- The participating States need to acknowledge that journalism has irreversibly changed and that new actors are contributing to the public debate through the media.
- The participating States need to refrain from trying to define who is a journalist. It was difficult to define who is a journalist 25 years ago; it is even more complex today.
- The new media actors need to enjoy at least some of the protection and privileges that were in the past only granted to traditional media.
- There is a clear need to improve 'media and Internet literacy' in order for the public to have a better understanding of the new environment and to enable to critically assess where the information is coming from.

The next meeting on legal/regulatory aspects of Open Journalism is planned for September 2014.





**Organization for Security and Co-operation in Europe  
The Representative on Freedom of the Media  
Dunja Mijatović**

**Communiqué 07/2014**

**2<sup>nd</sup> Communiqué on Open Journalism**

Online media covers a wide range of formats and languages. Today the Internet provides easy access to electronic or online-only versions of traditional print and broadcast media, as well as emerging New Media based on different and more participatory forms of expression.

Even in the case of traditional media, the Internet offers a method of distribution which enables access to information and resources as well as a more interactive framework for dialogue between media outlets and consumers.

Within this framework the phenomenon of Open Journalism has to be considered, of course, in light of already existing rights and other legal provisions in the field of free expression and media freedom. While technological changes mean that journalism and media are irreversibly changing, our basic human rights remain the same.

The latest expert debate on Open Journalism focused on how traditional and well-established media legal statutes should be applied or re-interpreted to protect innovation and media plurality.

As a conclusion to this session the OSCE Representative on Freedom of the Media issues the following recommendations to the participating States:

- The participating States need to recognise that the new participants in journalism act as public watchdogs, contribute to a free and open society, make systems of government more accountable, and foster democratic development by connecting people and building bridges between nations.
- The participating States need to ensure that the Internet remains an open platform for free flow of information and ideas, and that any proposals to

regulate the Internet properly respect and promote freedom of expression and freedom of the media.

- Online content should be dealt with as any other form of expression, and there is therefore no need to create new principles of regulation to deal with illegal or harmful content.
- The new media actors should also enjoy some if not all of the privileges that were in the past only granted to traditional journalists. They might include, but not necessarily be limited to confidentiality of sources, media accreditation, information requests, and perishability of news.
- The existing national systems of media self-regulation should be open to new media actors.

The next meeting on legal/regulatory aspects of Open Journalism is planned for spring 2015.

**Dunja Mijatović**

OSCE Representative on Freedom of the Media

Vienna, 28 November 2014



**Organization for Security and Co-operation in Europe  
The Representative on Freedom of the Media  
Dunja Mijatović**

**Communiqué 01/2016**

**3<sup>rd</sup> Communiqué on Open Journalism**

During the previous working meetings of the project, the presence and role of intermediaries in Open Journalism was raised on several occasions as a relevant issue for further discussions. The notion of intermediaries includes several different actors of the Internet value chain, particularly those who play a direct and effective role in the distribution of and access to journalistic content.

Intermediaries have become one of the main platforms facilitating access to media content as well as enhancing the interactive and participatory nature of Open Journalism.

The progressive establishment of different terms of use or community standards by social media platforms has increased their influence in the way content is distributed. There is also a risk of intermediaries automatizing decisions with clear human rights implications.

On the other hand, the emerging importance of intermediaries as content hubs has also caused, in some cases, a higher level of intervention by state authorities. Intermediaries are often faced with requests and requirements by law enforcement and regulators.

Previous debates focused on how journalism has changed and the way the public debate is now also shaped by other actors, as well as how traditional and well-established media legal statutes should be applied or re-interpreted to protect innovation and media plurality. In the latest expert meeting, discussions referred to the role of intermediaries in Open Journalism as well as principles and rules governing their activities.

As a conclusion to this session the OSCE Representative on Freedom of the Media issues the following recommendations to the participating States:

- Public authorities should protect freedom of expression, media freedom and the free flow of information in all the facets and areas of the online world. The important presence and role of intermediaries should not endanger the openness, diversity and transparency of Internet content distribution and access.
- Excessive and disproportionate provisions regarding content takedown and intermediaries' liability create a clear risk of transferring regulation and adjudication of Internet freedom rights to private actors and should be avoided. States should also discourage intermediaries from automatizing decisions with clear human rights implications<sup>1</sup>.
- International documents on human rights responsibilities for non-state actors, as well as multi-stakeholder debates and initiatives such as the Manila Principles<sup>2</sup>, should be given due consideration in this area.
- The legitimate need to protect privacy and other human rights should not undermine the principal role of freedom of the media and the right to seek, receive and impart information of public interest as a basic condition for democracy and political participation.
- Making private intermediaries more transparent and accountable is a legitimate aim to be pursued by participating States through appropriate means. However, this must not lead to excessive control by public authorities over online content.
- Decisions addressed to intermediaries establishing restrictions or ordering the takedown of Internet content should be adopted according to law, by judicial or other independent adjudicatory authorities, following due process and with full respect to the principles of necessity and proportionality.

**Dunja Mijatović**

OSCE Representative on Freedom of the Media Vienna,  
29 January 2016

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1 For example, not expecting or pushing intermediaries to write algorithms to find terrorists or automatically be able to identify hate speech.

2 <https://www.manilaprinciples.org/principles>.











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