

2016 Annual Colloquium on fundamental rights

EU Public Consultation on Media Pluralism and Democracy

UNESCO Contribution

SECTION B. MEDIA FREEDOM AND PLURALISM

Question 5. In the context of media freedom and pluralism, what should be the role of the State, if any, in the regulation of media? What should be the role of media self-regulation?

UNESCO as the UN body with a mandate on Freedom of Expression, is the entity providing UN inputs to the Universal Periodic Review conducted under the auspices of the UN Human Rights Council in Geneva on matters relating to media freedom and based on international treaties and standards.

UNESCO evaluates Member States compliance with the Right to Freedom of Opinion and Expression as outlined in Article 19 of the Universal Declaration of Human Rights and Article 19 of International Covenant on Civil and Political Rights. Specifically, states are assessed for their role in providing constitutional and legislative frameworks, sound media self-regulatory mechanisms and provisions for safety of journalists in accordance with international standards.

[The UNESCO World Trends Report](#) on Media pluralism has a dedicated chapter (chapter 2) to media pluralism. The chapter underlines the major trends and challenges for media pluralism p 48: “although it has been possible to some degree to ascertain the existence of ownership conglomerates, measuring the impact of media concentration on editorial independence and hence the pluralism of content has been more challenging. The continued predominance of media conglomerates, and the concentration of commercial media on serving monied audiences who are attractive to advertisers, has fuelled concerns over whether ‘market censorship’ may restrict the plurality of voices in the media field, particularly broadcast and print. Concentration has been compounded by a decline in funding for media monitoring and support groups, particularly in parts of Africa and Central and Eastern Europe. The development of decentralized, personalized media technologies, however, broadens pluralism by allowing easy access for new players to an extended media market. On the other hand, it has been argued in some countries that the development of ‘social media’ and algorithmic personalization affords cases where the likeminded communicate with the likeminded in ‘information cocoons,’ and where there is little variety of news or views, but rather a steady repetition of the same information diet. Thus, the impact of pluralistic media sources online may not translate into pluralistic consumption practices and may sometimes run counter to effective pluralism. Furthermore, increased availability of news content does not necessarily signal that a greater diversity of sources is being accessed, or portrayed in mainstream media. The trend towards concentration off-line has been mirrored to some extent online through continuing predominance of major media outlets and their news content, even on blogs and social media.”

Regarding the role of the State, UNESCO recognizes the crucial role of the State to guarantee media freedom and pluralism. The UNESCO publication [Public Service Broadcasting: A Legal Comparative Survey](#), underlines p 12 that: “Article 2 of the ICCPR places an obligation on States to “adopt such legislative or other measures as may be necessary to give effect to the rights recognized by the Covenant.” This means that States are required not only to refrain from interfering with rights, but that they must take positive

steps to ensure that rights, including freedom of expression, are respected. In effect, governments are under an obligation to create an environment in which a diverse, independent media can flourish, thereby satisfying the public's right to know. This is backed up by a wealth of authoritative international standards. As the European Court of Human Rights stated: “[Imparting] information and ideas of general interest ... cannot be successfully accomplished unless it is grounded in the principle of pluralism.””

However, when it comes to adoption of codes of behavior for the media that are necessary to support freedom of expression, UNESCO believes that media self-regulation is the most appropriate solution as it can preserve the independence of the media and protect the media from partisan government interference.

Question 7. What competences would media regulatory authorities need in order to ensure a sufficient level of media freedom and pluralism?

The UNESCO publication [Guidelines for Broadcasting Regulation](#) p. 16 emphasises that “It is accepted best practice throughout the world that as an independent broadcasting industry develops, so too must an independent regulatory system to licence and oversee this industry.” On p. 21 it is underlined that a “vital element to ensuring independence is providing a secure means of funding of the regulatory authority. In order to avoid government authorities applying political pressure on the regulator through funding mechanisms, arrangements for funding should be specified in law in accordance with a clearly defined plan, and with reference to a transparent budgeting process.”

Question 8. What should be the role of public service media for ensuring media pluralism?

The UNESCO publication [Public Service Broadcasting: A Legal Comparative Survey](#), underlines p 13 that: “One of the key rationales for public service broadcasting is that it makes an important contribution to pluralism. A number of international instruments stress the important contribution public service broadcasters make to promoting diversity and pluralism. Every year, the four special international mandates on freedom of expression – the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples’ Rights) Special Rapporteur on Freedom of Expression and Access to Information – adopt a Joint Declaration elaborating on key freedom of expression themes. In their 2007 Joint Declaration, the special mandates highlighted the role of public service broadcasters in contributing to diversity, including by “giving voice to, and serving the information needs and interests of, all sectors of society.” The special mandates reiterated this in their 2010 Joint Declaration, expressing concern that this role was coming under threat.”

Question 9. How should public-service media be organized so that they can best ensure the public service mandate?

The UNESCO publication [Public Service Broadcasting: A Legal Comparative Survey](#), underlines p 15 that: “Public service broadcasters need to be independent to ensure the public service mandate. At a practical level, there are a number of ways of guaranteeing the independence of public service broadcasters, including through structural guarantees and rules relating to programming. Independence is also safeguarded through the establishment of appropriate systems of accountability to the public, including systems of direct public input and general requirements of transparency, which helps enable a direct public watchdog role. The manner in which public funding is allocated to public broadcasters is also key

to their independence (see below). In terms of structural guarantees, a key focus of the standards is on the need to establish independent governing bodies, and on how to achieve this in practice. The standards also reflect the complementary idea that the editorial independence of public service broadcasters should be guaranteed. This approach erects a two-tier structure to protect independence, composed of a governing body, which oversees the work and reports to parliament, (i.e. acts as an interface between the organization and top-level accountability bodies) and the management of the organization itself. In practice, editorial independence is often promoted by ensuring a clear separation between the governing body, with overall responsibility for the organization, and managers and editors, who have responsibility for day-to-day and editorial decision-making. The governing body may set directions and policy but should not, except perhaps in very extreme situations, interfere with a particular programming decision. A number of international statements reflect these ideas of structural independence. (...) The day to day management and editorial responsibility for programme schedules and the content of programmes must be a matter entirely for the broadcasters themselves. The independence of public service broadcasters must be guaranteed by appropriate structures such as pluralistic internal boards or other independent bodies.”

[The UNESCO World Trends Report](#) on p.66 further emphasizes that “With respect to public broadcasting, regulation can provide legally guaranteed editorial independence as well as a business model that entails income from license fees or other mechanisms, which insulate journalism from market pressures that might otherwise lead to distortions or the neglect of unprofitable content.”

13. What is the impact of media concentration on media pluralism and free speech in your Member State? Please give specific examples and best practices on how to deal with potential challenges brought by media concentration.

[The UNESCO World Trends Report](#) on p. 44 highlights that “Establishing a direct causal link between media concentration and media pluralism per se has always posed a scientific challenge, but the general assumption has been that an absence of monopoly in terms of ownership correlates with diverse content availability. The corresponding assumption is that when there exists concentration of media ownership in the hands of a few owners, and particularly when their identity and origins of capital remains undisclosed, there is an inherent threat to media pluralism. Not only is the public unaware of which interests shape media content, but the lack of ownership transparency can potentially lead to hidden monopolies and limit access and representation of diverse and critical views.” In its dedicated compendium on Western Europe, the World Trends Report notes that the “relaxing of media ownership regulations, digitization of information and the rise of internet communications, combined with the financial crisis, have accelerated the trend in concentration of media ownership and consolidation.” The World Trends Report on Eastern and Central Europe notes that “Eastern and Central Europe has experienced a ‘divestment of ownership’ that has paved the way for new owners often from other sectors of the economy and with close links to powerful businesses and political interests, and whose entry into the media sector has not always benefited pluralism.” It further finds that “Affiliation with political forces and business groups threatens media pluralism in the region because protecting the media owners’ other business interests becomes paramount and takes priority over the public interest and impartiality”.

SECTION C. JOURNALISTS AND NEW MEDIA PLAYERS

Question 23. Please indicate best practice for protecting journalists from threats against their safety and security

[The UN Plan of Action on the Safety of Journalists and the Issue of Impunity](#) was endorsed by the UN Chief Executives Board on 12 April 2012. The Plan was prepared during the 1st UN Inter-Agency Meeting on this issue, convened by the Director General of UNESCO at the request of the Intergovernmental Council of the International Programme for the Development of Communication (IPDC).

The Plan of Action aims to creating of a free and safe environment for journalists and media workers, both in conflict and non-conflict situations, with a view to strengthening peace, democracy and development worldwide. Its measures include, among other undertakings, the establishment of a coordinated inter-agency mechanism to handle issues related to the safety of journalists as well as assisting countries to develop legislation and mechanisms favourable to freedom of expression and information, and supporting their efforts to implement existing international rules and principles.

To further reinforce prevention, the Plan recommends working in cooperation with governments, media houses, professional associations and NGOs to conduct awareness raising campaigns on a wide range of issues such as existing international instruments and conventions, the growing dangers posed by emerging threats to media professionals, including non-state actors, as well as various existing practical guides on the safety of journalists.

Sharing of good practices in promoting safety of journalists is one of the effective approaches to achieve expected results identified in the [Implementation Strategy](#) of the [UN Plan of Action on the Safety of Journalists and the Issue of Impunity](#).

At the national level, UNESCO advises Member States on the implementation of existing international standards at national level and on the development of journalist safety mechanisms. Member States are also supported in regard to the sharing of good practices and capacity-building among various actors, including the criminal justice chain, to promote a safe environment for journalists at national level.

Mandated by UNESCO's Intergovernmental Council "International Programme for the Development of Communication (IPDC)", UNESCO's Director General biannually reports on the Safety for Journalists and the Danger of Impunity. This is a unique UN mechanism to monitor killings of journalists and encourage states to follow up with judiciary action in order to eliminate impunity. UNESCO's Director General further publicly condemns every time a journalist has been killed and UNESCO acts as a liaison with Member States to encourage reporting on the ensuing legal investigations.

The safety of digitally interfaced journalistic actors has significant implications for freedom of expression, press freedom and privacy protection, and is of particular concern to UNESCO. In order to improve global understanding of emerging safety threats linked to digital developments, UNESCO commissioned a research [Building Digital Safety for Journalists](#) within the Organization's on-going efforts to implement the UN Inter-Agency Plan on the Safety of Journalists and the Issue of Impunity, spearheaded by UNESCO.

The report identifies specific challenges facing journalistic actors interfacing with digital technology and offers concrete recommendations to the diverse set of actors involved. The protection of journalism

entails actions at three levels – (a) state power, (b) media institutions’ policies, (c) and the behavior of individuals and their associates. The recommendations that follow highlight the potential of the following organizations and individuals: UN bodies, International organizations (governmental and non-governmental), Regional organizations, Governments, Corporations, News organizations, Journalism schools and other educational and training institutions, Journalist associations, and Journalists and others who contribute to journalism. The ultimate goal of addressing these challenges is to improve the safety and protection of all those who contribute to journalism. The issue of digital security is complex because it extends across the entire value chain of digital communications. From devices to infrastructure used to transmit and store data, it also includes the acts of electronic interviews and research and communication of data, as well as publishing and interaction. It is not a purely digital realm – for example, devices can be physically stolen or destroyed – not merely subject to electronic theft or disruption. Location and social media data can be used for targeting and timing of physical attacks.

Question 25. How would pressure on journalistic sources be best addressed? and

Question 26. Please indicate and best practices for protecting the confidentiality of journalistic sources/whistleblowers?

Both the UN General Assembly and the UN Human Rights Council have acknowledged “the particular vulnerability of journalists to becoming targets of unlawful or arbitrary surveillance or interception of communications in violation of their rights to privacy and to freedom of expression” (UN General Assembly Resolution on The Safety of Journalists and the Issue of Impunity, A/RES/69/185; UN Human Rights Council Resolution on The safety of journalists. A/HRC/27/L.7).

The legal frameworks that protect the confidential sources of journalism are essential to reporting information in the public interest — information that may otherwise never come to light. However, these frameworks are under significant strain in the digital age, and there’s a need to revise and strengthen them - or introduce them where they don’t exist.

To examine this, UNESCO has UNESCO commissioned a [study on Protecting Journalists Sources in Digital Era](#), conducted by Julie Posetti for the World Editors Forum (within the World Association of Newspapers and News Publishers, WAN-IFRA), with funding from Sweden, and support from the University of Wollongong.

The study found that legal source protection frameworks are being actually or potentially:

- Eroded by national security and anti-terrorism legislation,
- Undercut by surveillance – both mass and targeted,
- Jeopardised by mandatory data retention policies and pressure applied to third party intermediaries (like ISPs, telcos, search engines, social media platforms) to release data,
- Outdated when it comes to regulating the collection and use of digital data. (Examples are: the admissibility, in court, of information recorded without consent between a journalist and a source; the extent to which existing source protection laws also cover digitally stored material gathered by journalistic actors).

The study also found that source protection frameworks are challenged by questions about entitlement to claim protection, such as: “Who is a journalist?” and “What is journalism?” — which are matters that increasingly require case-specific assessments.

Where source protection is compromised, the impacts can include:

- pre-publication exposure of journalistic investigations which may trigger cover-ups, intimidation, or destruction of information,
- revelation of sources’ identities with legal or extra-legal repercussions on them,
- sources of information running dry,
- self-censorship by journalists and citizens more broadly.

Many journalists are now adapting their work in an effort to shield their sources from exposure, sometimes even seeking to avoid electronic devices and communications altogether. However, while such tactics do help, they may be insufficient if legal protections are weak, encryption is disallowed, and sources themselves are unaware of the risks.

If confidential sources are to confidently make contact with journalists, the study proposes four conditions:

- Systems for transparency and accountability regarding data retention policies and surveillance (including both mass surveillance and targeted surveillance) – as recommended by the UN General Assembly,
- Steps taken by States to adopt, update and strengthen source protection laws and their implementation for the digital era,
- Training of journalistic actors in digital safety and security tactics,
- Efforts to educate the public and sources in Media and Information Literacy, including secure digital communications.

A major output of the study is further an 11-point assessment tool for measuring the effectiveness of legal source protection frameworks in the digital era.

In terms of this, a model framework should:

1. Recognise the value to the public interest of source protection, with its legal foundation in the right to freedom of expression (including press freedom), and to privacy. These protections should also be embedded within a country’s constitution and/or national law,
2. Recognise that source protection should extend to all acts of journalism and across all platforms, services and mediums (of data storage and publication), and that it includes digital data and meta-data,
3. Recognise that source protection does not entail registration or licensing of practitioners of journalism,
4. Recognise the potential detrimental impact on public interest journalism, and on society, of source-related information being caught up in bulk data recording, tracking, storage and collection,

5. Affirm that State and corporate actors (including third party intermediaries), who capture journalistic digital data must treat it confidentially (acknowledging also the desirability of the storage and use of such data being consistent with the general right to privacy),
6. Shield acts of journalism from targeted surveillance, data retention and handover of material connected to confidential sources,
7. Define exceptions to all the above very narrowly, so as to preserve the principle of source protection as the effective norm and standard,
8. Define exceptions as needing to conform to a provision of “necessity” and “proportionality” — in other words, when no alternative to disclosure is possible, when there is greater public interest in disclosure than in protection, and when the terms and extent of disclosure still preserve confidentiality as much as possible,
9. Define a transparent and independent judicial process with appeal potential for authorised exceptions, and ensure that law-enforcement agents and judicial actors are educated about the principles involved,
10. Criminalise arbitrary, unauthorised and wilful violations of confidentiality of sources by third party actors,
11. Recognise that source protection laws can be strengthened by complementary whistleblower legislation.

More details about journalists’ sources protection in the digital era can be found in the UNESCO Publication [World Trends Report in Freedom of Expression, Special Digital Focus](#).

Question 30. Please indicate best practice facilitating investigative journalism

UNESCO has developed and published a number of manuals to support and facilitate investigative journalism and believes that training of journalists is an important component to facilitate and promote investigative journalism. UNESCO organizes regular training of journalists, and has published some training materials. Training usually also have a component on how to access information.

[Story-based inquiry: a manual for investigative journalism](#)

This manual provides a guide to basic methods and techniques of investigative journalism, and it consciously fills a gap in the literature of the profession. The majority of investigative manuals devote a lot of space to the subject of where to find information. They assume that once a reporter finds the information he or she seeks, he or she will be able to compose a viable story. UNESCO does not think that the basic issue is finding information. Instead, it thinks the core task is telling a story. The Manual goes through every step of the investigative process, from conception to research, writing, quality control and publication.

- [The global investigative Journalism case-book](#)

At a time when media landscapes are rapidly changing, journalism today needs to clearly show its added value for public interest. In this light, credible investigative stories, like the kind promoted in this book, are increasingly important for highlighting the continuing importance of professional journalistic work.

This Casebook thus serves as a key knowledge resource, providing a valuable learning opportunity for journalists and media professionals, as well as for journalism trainers and educators.

How to access information and the promotion of it is at the core of UNESCO's mandate.

SECTION D. HATE SPEECH ONLINE

Question 31. What would be the most efficient ways to tackle the trivialization of discrimination and violence that arises through the spreading of hatred, racism, and xenophobia, in particular online

The complexity of defining and identifying hate speech, including online, often calls for tailored solutions. The UNESCO commissioned study [Countering online hate speech](#) points to specific elements to hate speech on the Internet, which call for multiple and broad-based responses, rather than entrusting only one or a limited number of actors to deal with the issue. On p58 it states that “The problem of hate speech online demands collective solutions. This may seem an obvious conclusion and one that is shared by many other areas of social life. As this study has indicated, however, there are peculiar elements to the issue of hate speech online that are likely to make responses entrusting only one or a limited number of actors highly ineffective. As proposed by the UN Human Rights Council Special Rapporteur on Minority Issues, States could work collaboratively with organisations and projects that conduct campaigns to combat hate speech, including on the Internet, including by providing financial support (HRC, 2015). Internet intermediaries, on their part, have an interest in maintaining a relative independence and a “clean” image. They have sought to reach this goal by demonstrating their responsiveness to pressures from civil society groups, individuals and governments. The way in which these negotiations have occurred, however, have been so far been ad hoc, and they have not led to the development of collective over-arching principles. (...) More structural initiatives are needed in order to explain [to media users] not only how certain instances can be reported, but also why this is important in creating shared spaces where dialogue can occur around hate speech. There also seems to be potential to consolidate the silent or passive middle ground to lean away from hateful extremes, by activists engaging with online hate speech through the medium of counter speech.”

Special attention is given in the research to social and non-regulatory mechanisms to identify and counter the production, dissemination and impact of hateful messages online.

A typology of responses further elaborated in the study includes:

- Monitoring and analysis by civil society e.g. of how online hate speech emerges and spreads, set up of early warning systems, development of methods to distinguish among different typologies of speech.
- Individuals promoting peer-to-peer counter-speech
- Organised action by NGOs e.g. to report cases to authorities or create national and international coalitions to address emergent threats connecting online hatred and violence offline.
- Initiatives encouraging social networking platforms and Internet Service Providers to increase active response mechanisms to online hate speech
- Structural responses through Media and Information Literacy, empowering users through education and training about the knowledge, ethics and skills to use the right to freedom of expression on the Internet to interpret and react to hateful messages.

Creative societal responses like these can produce results that reduce expressions of group hatred online. They can help ensure that the Internet remains a place of positive potential, and therefore that this network of networks will help us to build Knowledge Societies on the basis of peace, human rights and sustainable development.

Amongst other findings, the study's key recommendations include that:

- States should work collaboratively with organizations and projects that conduct campaigns to combat hate speech, including on the internet.
- Internet intermediaries – including internet service providers, search engines and social media platforms – should develop collective principles for proactively addressing online hate speech, in alignment with international human rights law.
- Civil society organizations should monitor hate speech and engage in counter speech.
- Educational institutions and media organizations should lead media and information literacy campaigns to teach the importance of user empowerment, critical thinking and peaceful dialogue on all media platforms.

Question 32. How can a better informed use of modern media, including digital media (media literacy) contribute to promote tolerance? Please indicate any best practice.

[UNESCO's publication Countering Online Hate Speech](#) states on p58 that "Initiatives promoting greater media and information literacy have begun to emerge as a more structural response to hate speech online. Given young people's increasing exposure to social media, information about how to identify and react to hate speech may become increasingly important. While some schools have expressed interest in progressively incorporating media and information literacy in their curriculum, these initiatives, however, are still patchy and have often not reached the most vulnerable who need the most to be alerted about the risk of hate speech online and offline. It is particularly important that anti-hate speech modules are incorporated in those countries where the actual risk of widespread violence is highest. There is also a need to include in such programmes, modules that reflect on identity, so that young people can recognise attempts to manipulate their emotions in favour of hatred, and be empowered to advance their individual right to be their own masters of who they are and wish to become. Pre-emptive and preventative initiatives like these should also be accompanied by measures to evaluate the impact upon students' actual behaviour online and offline, and on their ability to identify and respond to hate speech messages."

SECTION E. ROLE OF FREE AND PLURALISTIC MEDIA IN A DEMOCRATIC SOCIETY

Question 35. Please give specific good examples or best practices for increasing media literacy

UNESCO considers that the empowerment of people through Media and Information Literacy (MIL) is an important prerequisite for fostering equitable access to information and knowledge and promoting free, independent and pluralistic media and information systems.

[The UNESCO Global Media and Information Literacy \(MIL\) Assessment Framework](#) provides a conceptual and theoretical framework for MIL, and introduces the rationale and methodology for conducting an

assessment of country readiness and existing competencies on MIL at the national level. It also includes practical steps for adaptation of its recommendations at national level.

[The Media and Information Literacy Curriculum for Teachers](#) is an important resource for Member States in their continuing work towards achieving the objectives of the Grünwald Declaration (1982), the Alexandria Declaration (2005) and the UNESCO Paris Agenda (2007) – all related to MIL. It is pioneering for two reasons. First, it is forward looking, drawing on present trends toward the convergence of radio, television, Internet, newspapers, books, digital archives and libraries into one platform – thereby, for the first time, presenting MIL in a holistic manner. Second, it is specifically designed with teachers in mind and for integration into the formal teacher education system, thus launching a catalytic process which should reach and build capacities of millions of young people.