

The background of the cover is a solid blue color. Scattered across the top half are several semi-transparent, light blue speech bubbles of various shapes and sizes, some pointing towards the center and others pointing outwards.

# **DIGITAL CHALLENGES TO ETHICAL STANDARDS OF JOURNALISM**

**RESPONSES AND NEEDS  
OF EUROPEAN MEDIA COUNCILS**

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# INTRODUCTION



**THE CODES OF ETHICS FOR JOURNALISM** are the framework upon which the profession is built. By definition, they are meant to guide journalistic behaviour. Furthermore, the shared ethical principles of journalism define both the boundaries and the expectations of professional conduct by articulating what is acceptable and what is not, what journalists should strive for and what their obligations are. In doing so, they not only define how the profession sees itself but also how they want to be perceived by others.

In a world of declining rates of trust in news and journalism, safeguarding the ethical standards of the profession and adapting them to new realities is becoming increasingly important. At the same time, journalism itself is changing in profound ways in terms of financing, resourcing and consumption. With decades of adapting to the digital age already behind, the media landscape continues to change in ways that constantly challenge media councils to keep the balance between keeping their core principles clear and stable to be applicable and acceptable and, at the same time, up-to-date, so they adequately reflect the prevailing reality.

This report seeks to discuss the current and future need of the European media councils to revise their ethical standards by interviewing council representatives. The emphasis is on the challenges posed by the digital world. In what ways do the councils seek to adapt their ethical codes and guidelines to the new realities and challenges posed by Internet culture and social media logic? Is there a need to create new deontological standards as journalism adopts new forms, extends over new distribution platforms and engages new content producers, stakeholders and audiences? How have the possible amendments been formulated and implemented in practice?

Recognising that journalistic norms are created and maintained within specific historical and cultural contexts, this report seeks to illustrate the principles and ways in which the European media councils update and apply their existing standards to new areas. The issues discussed relate to, for example, the blurring of lines between private and public, as well as calls for greater journalistic transparency in disclosing potential conflicts of interests, and labelling of sponsored editorial content or AI, among others.

This study has been conducted by the Council for Mass Media in Finland as part of the Media Councils in the Digital Age project co-funded by the European Commission.

# 1. MEDIA COUNCILS' VIEWS ON REVISING THE CODES OF ETHICS

**ALTHOUGH EUROPEAN MEDIA COUNCILS** (hereinafter, “councils”) operate based on largely similar principles, they have some decisive differences, which are visible in their codes of ethics.

First, the councils define their remit differently, as Harder (2020) has acknowledged previously in the *Media Councils of the Digital Age* project. While some councils cover all platforms, others identify themselves as press councils and handle complaints only against print and online media (i.e., print media and their online equivalents), not against television and radio. Most—not all—media councils also regard journalistic content published on social media as within their remit. All the councils interviewed for this study, except the Bulgarian, Montenegrin and Slovenian Councils, accept complaints against journalistic content published on social media platforms.

Second, some of the councils only allow complaints against media that have submitted themselves to self-regulation, while others allow complaints against all media outlets in principle (ibid.). What also varies is whether the councils accept complaints against individual journalists or whether the complaints should always be against the editor-in-chief or the publisher.

Third, the councils differ as to whether anyone can file a complaint or whether the complainant has to have been personally affected by the media coverage (Ibid. 11–13). Of the councils that participated in this study, The Netherlands Press Council, the office of the Swedish Media Ombudsman and the UK regulator Impresss (for the main parts) require this kind of ‘personal stake’.

Notably, the ethical codes of the councils were created at very different times and have been shaped by different historical, cultural, legal, political and institutional contexts. The oldest codes still in use were created over half a century ago and, over the years, have been amended to cover ever new platforms and forms of journalism. Conversely, the youngest codes are just a few years old and have been created with the challenges of digital publishing in mind.

Nevertheless, the codes of the councils are largely similar in their main principles and scope. For example, most of the codes are platform-neutral; only a few councils have created separate guidelines for online publishing. According to our study participants (see the Methodology section at the end of this chapter), most of whom are heads or other senior officers of the participating councils, many of the councils have endeavoured to keep their codes simple, short and unspecific, so they could be more

applicable in different situations, more likely to last and would not require frequent updates.

Several participants added that a general code is more acceptable in the field and leaves more room for ethical considerations, which increases journalists' sense of responsibility.

What we have found is that having a very general code with very few specifics actually works quite well because it pushes back the responsibility on journalists to interpret the code. It doesn't give them rules like, "You can do this; you cannot do that" but it says to them, "Here is the code, and you are required to observe the spirit of it and its individual principles." [...] What I find is that our general principles give me enough freedom to [...] make a judgment on a complaint; and if I were faced with more specific principles [...] I think I would find it harder to apply common sense and to take into account context. So, I'm happier with the more general principles we have. [...] And we have had very few requests for any changes or amendments to them.

I don't think that everything has to be in the code of ethics. I think that it's important that the code of ethics is not too long. [...] It's kind of an effort to keep the code of ethics to the main principles, and not tell the editors just exactly how to do things. [...] I think we would have a problem if the code of ethics got too detailed. [...] I think that could diminish the media's obligation to us, actually. So, I think it's important to [...] keep a balance and leave them in charge of the publishing based on these main principles in the code of ethics.

Self-regulation means that media are really kind of willing to comply. It's not [...] that you're forced to do something, but you're willing to do something. You sign the rules, and you abide by the rules because you want to. With most of the media, this works. So, we don't think we need completely exact rules. This is one of the differences between the system of ethical self-regulation and the legal system. [...] We don't tend to be so executive because we believe that it is inherent to self-regulation that the media abide by the rules because they think that the rules are good.

I don't believe in too much regulation. I believe in [...] freedom of the press, and I believe that news outlets that are serious and want to do a good job can handle that by themselves. [...] Our code of ethics, they're wide. I mean, they are very unspecific. [...] They're more like a framework than specific rules. So that is why I think they're quite constant. They can almost live forever.

The idea [...] is not to make a code that [...] becomes a kind of encyclopedia. We prefer something that is brief, simple and general.

As the participants pointed out in the interviews, changing the guidelines too often may confuse the subjects. In the countries where the guidelines were updated recently, the focus has been on promoting and endorsing the changes made. On the other hand, being flexible to change was also considered important.

The councils also vary as to how they revise their codes. Some of them have codes committees that meet at regular intervals to review the code. Among our participating councils, for example, the Irish Office of the Press Ombudsman (which is part of the Press Council of Ireland) has such a committee, made up of editors who meet

yearly to see if any changes are needed. The Irish Code also states that its content will be reviewed at regular intervals. This does not mean, however, that the Code will be changed very often. According to the Irish Press Ombudsman Peter Feeney, one of the commitments of his Office for 2022 is to update the Handbook on the Code of Practice, which gives examples of complaints that have been upheld under each of the Code's principles. Whether any updates to the Code itself will be made was not yet known.

Many councils, however, do not have policies on how often they update their codes and guidelines but review them on a need-to basis. The renewal process is typically triggered by a number of complaints on a particular subject or by a wider national debate on a journalistic ethical issue that urgently needed to be solved. The review process is time-consuming, so many councils seem to practically prefer less revision of their code.

The main reason for us to change the guidelines would be that we have a lot of complaints about something that is not in the guidelines yet.

All the recommendations, all the guidelines that we adopt are emerging because the general public is asking us to reflect on a topic or because [...] we have noticed that there is an emerging problem that we have to tackle before it becomes bigger.

You might end up spending all your time theorising about certain issues and then ... such a case never really appears. [...] It's a lot of work to change the code of ethics and we don't want to do it too often.

Perhaps unsurprisingly, the most recently reformed councils have been at the forefront of updating codes. For example, Impress is conducting a wholesale review of all parts of its Standards Code and Guidance for 2020–2022. Lexie Kirkconnell-Kawana, the Head of Regulation, explained that the Code was developed through a long process based on comparative research with other press councils and a public survey. However, when the Impress started using its Code back in 2017, the Code was still completely untested.

While it mimicked in some ways press codes that were pre-existing, both in the UK and in Europe, in other ways, it dealt with very new areas. So, we were not sure until we road-tested it whether or not the Code would be fit for its purpose. In the intervening three years, we had identified [...] cases in which the Code had been applied and got a real sense of the areas where the Code is very relevant and other areas where it hasn't been tested yet.

When the Impress launched its review in 2020, it had identified areas where its Code had not gone far enough, which made it decide to conduct a review. In Kirkconnell-Kawana's experience, in the space of press regulation, there are very few examples of how to update a code. Impress' review process, led by the Impress Code Committee, started with the opening of a call for evidence in November 2020. The idea was that any organisations or individuals could participate in the review, regardless of whether they had a direct interest in journalism. The open call for evidence focused on seven

key issues: journalism online, accuracy, harassment, discrimination, public safety, children and fairness.

The call was followed by a series of workshops, roundtable discussions and further research to guide the Code Committee in considering revisions to the Standards Code. In spring 2022, Impress consulted on proposed changes to its Standard Code. A new version of the Code was expected to be issued in summer 2022 in time for the fifth anniversary of the first publication of the Code.

At the time of writing of this article, the Council for Mass Media in Finland was also planning to consult the media, experts and the public on the need for a comprehensive review of its Code. The Council last updated its Guidelines for Journalists in 2014, although supplementary guidance had been published since then. Should the Management Group of the Council decide to undertake the review, it would likely take place in 2022–2023, so the revised version of the Code could be issued at the start of 2024.

Some of the other participating councils had intentions to update certain parts of their Code, while most of them had no active plans to undertake revisions. For example, the German Press Council (Presserat) was planning to revise two Sections of its Code. The first Section deals with ‘dual functions’, that is, whether journalists and publishers may engage in other functions in addition to their journalistic activities. Furthermore, the Council was intending to formulate guidance on the use of artificial intelligence (AI) in journalism, as was the Dutch-speaking Belgian press council Raad voor de Journalistiek (hereinafter, “the Belgian Raad”).

In general, making any changes to a code is a slow process. Roman Portack, Managing Director of Presserat, described the process in its Council as commonly initiated by its Complaints Committee when it detects a need for a change while handling complaints. Then the task is sent to the Plenum, a 28-member organ that gathers twice a year to discuss ethical issues such as new guidelines for the Code or public statements. “Implementing changes often requires that they are discussed in multiple sessions, so it can take from 6 to 18 months before any new rules are approved”, Portack said. For example, in September 2021, the Plenum set up a working group tasked to draft amendments to the guidelines on dual functions. The working group was expected to present its proposal to the Plenum in March 2022, which does not necessarily mean that its proposal will be approved and adopted then.

When a rapid response is needed to an emerging problem, councils often use other means, such as issuance of recommendations. According to Hanot, Secretary General of the French-speaking Belgian Council for Ethical Journalism (CDJ), the Council has acted promptly in such situations to counter a flood of complaints, for example, by recommending, most recently, revisions of guidelines on reporting on gender violence. CDJ annexes these supplementary guidelines to its Code, and they can be revised later, if necessary. “When we are working on a recommendation or guideline, we look at our own jurisprudence and we also analyse how our European colleagues are dealing with the question,” Hanot said.

In early 2022, CDJ had three working groups preparing changes to its guidelines. One of the groups was drafting amendments to CDJ’s existing supplementary guidelines on the distinction between advertising and journalism, including native advertising, originally published in 2015. In particular, CDJ had been asked to clarify how such guidelines

are applied to journalistic content published on social media. Another working group was drafting additional revisions to guidance related to giving floor to anti-democratic opinions during electoral campaigns, and the third one was revising old guidelines on financial reporting.

Overall, the level of detail in the European media councils' codes varies considerably. Some codes have only a few clauses, and others are remarkably long documents with several appendices. The reason for such differences have already been partly discussed in the preceding paragraphs. Over the years, councils have adopted different approaches as to how much ground they intended to cover in their code and what role would be given to different kinds of supplementary documents. For example, some councils have published guidance—either as part of the code or as separate documents—on how their code should be interpreted. Whether or not the councils would accept a complaint against this kind of guidance varies. Some councils have issued a range of supplementary documents that they also apply to the handling of complaints.

Overall, European media councils have not been keen on formulating separate guidelines for online journalism but have instead applied more universal guidelines to all platforms. There are some exceptions, however. For example, in 2020, the Council of Media Ethics in Macedonia (CMEM) started formulating new guidelines for online journalism. Supported by two external experts and by funds from Organization for Security and Co-operation in Europe (OSCE Mission), CMEM consulted the professional community, journalistic associations, media houses and civil society organisations, as well as mapped the existing legislation and ethical guidelines in different countries. The new guidelines were approved as an annex to the Code.<sup>1</sup> (Council of Media Ethics of Macedonia, 2020.)

According to Maria Tuneva, Executive Director of CMEM, the approach of annexing the guidelines to the Code was chosen because it was perceived as less time-consuming than revising the existing Code. “About 70 percent of the complaints received by our Council concerned online journalism, and we decided it was necessary to explain the existing Code in more detail with the specifics of online media in mind. At the same time, there were calls for legal regulation of online media, and self-regulation was considered a much better option,” she said.

Two other councils have annexed specific guidelines for digital journalism as part of their codes: the Russian Public Press Complaints Collegium (Annex 1: Journalism in the New Media Context) and the Information Council of Catalonia (ICC), which published its guidelines (Appendix B: Advice about the Internet) as part of a larger revision of its Code in 2016.

Above all, the council representatives emphasised that the ethical codes must reflect local media realities in order to be accepted in the profession. Especially in countries in which the media professionals are poorly committed to self-regulation, updating the existing code in general was considered difficult and often unnecessary. In these circumstances, consolidating the role of the Council and raising awareness of profes-

1 In addition to updating the guidelines, CMEM established a Register of Professional Online Media in cooperation with the Association of Journalists of Macedonia. Among the main criteria for becoming a member of the register is respecting the standards of the Code of Journalists, the Charter of Ethical Reporting during Elections and the Statute of CMEM.



sional ethics were seen as priorities, while introducing new and ambitious guidelines was regarded as only doing harm.

Frankly speaking, to me, the priority is to provide better respect for and better awareness of our decisions, and better authority over them. This means that especially, the public bodies that are somehow involved in the process and that have some functions in the media field should contribute to the awareness of and respect for our decisions because we need that in order to be efficient.

We didn't want to be overly ambitious with the guidelines. We wanted to produce something that is realistic and needed in this context. Sometimes, some of the newsrooms still resist the self-regulatory body. Even though they are exposed to this concept [and] they understand it, they don't want to co-operate. If you impose additional [...] rules, it interferes with their work and does not consider the real conditions, the circumstances under which they work. And they say, "You are ignorant of our needs, of our context. You ask for something that is too idealistic to be implemented here." [...] Instead of having a strict rule in the guidelines, maybe it needs discussion. Not everything can be formally structured into one sentence and imposed as a rule. Instead, different practices should be explored and discussed to see what's the best approach.

The code of ethics is fine, but the problem is that media and journalists do not accept self-regulation and do not take the council's decision seriously.

Not everything that is a new practice in the media needs to have a new article or updates in the code. You can still consider this issue and build a practice of the council on that. It's not necessary to put everything in the code.

On the other hand, some interviewees voiced concerns that their council did not sufficiently understand the challenges of the current media environment, which would make it difficult for the council to adopt to new realities and create new deontological standards.

I feel that there are urgent changes or amendments that are required, but to be honest, the great majority of our Board consists of very senior journalists. And because they are old-school [...] they think that the general classic rules that we have are likely sufficient to deal with new problems.

## Methodology

This report is mainly based on 16 semi-structured qualitative interviews with representatives of different European media councils. The interviews were conducted between July and October 2021. Where necessary, parts of the information were later updated to reflect the situation at the end of February 2022.

The councils involved in the study represent different types of media systems and realities, and the analysis extended geographically across Europe, covering the following countries: (1) European Union member countries (both Flanders and Wallonia in Belgium, Bulgaria, Estonia, Germany, Ireland, the Netherlands, Slovakia, Slovenia,

Spain (Catalonia) and Sweden]; (2) EU candidate countries (Republic of North Macedonia, Montenegro and Turkey); and (3) non-EU member countries (Norway and the United Kingdom).

The report focuses mainly, but not exclusively, on the future needs brought up in the interviews by the representatives of the abovementioned councils. In principle, quotations are anonymised as much as possible, for example, when they represent the personal views of the interviewee. However, for the sake of clarity, interviewees are quoted in their own name when they clearly talk as representatives of their own council, for example, about the procedures or decisions that have been taken.

In addition, for the analysis, a database of Codes of Ethics, compiled as part of the Media Councils in the Digital Age project, was used. The database covers 55 codes from 49 countries. The data were collected and analysed by Dr. Raymond Harder, a lecturer at the Erasmus University of Rotterdam, as part of a sub-project led by the Belgian Raad voor de Journalistiek. Although putting the database together required tremendous effort and the results will surely be beneficial for the media councils themselves and for anyone interested in their work, one constraint in the data is worth noting: the database covers only the ethical codes of the media councils and not their additional guidance. The database can be found on the project's website.

As Harder (2022) explained, the decision to focus only on the codes of ethics was based on both practical and more principle-related factors. For example, it was not always clear what the status of the supplementary documents was, that is, whether they were mere recommendations or binding guidelines endorsed and actively applied by the councils. Furthermore, some of the documents did not concentrate on ethics but featured opinions, explanations and 'best practices', and many of them were too long and detailed to allow meaningful comparisons. Finally, most of these documents were not available in English. Given these constraints, the decision to concentrate on the ethical codes is well justified.

However, it must be remarked that different kinds of supplementary guidelines and recommendations (sometimes annexed to the code) can play an important role in the complaint handling process of some councils. For that reason, the approach here is mixed: when code-level comparisons or generalisations are made to provide background information on all European media councils, the abovementioned limitations should be kept in mind. On the other hand, the qualitative thematic analysis of this study also makes references to additional guidelines, where relevant, although no attempt has been made to map them systematically.

# 2. SELF-REGULATING JOURNALISM IN SOCIAL MEDIA

**JOURNALISM'S RELATIONSHIP WITH SOCIAL MEDIA** raises several issues that media councils need to address. In this chapter, the focus is on what type of social media contents the councils consider to be within their remit. As journalism increasingly relies on social media platforms, such as Facebook and Twitter, to pursue audience engagement and distribute their content, the councils will have to decide whether to concentrate exclusively on the official accounts of media outlets or also assess journalists' personal accounts. Some issues related to the use of social media as a source are discussed in the next chapter.

## 2.1. Defining the remit

With just a few exceptions (Bulgaria, Montenegro and Slovenia), the councils participating in the study considered journalistic social media content to be within their mandate. However, they have taken different approaches to what types of social media accounts their code is currently applied to.

While some councils only accept complaints against content that appear on the official social media accounts of publishers, others also consider journalists' personal social media accounts to be within their remit. In the latter case, the councils have to assess which part of the content is considered professional and which is considered private. Demarcating between the two is far from easy, as it inevitably leads to cumbersome questions of definition, such as who a journalist is and what journalistic content is.

Instead of applying clear-cut definitions and pre-set criteria, decisions are mostly made on a case-by-case basis. How exactly the councils go about doing this seems to vary. The key criterion is whether the content itself is regarded as journalistic. In addition, attention is given to questions like how explicitly the journalist in question reveals their profession on their profile, and how clearly the account can be linked to a particular media brand. Also, privacy settings and the number of followers may be taken into account.

What we are saying is that you are also responsible as a journalist for what you are publishing, for instance, on Twitter or Facebook. Not when you do it as a private

person, but when you do it explicitly as a journalist and when the content is journalistic content. [...] But it is quite impossible to clarify in a guideline what is and isn't journalism. We tried to do it with the last update of our code. Finally, after all the discussions, we said, "No, we are not going to give a definition. [...] We would decide case by case."

We have a general ruling saying that journalists are always journalists, even in social media [...], except if it's clearly private. [...] It's not enough if the journalist is saying on the presentation of his Twitter account that "it's only my way of thinking and not the way of thinking of the media". We do not care about it. [...] To be personal, it must be a closed group and the group must be very small. [...] Sometimes it's easy [to demarcate] because the journalist is a professional. Sometimes, it is very difficult. It's a case-by-case decision.

There's no clear definition of what's inside or what's outside. We look for whether that is related to their work as a journalist, of course. Is it related to a special article they published in the media that the journalist shares and then comments on? This would be within the Code of Ethics. But if a journalist [...] has strong opinions on environmental issues and the climate crisis and does not cover this issue at all... [...] we wouldn't treat a case like that. But it's not a clear-cut difference.

Well, we look at the identity of the person providing the content, but much more importantly, we look at the content of what has been shared and decide if it can be regarded as journalistic content. [...] It's very difficult to draw clear lines. [...] Basically, if journalists share content on social media, we think, in principle, that they may be subject to ethical review, but the context and the content will be decisive.

If a journalist is acting in their capacity as a journalist in the media, for example, commenting on a programme or reflecting on the content of a programme that has already been broadcasted, this could be [handled in the council]. But if it's a personal opinion or a personal message on the social network, then it will be out of the scope of our mandate.

At the moment, what we say is, if the account branding is not distinct from the official account branding, and a reader is left with the impression that the account is associated with the official holder, it's subject. So, our requirement is that publishers ensure there is a separation and clear distinction, such that even a disclaimer that this is not the official account of X isn't sufficient. We require them to do more. So, if there are journalists and they say, I'm a journalist working for X, and they include the company logo on their personal page, we would regard that as within remit, and that's the distinction that we draw. [...] But we think the distinction is becoming increasingly opaque. The tests that we apply are as reasonable ordinary readers. Would the ordinary reader regard that as a professional account? [...] If it's a personal account, it must be for private personal use. Anything in a professional use capacity is captured by our scheme.

The decision not to look at personal accounts was based, above all, on the fact that distinguishing between personal and professional content consistently is difficult, if not impossible, when the line between the two is so inherently blurred. Case-specific solutions were feared to lead to unfair situations.

We only accept complaints against social media content that is being run on an editor's own social media account or channel. We talked about this, because we have seen some individual editors-in-chief who run Twitter feeds with lots of followers and the editor-in-chief is the head of the paper, so that it's really hard for us to separate. But still, we decided that we're going to stick to the rule of not regulating the individual accounts. [...] We see that it's really complicated to differentiate between the two forms. [...] We need objective criteria, because where do we [otherwise] end up? We cannot check every account individually. [...] And it would be unfair. It would start a procedure against one Twitter feed and not against the other Twitter feed.

It's a strange mixture of personal views and more professional views, and I don't think it fits under a Press Council operation for that reason. I think the answer cannot be that everything tweeted by a journalist falls under our remit. [...] Probably the only way in which you can get close to regulating and having some sort of complaints process for social media postings of individual journalists, is to decide: Is that journalism, or is it a private matter or a personal matter? I don't really want to get into that area because I think it puts a huge responsibility on the Press Council to decide what journalism is in each individual case.

Furthermore, it was pointed out that dealing with individual journalists' social media accounts would inevitably raise unresolved liability issues, because the complaints are currently dealt with by the editor of the publication, who would be unlikely to accept responsibility for what their journalists do in their spare time when they tweet. On a practical note, some of the interviewees also said that with the existing resources of the council, extending the scope would not even be possible. In addition, it has been argued that self-regulating journalists' social media usage would unnecessarily restrict their free speech.

Every journalist has a right to a free opinion. Maybe you write an article in the name of your newspaper, but personally, you have a completely different opinion that you want to disseminate on your Twitter account. I think it's certainly correct that, as an editor, as a newspaper, you're liable for your output, but for an individual journalist, this can be completely different. Freedom of opinion and freedom of speech is also an issue here.

At the same time, representatives of those councils that do not currently accept complaints against individual journalists acknowledged that the decision was not without problems, and that things might have to change in the future. Above all, it was raised that the public likely does not differentiate between the official accounts of the media outlets and the more personal accounts of individual journalists. As distinguishing between the two is becoming increasingly difficult, confusion amongst the public may, to some extent, undermine the public's confidence in the effectiveness of the council. It was also seen as a threat that if the issue is not tackled through self-regulation, it will be addressed through legislation.

It does create an uncertainty and a confusion amongst the public, and I think it does undermine to a certain extent their belief in us because a member of the public

won't differentiate between something that a journalist says on their social media account and something that is published in the newspapers. [...] It's a weakness because I think it does undermine public confidence in how effective we are. So I do think it is an issue that needs to be dealt with, but I don't have any answer for it.

Maybe this will have to change in the future, because what we see is, if it's not self-regulation, then it's regulation by media authorities.

## 2.2. Journalists' behaviour in social media

The question of what journalists can and cannot say on social media has sparked a lot of debate in recent years, both within the profession and amongst the wider public. The debate has revolved around questions such as whether journalists should refrain from posting any personal views, interests or political beliefs to maintain an unbiased image in the eyes of their public.

Although several interviewees voiced concerns about how journalists' usage of social media might have a negative impact on the public's trust in the media, participants almost unanimously agreed that it was not the task of the councils to issue guidance on journalists' social media usage. Rather, it was argued that this should continue to be dealt with by in-house social media policies, as the matter is ultimately between the employer and the employee.

Some of the councils participating in the study had recently discussed the issue amongst themselves. After receiving a lot of complaints about journalists' social media behaviour, the Belgian CDJ discussed a possible amendment to the code. According to Hanot, the idea of issuing guidance was abandoned, at least for now, as the council did not reach an agreement on the issue.

The UK regulator Impress was looking into developing guidance similar to the BBC's social media policy (2019), according to Kirkconnell-Kawana, but they were still in the early stages of consultation on changes to their scheme in relation to personal social media accounts. Currently, Impress requires publishers to let the council know about all the social media handles they use for their official accounts and keep a register of those accounts it regulates.

Of the other European councils, at least the Armenian and Russian councils address the issue directly in their current code. While the code of the Media Ethics Observatory of Armenia briefly refers to an obligation to "set rules of conduct in social networks for the editorial staff and follow the compliance with thereof", the Russian Mass Media Self-regulatory Body addresses the issue more thoroughly in an annex to its code. Amongst other things, it states that even when using social media as private people, "journalists must not undermine the audience's belief in the impartiality, independence and competence of the organisation", and that "a journalist who has disclosed their affiliation with a specific media outlet should not share any confidential corporate information, run any political campaigns or criticise their colleagues".

# 3. REPORTING ON PERSONAL LIVES

**THE NOTION OF PRIVACY** has changed across time and cultures, and in the social media environment, boundaries between private and public are said to be increasingly open to interpretation. The first issue discussed in this chapter relates to user-generated content, particularly media councils' interpretations of the conditions under which images and information shared by people on social media can be used as sources of journalism. The second part discusses the principles of removing or anonymising upon request content from media archives.

## 3.1. Social media as a source

Due to the flow of information available on social networks, journalists are increasingly faced with the question of how to avoid unfair disclosures that have the potential to damage people's personal lives. In particular, the use of unauthorised social media images to illustrate stories of accidents and crimes was described as a recurring issue in the interviews conducted in this study.

Thus far, only a few councils have specific guidelines for the use of social media content. The ones that do stress that the use of personal information or recognizable images must, in principle, be justified by an overriding public interest if published without the permission of the people involved.

The Belgian Raad clarified the conditions under which information and images could be taken from social media or personal websites back in 2013. According to Pieter Knapen, the Secretary General of the Council, this was done in the aftermath of a tragic bus crash in Switzerland in which 28 Belgians were killed, most of them children. The guideline for Article 22 requires that if the person involved has limited the access to information or images on social media or on a personal website, the information may not be used in principle without asking permission, unless the journalist can "demonstrate a considerable public interest to justify its use".

Furthermore, it says that "Even on publicly accessible pages, personal information or messages may not be simply used in journalistic reporting, as there is a difference in context, extent and impact." Therefore, "a number of considerations" should be taken into account before using this information. In particular, the Flemish guideline is intended to protect people in vulnerable situations, such as minors and victims of

crime, disasters or accidents, and those closest to them. It is specifically stressed that their objections to the use of the material should be respected. It is also emphasized that taking information or images out of context may hurt or offend people. However, “This discretion does not apply to the use of personal messages of public persons on publicly accessible platforms or media.”

The Impress Code clause (7.2b) is similar in meaning to that of Belgian Raad, but with a much more explicit expectation to respect privacy settings. The 2017 version of the clause states that “except where justified by the public interest, publishers must respect privacy settings when reporting on social media content”. According to a draft set of recommendations for a new code clause, this should be amended so that the revised version would require publishers to “give due consideration to online privacy settings when determining the privacy status of the information and then adhere to those settings”.

According to Kirkconnell-Kawana, the test is a “reasonable expectation of privacy”. For example, if a person posts images of themselves on social media with privacy settings in place, then it is highly likely that they would not expect the images to be posted elsewhere. The draft version of Impress’s new guidance deals with this issue comprehensively and provides further details on social media privacy settings. For example, it is suggested that posting an image on an account without privacy settings does not mean that the individual is consenting to the publication of these images for a wider or entirely different audience, even though the expectation of privacy is weaker if “everyone” is allowed to view the post.

Kirkconnell-Kawana says that not only is there the issue of the settings used, but also other contextual factors to consider when deciding whether something should be regarded as private. “You have to consider the context, not just a benchmark of followers or settings”, she says. Importantly, the Impress guidance also states that “the clause is not breached if the public interest in the act or publication complained of outweighs the harm caused”. In addition to respecting privacy settings, the draft version of Impress’s new guidelines suggests that journalists should refrain from using fake social media accounts to obtain information from or gain access to individuals or groups.

The North Macedonian CMEM, for its part, asserts (guideline 7.5.) that “private data, statuses, videos, private photographs and other personal publications on social networks” should not be published without consent “unless the status of the specific publication is marked as public”. This can be read to mean that the use of material found in public accounts is considered unproblematic. Similar to the above two cases, the Macedonian guideline also stresses that exceptions to the general rule are cases where “public interest prevails over the right to privacy” and when publishing the information is “necessary for the purpose and topic of the reporting”. In those cases, journalists are urged to carefully weigh to what extent can an invasion of an individual’s privacy be justified. Furthermore, the Macedonian guideline 7.6 requires that details about third parties must be removed to protect their privacy. (Council of Media Ethics of Macedonia, 2020.)

Based on the interviews conducted in this study, the councils seem to adopt somewhat different approaches to whether they consider social media content in principle as private or public. Where Impress treats privacy settings with great respect, for example, some other councils’ representatives seemed to approach the issue from a radically



different perspective, arguing that virtually everything published on social media can be considered public. Others adopted a midway position. However, despite the different approaches, all stressed the importance of case-by-case consideration.

We regard social media as a public platform, definitely. If you have more than 30–40 people looking at it, we would regard it as public. But of course, it has to do with what kind of information is there. Is it very personal? Is it something that society needs to know about or has a just cause to know about? Every case is different. Everything matters. How old are they? Are they experienced? Is it important to get out?

Even if the account is open, the journalist cannot use a picture of a person without asking for permission. If you do not have permission, you can only use it if there is a general interest.

You can't limit privacy by saying how many people you share with. [...] I think a lot of the public don't take privacy measures on their social media accounts. They don't understand them, and they don't do it. And they don't think about how easily something they say to quite a small group can certainly get out of control, and can certainly be passed on or tweeted on, or forwarded or whatever. And suddenly, you completely lose control over who has that image and who was commenting on that image and what can be done with it. So, it is an issue.

I think we must look at the individual case to make a decision on this. It's really hard to say in an abstract manner. [...] We see that people don't handle the settings properly. I think there's a lot of private accounts that do not have privacy settings on. And some yellow press journalist would say, "Yeah, easy. No privacy settings, no privacy. We publish it." But the Press Council has a different view.

There seemed to be significant differences in interpretations of how a person's status affects the protection of that privacy. While some said that public figures should have the same rights to privacy as other people, others argued that also content published on their personal accounts was fair game.

In principle, I would say the private account of a public figure has exactly the same rights of privacy as the private account of a private figure. So, we do recognize that public figures have less privacy because they are public figures and, often, they benefit from being in public, but they still maintain a degree of privacy. And if they exercise that privacy, I think it ought to be respected. Of course, we also have a public interest clause so that you can, on occasion, breach privacy if it is in the public interest to do so.

A politician could never have a private profile on Facebook, where he says things that are not meant for publishing in the news media. It couldn't happen. We would always regard it as public information. But if a young person not experienced with the media didn't seek any position in society, then it wouldn't be a just cause for me as a reader to know about this. It's not important.

In practice, it seems that European media councils base their decisions on very similar reasoning. It was generally agreed that a number of contextual factors would need to be

considered when judging whether something is public or private. There was also a broad consensus that, regardless of what the privacy settings are and how wide a following the person has on social media, clearly personal information or pictures should not be published without consent unless justified by public interest. The fact that people don't necessarily handle their privacy settings properly was raised by several interviewees.

In addition to issues of privacy, there are also other ethical issues involved with the use of social media content for journalistic purposes. These relate to, for example, verification and attribution. In principle, social media content and other types of user-generated content (text, photos, videos, audios, etc.) are treated as any other source of information. However, some councils highlight their specific nature in their codes. For example, a guideline (to Art. 22) of the Belgian Raad reminds journalists to check "the provenance and the veracity of the information or the images". The Lithuanian code says that the source must always be mentioned "when using a citizen's personal video, as well as when using the audio or text information found on social networks" (Art. 46). The French IFJ Global Charter of Ethics for Journalists, for its part, states that journalists "will be careful to reproduce faithfully statements and other material that non-public persons publish on social media". In more general terms, the German guidelines state that "user-generated content must be clearly marked as such".

According to the interviews, those councils that did not yet have guidance on using social media as a source also had no intention of creating any. Generally, the more universal-level guidelines on privacy were considered sufficient for assessing social media content. For example, many councils have guidelines that require a duty of care in covering conflicts and tragedies or taking special care when dealing with grieving families. Some interviewees also said that more general guidelines leave more room for case-sensitive assessments and the use of common sense.

It is a difficult area and there are so many elements to it that I think it'd be almost impossible to have laid down specific rules about what you can and cannot do. I think you can only give general guidelines and hope newspapers take them seriously.

## 3.2. Removing content on request

Some of the most common requests that editorial offices receive are to remove or anonymise content from long ago. While these requests are mainly targeted toward editors-in-chief, media councils are also increasingly being contacted by disappointed people, hoping the councils could intervene or oblige the media to suppress the unwanted story.

The 'right to be forgotten' [replaced by the 'right to erasure' in the General Data Protection Regulation (GDPR)] is essentially a legal construct<sup>2</sup> that has not yet been applied to media archives. The legal debate around the issue was resurrected, however,

<sup>2</sup> In a landmark decision on internet privacy, the Court of Justice of the European Union ruled in May 2014 that search engine operators must comply with requests to remove links to personal data that are "inadequate, irrelevant or excessive in the light of the time that had elapsed." Later, the 'right to erasure' of personal data was included in Article 17 of the General Data Protection Regulation (GDPR).

in June 2021 when the European Court of Human Rights (ECHR) issued its judgment in the case of *Hurbain v. Belgium* (7292/16). According to the judgment, the Belgian court had not violated freedom of expression, when ordering the newspaper *Le Soir* to anonymise the identity of a rehabilitated offender in its digital archives (European Court of Human Rights, 2021). Some interviewees believed that the debate on legal protection for privacy at the level of the European Union together with the increase in removal requests by citizens may also put pressure on media councils to revisit the issue from the ethics perspective.

Currently, only two European media councils address the issue in their code. The Danish Press Council acknowledges in its code (rule B8) that in digital media, statements “will often be available long after their publication” and that “upon request to the medium, the availability of [...] previously published sensitive or private information may be hampered if possible and deemed reasonable.” In turn, the Belgian Raad has adopted a slightly different angle and tone. In its guidance to Article 22 of its code, it states that in principle, the public interest in keeping the archives “as complete as possible” outweighs the interest of the person making the request to remove or amend the content. Therefore, “the right to be forgotten” must always be weighed against “the public’s right to information” when considering these requests.

Similarly, the Netherlands Press Council (hereinafter, “the Dutch Raad”) emphasizes in the guideline (section D.) of its code that agreeing to anonymise or remove content should be an exception. The guideline was updated in May 2021 so that it no longer refers to archives but, instead, more generally to publications available online. The revised version reads: “If journalists are requested to anonymize or to remove publications (text, images and/or sound) accessible online, then in exceptional cases only will they allow for the public interest of archives of the highest level of completeness and reliability to be outweighed by the private interests of those who make the request.”

According to Daphne Koene, secretary of the Netherlands Press Council (hereinafter, “the Dutch Raad”), this minor amendment was made because it may not always be clear whether something was “archived” and thus, it made more sense to refer to content that is “available online.”

At the same time that it published the small update to its code, the Dutch Raad published an Annex, in which it aimed to clarify its assessment criteria for complaints concerning rejected requests to remove or anonymise personal data (Netherlands Press Council, 2021a). According to a statement published later on the Dutch council’s website, it had repeatedly pondered on how to determine, when handling complaints, whether a case was “exceptional” (Netherlands Press Council, 2021b). Also, it was seemingly not always clear to the complainants on what grounds their requests were accepted or rejected. After consulting different stakeholders, the council published some clarifications, hoping they would help weigh conflicting interests transparently.

However, the Dutch Raad decided to remove the Annex only a month-and-a-half later after discussing the issue with the Dutch Association of Editors in Chief. According to the council’s statement, the publication of the Annex gave the wrong impression that the entire journalistic community endorsed the assessment criteria set out in the document. The council explained that it believed that the quality of its own complaint handling process would benefit from publishing the Annex, while the editorial boards are responsible for their own considerations.

In the end, the Dutch Raad published its considerations in a modified form elsewhere on its website. The questions that the editors should consider, according to the Dutch Raad, include: How serious could the consequences of the publication be? Would keeping the information complete serve a particular public interest? Is the information still relevant? Did the person concerned cooperate with the publication and was he or she sufficiently aware of the consequences? The Council concluded that, in most cases, the decision would not be based on a single criterion, but various criteria would play a role (Netherlands Press Council, 2021a). Furthermore, it encouraged media outlets to publish their own criteria for removing content on request. (Ibid.)

The Dutch example shows that finding common ground on the issue can be difficult. On the one hand, there seems to be a wide consensus among the media councils and the industry that keeping the archives as they are is in the public interest and thus, the media organisations should agree to remove or anonymise archived content only in exceptional cases. On the other hand, it became clear from the interviews that in many countries, the common rules for handling these requests are still missing or at least unclear—partly because of the legal dispute around the issue.

Now I put on my hat as a former editor [...]. That was the most common question I got from the public: “Can you please remove this piece? Can you please remove this picture? It’s 10 years old, five years old, it’s 50 years old, I don’t want it to be there anymore. When you Google my name, you find me. Can you please delete it?” That is an extremely common question, and that is, I would say, totally unregulated. There’s no guideline or general rule on how to do that. I’ve spoken to many colleagues about this. [...] For the media companies, that’s a very, very, very, very common question. They get it all the time, and they’re like, “Oh, well, what should you do?” [...] It’s a territory that is totally unregulated, and there’s a lot of uncertainty [as to] how to deal with it.

The right to be forgotten is something that is, in its legal quality, still very, very disputed. [...] We don’t have a section or a guideline on this because I believe that the discussion is not over in the legal field and it’s not over in the ethical field either. I think Google Spain was just the beginning.

According to the interviews, most councils are currently considering removal requests as an editorial matter and not as something that falls within their own remit. Most councils have a strict rule of accepting complaints only about materials published in the last two or three months, which means that content already stored in the media organisations’ digital archives are not in their power.

The Belgian Raad takes a different approach to the two-month rule, though. As Knapen explained, the complainants are first asked to contact the media outlet in question and ask it to remove or anonymise the content. If the media outlet refuses to do so or decides not to answer, this will be considered a new case and will start a new two-month period for filing a complaint. However, as of July 2021, the Council had received only eight complaints on the right to be forgotten, all of which had ultimately been deemed unfounded.

The Impres, in turn, introduced in its draft set of recommendations a new sub-clause (7.3) that details the requirement for publishers to give “reasonable consideration” to those who wish to be anonymised after a publication has identified

them. This has been highlighted as particularly important for those under 18 years of age at the time of publishing.

Although many of the interviewees called for clearer common ethical rules for handling removal requests in journalism, they opposed the idea of making it the task of the media councils. Rather, they suggested, for example, that the national organisation of newspapers should step in and try to develop some common guidelines that are transparent and clear so that people would know what to expect.

I think that's something that should be self-regulated within the newspaper business. [...] I should say that they make their own rules. I mean, they have their own rules when it comes to alcohol ads, and they have their own rules when it comes to casino ads, and they can say, "We have these rules when it comes to removing or anonymising content."

I think it would be wrong to put it into our mandate. I think this has to be a discussion between them [the people making the requests] and the editor-in-chief. And if the editor-in-chief is a wise person, he or she will find ways to help if [he or she] sees a need for it.

However, many of the councils seem to be currently acting informally as intermediaries and trying to help complainants by negotiating with the editorial office, if necessary.

The importance of case-by-case assessment was emphasised in the interviews, as was the importance of preserving archives for historical reasons. Most of the interviewees agreed that permanently deleting data from archives should be avoided as much as possible. Some of them gave examples of better options, such as using "noindex" meta tags that will not delete the content but will hide it from search engine results. It was also mentioned that there should be a record of what content has been altered and how.

In line with the above, The Macedonian CMEM has outlined in a supplementary guideline that content available through search engines can be permanently deleted from the archives if it contains "hate speech, discrimination or other content that is not allowed by law and/or if there is a court order therefor." In case content is permanently deleted from the archive, the media are "obliged to publish a notice on the link where the deleted content was published stating that it has been removed and the reason therefor, the title, the publication date, the name of the author and the date of withdrawal, that is, deletion." Furthermore, the media is required to keep the "withdrawn content, as well as other relevant information on the specific case, in its internal archive."

In addition to laying out principles for removing content from media archives, some councils have in their Code specific guidelines for reusing archived material in news stories. For example, the Flemish, Montenegrin, Polish and Russian codes require that archived material be clearly marked as such so as not to mislead the audience. The Code of the Belgian Raad also emphasises that the original context of the re-used information or images must be considered. Journalists are particularly reminded to consider that "minors and their surroundings evolve quickly," and therefore, it "may be advisable not to republish older material or to ask for permission for re-publication."

# 4. TRANSPARENCY AS A RESPONSE TO ETHICAL CHALLENGES

**THE IDEA OF TRANSPARENCY** has been at the forefront of journalism studies and practice over the past 20 years, and the debate shows no signs of fading. Already a decade ago, the protagonists of transparency declared it “the new objectivity” (Weinberger, 2009), while others have suggested it to replace some of the core values of journalism, such as the obligation to “act independently” (McBride and Rosenstiel, 2013). Above all, transparency has been seen as providing opportunities to restore credibility and trust in journalism, while critics have also warned that it should not be considered a panacea or stand-alone principle at the top of a hierarchy of values.

In policy debates, calls for greater transparency have intensified in recent years. For example, in the US, the Knight Commission on Trust, Media and Democracy (2019, p. 7) urged, in its recommendation to the news media, to, first and foremost, “practice radical transparency” and “develop industrywide, voluntary standards on how to disclose the ways they collect, report and disseminate the news.” Similar calls have been made frequently also in the European context. What, exactly, is meant when transparency is required is not always completely clear, though.

At the word level, explicit references to transparency in the ethical codes of European media councils are scattered across different topics,<sup>3</sup> and only a few of them refer to it as a broader-level concept.<sup>4</sup> However, a closer look at the more concrete “transparency tools” identified in academic studies (e.g., in Karlsson and Clervall, 2018) shows that a vast number of these transparency elements are covered by media councils’ ethical codes and guidelines. For example, many of such codes and

<sup>3</sup> The explicit references to transparency in the codes of European media councils pertain to, for example, transparency about external financial support and relationships (e.g., Flanders, Greece and Moldova), ownership and management (e.g., Andalusia/Spain), advertising (e.g., Hungary and Italy), gathering information (e.g., Romania and Serbia), sourcing (e.g., Italy), correcting errors (e.g., France and Slovenia) and handling comments, responses and complaints (e.g., the Netherlands).

<sup>4</sup> For example, the Guidelines of the Netherlands Press Council state that “journalism that demands full freedom is at the same time transparent about its approach and choices.” Similarly, the Norwegian Press Complaints Commission urges journalists in its code to “be open on matters that could be relevant for how the public perceives the journalistic content,” without explicitly mentioning the word ‘transparency.’ The British Impress as well as the Lithuanian and Turkish press councils, in turn, each have a subheading on transparency, although different issues are covered under it. For example, the Impress mainly looks at the issue from the limited point of view of commercial arrangements, whereas the Lithuanian and Turkish codes cover a broader perspective.

guidelines require disclosing possible conflicts of interest, demarcating editorial content from advertising, distinguishing between facts and opinions, showing sources, correcting errors, disclosing working methods (such as identifying oneself as a journalist and informing the interviewees of the intended use of the information being gathered), and others.

The intention in this article is not to go through all the possible elements of transparency and their implications for journalistic self-regulation in the digital environment, let alone to suggest transparency as a solution to all the problems in contemporary journalism. Rather, the concept of transparency is used as a loose framework for issues brought up in the interviews and previous research.

In the interviews of European media council representatives for this study, opinions differed as to whether the value of transparency as a principle should be emphasised more at the level of ethical codes in the future. While some interviewees said that the importance of transparency should be emphasised more clearly in their code, others were more doubtful of the general usefulness of the concept.

I think that transparency, in the future, will be one of the core principles in ethical codes. [...] Independence is very important, but I [have] always hated the word 'objectivity.' [...] Transparency is much more important, I think. I would like to have it in a more explicit way in the ethical codes.

I think it'd be terribly difficult to give specific guidance on that beyond a vague encouragement that transparency is important. It increases trust, and it also helps to avoid the misuse of journalism. But I'm trying terribly hard to know how you could give specific guidelines on it. It's an important concept, but it's such a vague concept. I really have difficulty in saying how you could have it in your code in such a way that somebody could put in a complaint about it. [...] I find it hard to know how I could help even in giving advice on this because it's such a general concept. It's something that is good, but it's very difficult to see how you can codify it into anything that is meaningful.

For example, while explaining editorial decisions was considered of utmost importance in gaining public trust in the midst of fake news and disinformation, editorial transparency was not generally considered something that should be recognised at the level of ethical codes.

I'm very pro-transparency when it comes to journalistic methods. I think the more serious and trustworthy media should tell [...] how much they [are working] on a story, how many interviews they [are doing], how many documents they're reading. And the more, the better. [...] I think it's a way for serious media outlets [to survive] if they're going to fight in the internet age against those alternative media. [...] I think that's very important. But regulation, no. I don't think so.

The thing about explaining editorial decisions, this is something that we would not have in the press code, as we see the press code as kind of a red line that must not be crossed and not as a kind of guideline to [the] best possible journalism. Our perspective is more the bottom line that must not be crossed. This is what we see the press code as.

On the other hand, it was predicted that the social media and, in particular, the credibility indicators that help users to distinguish fake news from legitimate news sources in social media platforms could contribute to making journalistic practices more transparent in a way that also affects journalistic ethics in the future.

My personal view is that we see a natural graduation towards generally more transparent reporting practices, particularly in light of system design of platforms and news delivery. For example, Facebook is including new reliability indicators when identifying news that [travel] on its platform. It might be the case that publishers start doing it by virtue of the fact that their content won't surface on Facebook unless they comply with those sorts of commercial requirements. So, I think we'll see change generally over time just because of that. It's definitely an area we're looking at [...] as part of our general obligations under our scheme contract.

In the following, several aspects of actor and production transparency (Heikkilä et al. 2012, p. 43) are discussed in more detail. These include disclosing potential conflicts of interest, identifying sponsored editorial content, labelling news automation and personalisation, linking to sources and correcting mistakes online and on social media. Moreover, maintaining the online comment sections can be understood as a form of participatory transparency (Karlsson, 2010).

#### **4.1. Dual roles: Disclosing potential conflicts of interest**

Growing concerns about the decline in trust in (news) journalism around the world have brought questions of real and perceived media bias to the fore. In public debates, it is often demanded that journalists disclose all possible biases at play for any given story. Where there are historically rooted differences across journalistic cultures as to whether journalism is expected to be 'impartial,' 'unbiased' or 'objective,' virtually all European media councils emphasise in their codes that journalism is to be independent. Furthermore, it is commonly required that the public be able to distinguish facts from opinions.

Many councils also lay down a stern admonition to avoid different kinds of conflicts of interest (especially those of a financial nature) at both the organisational and personal levels. In some places, however (and in some codes more than in others), it has been considered sufficient for any such interests that may distort a story—or that could be perceived as distorting a story—to be properly disclosed. There are some weak signs that the latter approach may be gaining more ground. The German case described in the following paragraph is an interesting example of this. While the issue itself is not just about online journalism, it is related, for example, to the above-described debate on whether journalists should strive to maintain an impartial and neutral stand. In particular, it has been demanded that journalists abstain from political activity.

In the autumn of 2021, the German Presserat was in the process of updating its guideline (6.1) on dual functions. The guideline currently reads: "Should a journalist or publisher exercise another function in addition to his or her journalistic activity,



for example [...] in a government, a public authority or a business enterprise, all those involved must take care strictly to separate these functions. The same applies in reverse.”

Many other councils (e.g., in Estonia, Hungary, Italy, Lithuania, Poland, Romania, Slovenia and Catalonia) have a similar clause in their code that forbids journalists to work for, accept any income from or have an active role in an organisation, political party or company whose activities they cover.

In the jurisprudence of the committees of the Presserat, however, they have already required that possible dual functions be made transparent rather than be strictly separated as stated in the aforementioned code clause. According to Roman Portack, managing director of the Presserat, their aim is now to bring the wording of the code into line with the interpretation already applied by the committees of the Presserat in their practical work. Portack explained:

What the guidelines say now is that there are dual functions that have to be separated. And what we want is not to say that some things can't go together, but that they have to be made transparent, because there are always things that really can't go together. The common case is that you have a party affiliation and you are a journalist who covers party politics. This is the case that we need a guideline for.

At the time of writing of this article, the formulation and scope of the revised guideline was still under discussion. For example, there was some consensus that journalists would not be expected to disclose a party membership, but whether an active function or an employee status in a political party or in a commercial company should be made transparent was yet to be decided.

This case illustrates how the ethical practices and principles of journalism are shaped over time within specific historical and cultural contexts. The question of dual roles not only relates to the debate on partisan journalism but also to the debate on how journalistic work and role perceptions have changed in recent years largely due to economic factors. This affects, in particular, a growing number of freelance journalists who often shuttle between jobs.

## **4.2. Labelling sponsored editorial content**

The demarcation of paid content from editorial content is one of the cornerstones of journalism ethics. However, along with the growth of sponsored content in digital journalism, the boundaries between editorial and commercial content are becoming increasingly blurred. While advertisements that resemble editorials have long predated the digital age and while some sponsored content may be short-lived, concerns have been raised that the deepening convergence between marketing communications and journalism has far-reaching consequences.

While a range of terms have been used in reference to similar phenomena—including ‘branded content,’ ‘sponsored content’ and ‘native advertising,’ Hardy (2021) suggested using ‘sponsored editorial content’ as an all-encompassing concept. He defines this type of content as a “material with similar qualities and format to content

that is typically published on a platform or by a content provider, but which is paid for by a third party.” It covers two main converging forms: a brand-controlled, editorial-like material, and a material that is paid by, but not controlled by, the sponsor, at least not formally. It is the latter type that is of specific interest in this article.

In general, virtually all European media councils require in their code that a clear distinction be made between editorial content and advertisements (or other commercial contributions) and that the public be enabled to recognise advertising as such. Some of the codes also specifically mention that ‘surreptitious,’ ‘hidden’ or ‘covert’ advertising must be avoided, while others stress that ‘sponsored content’ must be clearly marked. According to the Codes of Ethics database, none of the codes currently refer to ‘branded’ or ‘native’ content.

The interviewees generally considered their current guidelines adequate, and most of them disclosed that their councils had no active plans of revising their code regarding sponsored editorial content. Some said, however, that this is one of the areas where more specific and nuanced guidance may be needed to ensure that the guidelines understand properly and cover sufficiently the evolving forms of sponsored content.

For example, the Belgian CDJ has addressed the issue of native advertising in a recommendation that was published in 2015. According to this document, applying the general rules on advertising to native advertising is problematic because it takes various and sometimes subtle forms that can be difficult for the editorial staff to control in a rapidly changing online environment. While acknowledging that native advertising is an important financial source for publishers, the recommendation states that native advertising should not be produced by teams that produce editorial content and that journalists should not take part in the production of native advertising. The document further emphasises that native advertising must be clearly marked and visually differentiated from editorial content (Conseil de déontologie journalistique, 2015).

At the time of writing of this article, the CDJ was preparing to rewrite its recommendation on how to distinguish between advertising and journalism. It also already deals with native advertising. According to Hanot, the council had been asked to clarify whether journalists are allowed to promote products on Instagram. Furthermore, after having dealt with several complaints related to, for example, sponsor arrangements in sports and lifestyle journalism, the council decided that certain principles need to be clarified and brought back to the attention of their members.

Also, in the UK, the Impress was going to update its guidance to its code clause 10.1 that states that “publishers must clearly identify content that appears to be editorial but has been paid for, financially or through a reciprocal arrangement, by a third party.” While the clause itself was intended to remain unchanged, clear definitions would be added to the guidance section. A draft version of the guidance identifies three types of content that may be understood as commercial: “The first is where payment is made or where an in-kind arrangement exists [...] but the third party exerts no editorial control over the article’s content. [...] The second is where a payment is made, or an in-kind arrangement is agreed to, and the third party applies some degree of editorial control. The third type of content is where a third party exerts full editorial control over an article by, for instance, commissioning an article, selecting the writer, and influencing the content of the article.” According to the draft, the last type of content “may be labelled as ‘paid content,’ a ‘paid advertorial’ or ‘advertiser content.’

The current version of the guidance on the Impress standards code already requires publishers to clearly identify any commercial arrangements and to distinguish between editorially independent content and content that “has been influenced by, or may be perceived to have been influenced by, a sponsor.” The revised version is intended to also provide publishers clear advice on how the different types of commercial content should be labelled and what the responsibilities of both advertisers and publishers are when using this form of content.

According to Kirkconnell-Kawana, the Impress Standards Code was originally developed with the harms of the day in mind, addressing the fact that, in the UK, a lot of commercial publishers have relationships with networks of both private and public organisations, from which they accept payment for stories. However, by July 2021, the Impress had not had a complaint about its Code’s transparency clause, which also requires, for example, disclosing significant financial conflicts of interest regarding the network of publishers that it regulates. Kirkconnell-Kawana disclosed that “one of the worst examples” of where the Code clause is relevant is the case of London’s Evening Standard, which reportedly agreed in 2018 to a £3 million deal with six leading commercial companies, including Google and Uber, to give them “money-can’t-buy” positive news and “favourable” comment coverage.<sup>5</sup>

Although similar-style paid stories can, of course, appear on any platform, sponsored editorial content is perhaps most typically found online. Research indicates that because of the wide variety of formats of online advertising, it can be difficult for the public to identify. Some new forms of sponsored content take advantage of ambiguities between paid and editorial content in multiple dimensions. This may be an area that media councils should stay alert to. Some studies have also called for the development of more specific and practical guidelines for the republication of sponsored content that incorporate different social media settings (An et al., 2018).

### **4.3. Marking news automation and personalisation**

The impact of artificial intelligence (AI) on different aspects of journalism, from content production to distribution, has been one of the most widely discussed issues among professionals in the field in recent years. For example, Professor Charlie Beckett (2019, p. 62), who leads the JournalismAI initiative at the London School of Economics, argued that there is now a need for new codes or guidelines for AI.<sup>6</sup>

<sup>5</sup> The Evening Standard’s alleged arrangement sparked outrage across the British mainstream press as it was seen to effectively sweep away the conventional ethical divide between news and advertising, leaving readers unable to differentiate between news that is paid-for and other commercially-branded content, even though the Standard itself strenuously denied going beyond the practice of publishing “branded editorial” paid for by companies and clearly marked as such. (Open Democracy 2018.)

<sup>6</sup> The ethical concerns raised by Beckett (2019) in a report based on a global survey of journalism and on an intelligence report relate to, for example, algorithmic bias, AI’s increasing role in promoting misinformation and accentuating ‘filter bubbles,’ balancing human intelligence with AI, the growing role of technology companies, privacy of data used by AI and others (Ibid. 52–68).

As part of the Media Councils in the Digital Age project, the Finnish CMM conducted earlier an Europe-wide study on the ethical implications of news automation for the work of media councils. Even though the results of the study indicated that automated generation of news text in Europe was still mainly experimental in nature, in his report, Lauri Haapanen (2020) advised the councils to “keep their eyes open” to the possible need for self-regulatory guidance on news automation, act proactively on the issue and “critically revisit their complaints procedures so that audiences have a genuine opportunity to bring up their grievances with automation.”

Even before Haapanen’s report was published, in late 2019, the CMM had issued a statement on marking news automation and personalisation. The purpose of this supplementary guideline was “to define the use of algorithmic tools as part of journalistic work and to assure the public that media outlets act responsibly and transparently while using algorithms” (Finnish Council for Mass Media, 2019). The statement outlined how media outlets should inform their audiences about their use of news automation and their personalisation of content. It further stressed that journalistic organisations should sufficiently understand the effects of algorithmic tools and that it is their duty to ensure that their digital service developers also adhere to their journalistic guidelines when they independently make decisions that influence journalistic content. However, the Finnish Guidelines have not yet been amended to cover the issue of algorithms.

Since then, several councils have taken steps to cover AI in their code. As of February 2022, at least the Belgian Raad, the German Presserat and the Impress in the UK had concrete plans to add to their code a clause or guideline on the use of AI in journalism, and the Catalan council had just published supplementary guidance on the issue.

In a draft set of recommendations for changes to its code, the Impress has created a new sub-clause (10.5) that addresses the use of AI. The proposed formulation is “Publishers must take responsibility for the use of AI and exercise human editorial oversight and ensure that prominent labels make it explicitly clear that AI has been used.” The draft guidance to the code details that the requirement of editorial oversight covers the use of AI in generating, publishing and disseminating news and that the publishers are expected to “prominently label all content that has been generated wholly or partly by AI, so it is clear to their readers that this is the case.” The guidance further reminds publishers that the public has the same ability to complain about AI-generated content as they do with human-generated content.

According to Kirkconnell-Kawana, when the Impress was preparing its new code sub-clause, it consulted academic and digital-sector experts as well as a range of practitioners to understand future journalism practices better and to have a clearer idea of what the sub-code could practically look like.

Similarly, the Belgian Raad was discussing in early 2022 the issue of AI with a range of media organisations and preparing to add two new guidelines on AI to its code. The changes are likely to be approved in fall 2022. According to the draft text, the first addition would be made to Article 9, which deals with editorial independence. Among other things, the new guideline would remark that the editorial choices regarding AI must comply with the principles of the Council and that the final responsibility for the produced content rests with the editor-in-chief at all times. According to the draft, the editor-in-chief must ensure that the principles of the ethical code are met in the

development of AI-driven systems as well as to monitor the application and implementation of these principles.

A second addition to the Flemish code would be to Article 11, which requires journalists to be transparent about their assignments, about their approach and about their way of working. The draft text requires editors to communicate transparently about automated news production and personalisation of content, so that it would be clear to the public when content has been created or selected by AI. In particular, the editors would be expected to indicate when “the essence of a news item” has been produced on the basis of automated processes and to refer as far as possible to the sources on which the item is based.

At the time of conducting the interviews, the German Presserat was still in the early stages of planning how to address the use of AI in its code. As a first step, it was expected to hear an AI expert in its Plenum in March 2022.

The Catalan Press Council took a slightly different approach and commissioned a study on AI (Ventura 2021). Based on the conclusions of the study, the Council prepared its recommendations for the ethical use of AI, which were published as part of the report. These recommendations included safeguarding the source and diversity of data and ensuring constant monitoring of their representativeness; ensuring the technical quality of data processing to minimise risks and mitigate errors; making users aware of the existence of algorithms and the basic features of their operation, as far as possible; responsible management of data and privacy; preventing the use of tailor-made algorithms to undermine pluralism or cause damage to vulnerable communities; enhancing the human factor; training and promotion of interdisciplinary project teams; and promotion of research addressed at exploring convergence between the technical efficiency of systems and the values of ethical journalism (Ibid.).

Other interviewees said that they were at least staying alert to the possible future need to create guidance regarding AI. According to Hanot, the Belgian CDJ had studied the issue among its members but issuing guidance on AI was not yet considered necessary. This is mainly because AI is still hardly used by the media in Wallonia but also because the current provisions of CDJ’s code are seen as providing sufficient tools for addressing the ethical issues related to news automation.

Other interviewees also said that the time is not yet ripe for their creation of new guidelines because the journalistic use of algorithms in their country is still experimental rather than well established. Especially in small market areas, the opportunities for the media to invest in new technological innovations were said to be scarce.

I'm not aware of any newspaper that is using algorithms to generate news or to differentiate the news. [...] Maybe we're not developed enough yet to do that, but it hasn't become an issue for us yet. I mean, I presume it will be ultimately [...] but it simply isn't an issue for us at this stage.

Our media market is very, very small. So, our media are, maybe, not using all the technology they could because it's just too expensive. [...] For now, they don't have specific software for generating the news. And I think it's just not profitable because of the small market. So far, we have not had an issue with that. Maybe these tools will become more accessible and cheaper, and then [...] we will have these problems too. To the best of our knowledge [...] media organs do not use algorithms or maybe

they use very basic, very simple algorithms. And there have been no complaints related to this issue. And there has been no public debate or debate within professional journalistic circles on the issue. It is certainly not one of the priorities of the media. In my personal opinion, yes, it obviously is a problem [...] but there really has been no debate within our board. To be honest, I don't think that there is real awareness about what we are talking about.

Some interviewees questioned whether guidance on AI was needed at all and wondered how effective such guidance could be. One interviewee who had followed the developments from a front-row seat for years believed that the hype about algorithms in journalism is already largely over, both with respect to automated production of content and personalisation of delivery.

I think that the media are backing off from the algorithms a bit. [...] I mean, that's not a way forward. They've realised that if they are going to have the paywall and make people pay for quality content, algorithms won't do. You have to have wise decisions made by people. So, I don't see it as an ethical problem, really. [...] Robot journalism hasn't saved the media business, it hasn't become a big thing. [...] I know some media companies have robots, but they are very generic and quite boring. It was a hype some years ago, but it's not a big issue anymore. [...] In five years, maybe [there'll be] a lot of robots writing about the weather and sports, but I think the robots can never do a great, investigative quality piece. Or maybe they can in 20 years, but not now. [...] Personalisation was also a hype some years ago, but I don't think that's a big issue anymore. I mean, we tried it, and ... people want to read what everyone else is reading, basically. I don't think that personalisation is an ethical problem that needs guidance.

Several interviewees were also sceptical about whether their councils would ever receive complaints about news automation or personalisation even if they were covered by their code. Based on the Finnish experience, this may well be the case. Two years after issuing its statement on marking news automation and personalisation, the Finnish CMM had received only one related complaint, which was not approved for processing. However, this is not to say that the statement is irrelevant. On the contrary, it seems that CMM's guidelines on AI have been well received by the media and has had an effect industry practice.

#### **4.4. Linking to sources**

An issue often brought up when discussing how the transparency of journalism could be improved is linking. While the proponents of the “ethic of the link” state that understanding the value of links is fundamental to understanding the value of the web and its ideology of openness (Jarvis, 2007, 2008; Rosen, 2008), journalists are often accused of being reluctant to provide outside links. For example, Karlsson and Clerwall (2018, p. 1928) have argued that if media organisations seek to improve how citizens view the credibility of journalism, of all the different transparency tools, hyperlinks are probably the best means of improving the public's perception.

While this issue has been discussed for decades, only a few European media councils address the issue of linking in their codes. In general, councils are reluctant to give recommendations on what the media should publish. In Appendix B of the Catalan code, however, the following is stated under the heading of transparency: “The information must be credited and the links should contain the correct references, with the purpose of guiding the recipients and keeping the data contextualised.”

The other councils that address linking in their codes look at the issue from the point of view of responsibility. A clause in the Norwegian code, which dates back to the early days of online publishing, reminds journalists that links can point to content that does not comply with their ethical code. In turn, the code of the Press Council of Luxembourg imposes an obligation on journalists to check, before placing a link, whether the referred pages contain illegal content, and if they do, to refrain from providing such link.

The Dutch and Flemish codes both stress the importance of weighing different interests against each other: According to the guidelines of the Dutch Raad “journalists who in their publications link to information of third parties need to consider whether the interest served by including a (hyper)link in the publication is in reasonable proportion to the interests that are potentially damaged as a result thereof.” In a similar manner, the code of the Belgian Raad requires that “when a journalist places a hyperlink, he gives the necessary context and weighs up the importance against the interests that may be affected by the placing of a hyperlink.” In addition, the Flemish code makes a difference between placing a link and embedding content in the story. In the latter case, the journalist is considered “responsible for the whole.”

According to Knapen, the clause was added to the code of the Belgian Raad in the aftermath of a complaint against a discriminatory vlog and some other media that had linked to the vlog. The council decided that, in principle, journalists are responsible for their placement of the hyperlink, but not for the linked content. The council also stressed that journalists are expected to provide the right context and to clarify their choices. This view seems to resonate with that of the other interviewees. While they did not see any reason to address the issue in their code, many councils had handled complaints on linking.

At the level of principles, it was stressed that links should be handled with caution, although views varied somewhat as to where boundaries should be drawn. Imposing strict obligations to check for illegal content, as required in Luxembourg’s code, was generally not considered necessary, as the self-regulatory guidelines should avoid overlapping with the law. Even linking to distasteful, sensitive or other questionable content was considered acceptable if the link provides evidence in a case of public interest and if the decision to insert the link is properly contextualised.

A few newspapers mainly working with right-wing issues, they link when they tell critical stories about the right-wing movement. They would clearly mark it and say that we need to show the public what’s out there. But they wouldn’t breach the code of ethics by linking to it, nor the code of law.

In accordance with the previous practice of the council, I would say that if the hyperlink would lead to very offensive content or something like that, I think we would hold the journalist responsible for that although we don’t have this in the Code.

Well, I think probably in that instance, there should be a disclaimer saying, "If we are providing hyperlinks, we are not endorsing what is on that hyperlink." The hyperlink is there for the reader if he or she wants more information. But the editor loses control, once you go to hyperlink. It's no longer theirs, it's someone else's. And I think journalists have to be very careful in using hyperlinks to ensure that if you're talking about, say the far right, you shouldn't provide a hyperlink, which brings you into propaganda for the far right. You could provide a hyperlink, which is critical of the propaganda of the far right. So, I think the use of hyperlinks is a difficult area because it needs a nuanced, a careful considered approach that takes into account context of it.

I don't think that a media company that publishes a link can be responsible if it linked to another media. [...] Of course, they need to be careful not to link to things that are [...] violent, racist or anything. They should be careful with those, but they can never be regarded as responsible for the content on the other site just because they linked to it.

If you cover a story with somebody and you give this person's political views, for example, and then you say, "These views can be found here and there," and then you give a hyperlink, [...] I would feel it's a documentation of those views. You prove to the reader that the person has really mentioned this and that by giving the hyperlink. [...] But we just had a case of an embedded YouTube video. This is basically a visual hyperlink, if you will. In the case that we had, the video was not being used as a proof but more as an own statement. The decision was that there was responsibility for the content. [...] And this is the question. If the content comes across as an own statement, then there is a responsibility for it. And if it's just being used as a proof, then there will be no responsibility for it.

On the other hand, one of the interviewees brought up an example of where the ethical code should preferably be tighter than the national law. According to Alexander Kashumov, who is former Chair and current member of the Bulgarian National Council for Journalistic Ethics, the Supreme Court of Bulgaria has developed a ruling that a clear quotation releases the one making the quotation from responsibility for the content.

There are some cases in which this tactic has been used apparently to escape from legal responsibility for the truthfulness of what is being reported. They are playing sometimes this kind of games and referring to something that has been published, but it is not very clear by whom and on what grounds. So, quoting that kind of source is not considered illegal, although I would think that it could be regarded as unethical.

Opinions differed somewhat as to whether embedded content (such as screenshots, images, videos or GIFs) should be treated any differently from hyperlinks. Some interviewees did not differentiate between the two, while others felt that embedding content into the story gives the journalist and the editor much greater responsibility for the content.

If I embed something that is very bad, I can't just say that it's not mine. I have made



the decision to show it on my outlet and I have to stand up for that content. That's a big difference, I think. [...] Just the same as if you publish pieces from the news agencies and then if there's something wrong, you can't say, "Oh, it was AP or AFP who wrote that, it wasn't us." You're responsible for everything that you publish, no matter who has written it. It's your responsibility when it's under your flag.

## 4.5. Correcting mistakes online and in social media

Another essential form of journalistic transparency and accountability is publishing corrections. It has been generally considered a powerful tool for cultivating trust, although, again, empirical studies have suggested that the effects of publishing corrections on perceived credibility may in fact be mixed (Appelman and Hettinga, 2021; Karlsson et al., 2017).

Most councils apply the same universal principles on corrections to all publishing platforms. Practically all of them require that incorrect information be corrected as soon as possible and in an appropriate manner so that the public would recognise what has been corrected. While some codes are more detailed than others in explaining how corrections should be published, only a handful of them give detailed advice on how this should be done online. For now, the issue of correcting errors on social media is not specifically addressed at the level of codes.

Recent experimental studies aimed at improving the reach and effectiveness of journalistic corrections (Rhodes, 2019) have pointed out, for example, that in the social media environment, corrections never achieve the reach of the original story and that different social media platforms have different capabilities for correcting mistakes. Some of the interviewees also wondered whether the requirement of "due prominence" and the obligation to correct mistakes "as soon as possible" (both appearing in one way or another in most codes) should be reconsidered in the 24/7 social media environment.

However, most of the interviewees believed that their council's current guidelines provide it adequate tools for assessing whether factual errors have been sufficiently corrected. While different social media platforms have different best practices for issuing corrections, it was generally not considered the task of the councils to go into too many details—at least not at the level of codes and guidance.

However, Kirkconnell-Kawana said that the guidance section of the Impress' code, in a separate note on publishing corrections, mentions that if an error was widely shared in a post or tweet:

It may be appropriate to promote the correction so that it reaches the same audience or pin it to the social media account for a reasonable period. If it's a Facebook post, we often require [that] they pin a correction to the top of their newsfeed for 24 hours or 48 hours. Or if it is a tweet, we would again expect a tweet to go out in the same format and then be pinned to the top of the post account. What we would like to explore more is how to correct errors that occurred, for example, on a YouTube Live, TikTok or Snapchat video editorial, on which publishers are also increasingly engaging.

She added that the Impress is also thinking about developing a requirement for a public facing area on a publisher's website or account where people could go and view corrections. The purpose of this requirement is to ensure that all publishers maintain a public and transparent record of corrections.

It was also brought up if the media councils could require the editorial offices to establish systems that provide easy ways to report errors on different platforms and to ensure that the requests for corrections will reach the person responsible for making them and everyone else involved in the process.

## 4.6. Moderating online comments

One of the most pressing questions regarding contemporary digital media ethics is arguably how to counteract hate speech. Journalistic media have long been tormented by the question of what to do with comments sections that are rife with abusive and harmful content. In the mid-2010s, many legacy media publications started reducing online commenting capabilities on their websites or turned them off altogether. Since then, however, some media companies have turned them back on but often in a more contained and controlled format, allowing readers to comment on fewer and less sensitive topics for a limited time. Importantly, investing money into better moderation technologies and adopting commenting tools, which require registration or subscription, have made keeping conversations civilised a more manageable task.

According to the interviewees, one of the most common public misconceptions is that not getting their comments published on the comments thread on a news publisher's site is tantamount to limiting their free speech. Some councils reported regularly receiving complaints from or being contacted by people who found this non-publishing of their comments on the news site a form of censorship.

They say, "It is censorship because I'm free to publish a comment." And we say, "No, it is not censorship because it is the website of the medium involved and they are responsible for all that is on their website. And you have freedom of expression, but outside the website of the media outlet."

We get a lot of that. People who think they are censored. We don't [deal with] those kinds of complaints at all. We'd say that this is not a breach of conduct. You can use your freedom of speech anywhere. The only time you have the right to comment is where you have been criticised. Then you would have a right to get [your comment] published. In any other cases, you would not.

It's not a human rights thing. [...] It's not about censorship. It's about following the rules.

In their codes and guidelines, the councils rather address the issue from the perspective of under-moderation. With only a few exceptions, the councils address the issue of user comments in their codes (also Harder, 2020, pp. 12–13). It seems that many of the current guidelines on user comments were originally created just over a decade ago. Some have since been updated and some have not.

The main principles regarding user comments are largely similar from code to code. A key principle is that inappropriate content must be removed as soon as possible, that is, when it has come to the editor's attention. In principle, comments sections are not expected to be pre-moderated, although the Belgian CDJ suggested that moderation be done "preferably a priori," and the Norwegian guidelines say that if "editorial staff choose not to pre-edit digital chatting, this has to be announced in a clear manner for those accessing the pages."

What the councils have expected in practice is the creation of mechanisms that allow people to report content that violate ethical principles. In terms of content, there are differences in what are considered unacceptable. Some councils do not specify those at all, some expect user comments to be compliant with their ethical code and others take a narrower approach, such as in Finland, where content is assessed only in terms of whether it "violates privacy and human dignity" (Annex 1).

While most codes are general rather than specific in their formulations regarding user comments, the Catalan code is exceptionally detailed. Appendix B of its code from 2016 not only requires that the "feedback from users" be moderated but also that "the contributions on the internet not be anonymous." Moreover, anyone wishing to comment should first log in to be identified: "The diffuser should require prior registration [of] users who wish to comment and give their opinions, in the same way that newspapers don't publish letters to the editor written by people who have not been properly identified." Although in special cases, the Catalan code allows newspapers to publish comments anonymously, the code requires that the identity of the commenter be known to the editor: "Anonymity is admissible when it tries to ensure information on facts and opinions of unequivocal public interest or vital need, but the participant must be equally identified in front of the medium."

Similarly, the supplementary document to the clause on "comments of third persons" (2.8) in the code of the Montenegrin council states that "online portals that opt for post-moderation are obliged to include user registration" and are "obliged to use software for automatic filtering of inappropriate terms." The document also provides a long and detailed list of what the comments shall not contain,<sup>7</sup> as well as specifies the possible types of moderation, procedures and sanctions. Among other things, it recommends that the portals consider the possibility of closing the option for commenting on "extremely sensitive topics" and that they "publish comments in their entirety" or not at all (Media Self-Regulation Council of Montenegro, 2019).

The Croatian Journalists' Code of Honor also requires in more general terms that the editors "provide mechanisms that will prevent or at least restrict the publication of ethically and legally unacceptable content", where users can publish textual, visual or audio content directly.

The Belgian CDJ disclosed that it intends to update in the coming years its code clause on "reactions from the public" (Art. 16) and the related recommendation from 2012 to better reflect the current media environment. According to Hanot, the council

<sup>7</sup> These include hate speech and discriminatory comments, clearly illegal content, threats, propagation of or advocating for violence, incitement to any form of cybercrime, violation of intellectual property rights, manifestly unfounded accusations, offensive speech, swear words and vulgar expressions insulting public morals, advertising and promotional materials etc.

considers its current guidelines partly insufficient, although the quality of discussions on its local media improved significantly after it began to use a moderating tool funded by the Ministry of Media. Hanot said:

We have recommended in our rulings that, for example, in Facebook, the media has to pay particular attention to users asking for moderation or flagging hateful content in the comments to a thread or via a "Send Message" button. We have to renew our guidelines on this, but it will not be the first priority.

The legislative context in each country certainly has an impact on how much room for manoeuvring the councils have. An example of this is the Defamation Act in the UK. Kirkconnell-Kawana said:

It creates obligations on publishers or website operators to ensure that if they moderate, they don't defame an individual, even if it was another user, not the publisher themselves, that posted the defamatory statement. That is a challenging area of the law, really, because it puts quite a heavy onus on publishers. If they decide they are not going to moderate, it allows them to avoid liability. That means that all manner of abusive, insulting and objectionable comments can be made on their platforms, and there are very few mechanisms to intervene, unless you are the person defamed. Therefore, the Impress Code tries to meet publishers halfway: it does not require publishers to moderate but says that if something is brought to their attention by any member of the public, they must act on that.

The other councils that participated in this study had no plans to update their codes regarding online comment sections. However, questions were raised in the interviews on what is a reasonable time frame for removing comments that breach the code, what tools for reporting harmful content media outlets should provide, and what sort of systems should media outlets have in place to ensure the quality of the debate.

# 5.

## CONCLUSIONS:

# INCORPORATING NEW FORMS OF JOURNALISM INTO THE SYSTEM OF SELF-REGULATION

**THE REPORT SET OUT TO DISCUSS** the current and future need of the European media councils to revise their ethical standards to better address the challenges posed by the digital world. To summarise the conclusions from the previous chapters, most ethical issues identified in the report require minor revisions here and there rather than fundamental changes in principles. However, there are some ethical undercurrents to be noted that may shape journalism and its standards in more profound ways in the long run. These relate to, for example, the growing power of algorithms, the blurring of boundaries between paid and editorial content, and the increasing difficulties of distinguishing between private and public in the digital environment. Furthermore, journalism itself is subject to a greater demand for transparency than ever before.

In addition, the entry of new actors to the journalistic sphere and their possible engagement in the system of journalistic self-regulation may lead to clashes of ethical cultures. In general, the participants of the study believed that the current ethical codes and guidelines of their media council are fit to their purpose and also suitable for the inclusion of all new forms of journalism regardless of the platform.

We already have experience with the new players, and we do not think we need a different code. We think that the press code applies to all press, be it a conservative newspaper, a yellow press paper or a new online medium. The rules are the same for everybody.

On the other hand, it was argued that the councils must be able to renew themselves if they are to retain their relevance. Some interviewees voiced concerns that the current composition of their council may not have a sufficiently high understanding of digital ethics and the challenges of the current media environment to be able to critically assess the possible need for revisions. It was also noted that younger audiences are less likely to file complaints to media councils, which inevitably affects what

ends up on their agenda. Another threat perceived by some was that, in the long run, the number of complaints might decline because journalism ethical debates are increasingly taking place on social media or in the online comment threads, where people can get immediate responses to their questions and share their views and outrage with others.

I think that traditional media are dead. Nobody's reading newspapers [here], and I think in other countries, circulation has also declined dramatically. Especially, young people... [...], are they watching TV, this young generation? Because all they learn and all they know, they are getting from different social networks or other sources. [...] I think we have to follow them because [...] the world is becoming their world. We are almost passé in this world. We have to follow the trends and see what's happening in the digital world.

The generational thing is important because [...] the topics that are extremely evident to people that are 20 [years] are not so evident to the council members. [...] For me, the main concern is how to reconnect to audiences or the public.

I think several people who would probably want to send some complaints do not do it anymore because they simply write their comments below the article or video. They just say directly what they think. This influences the work of the councils.

Interestingly, however, in Sweden, the council was struggling with a rapidly growing number of members at the time this study was conducted. This was largely because of the new media support scheme in Sweden requiring that the media must “follow good media ethical practice” to receive financial support from the state. The media that have voluntarily joined the system of journalistic self-regulation are, by definition, considered to have an acceptable ethical level. According to Caspar Opitz, the Swedish Media Ombudsman, the new members largely represent the so-called right-wing alternative media, whose interest in joining the self-regulatory system is in many cases due to state aid. In Sweden, all media with a registered responsible editor can join the self-regulatory system simply by filing an application in which they commit to complying with the rules and practices of the self-regulatory system.

Many of these outlets, they don't care about media ethics. They don't want to be in the system, they don't care about what I say, really. But they do care about money, so they have joined the system to get money from the state. [...] They want to get that one-and-a-half million [Swedish crowns] a year, which can finance their whole editorial department. [...] That is something we need to tackle. We don't really know yet how it will develop but they are in the system, and the complaints against them are starting to come in. We will see how they react to us dealing with these issues. When they are in the system, there will obviously be complaints against them, and in some cases, maybe in a lot of cases, they will be condemned. Then they would need to publish an apology. Will they do that? We don't know. [...] We'll see what happens. Either they start to follow the rules because they want to be in the system, and they want to have the money. Maybe they will start to understand what media ethics is, and they would want to comply. Or, they ignore the condemning decisions, they ignore what I'm saying, and we throw them out.

In the autumn of 2021, the Swedish self-regulatory system was planned to be altered so that members who repeatedly failed to comply with the ethical code could be expelled. According to Opitz, this was considered necessary to maintain the legitimacy of media self-regulation in the eyes of the general public. Overall, he describes the situation as being complex because of the new subsidy scheme: “The idea of self-regulation is to safeguard the freedom of the press and to keep the state and the lawmakers at a distance from itself. Now the state has practically forced new media to reluctantly join the self-regulatory system”.

In addition, some large entertainment-oriented Swedish media houses that had previously remained outside the national self-regulatory system had filed an application for membership. In their case, the motivation behind this was not state aid but a public debate on media ethics, sparked by sexual abuse claims related to a reality TV series called *Paradise Hotel*. The Media Ombudsman was not competent to deal with the related complaints, as the case was beyond its remit, but in the aftermath of the debate, many others wanted to join. The sudden influx of new members, in turn, raised the question of how the costs of self-regulation should be shared fairly and how the resources of the Media Ombudsman’s office would be made sufficient as the number of members and complaints increases.<sup>8</sup> Opitz described:

There are a lot of media outlets knocking on the door to join the system: new TV channels, new radio channels and pod platforms. We are not really rigged for all these new outlets. So, we are now discussing who can and cannot join. Should we open our arms to get all these new media in the system or not? We will become irrelevant if we can't get the blogs and pods and everything in the system. But how should we finance and deal with this when there's just me and three people in my office? That is a very big issue for us at the moment.

As part of the Media Councils in the Digital Age project, Harder (2020) concluded that on a structural and organisational level, the shift towards the online sphere has proven to be problematic for many media councils whose “ideas, models and structures are largely based on assumptions that relate to the pre-digital situation”. Unlike legacy media forms (print media and their online counterparts, as well as broadcast media in many countries), digital native media are not self-regulatory by default (Ibid. 18–19.)

In accordance with the principles of universality and platform neutrality, at the level of ethical codes and guidelines, no special attention is generally paid to new types of content producers in journalism, with a few exceptions. For example, the Russian code deals at length and in several passages with how content produced by bloggers, for example, should be “clearly differentiated from the content prepared by professional journalists and editorial staff”.

In turn, the Impress Code Committee (2022) specifically mentioned in a consultation paper that the Council regulates a wide range of news publishers, some of

<sup>8</sup> Thus far, the Swedish self-regulatory system has been financed by four press organisations and four broadcasting companies that are also responsible for drawing up the Code of Ethics for Press, Radio and Television in Sweden. Meanwhile, others can join the system for free.

which “have come to journalism through non-traditional pathways” and, therefore, the Impress “takes care not to presume a particular level of knowledge of those that use the Code and guidance”. During the Call for Evidence conducted earlier by the Impress, it became apparent that the blurring of lines between opinions and news items was a pressing issue, “particularly for new entrants to the news market”. Therefore, the Code Committee decided to provide further advice on how to effectively distinguish between the two in the revised guidelines “for those journalists who have not had the benefit of formal journalistic training” (Ibid.) However, on the level of code or guidance, no specific reference to the journalists’ backgrounds was made.

The focus of this study was to identify the need for revising the existing codes of ethics and possibly also creating new ethical standards. However, in the interviews, it was also discussed more profoundly what the participants considered as the most pressing ethical issues of the day. The frequently mentioned issues included the spread of hate speech and mis- and disinformation, as well as the blurring of lines between opinions and news as a means of perpetuating sensationalist and partisan takes. While these remain significant issues on a global level, the journalistic codes of ethics generally provide the tools required to address them. The principles of striving for truth and accuracy are at the very core of journalism ethics, and virtually all media councils require journalists to check facts, openly correct serious factual errors, differentiate between facts and opinions and avoid discrimination.

Although many of the concerns brought up in the report are shared by the councils, given the different national contexts and statuses of media councils, it is difficult to propose shared solutions to the challenges outlined. At least in the short term, most councils feel that they can deal with new challenges by means of incremental changes to the existing codes of ethics. In the long term, however, it is evident that the councils have to be adaptive to change and open to re-thinking their roles, procedures and principles to maintain their legitimacy in an ever-changing media landscape. ■



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