



ARTICLE 19's comments on the Draft Standards Code of IMPRESS

September 2016

ARTICLE 19 has reviewed the IMPRESS Draft Standards Code (the Standards Code) from the perspective of international standards on freedom of expression. On that basis, we offer recommendations where we believe the Standards Code needs to be amended to comply with the requirements of the international protection of freedom of expression.

However, these international standards on freedom of expression do not necessarily provide for precise or unique solutions to each issue covered by the Standards Code, and we have found it useful to offer suggestions that are based on a comparative look at codes of ethics at the international and national levels.¹

Introduction and Preamble

The Standards Code is part of an unprecedented evolution of press regulation in the UK; we therefore suggest that it is accompanied by an introductory note on this new context and the legal underpinning of self-regulation.

We note that professional ethics and standards codes typically commence with a declaration expressing formal adhesion to a certain journalistic ideal and to the values of the profession. For instance:

- The [*International Federation of Journalists' Code of Principles*](#) opens with the following declaration:

1. Respect for truth and for the right of the public to truth is the first duty of the journalist.
2. In pursuance of this duty, the journalist shall at all times defend the principles of freedom in the honest collection and publication of news, and of the right of fair comment and criticism.

- The [*US National Public Radio Ethics Handbook*](#) starts with this proclamation:

We hold those who serve and influence the public to a high standard when we report about their actions. We must ask no less of ourselves. Journalism is a daily process of painting an ever truer picture of the world. Every step of this process - from reporting to editing to presenting information - may either strengthen or erode the public's trust in us. We work hard to be worthy of that trust and to protect it.

- The [*Code of the Netherlands' Press Council*](#) opens with the following:

¹ We have relied on the database of the Ethical Journalism Network, at <http://accountablejournalism.org/>

Media play an extremely important role in our society, in many different ways and on a great number of platforms. They monitor authorities and organisations, institutions and businesses.

They play an important role in the democratic process in our society. They offer ample room for proper, sound and independent journalistic work in all its manifestations and in all places. This is how the people they work for - the public, in the broadest sense - are served in the best possible way.

Proper journalism can only be performed in full freedom and independence. The freedom of the press is vital. This important role comes with obligations and responsibilities. Journalism that demands full freedom is at the same time transparent about its approach and choices. It brings up its own conduct and expressions for discussion, thereby building up trust and creating a reinforcing effect.

Proper journalism is truthful and accurate, impartial and fair, verifiable and sound. It allows itself to be inspected and is transparent when handling comments, responses and complaints.

We suggest that a similar statement or declaration is introduced in the Standards Code, e.g. in the form of a preamble. This would fit well within IMPRESS' *raison d'être* of promoting accountable journalism and would encourage embedding ethics into daily practices of the IMPRESS membership.

A preamble could also insist that journalists should be allowed to work independently and free from undue influence from political or economic interests, and that publishers should contribute to journalists' life-long training, notably on professional ethics and on innovation in the context of the contemporary evolution of media landscapes.

Public Interest

ARTICLE 19 welcomes the presence of a public interest section in the Standards Code. We make the following observations on these provisions:

- From a formal point of view it is not clear why, unlike the other provisions of the Standards Code, the public interest section is not numbered. We assume that the IMPRESS intends to view this section as a disclaimer, which is separate to the Standards Code as such, since it describes the 'exception' to the Code's applicability. However, this is somewhat confusing and should be clarified.
- The public interest section demands that a publisher that undertakes an action that, in the absence of a public interest justification, would be in violation of the Standards Code, should make a 'contemporaneous note' on the said justification. While this provision might contribute to the effective implementation of the public interest clause, we note that it is not clear whether the publisher should render the justification public in any fashion. We suggest that the Standards Code should require the justification to be made public, for instance by being inserted into the news story.
- The clause demands a detailed justification of the action undertaken in the name of public interest: the publisher must establish the reason for believing the action to be in the public interest (i), demonstrate that code-compliant measures were first considered (ii), show that the action is likely to achieve its aim (iii) and explain why the resulting harm does not outweigh the public interest (iv). We suggest that the requirement of an excessively detailed justification may become a disproportionate burden for the

publishers and we suggest that the first two conditions might be sufficient to achieve the objective of the clause.

Accuracy

Section 1.2 states that “Publishers must correct any significant inaccuracy with due prominence at the earliest opportunity.”

We suggest that a clause on the right of rectification and the right of reply could be added to Section 1.2, stating that “publishers must make public the conditions that govern the right of rectification and a right of reply in their media”.

We offer the following guidelines to that respect:

- The right of reply should be clearly distinguished from a right of correction. A right of correction should be limited to pointing out erroneous information published earlier, with an obligation on the media itself to correct the mistaken material. A right of reply, on the other hand, requires the media to grant space to an individual whose rights have been harmed by an allegation based on erroneous facts, to ‘set the record straight’.
- The right of reply should only apply when the right of correction is not sufficient to redress the damage suffered by the complainant.
- The right of reply should conform to the following criteria:
 - a. A reply should only be available to respond to incorrect facts or in case of a breach of a legal right, not to comment on opinions that the reader/viewer doesn't like or that present the reader/viewer in a negative light;
 - b. The reply should receive similar, but not necessarily identical, prominence to the original article;
 - c. The media should not be required to carry a reply unless it is proportionate in length to the original article/broadcast;
 - d. The media should not be required to carry a reply which is abusive or illegal;
 - e. A reply should not be used to introduce new issues or to comment on correct facts.

Attribution

Section 2 provides that “Publishers must take all reasonable steps to identify and credit the originator of third-party content” and correct with due prominence any failure to do so.

We observe that other codes explicitly prohibit plagiarism and insist on the respect of copyright. We suggest that IMPRESS considers including plagiarism in this provision.

Should IMPRESS choose to include a clause on copyright, we recommend that the requirements of freedom of expression are duly taken into consideration. In that regard, the Standards Code could provide that “unless fair use or a predominant public interest justifies the unauthorised publication or reproduction of copyrighted material, publishers should respect copyright.”

ARTICLE 19 also observes that in the current state of media landscapes, the use of online third-party content (user generated comment, ‘UGC’) may raise additional questions from a professional ethics point of view. We suggest that the Standards Code could provide that:

- Publishers should rely on the best available technical expertise to authenticate and validate digital user-generated content;
- Publishers should strive to provide adequate remuneration to the author of UGC.

Children

Section 3.3 provides that “Publishers must give reasonable consideration to the request of a person who was previously identified as a child under the age of 16 years in a news story and who now wishes their identity to be concealed.”

ARTICLE 19 notes that in certain cases there might be a public interest justification to identifying a person such as described in Section 3.3. In that sense, we recommend the inclusion of a reference to the public interest clause.

We also suggest that in terms of the protection of children, the Standards Code could include a provision on the use of graphic images and representation of violence. Other codes state that a prior warning must be issued before showing images that may be shocking to children or even the general public. For example, [AFP](#) states:

AFP and many other news media are faced with an increasing flow of graphic imagery from social networks, armed groups’ propaganda videos, and from their own production.

Careful consideration must be given to the publication of a graphic image or video. Editors must ask if it adds to the understanding of the story in an essential way, or only appeals to morbid interest. Is it within the acceptable limits for a major media outlet? Does it cross the line into gore (dismembered limbs, mutilated bodies, executions, moment of death)? Will it cause distress to viewers or to the victim’s family? Does it damage the dignity of the people involved?

If an image or video is very graphic but still merits publishing in the public interest it should carry a warning.

Discrimination.

Section 4.1 states that “Publishers must not refer pejoratively to a person on the basis of that person’s age, disability, gender reassignment or identity, marital or civil partnership status, pregnancy, race, religion or belief, sex or sexual orientation or another characteristic which makes that person vulnerable to discrimination.”

ARTICLE 19 welcomes a provision that aims at countering “hate speech”. However, we are concerned that Section 4.1 goes beyond what is permissible under international standards on freedom of expression.

We recall that free speech extends to information and ideas that others may find provocative, shocking or offensive. Under the case-law of the European Court of Human Rights, journalists have the right to resort to a humorous or provocative tone. The word ‘pejoratively’ is in itself too vague and open to subjective interpretation. This provision would condemn satire or a satirical magazine entirely. We recommend the removal of Section 4.1.

In addition, the Standards Code could encourage publishers to take positive actions to support diversity and equality as part of their social responsibility (For example, the Canadian Association of journalists’ Principles for Ethical Journalism states:

News organizations – including newspapers, websites, magazines, radio and television – provide forums for the free interchange of information and opinion. As such, we seek to include views from all segments of the population. We also encourage our organizations to

make room for the interests of all: minorities and majorities, those with power and those without it, holders of disparate and conflicting views.

In ARTICLE 19' [Toolkit on Hate Speech](#) (2015), we offered the following recommendations to media houses that might be considered by IMPRESS:

All forms of mass media should recognise that they have a moral and social responsibility to promote equality and non-discrimination for individuals with the broadest possible range of protected characteristics. In respect of their own constitutions, mass media entities should take steps to:

- Ensure that their workforces are diverse and representative of society as a whole;
- Address as far as possible issues of concern to all groups in society;
- Seek a multiplicity of sources and voices within different communities, rather than representing communities as homogenous entities;
- Adhere to high standards of information provision that meet recognised professional and ethical standards;
- Promulgate and effectively implement professional codes of conduct for the media and journalists that reflect equality principles.

To proactively combat discrimination, media entities should consider:

- Taking care to report in context, and in a factual and sensitive manner;
- Ensuring that acts of discrimination are brought to the attention of the public;
- Being alert to the danger of discrimination or negative stereotypes of individuals and groups being furthered by the media;
- Avoiding unnecessary references to race, religion, gender, sexual orientation, gender identity and other group characteristics that may promote intolerance;
- Raising awareness of the harm caused by discrimination and negative stereotyping;
- Reporting on different groups or communities and giving their members an opportunity to speak and to be heard in a way that promotes a better understanding of them, while at the same time reflecting the perspectives of those groups or communities;
- Professional development programmes that raise awareness about the role the media can play in promoting equality and the need to avoid negative stereotypes.

Harassment

Section 5.1 of the Standards Code states that publishers must ensure that journalists do not engage in intimidation, while Section 5.2 provides that deception and harassment are subject to the public interest clause. This clause thus distinguishes between behaviours that are never acceptable and behaviours that can be justified by the public interest.

We suggest that the provision could be expanded to cover all unacceptable methods (violence, threats etc.) on the one hand, and the fair and less fair methods that can be justified under the public interest clause (dissimulation, hidden cameras, etc). This would provide more detailed guidance to publishers.

Justice

We find that Section 6.1, which requires that publishers must take the greatest care in not prejudicing any legal proceedings or criminal investigation, except as permitted by law, may be at odds with the principle of open justice and the role of the media in making public the operation of justice institutions. This is important as the role of the press in open justice has been acknowledged in the case-law of the European Court of Human Rights. Indeed, in the Standards Code the public interest clause extends to an 'open, fair and effective justice'.

While this might be considered to be covered by the reference to “unless permitted by law”, we suggest that the Standards Code should clarify that it is the role of media to report on justice and investigations. Instead of a reference to national law, we suggest a reference to the international standards on freedom of expression.

We note that unlike Sections 6.3 and 6.4 (which prohibit payments to witnesses, defendants in criminal proceedings, and to public officials, unless permitted by law), other ethical codes prohibit paying for information in more absolute terms. For instance, the [Los Angeles Times](#) states: “The Times does not pay sources for information”; the AFP takes the same approach.

We suggest that it would be useful to further clarify this clause. While publishers and journalists should generally not engage in conduct not permitted by law, the Standards Code could adopt a clearer, stronger view on whether it is acceptable – from an ethical point of view – to pay to obtain information. If payment to sources of information are considered acceptable by the Standards Code, we suggest that additional guidance should be provided to publishers on what practices are in compliance with ethics.

Privacy

Section 7.1 defines the concept of a reasonable expectation of privacy, which journalists must respect except when justified by the public interest. At 7.1.d, we recommend that the concept of ‘public profile’ is expanded to make it clear that public officials and public figures must show greater tolerance of invasion of their privacy than ordinary individuals, as is reflected in the case law of the European Court of Human Rights.

We observe that Section 7.2.a (prohibiting covert ways to gain or record information) covers a similar topic as Section 5.2 (journalists must not use deception, and must always identify themselves as journalists). We suggest that the question of “loyal” or “fair” means to acquire information could be examined in one section instead of being spread across two different sections.

In our view, Section 7.2.b of the Standards Code (requiring respect of privacy settings when reporting on social media content) is problematic.

It is not entirely clear that users can easily rely on settings and preferences as provided on social media platforms. Terms and conditions of such platforms can be changed almost at will. In addition, not all users understand how to change privacy settings, or are even conscious of their existence. Users can also republish other users’ material under different settings.

Hence, due to the changing and uncertain nature of privacy settings on social media platforms, it would be more appropriate to simply extend the notion of ‘reasonable expectation of privacy’ to social media (in Section 7.1). For instance, the situation of a user who shares photos with a small group of friends and family (where there is a reasonable expectation of privacy) differs from that of an artist who uses social media to promote their work (where there is none).

Sources

Section 8.1 provides that “Publishers must take care to protect sources where confidentiality has been agreed to and not waived by the source.”

The protection of sources is a cornerstone of journalism and we recommend that it is expressed in stronger terms. For instance, on the protection of sources, the Code of AFP states:

Journalists have a duty to protect the identity of confidential sources and fixers and should never knowingly put them at risk. Digital surveillance is now commonplace and this should be taken into account when working on sensitive stories. If we promise our sources confidentiality, we must be prepared to accept any legal consequences that may result.

AFP journalists should never hand over their recordings, notes or images to a third party. If requested to do so they should inform the chief editor who will seek legal advice if necessary.

ARTICLE 19 also recommends taking into consideration the case of whistleblowers, who form an integral part of freedom of expression and indeed the right to freedom of information. In addition to taking all precautions to protect confidentiality, we suggest that IMPRESS could recommend that publishers offer sources and whistleblowers up-to-date secure digital communication, including for instance the use of blackboxes that allow the anonymous transmission of information.

Transparency

We recommend that a stronger commitment to the separation of advertising should be made in Section 10.1. For example, IMPRESS might find inspiration in the [German Press Council Guidelines for Journalistic Work](#) which states:

The responsibility of the Press towards the general public requires that editorial publications are not influenced by the private or business interests of third parties or the personal economic interests of the journalists. Publishers and editors must reject any attempts of this nature and make a clear distinction between editorial and commercial content. If a publication concerns the publisher's own interests, this must be clearly identifiable.

Similarly, [Brazil's National Association of Newspapers' Code of Conduct](#) states:

Differentiate, in a manner that is clear and comprehensible to the readers, editorial copy from advertising material.

On Section 10.2, we note that provisions on conflict of interest could be reinforced to a stronger duty than merely 'taking reasonable steps to declare significant conflicts of interest'. For instance, the Federation of the [Spanish Press Code of Ethics for the Journalistic Profession](#) addresses the same issue as follows:

In order not to cause mistakes or confusion among the users of information, a journalist must make a formal and rigorous distinction between information and advertising.

Therefore, it is considered ethically incompatible simultaneously to practice journalism and the advertising business.

Equally, this incompatibility applies to all activities related to social communication which may imply a conflict of interests with the journalistic profession and its principles and norms.

1. A journalist shall not accept, directly or indirectly, payments or rewards from other persons to promote, direct, affect or to publish information or opinions of any kind.
2. A journalist shall never take advantage of the information to which he/she is privileged as a consequence of his/her profession. In particular, a journalist who

regularly or occasionally deals with financial issues is subject to the following regulations:

- a) He/she may not take economic advantage of financial data of which he/she has knowledge of before it has been published, nor can he/she transmit such data to other persons.
- b) He/she may not write of such bonds or shares in which he/she or his/her family has significant economic interest.
- c) He/she may not buy or sell bonds or shares that he/she intends to write about in the near future.

Additionally, in this section the Standards Code might also include further instructions on issues such as transparency on gifts and presents received or payment for travel costs and expenses of journalists.

Transparency could also be extended to making public complete information over ownership of the publishers, including the significant shareholders (those in a position to exert actual control).

Additional considerations

A number of other issues – that are typically covered in some ethical codes – are missing and should be included. In particular, we suggest that the Standards Code include:

- Rules on impartiality and fairness in the coverage of elections.² For example, the Code of [AFP](#) states:

Media coverage of elections is a fundamental element in the democratic process, and AFP journalists have a responsibility to provide impartial coverage and to give a voice to all candidates and political parties. Reporters should not allow their political opinions to influence their work.

- Provisions on how to deal with requests to anonymise archived articles, or to remove online material and give regard to the public interest provisions. For instance the [Netherlands Press Council](#) states:

When journalists are requested to anonymize archived articles or to remove these, then in exceptional cases only they will set aside the public interest of archives having the highest level of completeness and reliability for the private interests of the one who makes the request.

- A provision encouraging publishers to offer their journalists a clause of conscience, similar to the ones in the AFP which states that journalist “cannot be obliged to carry out a task that goes against their conscience.”

² See also ARTICLE 19’s Access to Airwaves, where we detail rules applicable to broadcast media, at <http://bit.ly/29B1Wy1>