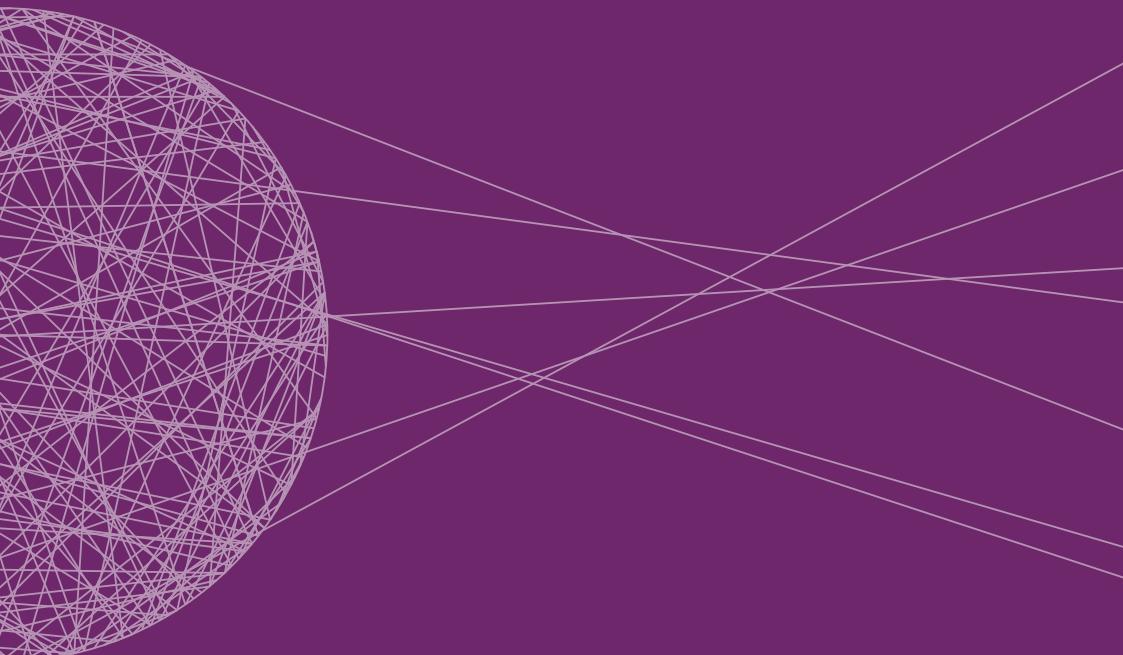




ARTICLE¹⁹



The Right to Blog

2013

Policy Brief

ARTICLE 19

Free Word Centre
60 Farringdon Road
London
EC1R 3GA
United Kingdom
T: +44 20 7324 2500
F: +44 20 7490 0566
E: info@article19.org
W: www.article19.org
Tw: @article19org
Fb: facebook.com/article19org

ISBN: 978-1-906586-50-8

© ARTICLE 19, 2013

This work is provided under the Creative Commons Attribution-Non-Commercial-ShareAlike 2.5 licence.
You are free to copy, distribute and display this work and to make derivative works, provided you:

- 1) give credit to ARTICLE 19;
- 2) do not use this work for commercial purposes;
- 3) distribute any works derived from this publication under a licence identical to this one.

To access the full legal text of this licence, please visit:
<http://creativecommons.org/licenses/by-nc-sa/2.5/legalcode>.

Executive summary

In this policy paper, ARTICLE 19 proposes a set of recommendations to state actors and policy makers about what they should do to promote and protect the rights of bloggers domestically and internationally. It also gives practical advice to bloggers about their rights and explains how - and in what situations - they can invoke some of the privileges and defences that traditional journalists have found vital to the integrity of their work.

In common with many other aspects of modern life, the Internet has transformed the way in which we communicate with one another. Where the printed press and broadcast media were once the main sources of information, the Internet has made it possible for any person to publish ideas, information and opinions to the entire world. In particular, blogging and social media now rival newspapers and television as dominant sources of news and information. Unsurprisingly, these developments have also called into question the very definition of 'journalism' and 'media' in the digital age. It has also raised difficult questions of how the activities of bloggers and 'citizen journalists' can be reconciled to existing models of media regulation.

ARTICLE 19 argues that it is no longer appropriate to define journalism and journalists by reference to some recognised body of training, or affiliation with a news entity or professional body. On the contrary, ARTICLE 19 believes that the definition of journalism should be functional, i.e. journalism is an activity that can be exercised by anyone. Accordingly, it argues that international human rights law must protect bloggers just as it protects journalists. The policy paper therefore addresses the key areas that bloggers are likely to face, that is: licensing, real-name registration (vs. anonymity), accreditation, the protection of sources, protection from violence, legal liability and ethical responsibility and suggests ways for them to be addressed.

Key recommendations

- Relevant legal standards should reflect the fact that ‘journalism’ consists of disseminating information and ideas to the public by any means of communication. As such, it is an activity which can be exercised by anyone.
- Any definition of the term ‘journalist’ should be broad, to include any natural or legal person who is regularly or professionally engaged in the collection and dissemination of information to the public via any means of mass communication.
- Bloggers should never be required to obtain a licence to blog.
- Bloggers should never be required to register with the government or other official bodies.
- Accreditation schemes must meet international freedom of expression standards and should ensure that:
 - all applicants, including bloggers, who meet the minimum requirements defined in the law should be automatically issued with a ‘press’ facilitation card;
 - press cards should only be required to get access to events or premises where there is a clear need to limit attendance based on limited space or the potential for disruption;
 - the conditions for obtaining a press card should be based on the overall public interest and not on considerations such as affiliation with a professional association or degree in journalism.
- Legal commentators, including bloggers, should be allowed to use social media from court rooms if the hearings are open to the public.
- To the extent that they are engaged in journalistic activity, bloggers should be able to rely on the right to protect their sources.
- Any request to disclose sources should be strictly limited to the most serious cases. It should be approved only by an independent judge in a fair and public hearing with a possibility of an appeal.
- State authorities must guarantee the safety of bloggers using a variety of measures, including the prohibition of crimes against freedom of expression in their domestic laws.

-
- States must take reasonable steps to protect bloggers and other individuals actively engaged in online communities when they know or ought to know of the existence of a real and immediate risk to the life of an identified blogger as a result of the criminal acts of a third party;
 - State authorities must carry out independent, speedy and effective investigations into threats or violent attacks against bloggers or other individuals engaged in journalistic activity online.
 - The laws governing the liability of bloggers, including defamation law, incitement and other speech-related offences, must comply with international freedom of expression standards.
 - As a general rule, bloggers should not be held liable for comments made by third parties on their blogs in circumstances where they have not intervened or modified those comments.
 - For certain types of content, for example content that is defamatory or infringes copyright, consideration should be given to adopting ‘notice-and-notice’ approaches whereby bloggers would be required to pass the complaint to the original maker of the statement at issue, without removing the material upon notice.
 - The term ‘duties and responsibilities’ in Article 19 of the ICCPR and Article 10 of the European Convention must be interpreted flexibly to take into account the particular situation of the blogger in question.
 - Bloggers should not be forced to abide by the ethical codes or codes of conduct developed by traditional media and should not be coerced or given an incentive to join self-regulatory bodies for traditional media.
 - Bloggers may decide to follow the ethical standards of traditional media of their own accord. They can also develop their own code of practice either for their own blogs or for associations they voluntarily join. Alternative dispute resolution systems should also be encouraged.
 - When bloggers produce a piece for a traditional newspaper, they should be subject to the newspaper’s editorial control, and abide by the ethical standards of journalists.

About ARTICLE 19

ARTICLE 19 is an international human rights organisation, founded in 1986, which defends and promotes freedom of expression and freedom of information worldwide.

It takes its mandate from the Universal Declaration of Human Rights, which guarantees the right to freedom of expression and information. An increasingly important means to express oneself and to seek, receive and impart information is through information and communication technologies such as the Internet. Hence, ARTICLE 19 has been promoting the Internet freedoms for over 10 years and is active in developments in policy and practice around freedom of expression and the Internet through our network of partners, associates and expert contacts.

ARTICLE 19 encourages organisations and individuals to give us feedback about how this policy brief is being used. Please send your feedback to legal@article19.org.

This document has been published with support of the Adessium Foundation of The Netherlands, as part of their wider support for ARTICLE 19's work on freedom of expression and internet communications technology.

Table of contents

Introduction	6
Blogging and the definition of ‘journalism’	8
Blogs, blogging, bloggers	9
The relationship between blogging and journalism	9
Bloggers and international standards on freedom of expression	10
Freedom of expression under international law	11
Limitations of the right to freedom of expression	12
Bloggers, journalism and new media under international law	12
Licensing, registration and the anonymity of bloggers	15
Licensing and registration of schemes	16
Bloggers and accreditation	19
Accreditation under International Law	20
Bloggers and the protection of sources	22
Protection of sources under International Law	23
Violence against bloggers	25
Protection from violence under International Law	26
Bloggers’ liability	29
Bloggers and defamation	31
Bloggers and incitement to hatred	33
Bloggers and other offences	34
Bloggers’ liability for third-party content	35
Bloggers and ethical responsibilities	38
Bloggers and ‘duties and responsibilities’	39
Bloggers and self-regulation	40

Introduction

Nothing is so unsettling to a social order as the presence
of a mass of scribes without suitable employment and
acknowledged status.

Eric Hoffer, The Ordeal of Change, 1963

Many of the current forms of publication have nothing to do with paper. Thanks to the Internet, traditional media – both print and broadcast – are no longer fully in charge of the information flow and no longer hold a monopoly over it. Anyone with access to a computer or a smartphone can gather and disseminate information. Anyone can make their own broadcast. Anyone can publicly communicate their opinions and ideas to the entire world via a blog or social media network.

Many bloggers gather information in the public interest in much the same way as traditional journalists. They interview sources, check facts and debate important public issues. In countries where the traditional media is heavily censored, blogging provides people with a rare opportunity to distribute information and exercise their right to freedom of expression.

Many traditional journalists and media also have blogs or use social media. Most media outlets feature blogs on their websites or recruit bloggers to provide content for them. They also embrace social media by inviting readers, listeners or viewers to follow their activities on Facebook or Twitter.

A number of bloggers have also created organised communities or forged ways of cooperating that bear certain similarities to publishing houses or established media institutions. This means that the boundaries between blogging and traditional media/journalism are now blurred and raises difficult questions about what and who count as 'media' and 'journalists' in this digital age.

At the same time, blogging itself encompasses a broad spectrum of activities, not all of which necessarily fall within the definition of 'journalism'. Many blogs are social in nature, describing personal or family occupations, entertainment, etc. Some argue that many blogs are simply rants, others that they are very dangerous¹ and others that they have no value at all.

Equally, other questions arise, such as:

- Should bloggers be licensed or registered?
- Should bloggers be granted the same rights that have traditionally been enjoyed by journalists?
- Should bloggers be held to the same professional and ethical standards expected of a journalist?
- In what circumstances can they be held liable for what they say online?
- How can bloggers benefit from the kinds of protection programmes that are usually available to professional journalists in order to prevent them from being physically attacked?

In this brief, ARTICLE 19 offers answers to these and other complex questions by referring to international standards of freedom of expression. Our aim is to provide recommendations to state actors, legislators and policy makers and to all stakeholders about what they should do to promote and protect the rights of bloggers domestically and internationally.

We begin with an overview of the ‘blogging’ phenomenon and applicable international standards of freedom of expression in this area. We then examine key issues that bloggers are likely to face, namely licensing, real-name registration (vs. anonymity), accreditation, the protection of sources, protection from violence, legal liability and ethical responsibility. We conclude each section with specific recommendations to state actors and policy makers about what they should do to promote and protect the rights of bloggers domestically and internationally.

Blogging plays an invaluable role in the free flow of information worldwide. It enables a true exchange of information in ways that traditional media did not in the past. It also allows an immediate sharing of information with its audience and immediate feedback. It represents a valuable form of alternative journalism and is an example of the Internet’s ‘democratisation of publishing.’

In the 21st century, many bloggers will take their place as watchdogs, alongside traditional media. The international community and individual states must develop protection for bloggers, just as they have developed protection for traditional media, despite the many constraints. Throughout history, the traditional media have obtained protection as a group although, at the individual level, many members of the media are not concerned with advancing public interest. Similar protection must be provided to bloggers.

Blogging and the definition of ‘journalism’



Blogs, blogging, bloggers

There is no universally agreed definition of 'bloggers' or 'blogging'.²

In the most basic sense, a blogger is any person who writes entries for, adds materials to, or maintains a 'blog' – a web log published on the Internet. Blogs allow anyone to self-publish online without prior editing or commissioning by an intermediary (e.g. someone like a newspaper editor). They can be immediate and also anonymous if the blogger so desires. They reflect their authors' personal interests and preferences and vary enormously in style, content (from politics to gardening or fashion) or length (from short written pieces to longer ones closely resembling 'reportage').

Blogs normally allow readers to post comments and allow authors to engage in virtual, multilateral conversations with their readers.³ Typically, they also contain a series of hyperlinks that take the reader to other content.

Although blogging originally began as a wholly informal activity, blogs have come to be used on a widespread basis by a variety of people (for example, doctors, judges, lawyers, police officers and professional journalists) in a professional or semi-professional capacity. While many journalists blog, not all of them do. Conversely, bloggers may get published in mainstream media online, without necessarily identifying themselves as a 'journalist'. By contrast, in some countries, the term 'blogger' is usually applied to someone who is a freelance journalist and is not used for the myriad of other individuals who may be blogging in their spare time or on a more regular basis.

Unsurprisingly, this situation contributes to the considerable confusion around the legal status of bloggers and the rules that may be applicable to them.⁴

The relationship between blogging and journalism

ARTICLE 19 has long argued that 'journalism' and 'journalists' should not be defined by reference to some recognised body of training, or by affiliation with a media entity or professional body.⁵ We have argued that journalism is an activity that can be exercised by anyone, and that it is important that any legal standards and principles applicable to the activity should reflect this.

In particular, the definition of the term 'journalist' should be broad to include any natural or legal person who is regularly or professionally engaged in the collection and dissemination of information to the public via any means of mass communication.

At the same time, any person who seeks to publish information on matters of public interest should benefit from the same protection and privileges given to professional journalists under existing case law, including prohibiting any requirement for journalists to be registered, requiring the authorities to investigate attacks on them, and protecting their sources.

Further, as we will see below, bloggers are liable for any content they produce under the relevant laws of their country. In addition, where bloggers are also members of a particular profession, for example lawyers or doctors, they also remain subject to the rules of professional conduct (e.g. the requirement of client or patient confidentiality).



Bloggers and international standards on freedom of expression

Under international human rights law, everyone has a right to freedom of expression.

To date, we are not aware of any attempt to address the position of bloggers within international law. However, there are two reasons why this is not necessarily problematic.

- First, in so far as bloggers' activities fall within the functional definition of 'journalism' outlined below, they should benefit from the protection afforded to journalists under international law in specific areas.
- Second, this lack of specific international standards is an opportunity for the international community to develop the highest standards of protection for bloggers.

Freedom of expression under international law

The right to freedom of expression is guaranteed under Article 19 of the Universal Declaration on Human Rights (UDHR)⁶ and further elaborated and given legal force under Article 19 of the International Covenant on Civil and Political Rights (ICCPR).⁷

In September 2011, the UN Human Rights Committee (the HR Committee), the treaty body which monitors implementation of the ICCPR, interpreted the minimum standards guaranteed in Article 19 in General Comment No.34.⁸ Importantly, the HR Committee stated that it protects all forms of expression and the means of their dissemination, including all forms of electronic and Internet-based modes of expression.⁹ In other words, the protection of freedom of expression applies online in the same way as it applies offline.

At the same time, the HR Committee stipulated that states party to the ICCPR are required to consider the extent to which developments in information technology, such as Internet and mobile-based electronic information dissemination systems, have dramatically changed communication practices around the world.¹⁰ In particular, the legal framework regulating the mass media should take into account the differences between print and broadcast media and the Internet, as well as noting the ways in which these different media converge.¹¹

Additionally, in their 2011 Joint Declaration on Freedom of Expression and the Internet, the four special mandates for the protection of freedom of expression highlighted that regulatory approaches in the telecommunications and broadcasting sectors cannot simply be transferred to the Internet.¹² In particular, they recommended the development of tailored approaches for responding to illegal content online, while pointing out that specific restrictions for material disseminated over the Internet are unnecessary.¹³ They also promoted "self-regulation as an effective tool for redressing harmful speech."¹⁴

Limitations of the right to freedom of expression

While the right to freedom of expression is a fundamental right, it is not guaranteed in absolute terms. Under Article 19(3) of the ICCPR, any limitation of the right to freedom of expression must meet the so-called 'three-part test' which consists of the following criteria:

- Restrictions must be **provided by law**. The law must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.
- Restrictions must **pursue a legitimate aim**, as exhaustively enumerated in Article 19(3)(a) and (b) of the ICCPR.
- Restrictions must be **necessary and proportionate** in a democratic society. There must be a pressing social need for the restriction; and if a less intrusive measure is capable of achieving the same purpose as a more restrictive one, the least restrictive measure must be applied.

The same principles apply to electronic forms of communication or expression disseminated over the Internet, such as blogging. In particular, the HR Committee has said in its General Comment No. 34 that:

Any restrictions on the operation of websites, blogs or any other Internet-based, electronic or other such information dissemination system, including systems to support such communication, such as Internet service providers or search engines, are only permissible to the extent that they are compatible with [Article 19] paragraph 3. Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with [Article 19] paragraph 3.¹⁵

These principles have been endorsed by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in his 2011 report.¹⁶

Bloggers, journalism and new media under international law

There is currently no agreed definition of 'journalism' or what constitutes 'media' at the international level. Similarly, international standards do not define 'bloggers' or 'blogging'.

Nonetheless, the HR Committee and the Council of Europe have provided tentative definitions. In particular, they have recognised the important role that 'citizen journalists' and bloggers play in the gathering and dissemination of information.

Most significantly, they have proposed a functional definition of 'journalism', one which encompasses those communicating publicly using new media, provided they fulfil certain criteria.

In its General Comment No 34, the UN Human Rights Committee defined 'journalism' as follows:

Journalism is a function shared by a wide range of actors, including ... bloggers and others who engage in forms of self-publication in print, on the Internet or elsewhere, and general State systems of registration or licensing of journalists are incompatible with [Article 19] paragraph 3. Limited accreditation schemes are permissible only where necessary to provide journalists with privileged access to certain places and/or events. Such schemes should be applied in a manner that is non-discriminatory and compatible with Article 19 and other provisions of the Covenant, based on objective criteria and taking into account that journalism is a function shared by a wide range of actors.

In other words, journalism is an activity, which consists of the collection and dissemination of information to the public via any means of mass communication.

The Committee of Ministers of the Council of Europe (COE) has adopted an equally broad definition of the term 'journalist'.¹⁷ It has also called on member states to:

- Adopt a new, broad notion of media which encompasses all actors involved in the production and dissemination, to potentially large numbers of people, of content (for example information, analysis, comment, opinion, education, culture, art and entertainment in text, audio, visual, audiovisual or other form) and applications which are designed to facilitate interactive mass communication (for example social networks) or other content-based large-scale interactive experiences (for example online games), while retaining (in all these cases) editorial control or oversight of the contents; [emphasis added]
- Review regulatory needs in respect of all actors delivering services or products in the media ecosystem so as to guarantee people's right to seek, receive and impart information in accordance with Article 10 of the European Convention on Human Rights, and to extend to those actors relevant safeguards against interference that might otherwise have an adverse effect on Article 10 rights, including as regards situations which risk leading to undue self-restraint or self-censorship; [emphasis added.]¹⁸

In addition, the Committee of Ministers provided a set of indicators to determine whether a particular criterion is fulfilled. For example, a particular organisation or individual engaged in the dissemination of information will fully meet the public expectation criterion if it:

- is available;
- is reliable;
- provides content that is diverse and respects the value of pluralism;

- respects professional and ethical standards; and
- is accountable and transparent.

At the same time, the Council of Ministers highlighted that each of the criterion should be applied flexibly.

Most notably, the Committee said that bloggers should only be considered as media

if they meet certain professional standards criteria “to a sufficient degree.”²⁰ In ARTICLE 19’s view, however, this criterion is unnecessary. While professed adherence to a set of professional standards may be a helpful indicator of whether an individual is engaged in media activity, it should not be regarded as a necessary condition.²¹ The activity of disseminating information in the public interest is not something that should require membership of a professional body or adherence to some established code of conduct.

Licensing, registration and the anonymity of bloggers



Licensing and registration schemes

As the number of bloggers around the world has skyrocketed, several countries have sought to limit the free flow of information and ideas by creating licensing and registration schemes for bloggers.

- **Licensing** schemes are systems which require prospective bloggers to obtain permission from the government in order to be allowed to blog. In addition, they may be required to register their blogs on an official list controlled by the government. The ostensible purpose of such schemes is usually to create a 'safe' online environment by placing the task of informing the public in the hands of 'qualified' individuals of high moral integrity. It is usually argued that this will promote higher ethical standards and a higher quality of information online.
- **Registration** schemes can also refer to a requirement for bloggers to use their real names online. The usual justification for real name registration systems is that individuals would not engage in all sorts of unpleasant – but not necessarily unlawful - activities if their real identity were revealed.

Such schemes are usually found in societies such as Iran,²² Saudi Arabia²³ and Sri Lanka²⁴, where freedom of expression has traditionally been under tight government control.

ARTICLE 19's position on the licensing and registration of bloggers

ARTICLE 19 believes that licensing and registration schemes for all bloggers, whatever they do, are deeply inimical to protection of the right to freedom of expression and in flagrant breach of international law.

Although there are no specific international standards regarding the licensing or registration of bloggers, it is well established that mandatory licensing or registration of journalists is incompatible with the right to freedom of expression. Similarly, there is no legitimate reason why bloggers – or in fact members of the general public – should be subject to mandatory licensing to express themselves.

An important source of legal authority on the subject is an opinion of the Inter-American Court of Human Rights issued in 1985.²⁵ Most tellingly, the Court dismissed the argument that licensing schemes were necessary to ensure the public's right to receive truthful information or high standards of publication and found that such systems ultimately prove counterproductive.²⁶

Similarly, the UN Human Rights Committee has repeatedly held that mandatory licensing schemes for print media constitute a violation of the right to freedom of expression.²⁷ The UN, OAS and OSCE special mandates for freedom of expression have also stated that individuals should not be required to obtain a licence or register.²⁸

ARTICLE 19 believes that these standards are fully applicable to bloggers and that they must not be subjected to registration or licensing requirements. The right to express oneself through the mass media belongs to everyone, and should not be subject to government approval. Licensing and registration schemes would allow governments to control who is engaged in blogging and what they say; or to use the threat of licence denial/withdrawal if the government did not agree with the content of a particular blog. Moreover, once would-be bloggers know they have to register or apply for a licence, they are far less likely to be overtly critical of the government.

ARTICLE 19's position on real name registration of bloggers

The right to ‘anonymity’ is not universally recognised as part of the right to freedom of expression under international law. Instead, it is typically considered as part of the right to privacy,²⁹ although in some countries, anonymous speech is protected under free speech guarantees.³⁰

The rationale behind anonymity is clear: individuals are far more likely to speak or disclose information knowing that their identity will not be revealed. However, some argue that real name registration would prevent certain socially unacceptable or even criminal activities, as users could be held accountable.

ARTICLE 19 recalls that, under international standards states must be responding to a pressing social need and not merely out of convenience in order to justify any restriction on freedom of expression as being “necessary”. Also, the restriction must impair the right as little as possible and, in particular, not restrict speech in a broad or untargeted way; nor should it go beyond the realm of harmful speech in order to rule out legitimate speech. Most real name requirements would go beyond what is permissible under these standards, in particular:

- Online anonymity has been extremely effective in promoting freedom of expression and has been an intrinsic part of the culture of the Internet and how it works. In many instances, it has given people the ability to express their opinions, even controversial ones, and it has contributed to the success of many blogs. Real name registration schemes can be easily abused by the authorities and can become a tool of repression, leading to the persecution and harassment of bloggers and their readers. In many countries, criticising the government is illegal and only the anonymous posting of such information online can ensure that authors are not at risk of reprisal.³¹
- Anonymity has been also used for years in print publishing. Using anonymous sources is often necessary in investigative journalism and the right of journalists to protect the confidentiality of their sources is universally accepted.³²
- Moreover, many authors or journalists write under pen names and, in many cases, their true identity has never been revealed. Newspapers also typically publish anonymous letters to the editor or letters signed with pseudonyms.

Even newspaper articles are sometimes not attributed to individual journalists but to a press agency or the publication itself. In academia, anonymous peer reviews of proposals and articles are also common.

- The requirements of real name registration are ineffective in practice, as bloggers can always use other technical means and security tools (like data encryption, use of virtual private networks (or 'VPNs'), anonymous Internet navigation and secure file removal) to preserve their anonymity.
- Anonymity is not limited to the Internet and cannot be fully avoided in 'real life'.

For example, it is still possible to send anonymous letters, make anonymous phone calls, or distribute leaflets and other publications anonymously.

Although the Internet makes it much easier and less expensive to reach large numbers of people, any requirement for real name identification would make Internet communication more restrictive than many other everyday forms of communication (e.g. postal services are not required to authenticate the return addresses of letters with harmful content; real name identification is also not required for telephone calls.)

Therefore, ARTICLE 19 believes that real name registration systems for bloggers (as well as Internet users in general) should be abolished as being disproportionate restrictions to the right to freedom of expression

Recommendations:

- Bloggers should never be required to obtain a licence to blog.
- Bloggers should never be required to register with the government or other official bodies.
- Bloggers should not be required to register with their real identity/name in order to blog.

Bloggers and accreditation



Accreditation under international law

The right to freedom of expression includes a right to “seek and receive” information and ideas. Gathering information is clearly essential to the media, and courts have often confirmed that the activity of newsgathering is protected under the right to freedom of expression.

At the same time, states usually impose some limits on newsgathering, such as restricting access to government buildings, attendance at certain events (e.g. official briefings, press conferences, sports events), or attendance at certain court hearings that are closed to the public. It is also common to operate accreditation schemes . Usually, this means that journalists can apply for a press card, which must be produced to gain entrance on days when audience numbers exceed the number of seats available. Holders of press cards are sometimes granted certain privileges, such as access to communication facilities and front row seats.

The problem with many accreditation schemes, however, is that they are also a common source of abuse. Governments often refuse to grant press cards to journalists who criticise them, or require possession of press cards in situations where there are no authentic constraints. The situation is even more difficult for bloggers since public officials do not consider them to be ‘real’ or ‘professional’ journalists and prevent

them from even being eligible for accreditation schemes.

Like all restrictions, limitations to newsgathering must comply with the three-part test. The HR Committee has stated that an accreditation procedure should not be susceptible to political interference and that it should impair the right to gather news as little as possible. The number of accredited journalists permitted to attend an event may be limited only when there are demonstrable problems in accommodating all those interested.³³ Furthermore, accreditation decisions must be taken by independent bodies, subject to clear criteria set out in law. Similar recommendations have been made by special rapporteurs on freedom of expression, who have emphasised that the decision to withdraw accreditation should never be based solely on the content of an individual journalist’s work.³⁴

ARTICLE 19's position on the accreditation of bloggers

ARTICLE 19 believes that accreditation schemes should not be the sole preserve of professional journalists but should also be available for bloggers when they are engaged in the gathering and dissemination of information to the public. It is positive that some states are already

moving towards this practice; for example, in Indonesia³⁵ and Canada³⁶ some bloggers have been granted press cards allowing them access to certain events.

At the same time, states must ensure that all accreditation schemes can only be

limited in the areas and situations that meet the international freedom of expression standards outlined above.

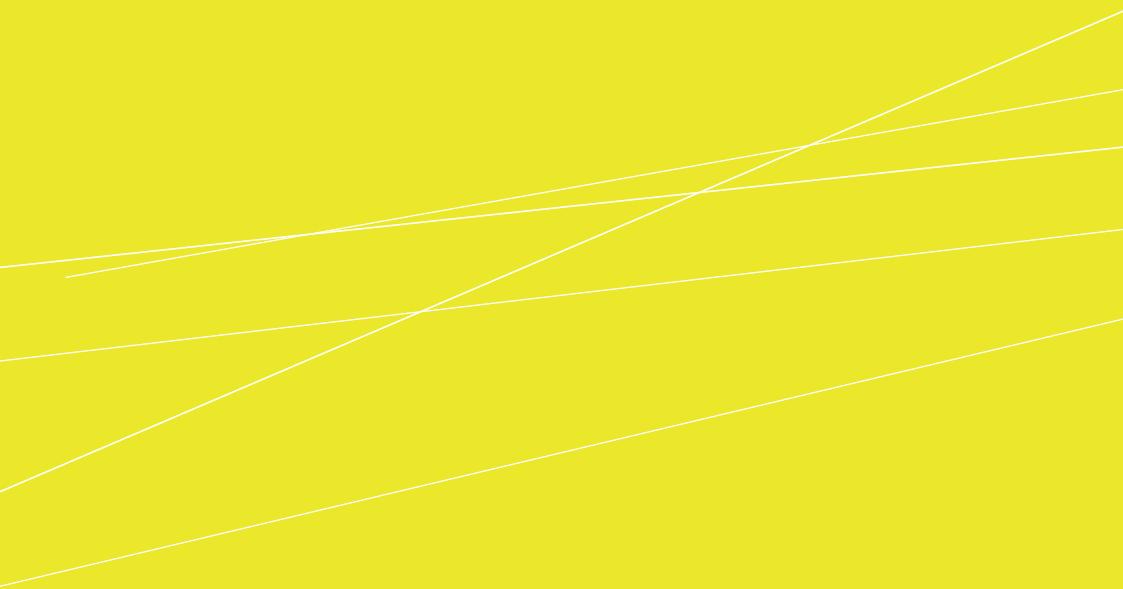
ARTICLE 19 also believes that, in principle, anyone should be able to use social media from court rooms, subject to contempt of court laws. Again, it is positive that some states have already adopted rules of this kind.

For example, in the UK the Lord Chief Justice recently issued guidelines allowing “legal commentators,” which include bloggers, to tweet or use live text messaging from court without prior court permission.³⁷ The guidelines further provide that the wider public may also use social media in court subject to court permission.³⁸ While we consider this latter requirement to be unnecessary if appropriate guidance is given in writing or orally by the court at the beginning of proceedings, ARTICLE 19 suggests that this generally permissive approach should be followed elsewhere as an example of best practice in court reporting in the digital age.

Recommendations:

- Accreditation schemes must meet international freedom of expression standards and should ensure that:
 - all applicants, including bloggers, who meet the minimum requirements defined in the law should be automatically issued with a ‘press’ facilitation card;
 - press cards should only be required to get access to events or premises where there is a clear need to limit attendance based on limited space or the potential for disruption;
 - the conditions for obtaining a card should be based on the overall public interest and not considerations, such as professional association or degree.
- Legal commentators, including bloggers, should be allowed to use social media from court rooms if the hearings are open to public.

Bloggers and the protection of sources



Protection of sources under international law

The protection of sources is a vital element in the newsgathering process and numerous international and regional bodies have endorsed a strong policy towards it.³⁹

The African Commission on Human and Peoples Rights maintains the protection of sources in Principle XV of its Declaration of Principles on Freedom of Expression in Africa⁴⁰; the Inter-American Commission on Human Rights has adopted the protection of sources as part of its Declaration of Principles on Freedom of Expression⁴¹; and, most recently, the European Court of Human Rights (European Court) observed that the right to protect sources is:

[A] cornerstone of freedom of the press, without which sources may be deterred from assisting the press in informing the public on matters of public interest. As a result the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information to the public may be adversely affected.⁴²

This important principle has also been recognised in domestic legislation and jurisprudence.⁴³

Like the right to freedom of expression, the right not to disclose the identity of journalistic sources is not absolute. It may be restricted in certain circumstances that are justifiable under the three-part test set by international law.⁴⁴ In particular, journalists might be required to reveal the sources of their information, if doing so is necessary to prevent a major or serious crime (such as murder, manslaughter or severe bodily injury) or for the defence of someone accused of committing a major crime.⁴⁵ In addition, all other alternative measures must be exhausted and there must be a fair and public hearing involving the journalist concerned before an order for disclosure may be issued.⁴⁶

It is also important to note that, under international standards, the right to protect sources is not limited to traditional media.⁴⁷ Some international bodies have sought to avoid using the term ‘journalist’ in their definition of the right. For instance, the Declaration of Principles on Freedom of Expression adopted by the Inter-American Commission on Human Rights states:

Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.⁴⁸

Similarly, the Council of Europe has been careful to formulate a very wide definition of ‘journalist’, covering anyone who serves as a conduit of information to the public, regardless of whether they would normally be perceived as ‘journalists’.⁴⁹ Recently, the Committee of Ministers of the Council of Europe said that:

In the new media ecosystem, the protection of sources should extend to the identity of users who make content of public interest available on collective online shared spaces which are designed to facilitate interactive mass communication (or mass communication in aggregate); this includes content-sharing platforms and social networking services.⁵⁰

With a few exceptions, domestic practice has largely failed to keep pace with the new media phenomenon, partly because of frequently narrow definitions of the term ‘journalist’ in the laws of many countries. Nonetheless, some domestic courts have recently recognised bloggers’ right to protect sources, for example the Irish High Court.⁵¹

ARTICLE 19’s position on the protection of bloggers’ sources

ARTICLE 19 believes that, to the extent that they are engaged in journalistic activity, bloggers should be able to rely on existing international standards and comparative law and should be able to invoke the right to protect sources in the same way as professional journalists affiliated with traditional news entities.

This means that bloggers should not be required to disclose the identity of their confidential sources, unpublished materials, notes, documents or other materials that may reveal information about their sources or publication processes simply because they are not recognised as ‘journalists’. If they are given such protection, however, bloggers should understand that they may still be required to identify their sources in certain circumstances.

Recommendations:

- To the extent that they are engaged in journalistic activity, bloggers should be able to rely on the right to protect their sources.
- Any request to disclose sources should be strictly limited to the most serious cases. It should be approved only by an independent judge in a fair and public hearing with a possibility of an appeal.

Violence against bloggers



Protection from violence under international law

Bloggers have recently become the targets of physical attacks, death threats and murders because of what they say. In 2012 alone, 48 'citizen journalists' were killed compared to four the previous year.⁵² During the same year, in at least 19 countries, a blogger or internet user was tortured, disappeared, beaten or assaulted as a result of their online activity.⁵³ Impunity for violence is rampant. This is in violation of international human rights standards.

Under international law, states have two sets of obligations:

- **Duty to prevent attacks:** States have a positive obligation to take steps to prevent violent attacks against anyone on their territory. These obligations take on a particular importance when individuals are attacked for exercising their right to freedom of expression, both on and offline.⁵⁴ It has been stated repeatedly by international bodies that states must "create a favourable environment for participation in public debate by all the persons concerned, enabling them to express their opinions and ideas without fear."⁵⁵

What this means in practice is difficult to define. On the one hand, this protection should at least markedly reduce the risk of violence occurring. For example, the European Court has found that the protection of the right to life "may also imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual."⁵⁶ On the other hand, the duty to protect should not place "an impossible or disproportionate burden on the authorities"⁵⁷ or provide an excuse for constantly shadowing a journalist or a blogger. In other words, not every claim of a threat will give rise to a right to protection. The European Court considered that the deciding factor should be whether "the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party."⁵⁸

- **Duty to investigate:** If states fail to prevent attacks, they are required to investigate the circumstances of the attack and prosecute those responsible. The purpose of such an investigation should be to enable victims "to discover the truth about the acts committed, to learn who are perpetrators and to obtain suitable compensation."⁵⁹ On numerous occasions, international bodies have recognised that impunity for violence has a chilling effect on the free flow of information in society and prevents "the right of everyone to seek and receive information and ideas."⁶⁰ Journalists in the broad sense may be deterred from performing the important task of informing the public, and ordinary citizens may also become more reluctant to denounce criminals or criticise public officials. All in all, an insufficient investigation "constitutes an incentive for all violators of human rights."⁶¹

In order to comply with international law, an investigation must be independent, speedy and effective.⁶² The investigation should also be set in motion by law enforcement agencies on their own initiative, and not on the initiative of the victim or their family.⁶³ The investigation should be concluded within a reasonable amount of time with reference to: the complexity of the matter, the judicial activity of the interested party and the behaviour of the judicial authorities.⁶⁴ In addition, victims of attacks must have effective remedies to seek redress, including in the civil courts, where appropriate.⁶⁵

ARTICLE 19's position on the protection of bloggers from violence

ARTICLE 19 believes that all international standards regarding protection against violence and the obligation to carry out effective investigation into attacks must apply to bloggers and other individuals actively engaged in online communities when they are targeted by violence. States must ensure that measures aimed at protecting journalists are not exclusively aimed at journalists affiliated with traditional media.

In particular, ARTICLE 19 recommends that states consider the following measures:

- States should prohibit ‘crimes against freedom of expression’ in their domestic legislation with appropriate penalties which take into account the seriousness of such offences. These crimes should include instances of violence and other forms of attack against bloggers and those who are targeted for exercising their right to freedom of expression.
- States must treat violence and attacks on bloggers as a direct attack on freedom of expression. They must publicly refute any attempt to silence critical or differing voices in society. States should also publicly recognise that some bloggers are vulnerable to violence and other forms of attacks specifically because they are exercising their right to freedom of expression.
- States must pay special attention to the responsibility of non-state actors and focus on the violations they carry out. This is of particular importance in countries where organised crime groups have emerged as the main violators of the right to freedom of expression.
- States have a positive obligation to take preventive operational measures to protect bloggers whose lives and safety are at risk of the criminal acts of others. This obligation arises when the authorities know or ought to have known of the existence of a real and immediate risk to life resulting from the criminal acts of third parties. It should not be limited to cases where the individuals concerned requested state protection.

-
- When an attack against bloggers takes place, states must launch an independent, speedy and effective investigation in order to bring both the perpetrators and the instigators to justice. They must also ensure that victims can obtain complex and holistic remedies for what they have suffered.

Recommendations:

- State authorities must guarantee the safety of bloggers using a variety of measures, including the prohibition of crimes against freedom of expression in their domestic laws.
- States must take reasonable steps to protect bloggers when they know or ought to know of the existence of a real and immediate risk to the life of an identified blogger as a result of the criminal acts of a third party;
- State authorities must carry out independent, speedy and effective investigations into threats or violent attacks against bloggers or other individuals engaged in journalistic activity online.

Bloggers' liability



It is often said that the Internet is like the ‘Wild West’ operating in a legal vacuum. This is very far from the truth. The fact that some activity is not specifically regulated does not mean that it is not regulated at all. In the absence of any specific Internet legislation, Internet users, including bloggers, are subject to the general laws of the land; this includes laws prohibiting defamation, incitement, copyright infringement and many others. It is also important to bear in mind that any limitations on the right to freedom of expression must comply with the three-part test under international law.

Different types of content call for different legal and technological responses. In his 2011 report, the UN Special Rapporteur identified three types of expression for online regulation:

- expression that constitutes an offence under international law and which can be criminally prosecuted;
- expression that is not criminally punishable but may justify a restriction and a civil suit; and
- expression that does not give rise to criminal or civil sanctions, but still raises concerns in terms of tolerance, civility and respect for others.⁶⁶

The Special Rapporteur clarified that the only exceptional types of expression that states are required to prohibit under international law are: ‘child pornography’, direct and public incitement to commit genocide, ‘hate speech’ and incitement to terrorism. He also made clear that the legislation criminalising these types of expression must also be sufficiently precise, and that there must be adequate and effective safeguards against abuse or misuse, including oversight and review by an independent and impartial tribunal or regulatory body.⁶⁷ Furthermore, the Special Rapporteur stressed that all other types of expression should not be criminalised. Instead, states should promote the use of more speech to combat offensive speech.

While in principle, speech-related laws apply both offline and online, they must be interpreted in a way that takes into account the nature of the medium or platform in line with international standards on freedom of expression. At the same time, while it is important to protect the right to freedom of information online, it is also important not to silence victims of particular types of speech. Victims should have recourse to protection of their rights; and court oversight for existing protection should also apply for online speech, with necessary guarantees of fair trial.

Whilst it is beyond the scope of this brief to examine each particular type of law and how it should be applied to bloggers, we will briefly examine four important issues:

- bloggers and **defamation**;
- bloggers and laws prohibiting **incitement** to hatred;
- bloggers and various common **speech offences** which have proved to be problematic when applied online; and
- bloggers and **liability for third party comments**.

Bloggers and defamation

Although defamation laws have always applied in principle to any speech, the Internet has made liability for defamatory statements a much more realistic prospect for ordinary individuals than in the past. This is especially the case since, unlike traditional media, bloggers tend not to have to submit to any editorial control or have no resources to seek legal advice pre-publication.

Given the nature of online publications, ARTICLE 19 finds several defamation rules to be particularly problematic for bloggers (and for online speech in general):

- **Criminalisation of defamation online:** Some countries have elected to introduce special criminal sanctions for online defamation or to impose harsher penalties in cases where defamatory statements are disseminated on the Internet.⁶⁸
- **'Libel tourism':** Blogs and other Internet publications are usually visible to the world at large and can be speedily disseminated (or become 'viral'). This means that bloggers may be sued for defamation anywhere in the world. The Internet can facilitate the practice of 'libel tourism' or 'forum shopping' whereby plaintiffs choose to sue in a country where they have better prospects of success rather than in the country they have suffered the most harm. This practice is notoriously damaging for freedom of expression.⁶⁹
- **The multiple publication rule:** Under some defamation laws, defendants can be held liable for each separate instance of publication of a defamatory statement (the so-called "multiple publication rule"). However, the Internet allows any potentially defamatory statement to be indefinitely stored on the Internet and then searched and unearthed at any future point in time. This rule is highly problematic for freedom of expression as it raises the spectre of endless liability for defamation each time a statement is accessed online.⁷⁰
- **The repetition rule:** In some countries, it is no defence in defamation cases for the defendant to prove that they were merely repeating what they had been told (the so-called "repetition rule"). Therefore, bloggers who refer to statements made by others or make links to defamatory statements may be held liable under defamation laws.⁷¹ This has a potentially chilling effect on freedom of expression online, especially when the vast majority of bloggers are not familiar with the intricacies of defamation law in their own countries, let alone with defamation laws worldwide.⁷²

In practice, many allegations made online are often too trivial, or not sufficiently serious, and the extent of publication is too minimal, to have caused any substantial damage to the reputation of the complainant. It is positive that defendants in some countries are increasingly seeking to strike out trivial claims as an abuse of process for the reasons listed above.⁷³

Additionally, states should consider adopting **alternative systems for dispute resolution:** since the mid 1990s there have been several notable efforts towards establishing a system for online dispute resolution. These efforts began with, and

continue to be primarily focused on, resolving e-commerce disputes and domain name disputes.⁷⁴ Although this 'online dispute resolution' (ODR) industry has not expanded as rapidly

in focus or breadth as was once anticipated, it may nevertheless be worth considering the lessons learned as a result of these ODR efforts when considering similar systems for bloggers.

ARTICLE 19's position

- ARTICLE 19 believes that recent developments demonstrate the need for a new, more balanced approach to defamation which better upholds freedom of expression online. In particular:
 - Any laws which specifically criminalise online defamation, and/or impose harsher penalties for online defamation than for offline defamation, should be abolished as incompatible with international standards on freedom of expression. All criminal defamation laws should be abolished and replaced with civil remedies where appropriate. In this regard, we note that new Web 2.0⁷⁵ types of applications have made it possible to respond to derogatory comments online almost immediately and at no cost. Given the availability of an easy right of reply, we believe that the sanctions available for offline defamation are highly likely to be both unnecessary and disproportionate in the digital environment.⁷⁶
 - The threshold for bringing a defamation action in relation to online publications, including blogs, should be a high one. Complainants should be required to prove substantial harm to their reputation. Hence, it is highly unlikely that substantial damage could be established in circumstances where, for instance, an allegedly defamatory comment is rapidly buried by a large number of other comments in a thread.⁷⁷ Moreover, the impact of a blog is likely to be qualitatively different from that of a comment made in a newspaper or broadcast.⁷⁸
 - Jurisdiction in Internet defamation cases should be restricted to the state or states in which the author is established or to which the content is specifically directed; jurisdiction should not be established simply because the content has been downloaded in a certain state.⁷⁹
 - The multiple publication rule should be abolished and replaced with a single publication rule in accordance with international standards on freedom of expression.⁸⁰ This means that for content that was uploaded in substantially the same form and same place, statutes of limitation for bringing legal cases should start from the first time the content was uploaded and only one action for damages should be allowed in respect of that content. Where appropriate, it should be possible for the damages suffered in a number of jurisdictions to be recovered at one time.

-
- The repetition rule should be applied flexibly, taking into account the position or status of the person making the statement so as to prevent ordinary individuals from being prosecuted for merely distributing (posting or hyperlinking) defamatory statements made by others. This is especially the case when the original statement was made in the mainstream media.
 - Self-regulatory right of reply is likely to be the most proportionate way to deal with defamatory content in the vast majority of cases. If, nonetheless, an application is made to court and the allegations of defamation are not sufficiently serious, the application should be struck out as an abuse of process.
 - Bloggers should be able to avail themselves of all defences available in defamation cases under international standards, such as defence of reasonable publication or defence of truth.⁸¹

Bloggers and incitement to hatred

In recent years, ‘hate speech’ online has emerged as a particularly thorny issue for freedom of expression on the Internet,⁸² in particular in countries with a diverse ethnic and/or religious makeup.⁸³ There is no universally agreed definition of ‘hate speech’, either online or offline. Moreover, most laws targeting the phenomenon of ‘hate speech’ are unduly vague, which means that freedom of expression can be unduly restricted under them.

ARTICLE 19’s position

ARTICLE 19 has long argued that all prohibitions of ‘hate speech’ must conform to international standards on limiting the right to freedom of expression and freedom of information. Prohibitions that censor contentious viewpoints unnecessarily are often counter-productive to the aim of promoting equality and fail to address the underlying social roots of the kinds of prejudice of which ‘hate speech’ is symptomatic. In most instances equality is better promoted through positive measures aiming to increase understanding and tolerance, rather than through censorship of those views perceived as injurious to some groups or individuals.

ARTICLE 19 has also pointed out that it is only under certain limited circumstances that states are obliged by international human rights law to prohibit specific forms of “hate speech,” namely the advocacy of hatred that constitutes incitement to discrimination, hostility, or violence (“incitement” or “incitement to hatred”), as mandated by Article 20(2) of the ICCPR. These prohibitions should primarily be enforced by civil and administrative laws; only in the most serious cases should criminal sanctions be imposed. Criminal law should not be the default response to instances of incitement if less severe sanctions or measures

could achieve the same effect. ARTICLE 19 has also recommended numerous measures for states to adopt to ensure uniform and consistent implementation of their obligations under Article 20 of the ICCPR, as well as measures that should be offered to victims of incitement.⁸⁴

In assessing whether a particular expression amounts to incitement, ARTICLE 19 has recommended a “six-part test” of incitement, where the authorities should examine: the context of the expression, the speaker, the speaker’s intent to incite to hatred, the content of the expression, the extent and magnitude of the expression including its means of dissemination and the likelihood of the advocated action occurring, including its imminence.⁸⁵ All these criteria should also be applied to cases involving bloggers. Equally, states should adopt a wide variety of positive measures that foster freedom of expression as well as tolerance and diversity in society, including online campaigns and educational programmes for young people.

Bloggers and other offences

Bloggers may also be liable for a range of offences that seek to criminalise the dissemination of grossly offensive or menacing speech made via an electronic communications network. The laws that give rise to such prosecutions remain deeply problematic for freedom of expression. In particular, provisions criminalising ‘grossly offensive’ speech call for eminently subjective interpretations. In some countries, this has led to a rise in the number of prosecutions against bloggers (or social media users) for comments posted online.⁸⁶

Similarly, bloggers should be aware that they remain subject to contempt of court laws if they disclose the names of individuals whose anonymity is protected by court order or if they fail to respect the presumption of innocence when reporting on court cases.

ARTICLE 19’s position

ARTICLE 19 believes that freedom of expression cannot be trampled upon in the name of civility or politeness online. Laws giving rise to such prosecutions should be repealed.

We also believe that, in the face of what seems to be a growing concern about acceptable’ behaviour online, it is vital to bear in mind the importance of the context of statements made on the Internet. This includes the “fervent, if not florid” nature of discourse there, its tendency towards the “rapid and spontaneous exchange of comments,” as well as its “broad range of tolerance for hyperbolic language.”⁸⁷ Intermediaries and social media networks have also highlighted the importance of context in online communications, especially in relation to offensive comments.⁸⁸

As contempt laws constitute a restriction to freedom of expression, ARTICLE 19 recommends that any such case would have to be examined in the light of the three-part test under international law.

Bloggers' liability for third-party content

One of the striking features of blogs is that they allow other Internet users to post comments. A key issue for bloggers is therefore their potential liability for comments posted by those reading their blogs.

As a starting point, it is important to remember that legal responsibility for a blog generally lies with its 'owner', that is, the person who exercises editorial control over its contents. Accordingly, it is always up to each individual blogger to decide for themselves the content they wish to publish and whether to allow readers or users of the site to post comments. The decision of a blogger to enable third party comments on their blog merely reflects their willingness to engage in online conversation. This is highly desirable and should be encouraged, but it is not an obligation and is not recognised as such under international law.

Similarly, just as bloggers are free to decide for themselves whether or not to allow comments, bloggers are entitled to moderate any comments on their blog as they see fit, including removing any comments they dislike or which fall short of the terms and conditions or community standards which they have decided to impose.

At the same time, bloggers may be liable as publishers for comments made by third parties or 'user-generated content'. In some countries, however, they may benefit from immunity from liability since they may be considered as 'hosts' (i.e. providing storage of information) in relation to user-generated content. They can lose their immunity from liability, though, if they fail to remove allegedly unlawful content when informed of a complaint (so called 'notice and takedown' procedures). In other words, bloggers are given a strong incentive to have a robust takedown policy in place.

Additionally, bloggers become even more exposed to liability when they have a moderation system in place since they can more easily be fixed with actual knowledge that allegedly unlawful content has been posted on their site. The risk of liability is particularly high as an unlimited number of people can post comments and it might be difficult for individual bloggers to keep up with the amount of traffic on their sites. Equally, bloggers may be liable if they host or make available content that is owned by third parties, e.g. copyrighted material.

ARTICLE 19's position

ARTICLE 19 suggests that the following measures should be adopted to protect bloggers from liability for third-party comments:

- **Bloggers should be given immunity from liability for comments posted by third parties:**⁸⁹ as a general rule, bloggers should benefit from immunity from liability as long as they do not specifically intervene in third-party content.⁹⁰ In particular, as a matter of principle, bloggers should only be required to remove content following a court order that the material at issue is unlawful. This is consistent with the recommendations of the four special mandates on freedom of expression in their 2011 Joint Declaration on Freedom of expression and the Internet.⁹¹
- **Bloggers should not be required by law to monitor content posted by third parties:** ARTICLE 19 also believes that as a general rule, it would be disproportionate to hold bloggers liable for comments posted by others on the basis that they voluntarily operate a moderation system. Moderation systems can serve useful purposes in certain circumstances. For example, post-moderation may be appropriate if anonymous Internet users start abusing others online. However, if bloggers are fixed with knowledge simply on the ground that they operate such systems – rather than because they specifically intervened in the comments - this is likely to discourage them both from: (i) having a moderation system in place despite their other benefits; or (ii) even enabling comments in the first place, something which would undoubtedly diminish freedom of expression online more generally. Moreover, we consider that any provision or court decision, which would have the effect of requiring bloggers to monitor user-generated content, would be contrary to international standards of freedom of expression since it would be tantamount to endorsing a form of private censorship.⁹²
- **'Notice-and-takedown' rules should be abolished:** ARTICLE 19 is deeply concerned by the widespread adoption of 'notice-and-takedown' rules. We consider them inimical to free speech for several reasons. These rules often lack a clear legal basis⁹³ as well as basic procedural fairness. Under such rules, bloggers (as hosts) are effectively given an incentive to remove content promptly based on allegations made by a private party or public body and without any judicial determination of the lawfulness of the content at issue. Moreover, the maker of the statement at issue is usually not given an opportunity to consider the complaint. Such rules can have a chilling effect on freedom of expression, as naturally bloggers may err on the side of caution and take down material which may be perfectly legitimate and lawful.
- **'Notice-to-notice' approaches should be considered as an alternative to 'notice-and-takedown':** Whilst we believe that, as a matter of principle, bloggers should only be required to remove content when ordered to do so by a court, 'notice-to-notice' approaches are also compatible with international standards of freedom

of expression in that bloggers are merely required to pass the complaint to the original maker of the statement at issue, without having to remove the material upon notice. This system is especially suitable for certain types of content, such as defamatory statements.

Recommendations:

- The laws governing the liability of bloggers, including defamation law, incitement and other speech-related offences, must comply with international freedom of expression standards.
- As a general rule, bloggers should not be held liable for comments made by third parties on their blogs in circumstances where they have not intervened or modified those comments.
- For certain types of content, for example content that is defamatory or infringes copyright, consideration should be given to adopting ‘notice-and-notice’ approaches whereby bloggers would be required to pass the complaint to the original maker of the statement at issue, without removing the material upon notice.

Bloggers and ethical responsibilities



One of the most controversial issues related to blogging and its relationship to traditional journalism is the question of ethics and, more generally, bloggers' 'duties and responsibilities'.

Bloggers and 'duties and responsibilities'

The notion of 'duties and responsibilities' features in Article 19 of the ICCPR and Article 10 of the European Convention on Human Rights, both of which guarantee the right to freedom of expression. It does not, however, form part of Article 19 of the UDHR, nor does it appear in the American Convention on Human Rights or the African Charter on Human and Peoples' Rights. The main justification for inserting these terms to the ICCPR was a fear amongst the drafters that, although it was vitally important for democracy, unfettered freedom of expression could be misused.⁹⁴ There were particular concerns among the participating governments that the media could exert an undue influence over the conduct of national and international affairs, as well as public opinion generally.⁹⁵

Over the years, this concept of 'duties and responsibilities' has become an integral part of the reasoning of the European Court when assessing whether a restriction imposed on journalists by the authorities is necessary within a democratic society. In particular, the European Court has frequently examined whether the journalist has acted in good faith and provided reliable and precise information in accordance with the ethics of journalism.⁹⁶

However, although some have argued that an idea of 'duties and responsibilities' is necessary in order to promote ethical standards in journalism, many jurists have pointed out serious flaws in this concept.

- Firstly, it wrongly suggests that 'duties and responsibilities' serve as a precondition to the protection of freedom of expression. Critics have warned that if this was the case, human rights would only be granted to those who perform their duties to a community whose codes and values they accept and share and that such a conception would be "antithetical to both the unconditional nature of the rights and freedoms (which are not "meritorious") and their universal nature."⁹⁷
- Secondly, there is nothing exceptional about freedom of expression that requires such a special emphasis upon 'duties'. All human rights involve equal respect for the rights of others. Any suggestion that freedom of expression, in particular, may be limited by reference to 'duties' is contrary to the very spirit of human rights, as they belong not just to the virtuous but to all without qualification.

ARTICLE 19's position on bloggers' duties and responsibilities

ARTICLE 19 believes that the term 'duties and responsibilities' in Article 19 of the ICCPR and Article 10 of the European Convention must be interpreted in a much more flexible manner for bloggers. In particular, we submit that it would be highly problematic to judge bloggers by reference to the standards developed for traditional media for two main reasons:

- **Lack of resources:** the overwhelming majority of bloggers does not have the same resources and technical means as newspapers or television stations, especially as regards fact checking. The case-law of the European Court lends support to this view. In particular, the European Court has highlighted that the scope of any such 'duties and responsibilities' depends on the person's situation and their technical means.⁹⁸
- **Bloggers are already 'regulated':** it should not be forgotten that, like anyone, bloggers are already required to comply with the laws of the country in which they reside (see above). Therefore, the suggestion that there should be 'standards of acceptable behaviour' online beyond what is already required by law – akin to an enforceable code of civility or politeness online - is both unwarranted and overbroad.

Bloggers and self-regulation

Self-regulation has a long tradition in the news media, especially the press, and it typically involves a voluntary adoption of a code of practice by an association of journalists or media outlets. Such codes usually include as a minimum: duties of accuracy, fairness and independence; and respect for the presumption of innocence and privacy.⁹⁹ Compliance with this code is usually undertaken by press councils, made up of industry members, which also receive and resolve complaints against the media. Most press councils operate independently of the state. Press councils of this type can be found in Australia, Canada, South Africa, India and in many countries of Europe¹⁰⁰ and Africa.¹⁰¹

With the advent of blogging, there have been discussions in some countries about the question of whether bloggers engaged in journalistic activity online ought to be subject to self-regulation in the same way as the press. With this model, bloggers would voluntarily adopt a code of conduct and accept the complaint-solving mechanisms of a press council. Several countries are currently considering reforming their press councils so that they include new media, including Australia,¹⁰² New Zealand,¹⁰³ Finland¹⁰⁴ and the UK.¹⁰⁵

ARTICLE 19's position on bloggers' self-regulation

On the one hand, ARTICLE 19 considers that it is entirely reasonable for traditional media using new media (e.g. newspapers' websites) to extend the existing mechanisms for self-regulation to their online activities. On the other hand, while it remains possible for all bloggers to voluntarily abide by the standards established for traditional media or to set up their own ethical codes, we would oppose any form of legal 'incentive' or threat of sanction aimed at encouraging bloggers to comply with such codes. Similarly, bloggers should not be coerced or given incentives to join self-regulatory bodies.

The particular reasons for this are:

- Firstly, there is no evidence that the blogosphere needs to be self-regulated by particular ethical codes or bodies. In many ways, the Internet is already subject to a degree of self-regulation: for example, the provision of moderators for discussion groups and talkbacks,¹⁰⁶ or informal networks of discussion and criticism which aim to correct inaccurate information. The same is true of the use of offensive language and other socially unacceptable content. It has also been noted that the success of a particular blog usually depends on the quality of its content and approval by peer review.¹⁰⁷ Bloggers also tend to abide by some form of online 'etiquette', e.g. by acknowledging content produced by others or reproducing it on their own blog 'with permission and thanks'.
- Secondly, contrary to popular belief, the quality of the information found on blogs frequently surpasses that of the traditional press. Many bloggers have at times performed a useful function by actively exposing the low quality of information published by certain sections of the press - despite the fact that they are not themselves subject to the same form of self-regulation as traditional journalists.¹⁰⁸ Often, bloggers have picked up on a news story that mainstream media outlets have neglected¹⁰⁹, or have exposed the inaccuracy of news broadcasted by major media outlets.¹¹⁰ In other words, as competitors in the online marketplace of ideas, bloggers are arguably contributing to the raising of press standards.
- Thirdly, many blogs take the form of opinion pieces, which are never properly the subject of journalistic ethical standards. Indeed, it is worth remembering that the right to hold opinions is not limited under Article 19 of the ICCPR. Furthermore, if bloggers seek to emulate the output of traditional media, it remains possible for them to follow the relevant standards in that area if they wish.

Recommendations:

- The term ‘duties and responsibilities’ in Article 19 of the ICCPR and Article 10 of the European Convention must be interpreted flexibly to take into account the particular situation of the blogger in question.
- Bloggers should not be forced to abide by the ethical codes or codes of conduct developed by traditional media and should not be coerced or given an incentive to join self-regulatory bodies for traditional media.
- Bloggers may decide to follow the ethical standards of traditional media of their own accord. They can also develop their own code of practice either for their own blogs or for associations they voluntarily join. Alternative dispute resolution systems should also be encouraged.
- When bloggers produce a piece for a traditional newspaper, they should be subject to the newspaper’s editorial control, and abide by the ethical standards of journalists.

End notes

- ¹ For example, there have been strong calls from some groups to restrict certain blogs, such as those promoting anorexia, giving advice on committing suicide or displaying forms of ‘cyber-bullying’.
- ² A number of different definitions of bloggers have emerged; see, e.g. Debbie Weil, Top 20 Definitions of Blogging, Wordbiz Report, 8 October 2003; available at <http://bit.ly/16mrDXg> or Daniel Scocco, 27 Definitions for “Blog, Daily Blog Tips, 18 August 2008; available at <http://bit.ly/mPQXQ>.
- ³ See Paul Bradshaw, An attempt to define Blogging as a genre, Online Journalism Blog, 13 November 2008; available at <http://onlinejournalismblog.com/2008/11/13/an-attempt-to-define-blogging-as-a-genre>.
- ⁴ David Allen Green mentioned some of these elements in his written statement to the Leveson Inquiry; available at <http://bit.ly/xZTEzp>.
- ⁵ These recommendations are based on international and comparative standards. See, for example, Inter-American Court of Human Rights, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, Advisory Opinion OC-5/85, 13 November 1985, Series A. No. 5, available at www.oas.org/en/iachr/expression/showDocument.asp?DocumentID=27. The US Federal Court of the District has also held that, for the purposes of the Freedom of Information Act, ‘a representative of the news media is, in essence, a person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience.’ See Electronic Privacy Information Centre v. Department of Defense, US District Court for the District of Columbia (No. 02-1233 (JDB) ECF).
- ⁶ UN General Assembly Resolution 217A(III), adopted on 10 December 1948. While the UDHR is not directly binding on states, parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law since the UDHR was adopted in 1948.
- ⁷ Article 19 of the ICCPR stipulates: “1) Everyone shall have the right to hold opinions without interference. 2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice. 3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions.”
- ⁸ See, CCPR/C/GC/34; available at <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.
- ⁹ UN Human Rights Committee, General Comment No.34, para 12.
- ¹⁰ Ibid., para 17.
- ¹¹ Ibid., para 39.
- ¹² Joint Declaration on Freedom of Expression and the Internet, June 2011; available at <http://bit.ly/RGebi>.
- ¹³ Ibid.
- ¹⁴ Ibid.
- ¹⁵ General Comment, op.cit., para 43.
- ¹⁶ Report of the Special Rapporteur on key trends and challenges to the right of all individuals to seek, receive and impart information and ideas of all kinds through the Internet, A/HRC/17/27, 16 May 2011; available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/a.hrc.17.27_en.pdf.
- ¹⁷ Recommendation No. R (2000)7 of the Committee of Ministers to Member States on the right of journalists not to disclose their sources of information, adopted 8 March 2000 defines “journalist” as “any natural or legal person who is regularly or professionally engaged in the collection and dissemination of information to the public via any means of mass communication.”
- ¹⁸ Recommendation CM/Rec(2011)7 of the Committee of Ministers to member states on a new notion of media, adopted on 21 September 2011; available at <https://wcd.coe.int/ViewDoc.jsp?id=1835645&Site=COE>,
- ¹⁹ Ibid.
- ²⁰ The Committee stated that “as regards in particular new media, codes of conduct or ethical standards for bloggers have already been accepted by at least part of the online journalism community. Nonetheless, bloggers should only be considered media if they fulfil the criteria to a sufficient degree.” Ibid., para 41.
- ²¹ For example, in the UK, the Code of Practice of the Press Complaints Commission applies to citizen journalists only to the extent that they submit material to newspapers and magazines that subscribe to the Code: “Editors and publishers (who take the ultimate responsibility under the self regulatory system) are required to take care to ensure

- that the Code is observed not only by editorial staff, but also by external contributors, including non-journalists." See http://www.pcc.org.uk/faqs.html#faq2_13.
- ²² The 1986 Press Law, as per the 2000 amendment, requires all publishing houses and individuals established in Iran - including "all electronic publications" - to apply to the Press Supervisory Board for a licence. The applicants must be Iranian nationals, over 25 years old, with superior education, without a criminal record and "free from moral corruption." Additionally, all bloggers have to register their websites with the Ministry of Art and Culture. Individuals who fail to obtain a licence can face criminal charges which can result in up to five years imprisonment or even the death penalty. See Islamic Republic of Iran, Press Law; available at <http://bit.ly/10wlRhw>; or ARTICLE 19, the UPR Submission on the Islamic Republic of Iran, August 2009; available at <http://bit.ly/XQ28nN>.
- ²³ Under the Executive Regulation for Electronic Publishing Activity (January 2011), any entity broadcasting news through blogs, mobile phone or text messaging falls within the scope of the 2000 Law of Press and Publications and must obtain a licence. Applicants must be over 20 years old, nationals of Saudi Arabia and have a secondary education degree; editors of each licensee have to be approved by the government. Internet applications featuring memoirs, articles, diaries and personal reports, including blogs, require registration with the Ministry. The system thus combines licensing (for blogs featuring news and video materials) and registration (for personal blogs); see HRW, Saudi Arabia: Rescind New Online Restrictions, 07/01/2011; available at <http://bit.ly/YWejBe>.
- ²⁴ In November 2011, the Ministry of Mass Media and Information (MMMI) started to implement a registration process for "all the news casting websites operated within or outside Sri Lanka publishing news on Sri Lanka and its citizens." This also includes blogs, apart from those referring exclusively to personal matters. The first applications were reviewed in January 2012 and only 27 (out of 80) applicants were awarded a licence; by July 2012, only 45 websites had been registered; see, MMMI, Registration of websites has been started, 17/11/2011; available at <http://bit.ly/10DWgXR>; and MMMI, Registration of Newscasting Websites is put into action as planned, 16/01/2012; available at <http://bit.ly/YnNxBY>.
- ²⁵ IACtHR, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, op.cit.
- ²⁶ Ibid., para. 77: "General welfare requires the greatest possible amount of information, and it is the full exercise of the right of expression that benefits this general welfare... A system that controls the right of expression in the name of a supposed guarantee of the correctness and truthfulness of the information that society receives can be the source of great abuse and, ultimately, violates the right to information that this same society has."
- ²⁷ HR Committee, Concluding observations on Lesotho, 08/04/1999, UNDoc. No. CCPR/C/79/Add.106, para 23.
- ²⁸ Joint Declaration of 18 December 2003; available at <http://bit.ly/10wZxnZ>.
- ²⁹ See, for example, the 2011 Report of the UN Special Rapporteur, op.cit., para 53. This is also the prevalent view in Europe, for example in relation to online copyright enforcement cases.
- ³⁰ For more information see: <https://www.eff.org/issues/anonymity>
- ³¹ C.f., Recommendation CM/Rec (2011)7, op.cit., which states that "arrangements may be needed to authorise the use of pseudonyms (for example in social networks) in cases where disclosure of identity might attract retaliation (for example as a consequence of political or human rights activism)."
- ³² See summary of the case-law of the European Court of Human Rights (ECtHR); available at <http://bit.ly/ek1D7y>.
- ³³ In Gauthier v. Canada (07/04/1999, Communication No.633/1995), the HR Committee stated that accreditation schemes' "operation and application must be shown as necessary and proportionate to the goal in question and not arbitrary... The relevant criteria ... should be specific, fair and reasonable, and their application should be transparent;" para 13.6.
- ³⁴ The 2003 Joint Declaration, op.cit. "Accreditation schemes for journalists are appropriate only where necessary to provide them with privileged access to certain places and/or events; such schemes should be overseen by an independent body and accreditation decisions should be taken pursuant to a fair and transparent process, based on clear and non-discriminatory criteria published in advance."
- ³⁵ See ARTICLE 19, Indonesia: Navigating Indonesia's Information Highway, 2013.
- ³⁶ For example, Liberal Party Canada opened the accreditation to the LPC convention also to "independent bloggers" who expressed interest in covering the event. See Blogger accreditation for the LPC Showcase is confirmed; available at <http://bit.ly/Ywu5DX>.

- ³⁷ Practice Guidance on the use of live text-based forms of communication (including Twitter) from court for the purposes of fair and accurate reporting, December 2011, para 10; available at <http://bit.ly/tfbvBt>.
- ³⁸ Ibid., para 9.
- ³⁹ See, for example UN Commission on Human Rights, Human Rights Resolution 2005/38: The Right to Freedom of Opinion and Expression, 19 April 2005, E/CN.4/RES/2005/38;
- ⁴⁰ Declaration of Principles on Freedom of Expression in Africa, October 2002; available at <http://bit.ly/YWHuV4>.
- ⁴¹ Inter-American Commission on Human Rights, OAS, Report on Terrorism and Human Rights, OEA/Ser.L/V. II.1 16 Doc. 5 rev. 1 corr. (October 22, 2002).
- ⁴² See *Sanoma v Uitgevers B.V. v The Netherlands*, [GC], No. 38224/03, 14/09/2010; para 50; available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-100448>.
- ⁴³ Countries recognising the right to the protection of journalistic sources include Angola, Argentina, Armenia, Austria, Australia, Brazil, Burundi, Canada, Chile, Croatia, Ecuador, El Salvador, France, Georgia, Germany, Japan Lithuania, Mozambique, The Netherlands, New Zealand, Romania, Panama, Paraguay, Peru, Poland, Uruguay, USA, and Venezuela.
- ⁴⁴ See further the criteria for disclosure indicated in the "Proposed Guidelines on Protection of Journalists' Sources" in David Banisar, *Silencing Sources: An International Survey of Protections and Threats to Journalist's Sources* (Privacy International, 2007), p. 96.
- ⁴⁵ See, for example, Explanatory Memorandum to Recommendation No R(2000) 7 of the Committee of Ministers to member states on the rights of journalists not to disclose their sources of information, paras 40-41.
- ⁴⁶ Ibid., paras 40, 41 and 48.
- ⁴⁷ Despite the standards outlined here, international bodies have not explicitly recognised protection of sources by bloggers.
- ⁴⁸ Inter-American Declaration of Principles on Freedom of Expression, approved by the Inter-American Commission on Human Rights during its 108th regular session, 19 October 2000; available at <http://bit.ly/GNJ6Ng>.
- ⁴⁹ Recommendation R(2000) 7 of the Committee of Ministers, op.cit.
- ⁵⁰ Recommendation CM/Rec (2011)7, op.cit. A similar principle was recently established by the Swiss Federal Supreme Court, see Supreme Court rules on protection of sources for blog comments, 06/10/2011; available at <http://www.internationallawoffice.com/newsletters/detail.aspx?g=e8bad5e4-c35b-447e-9edf-3b72f674c25f>.
- ⁵¹ See *Cornec v Morrice & Ors* [2012] IEHC 376 (18/09/2012); available at <http://bit.ly/UHTaOG>. The Court considered that "a person who blogs on an internet site can just as readily constitute an "organ of public opinion" as those which were more familiar in 1937." It also found that there was a high constitutional value in ensuring the blogger's right to contribute to public discourse, and that being compelled to reveal their sources would compromise the "right to educate (and influence) public opinion, [which] is at the very heart of the rightful liberty of expression;" para 66.
- ⁵² RSF, Press Freedom barometer, Journalists killed, 2012; available at <http://bit.ly/wyGskw>. The term 'citizen journalist' and 'blogger' are often used interchangeably. 'Citizen journalism' has been described as citizens 'playing an active role in the process of collecting, reporting, analyzing, and disseminating news and information', see Bowman and Willis, *We Media: How Audiences are Shaping the Future of News and Information*, the Media Center at the American Press Institute, 2003.
- ⁵³ Freedom House, Freedom on the Net, 2012.
- ⁵⁴ For example, the UN, OSCE and OAS special mandates on freedom of expression have called on States to "take adequate measures to end the climate of impunity and such measures should include devoting sufficient resources and attention to preventing attacks on journalists and others exercising their right to freedom of expression;" see the 2000 Joint Declaration on Censorship by Killing and Defamation; available at <http://bit.ly/YplWAj>. See also 2012 Joint Declaration on Crimes against Freedom of Expression; available at <http://bit.ly/W5rx39>.
- ⁵⁵ ECtHR, *Dink v Turkey*, No. 2668/07, 14 September 2010.
- ⁵⁶ ECtHR, *Osman v. the UK*, Application No. 23452/94, 28 October 1998, para 115. See also *Gongadze v Ukraine*, No. 34056/02, 8 November 2005 (case dealing specifically with a failure to protect a journalist).
- ⁵⁷ *Osman v. the UK*, op.cit., para 116.
- ⁵⁸ Ibid., para 116.
- ⁵⁹ HR Committee, Observations and Recommendations to Guatemala, Doc.CCPR/C/79/Add.63, para 25.
- ⁶⁰ The 2012 Joint Declaration on Crimes against Freedom of Expression, op.cit.
- ⁶¹ *Miranda v. Mexico*, Case 11.739, Report No 5/99, OEA/Ser.L/V/II.95 Doc. 7 rev., p. 755 (1998), para 52.

-
- ⁶² For more details see the 2012 Joint Declaration on Crimes against Freedom of Expression, op.cit.
- ⁶³ The Inter-American Court, Velásquez Rodríguez v. Honduras, 29 July 1988, Series C No. 4, para 177.
- ⁶⁴ The Inter-American Court, Genie Lacayo v. Nicaragua, 29 January 1997, 30, para 77; see also the decision of the ECtHR in König v. Germany, 28 June 1978, para 99.
- ⁶⁵ See for example, 2012 Joint Declaration, op.cit.; the UN Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power, UN Doc. A/40/53, 29/11/1985; and decisions of the ECtHR in Delcourt v. Belgium, judgment of 17 January 1970; König v. Germany, op.cit.; or Öztürk v. Germany, judgment of 21 February 1984.
- ⁶⁶ The 2011 report of the UN Special Rapporteur on Freedom of Expression, op.cit.
- ⁶⁷ Ibid, para. 22.
- ⁶⁸ An example of one such law is the Electronic Information and Transactions Act 2008 in Indonesia; cited in ARTICLE 19, Indonesia: Navigating Indonesia's Information Highway, op.cit.
- ⁶⁹ See, for example, ARTICLE 19, Libel Tourism: a growing threat to free speech, available at <http://bit.ly/ZGbLcJ>.
- ⁷⁰ Times Newspapers Limited (Nos. 1 and 2) v. UK, Applications no. 3002/03 and 23676/03, 10 March 2009. Although the ECtHR did not find a violation of freedom of expression in this case, it stressed that defamation proceedings brought against a newspaper after too long a period might well give rise to a disproportionate interference with freedom of the press.
- ⁷¹ See, for example, the 'Lord Mc Alpine' case in the UK, November 2012; available at <http://bit.ly/PNOyED>.
- ⁷² The effect may be mitigated when assessing the amount of recoverable damages; see, e.g. <http://bit.ly/TMsojK>.
- ⁷³ This was, for example the case in the UK, see Kordowski v Hudson, [2011] EWHC 2667 (QB), Wallis v Meredith, [2011] EWHC 75 (QB) and McBride v Body Shop Int Plc, [2007] EWHC 1658 (QB); see Ashley Hurst, Internet Libel Part I: What makes it Different?, 26/11/2012, available at <http://bit.ly/RbbM4G>.
- ⁷⁴ The Grail Quest has been one of the popular models of dispute resolution for Internet entrepreneurs, and arbitration and Internet lawyers; see Internet Disputes, Fairness in Arbitration and Transnationalism: Reply to Julia Hornle, International Journal of Law and Information Technology, 2011.
- ⁷⁵ "Web 2.0" is a second generation of the World Wide Web that allows people to collaborate and share information online. It refers to the transition from static html Web pages to more dynamic ones.
- ⁷⁶ See the 2011 report of the UN Special Rapporteur on Freedom of Expression, op.cit., para 28.
- ⁷⁷ See, for example, Tamiz v Google, ([2013] EWCA Civ 68).
- ⁷⁸ The Guardian, The long arm of online libel laws, 7 November 2011; available at <http://bit.ly/X7Bs85>.
- ⁷⁹ The 2005 Joint Declaration of the OSCE, OAS and UN Special Rapporteurs on freedom of expression; available at <http://bit.ly/Xp7RJA>.
- ⁸⁰ The 2011 Joint Declaration of four special mandates on freedom of expression, op.cit.
- ⁸¹ See, ARTICLE 19, Defining Defamation, 2000.
- ⁸² Council of Europe, Tackling Hate Speech: Living together online; available at <http://bit.ly/QLmuTY>.
- ⁸³ In India, there were a number of high-profile arrests for comments posted on Facebook. The government recently issued guidelines to prevent ordinary citizens from being arrested for this type of innocuous comment; see Raw Story, India to amend hate speech law after Facebook controversy, 29/11/2012; available at <http://bit.ly/Y7VDm1>.
- ⁸⁴ ARTICLE 19, Prohibiting incitement to discrimination, hostility or violence, December 2012; available at <http://bit.ly/VUzEed>.
- ⁸⁵ Ibid.
- ⁸⁶ This is the case, for example, in the UK and Australia. In the UK, a man was convicted for making a joke on Twitter on the basis of such a law, although the conviction was subsequently overturned; see High Court Decision in Paul Chambers vs. DPP; available at <http://bit.ly/0OZ611>. See also BBC, Huge rise in social media crimes, 27/12/2012; available at <http://www.bbc.co.uk/news/uk-20851797>.
- ⁸⁷ See also ARTICLE 19's submissions in the Twitter Joke Trial case; available at <http://bit.ly/KFWOPU>.
- ⁸⁸ Twitter Help Centre, Offensive: Consider the Context; available at <http://bit.ly/1449YUA>.
- ⁸⁹ Different rules may apply for criminal content.
- ⁹⁰ See ARTICLE 19's submissions in *Jezier v Poland* (no.31955/11), available at: <http://www.article19.org/data/files/mediabinary/3670/Amicus-brief-Jezier-v-Poland-A19-submissions.pdf>; see also section 230 of the Communications Decency Act 1996.
- ⁹¹ The 2011 Joint Declaration on Freedom of Expression and the Internet, op.cit., Principles 2 (a) and (b).
- ⁹² For example, under Article 15 of the E-commerce Directive, EU Member States are prohibited from imposing a general obligation on providers to monitor

- their services. See also Joint Declaration on Freedom of Expression and the Internet, op. cit.
- ⁹³ See OSCE report, Freedom of Expression and the Internet, July 2011, p 30.
- ⁹⁴ Mario Oetheimer, Les "devoirs" et "responsabilités" des journalistes: une garantie à l'exercice de la liberté d'expression?, 2008; available at <http://bit.ly/WGq5p6>.
- ⁹⁵ For a similar approach by the ECtHR, see Stoll v Switzerland, [GC], no. 69698/01, 10/12/2007, para 104.
- ⁹⁶ See, for example, the ECtHR, Fressoz and Roire v. France [GC], No. 29183/95, para 54.
- ⁹⁷ F. Tulkens, Pour une approche dialectique des droits et responsabilités – Conclusions, in H. Dumont, F. Ost et S. van Drooghenbroeck, La responsabilité, face cachée des droits de l'homme, Bruylant, Bruxelles 2005, p. 525.
- ⁹⁸ See, for example, *Handyside v. the United Kingdom*, 7 December 1976, § 49 in fine, Series A no. 24.
- ⁹⁹ Syndicat national des journalistes, Charte d'éthique professionnelle des journalistes (2011); available at <http://bit.ly/ye6uvZ>; Press Complaint Commission, Editors' code of practice, available at <http://bit.ly/aDmTom>.
- ¹⁰⁰ See, for example the membership of the Alliance of Independent Press Councils in Europe; available at <http://bit.ly/1OJWAUP>.
- ¹⁰¹ For a list of Media councils and Press Ombudsmen in Africa, see <http://bit.ly/Zkp15U>.
- ¹⁰² The Australian Press Council (APC) is the principal body with responsibility for responding to complaints about Australian newspapers, magazines and associated digital outlets. It resolves complaints regarding the websites associated with print media. Bloggers whose articles are published on the websites of newspapers would therefore fall within the scope of the Council. See APC, 'What we do', available at <http://bit.ly/YyJgVs>. In May 2012, the first online-only publishers joined the Council. Even though the new members are new media which act like traditional media, this development certainly opens the door for bloggers. Moreover, the Council has embarked on a three-year Standards project to review its Standards of Practice with a focus on the context of growing electronic communication; see APC's standards, available at <http://bit.ly/ZGQOyw>.
- ¹⁰³ The Press Council (PC) oversees all content published on its members' websites, including blogs. The Council has also occasionally provided advice and even mediation services to individuals complaining about content published in non-traditional media; see www.presscouncil.org.nz. The Law Commission is also currently carrying out a review of the media regulatory environment in the digital era and has suggested replacing the PC and the Broadcasting Standards Authority with a single independent regulatory body, which would be funded by members and subsidised by the government. The new regulator would prepare, in consultation with stakeholders, a series of principles by which it would adjudicate. It has been proposed that there should be particular codes for the different sectors. Membership could be entirely voluntary or compulsory for some actors, for example those publishing as a commercial venture. Law Commission, The News Media Meets 'New Media', Issues Paper 27, December 2011, p. 105, available at <http://bit.ly/MXU9Y3>.
- ¹⁰⁴ The Council for Mass Media (JulkisenSananNeuvosto) is responsible for resolving complaints related to content published in the mass media by members of the council including newspapers, magazines, television, radio and websites. JulkisenSananNeuvosto, 'Basic Agreement', available at <http://bit.ly/ZHoChd>. In 2011, the Council's guidelines were amended to incorporate complaints related to comments posted by users on members' websites. See 'Guidelines for journalists'; available at http://www.jsn.fi/en/journalists_instructions/.
- ¹⁰⁵ The current Press Complaint Commission (PCC) resolves complaints related to newspapers, magazines and their websites. In 2009, its remit was extended to include online-only publications. However, the PCC only resolves complaints related to publications which would be considered UK-based newspapers or magazines if in printed form and whose editors subscribe to the Editor's Code of Practice. See Press Standards Board of Finance Limited, PCC's remit extended to include online-only publications, 14/12/2009, available at <http://bit.ly/14TYvmy>. Only bloggers working for newspapers or magazines which subscribe to the Code would be regulated by the PCC. In November 2012, the Leveson inquiry published its recommendations in relation to the culture, practice and ethics of the press and its recommendations might fundamentally alter the current system. Leveson's report remained silent on new media, including blogging. See the Leveson Inquiry website at <http://www.levesoninquiry.org.uk/>.
- ¹⁰⁶ The TalkBack Reader Response System was one of the first systems used on the Internet to allow people to respond to articles posted on a web site.
- ¹⁰⁷ David Allen Green, op.cit.
- ¹⁰⁸ For example, the UK Human Rights blog has exposed the misleading use of statistics by the Daily Mail to put down the European Court.

¹⁰⁹ For example, in the US, in 2002, bloggers exposed the racism of Senator Trent Lott; see Mark Glaser, Trent Lott Gets Bloggered: Free Finance Sites Spoofed by WSJ.com, Online Journalism Review, 17/12/2002.

¹¹⁰ Corey Pein, Blog-Gate, Colum.Journalism Rev., Jan.-Feb. 2005: "Bloggers have claimed the attack on CBS News as their Boston Tea Party, a triumph of the democratic rabble over the lazy elites of the MSM (that's mainstream media to you); p. 30–31; available at <http://bit.ly/13UxfbI>; or Rebecca MacKinnon, Blogging, Journalism, and Credibility, 11/01/2005; available at <http://bit.ly/XGTdLQ>.



DEFENDING FREEDOM OF EXPRESSION AND INFORMATION

ARTICLE 19 Free Word Centre 60 Farringdon Road London EC1R 3GA

T +44 20 7324 2500 F +44 20 7490 0566

E info@article19.org W www.article19.org Tw @article19org facebook.com/article19org