Written Comments
in the Case of

Sanoma Uitgevers B.V. v the Netherlands
Application No. 38224/03

A Submission to the European Court of Human Rights on behalf of the Open Society Justice Initiative, the Committee to Protect Journalists, the Media Legal Defence Initiative, ARTICLE 19, and Guardian News and Media Limited, with the support of The Associated Press, Bloomberg News, Index on Censorship, The European Newspaper Publishers Association (ENPA), Condé Nast Publications, Hearst Corporation, The National Geographic Society, The New York Times Company, La Repubblica, Reuters, Time Inc., The Washington Post Company, and The World Association of Newspapers and News Publishers (WAN-IFRA).

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IN THE EUROPEAN COURT OF HUMAN RIGHTS

Application No. 38224/03

Sanoma Uitgevers B.V. v the Netherlands

WRITTEN COMMENTS OF

Open Society Justice Initiative

Committee to Protect Journalists

Media Legal Defence Initiative

ARTICLE 19

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The Associated Press, Bloomberg News, Index on Censorship, Condé Nast Publications, The European Newspaper Publishers Association, Hearst Corporation, The New York Times Company, La Repubblica, Reuters, The National Geographic Society, Time Inc., The Washington Post Company, the World Association of Newspapers and News Publishers

Pursuant to leave granted on 3 November 2009 by the President of the Grand Chamber under Rule 44(2) of the Rules of the Court, the above named organisations hereby submit written comments on the protection of journalistic sources, safeguards against the search of newsrooms, and other aspects of media freedom.

I Introduction

We are grateful for the opportunity to make written submissions on the two issues formulated by the court, and would seek to supplement them with oral submissions of no more than fifteen minutes at the hearing. We are concerned that jurisprudence at chamber level fails to reflect the force of Article 10 or to deliver on the promise of some of the Grand Chamber's earlier landmark decisions on this guarantee. Few of its decisions have been more celebrated, or more followed by national courts around the world and by international courts, than *Goodwin v UK* which laid down, in paragraph 39, a fundamental free speech philosophy that source protection is a basic condition for press freedom in democratic society, because without it the vital watchdog role of the media would be neutered and the public would receive less information of news value. It follows from this principle that source disclosure may only be compelled by an independent judiciary, on exceptional occasions if such an order is justified by an overriding requirement of public interest. We regret to note, in the way the court has framed the first question, that the rule in *Goodwin* is somewhat attenuated by reference to how legislation and judiciaries have "balanced" source protection against law enforcement. We respectfully point out that there is no reference to "balance" as such in the taxonomy of Article 10: as the court in *Observer and Guardian v UK* explains, the Article begins with the proposition that there is a **presumption** in favour of freedom of expression in 10(1), which is defeasible only when a state can prove that it is strictly necessary to override that freedom in the interests of narrowly defined 10(2) exceptions.

This is a crucial point and we are anxious to explain to the court why the approach mandated by Article 10 emphatically does not require any "balance" between the freedom guaranteed in

10(1) and the freedoms set out in 10(2). If Article 10 merely required a "balance" between competing values, then it would permit entirely subjective judgments: the judge would inevitably apply his or her own prejudices when weighing what he or she may think to be an unimportant example of freedom of expression, against competing commercial interests that can be measured in hard cash. In this way, judges can lose sight of the **principle** of freedom of expression or devalue it by giving equal weight to the 10(2) exceptions. But an exception cannot have equal weight – it must be narrowly defined and strictly proved. A **presumption,** on the other hand, requires a close, objective scrutiny and a principled outcome: it places the burden of proof on those who claim that the substantive right must be overridden in the interest of subsidiary rights which in 10(2) take the form of exceptions which the court in *Observer v UK* held must be narrowly construed and stringently proved. It is on this fundamental point of the correct approach to Article 10 that the interveners would wish to make a short oral presentation. It is our experience that a number of chambers are deviating from this approach by importing subjective judicial "balancing acts" into Article 10 jurisprudence, with the consequence that their judgments set a lesser standard. This is apparent from the current case: paragraph 57 of the Third Section judgment in *Sanoma* speaks only of "balancing the conflicting interests" and sets out a number of ambulant factors which made the result turn upon judicial obeisance to law enforcers, rather than upon principle.

We are not invited to discuss the merits of the *Sanoma* case. However, the facts of the case are illustrative of the broader point we wish to address and which drives us to intervene: lawyers for police and prosecutors in Europe will read the facts of the *Sanoma* decision for the purpose of advising their clients. They must already take heart from the failure of the chamber meaningfully to protest against the behaviour of the Dutch police and prosecutors, in this instance, who adopted a number of tactics wholly unacceptable in a free society. The prosecutors misled the newspaper's lawyer ("it concerns a matter of life or death") and then threatened the editor with prison for the weekend and with the closure of his newspaper's premises for that period – actions that would have caused serious damage to his publications financially and would have delayed public access to them. The editor was arrested and held for four hours, and in the early hours of the morning an "investigating judge" decided after the most cursory of discussions that "the needs of criminal investigation outweighed journalistic privilege". The chamber merely found these actions to be "characterised by a regrettable lack of moderation". It similarly found the recent legislative removal of the safeguard of the involvement of an independent judge merely "disquieting". This will only serve to encourage similar actions in the future. What is needed is a strong signal from the Court requiring states to put in place an independent safeguard against those police and prosecutors acting rashly to obtain access to journalistic records. The message sent, if the chamber judgment is upheld, is that police and prosecutors can obtain such access with relative ease.

Journalists would never be able to gain access to places and situations where they can report on matters of general concern if they cannot give a strong and genuine undertaking of confidentiality. If they cannot promise sources anonymity, then they often cannot report at all. That is what happens when sources are unsure whether they will be protected – they dry up. Of course many good journalists will go to prison rather than reveal their source, but the uncertainty and chilling effect of a law that does not provide effective protection will deter sources from coming forward in the first place.

The majority judgment also placed great emphasis on the fact (at paragraphs 57 and 61) that the authorities made no use of the information to prosecute the sources. But reliance upon this fact is mistaken: how are the sources to *know* that the authorities will make no use of information about them? There were photographs taken by the journalists of the illegal activity and any or all of the participants *could* have been identified, even if it turned out much later that none of them were. Besides, sources – especially criminals – will not trust the police, and will believe – perhaps correctly – that the information will be used against them at some stage in the future. This is precisely the reason why they exacted the undertaking of confidentiality – so that the authorities would not be able to get their hands on material that incriminated them. It is similarly mistaken to conclude (without the slightest evidence) that "the Applicant's sources were never put to any inconvenience over the street race". If this were true, then the police

should have given Mr B the opportunity to go back to his sources and ask permission to disclose the photographs. But instead, they threatened him with arrest and financial disaster, and effectively put such pressure upon him that they compelled him to betray his source.

We also wish to stress that there was no truly **independent** prior judicial involvement. An "investigating judge" operates as an official with a vested interest in obtaining as much evidence as possible. The involvement of such a figure is no safeguard for the media – quite the contrary – as his or her decisions may reflect a system bias against the invocation of a privilege that impedes the investigation. Journalistic privilege should be weighed by a judge independent from the investigation. Similarly, in the same paragraph, the suggestion that an entitlement to *post factum* review can be a safeguard is mistaken. *Post factum* is too late: the damage has been done by the fact that the source has been identified. The genie cannot be put back into the bottle. The journalist has been forced to betray the source and in consequence fewer sources will come forward.

We do not believe that this 4-3 chamber judgment is attentive either to principle or to the realities of journalistic investigation. The minority judgment is, and conforms with the approach in *Goodwin*. Indeed, had Mr Goodwin been dealt with on the majority approach in his case, i.e. (in paragraph 59) merely by asking whether the information was "relevant" to a crime and capable of identifying the perpetrators, then the order to disclose his source would have been upheld, because she was believed to have been a thief who had stolen valuable commercial information. This is the danger if *Sanoma* is allowed to stand. It does away with the need for the police to prove a requirement by showing to a high level of certainty that disclosure is necessary in a democratic society. It is alarming that the chamber seems to disregard that a heavy burden of proof lies on the police and on prosecutors to override the article 10(1) guarantee. It is satisfied (as it makes clear at paras 63 read with para 59) merely because the information was "relevant" to the crime, rather than necessary to solve it, and "capable" of identifying perpetrators, although it did not do so and the offences perpetrated were not of a high level of seriousness.

Hence we invite the court to depart from the chamber decision and to re-assert the authority of *Goodwin v UK*. We ask the Court to endorse guidance agreed by the Council of Europe's Committee of Ministers (in Recommendation (2000)7) and make it crystal clear to all states in Europe that to conform with Article 10 there can be no question of requiring source disclosure without an order from a genuinely independent judge, who must apply a presumption against disclosure and require any applicant to prove to a high standard that this information is essential to the issue of guilt or innocence of a grave crime or to prevent imminent threat to life or limb or to prevent serious damage to national security. Finally, the police must prove that there is no other way by which the information can be obtained.

This submission will look at comparative sources of law and the experience of the interveners to address four points:

Firstly, the principles on source protection enunciated in Goodwin have become standards throughout Europe, but they are often undermined by government actions.
Secondly, the scope of the privilege, which has been broadened to cover situations of search and seizure, compelled testimony and the protection of unused and research materials.
Thirdly, the introduction of other safeguards, requiring prior judicial authorisation for disclosure and exhaustion of all alternative avenues of investigation.
Fourthly, the impact of the decision in *Sanoma*, by pointing to recent examples in the Council of Europe and further afield.

II International and Comparative Law

Since this Court's decision in *Goodwin*, many members of the Council of Europe – in Eastern as well as Western Europe – have enacted or amended laws to ensure greater protection of journalistic sources and materials. A review of these laws and how they are applied in practice leads to two conclusions. First, the principles of source protection articulated in *Goodwin*, this

Court's subsequent decisions, and the Recommendation of the Committee of Ministers have become, to a great extent, standard in national legal regimes throughout Europe. Second, in some states, laws protecting journalistic sources and materials are enforced ineffectively or inconsistently – with instances of government officials apparently undermining the law to target disfavoured news organizations or journalists. As discussed below, this underscores the importance of the Grand Chamber's decision in this case.

a) Source protection as a principle is now well established

The principle of the right of journalists to protect confidential sources of information has been recognised in countries around the world. By 2007, approximately 100 countries had adopted source protection laws.[1] The principle has also been recognized by the United Nations, the African Union, the Organization for American States, and the Organization for Security and Cooperation in Europe. Among democratic states, failure to recognize the rights of journalists to protect the confidentiality of their sources has become increasingly the exception rather than the rule.

i) International standards

Since *Goodwin*, a number of other decisions on source protection and the protection of journalistic materials generally have been adopted. In addition, Council of Europe bodies such as the Committee of Ministers have adopted guidelines on the implementation of the principle of protection of sources. In 2000, the Committee of Ministers adopted a Recommendation with detailed principles on protection of sources that all member states should adopt.[2] It describes the principles as "common European minimum standards concerning the right of journalists not to disclosure their sources of information." The principles broadly apply to "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" while a source is "any person who provides information to a journalist" and the information protected included the name and personal data of the source and the journalists, the factual circumstances and unpublished materials.

Other international and regional human rights bodies have also recognized the right in the past decade. The UN Commission on Human Rights annual resolution in 2005 stated that it was "stressing the need to ensure greater protection for all media professionals and for journalistic sources".[3] The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression found that the protection of sources has a "primary importance" for journalists to be able to obtain information and that the power to force disclosure should be strictly limited:

> [I]n order for journalists to carry out their role as a watchdog in a democratic society, access to information held by public authorities, granted on an equitable and impartial basis, is indispensable. In this connection, the protection of sources assumes primary importance for journalists, as a lack of this guarantee may create obstacles to journalists' right to seek and receive information, as sources will no longer disclose information on matters of public interest. Any compulsion to reveal sources should therefore be limited to exceptional circumstances where a vital public or individual interest is at stake.[4]

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[1] Privacy International, Silencing Sources: An International Survey of Protections and Threats to Journalists' Sources, Nov. 2007, http://www.privacyinternational.org/article.shtml?cmd%5B347%5D=x-347-558384.

[2] 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.

[3] The right to freedom of opinion and expression, Human Rights Resolution 2005/38, E/CN.4/2005/L.10/Add.11, 19 April 2005.

[4] Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, submitted pursuant to Commission resolution 1997/27, Addendum: Report on the mission of the Special Rapporteur to the Republic of Poland. E/CN.4/1998/40/Add.2, 13 January 1998. *See also* Commission on Human Rights, Report of the Special Rapporteur Mr. Ambeyi Ligabo,

The Organisation for Security and Co-operation in Europe (OSCE) has long recommended protection of sources.[5] The OSCE Representative on Freedom of the Media has taken a leading role in this. In 2007/8, following a detailed study of the relevant laws and practices in all 56 participating States,[6] he recommended the following standard for protection of sources:

> Journalists should not be required to testify in criminal or civil trials or provide information as a witness unless the need is absolutely essential, the information is not available from any other means and there is no likelihood that doing so would endanger future health or well being of the journalist or restrict their or others ability to obtain information from similar sources in the future.[7]

The right is also recognized by the African Commission on Human and Peoples Rights[8] and by the Inter-American Commission on Human Rights. [9] In its 2003 report on the situation in Venezuela, the Inter-American Commission elaborated on its concerns:

> The Commission holds that the right to protect confidential sources is an ethical duty inherent to journalistic responsibility. Furthermore, the IACHR states that this issue also involves the interests of the sources, in the sense of being able to rely on confidentiality – when, for example, information is given to the journalist on such conditions. The IACHR holds that revealing sources of information has a negative and intimidating effect on journalistic investigations: seeing that journalists are obliged to reveal the identities of sources who provide them with information in confidence or during the course of an investigation, future sources of information will be less willing to assist reporters. The basic principle on which the right of confidentiality stands is that in their work to provide the public with information, journalists perform an important public service by gathering together and disseminating information that would otherwise not be known. Professional confidentiality has to do with the granting of legal guarantees to ensure anonymity and to avoid potential reprisals that could arise from the dissemination of certain information. Confidentiality is therefore an essential element in journalism and in the task of reporting on matters of public interest with which society has entrusted its journalists.[10]

It restated these concerns in its 2004 Report on Terrorism and Freedom of Expression.[11]

ii) National laws

As a result of the *Goodwin* ruling and standards subsequently introduced by the Council of Europe, most CoE member States have now adopted broadly protective laws on sources. The laws have been evolving and provide now more protection than the original *Goodwin* requirements in many cases. A primary result of this international recognition has been the

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submitted in accordance with Commission resolution 2002/48, E/CN.4/2003/67, 30 December 2002; Promotion and protection of the right to freedom of opinion and expression, Report of the Special Rapporteur, Mr. Abid Hussain, submitted pursuant to Commission on Human Rights resolution 1997/26 E/CN.4/1998/40 28 January 1998.

[5] Concluding Document of the Vienna Meeting 1986 of Representatives of the Participating States of the Conference on Security and Co-Operation in Europe, Held on the Basis of the Provisions of the Final Act Relating to the Follow-Up to the Conference: Co-operation in Humanitarian and Other Fields, §40.

[6] Preliminary results, 3 April 2007: http://www.osce.org/documents/rfm/2007/05/24250_en.pdf. Final survey, Vienna, 3 July 2008: http://www.osce.org/item/24251.html.

[7] See Organization for Security and Co-operation in Europe, The Representative on Freedom of the Media, Access to information by the media in the OSCE region: trends and recommendations. Summary of preliminary results of the survey, 30 April 2007.

[8] In 2002, the Commission issued its *Declaration of Principles on Freedom of Expression in* Africa, Principle XV of which recognises the protection of sources.

[9] Inter-American Declaration of Principles on Freedom of Expression. Approved by the Inter-American Commission on Human Rights, 108th regular sessions, October 2000.

[10] Inter-American Commission on Human Rights, Report on the Situation of Human Rights in Venezuela OEA/Ser.L/V/II.118 doc. 4 rev. 2 29 December 2003.

[11] See http://www.cidh.oas.org/relatoria/showarticle.asp?artID=198&IID=1.

adoption of protections at the national level in law and by courts.[12] Broadly speaking, protection of sources has been recognised in four different ways. Nearly twenty States around the world have adopted constitutional protections; around 90 have adopted specific provisions in their national laws including their press laws and criminal and civil procedure codes.[13] Many federal states have sub-national laws including nearly all states in the United States (the first adopted in Maryland in 1896),[14] as well as in Argentina, Mexico, and Australia. Finally, the courts in a considerable number of countries have recognized the protection of sources in their national constitution, other laws or in the common law or based on international obligations.

The range of protection provided under these laws varies. At a minimum, all of them guarantee journalists the right not to reveal the identities of their confidential sources. Some provide absolute protection; others protect sources subject to narrow exemptions.

Examples of laws offering absolute protection include Georgia's 2004 Law on Freedom of Speech and Expression, which states "The source of a professional secret shall enjoy absolute protection and no one shall be entitled to demand its disclosure. No person shall be required to disclose the source of confidential information during court proceedings on the restriction of the right to freedom of speech and expression";[15] and the Bosnian law on Protection against Defamation which states that "Under no circumstances shall the right not to disclose the identity of a confidential source be limited in proceedings under this Law".

Swiss law provides a good example of a qualified privilege. Protection of sources is recognised under Article 17, Paragraph 3 of the Federal Constitution of the Swiss Confederation of April 18, 1999 ("The protection of sources is guaranteed"). An intervention is generally permitted if (1) there is a legal basis for the intervention, (2) the reason for the intervention can be explained by a public interest, and (3) the principle of proportionality is respected, i.e. the intervention is suitable and necessary to achieve the public interest and is not unacceptable for the affected persons (Article 36 of the Constitution).

The recognition of the importance of protection of sources is not just limited to constitutional protection or legislative enactments. The courts in many of the countries have taken these cases, often referring to European Court of Human Rights case law as crucial to their analysis.

In the UK, the Court of Appeal fully recognised the right of protection of sources in 2007, ruling that "it is now clear that the approach of the English courts to both section 10 of the 1981 Act and Article 10 of the Convention should be the same".[16] A recent lower court decision found that the UK was "effectively bound" by the Council of Europe regulations on protection of sources.[17]

Along similar lines, the Irish Supreme Court recently presented the European Court's reasoning in the *Goodwin* decision as determinative of the approach to be taken by the Irish courts.[18] And the Lithuanian Constitutional Court has held that "[t]he right of the journalist to preserve the

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[12] For a comprehensive overview, see Banisar, Silencing Sources, An International Survey of Protections and Threats to Journalists' Sources (Privacy International, 2007). http://www.privacyinternational.org/foi/silencingsources.pdf; OSCE Study, *Id*.

[13] See, e.g., Media Act (Croatia), Art. 30, 5 May 2004, Official Gazette No. 59/2004 [Zakon o medijima]; Law on the Provision of Information to the Public (Lithuania), Art. 8, July 1996 No. I-1418 (Revised version on 11 July 2006 – No X-752) [Visuomenės informavimo įstatymas]; see also Ruling on the Compliance of Art. 8, Const. Ct. of the Rep. of Lithuania (23 Oct. 2002) (analyzing *Goodwin* and rejecting as unconstitutional the predecessor provision of Lithuanian law).

[14] In the United States, thirty-five states and the District of Columbia recognize a reporter's privilege by statute. Most of the remaining states and nearly every federal circuit court of appeal recognizes the privilege under case law. See James C. Goodale et al, Reporter's Privilege (Practicing Law Institute 2009), Reporter's Privilege Overview § I.

[15] Law on Freedom of Speech and Expression § 11.

[16] Mersey Care NHS Trust v Ackroyd, [2007] EWCA Civ 101.

[17] Regina v Kearney, Webb & Murrer, Case No T20077479, 25 November 2008.

[18] *Mahon Tribunal v. Keena*, [2009] IESC 64 (S.C. Ireland 2009)

secret of the source of information and not to disclose the source of information is one of the conditions of the freedom of the media."[19]

In Portugal, the Court of Appeals of Lisbon ruled in 2006 that sources were essential for democracy and a free media:

> The disclosure of a confidential source of information forms one of the most undignified behaviours of a journalist […] besides questioning his own personal credibility, it jeopardises the seriousness and credibility of all journalists and all organisms of information […] the protection of the professional secret is intrinsic to the functioning of freedom of the press and to the development of a democratic society.[20]

The Court ruled that the journalistic privilege broadly covers a wide range of information that may lead to identification: *"this norm does not simply forbid the nominal identification of the confidential source, but also each and every form of disclosure, nominal or not, of a source".*

Similar laws and practices have been enacted and prescribed in other parts of the world. New York law, for example, provides for an absolute privilege against compelled disclosure of material given by a confidential source, the identity of the source, and "related material" gathered by the journalist under an agreement of confidentiality.[21]

In Canada, courts apply a common law privilege in cases involving the confidentiality of sources.[22] Courts further take account of the freedom of the press as enshrined in Section 2 of the Canadian Charter of Rights and Freedoms.[23] In New Zealand, under Section 68 of the Evidence Act of 2006, journalists may not be compelled "to answer any question or produce any document" that would disclose a source's identity unless a determination is made by a High Court that the public interest in the disclosure outweighs "(a) any likely adverse effect of the disclosure on the informant or any other person;" and "(b) the public interest in the communication of facts and opinion to the public by the news media" and "the ability of the news media to access sources of facts."

b) Broadening the scope of the privilege: search and seizure, compelled testimony, and the protection of unused and research materials

International standards and national practice increasingly recognise that the principle of protection of sources is to be interpreted broadly to encompass not only those documents whose disclosure would directly identify sources, but also other materials. States and courts have also recognised limits on the extent to which journalists can be compelled to testify and appear as witnesses in criminal proceedings, and have provided heightened protection to research and unpublished materials used to prepare journalistic pieces. A number of States now also provide heightened protection against searches of newsrooms and the interception of communications of journalists.

It is important to note that, while there is considerable range in the scope and levels of protection in these laws, the laws and the court decisions all derive from the principle that protection of sources is essential to the effective workings of the press and is an essential aspect of freedom of expression.

i) International standards

[19] Lithuanian Constitutional Court, Decision of 23 October 2002, Lietuviškai http://www.lrkt.lt/dokumentai/2002/r021023.htm
[20] Proc. No. 7139/065, 10 January 2006.
[21] N.Y. Civ. Rts. L. § 79-h(b).
[22] See, e.g., St. Elizabeth Home Society v. Hamilton (City) [Citation of Kenneth Peters], 2008 ONCA 182, at ¶ 26.
[23] Id. at ¶¶ 27-35 (discussing Charter and Goodwin)

International courts and tribunals have played a crucial role in broadening the scope of journalists' sources and the protection of journalistic materials.

The European Court itself held, in *Roemen and Schmit v. Luxembourg*, that all journalists and media houses should enjoy heightened protection from search and seizure. The Court reasoned:[24]

> [E]ven if unproductive, a search conducted with a view to uncover a journalist's source constitutes a more serious measure than an order to divulge a source's identity. This is because investigators who raid a journalist's workplace unannounced and armed with search warrants have very wide investigation powers, as, by definition, they have access to all the documentation held by the journalist.

Other international criminal tribunals have cited *Goodwin* in holding that journalists have a qualified privilege not to divulge the identities of sources and to refuse to testify about information obtained from sources. The International Criminal Tribunal for the former Yugoslavia (ICTY) has emphasized that, to foster the free flow of information to the public, sources must be able to trust that journalists will not be legally compelled to divulge information that sources provide. In *Prosecutor v. Brđanin*,[25] the ICTY Appeals Chamber held that a war correspondent had a privilege to refuse to take the stand when he was subpoenaed to testify about information he received from a source. The Appeals Chamber rejected the contention that the reporter's privilege attaches only to confidential sources and is relinquished upon publication of the information and its source, stating that war correspondents must not "be forced to become witnesses against their interviewees."[26] The Tribunal noted that "a vigorous press is essential to the functioning of open societies and that a too frequent and easy resort to compelled production of evidence by journalists may, in certain circumstances, hinder their ability to gather and report the news."[27]

The Appeals Chamber ruled that in order to override the privilege, in that case a requirement to testify, the Trial Chamber must consider the interest of justice with "the public interest in the work of war correspondents, which requires that the newsgathering function be performed without unnecessary constraints so that the international community can receive adequate information on issues of public concern." One of the particular concerns was that the disclosure would lead to the denial of access to areas to be able to gather information.[28]

The Appeals Chamber also ruled that it was necessary to consider the interest of justice and the need to not interfere with the journalists' role in gathering information to inform the public on issues of concern. It rejected the standard that the information need only to be show to be pertinent before it can be sought. A two part test must be satisfied before a subpoena can be issued:

> First, the petitioning party must demonstrate that the evidence sought is of direct and important value in determining a core issue in the case. Second, it must demonstrate that the evidence sought cannot reasonably be obtained elsewhere.[29]

In 2009, the Special Court for Sierra Leone followed *Goodwin* and *Randal* to hold that a journalist may not be compelled to identify a source absent a showing that the information sought has direct and important value to a core issue in the case, and is not reasonably obtainable elsewhere.[30] The Court stated:

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[24] 25 February 2003, Application No. 51772/99.
[25] Case No. IT-99-36-AR73.9, Decision on Interlocutory Appeal (Dec. 11, 2002) (a/k/a the "Randal" decision, after the journalist concerned)
[26] Id. at ¶¶ 42-43.
[27] p. 35
[28] p .43
[29] p. 50
[30] Prosecutor v. Taylor, Case No. SCSL-03-1-T, Decision on the Defence Motion for the Disclosure of the Identity of a Confidential 'Source' Raised During Cross-Examination of TF1-355 (Mar. 6, 2009), ¶¶ 30-33.

> The Trial Chamber is of the opinion that a wide definition of a journalistic "source" should be adopted and that no principled distinction can be drawn, as suggested by the Defence, between a "facilitator" and a "source" insofar as both types of persons assist journalists in producing information which might otherwise remain uncovered. The extension of privilege to journalistic sources stems from the right to freedom of expression and serves to protect the freedom of the press and the public interest in the free How of information." As stated by the European Court of Human Rights, "[without such protection, sources may be deterred from *assisting* the press and informing the public on matters of interest/'[emphasis added]" Further, both a "facilitator" and a "source" may run similar risks to personal safety and/or face other reprisals as a result of their willingness to assist a journalist in his or her reporting. This is especially true in situations of conflict, where tensions are heightened, where the threat of violence may be imminent and where "accurate information is often difficult to obtain and may be difficult to distribute or disseminate as well."[31]

Finally, recognising the special role played by NGOs in war-torn areas and their ability to uncover and report war crimes and human rights abuses, the Sierra Leone Court concluded in *Prosecutor v. Brima, Kamara, and Kanu*[32] that human rights monitors should be able to refuse to disclose their sources when testifying in an international criminal tribunal. Judge Robertson, in his concurring opinion, elaborates that while protection for sources is "treated as a 'privilege' available to the journalist witness, it is really a reflection of the public interest in protecting the sources' right of free speech in circumstances when identification would result in reprisals for exercising it".

Thus, international courts and tribunals have broadly interpreted the journalistic privilege of protection of sources in order to provide the greatest protection to the free flow of information and the ability of journalists and other publishers – including NGOs – to report on matters of public interest.

The same approach has been advocated by the Council of Europe's standard-setting bodies. The Committee of Ministers Recommendation (2000)7 on Protection of Sources calls for every member state to adopt in their domestic law and practices the following protections:

- *Right of non-disclosure of journalists*. Countries should adopt explicit and clear legal protection giving journalists the right to not disclose their sources;
- *Right of non-disclosure of other persons*. The protections should apply to all those engaged in the journalistic enterprise, including editors, support staff and outside organisations;
- *Limits to the right of non-disclosure*. The protection is only limited in cases where reasonable alternatives have failed, the public interest in disclosure clearly outweighs the need to protect in sufficiently vital and serious cases responding to a "pressing social need" supervised by the ECtHR;
- *Alternative evidence to journalists' sources*. In cases of libel and defamation, courts should review all available evidence and not force the release of information about sources;
- *Conditions concerning disclosure*. Disclosure orders are limited to the involved parties; journalists should be informed about their rights; sanctions should only be imposed by courts following and subject to review by a higher court; courts should impose measures to limit further disclosures of sources;
- *Interception of communication, surveillance and judicial search and seizure*. Searches or surveillance should not be used to bypass protections;
- *Protection against self-incrimination*. No limits on the right against self-incrimination.

The Council of Europe has also given special recognition to the need for protection of sources in conflicts and other dangerous circumstances. In 1996, the Council of Europe Committee of Ministers called on member states to ensure the confidentiality of sources in "situations of

[31] Id., ¶ 25.
[32] Case No. SCSL-04-16-AR73, Decision on Prosecution Appeal Against Decision on Oral Application for Witness TF1-150 to Testify Without Being Compelled to Answer Questions on Grounds of Confidentiality (May 26, 2006) (Justice Robertson, QC, concurring)

conflict and tension".[33] The Council of Europe reaffirmed the need for protection in these situations in 2005 with a declaration that member states should not undermine protection of sources in the name of fighting terrorism noting that "the fight against terrorism does not allow the authorities to circumvent this right by going beyond what is permitted by [Article 10 of the ECHR and Recommendation R (2000) 7]".[34]

In September 2008, the Council of Ministers issued "Guidelines on protecting freedom of expression and information in times of crisis" which recommended that member states adopt the 2000(7) recommendations into law and practice and further recommended that:

> With a view, inter alia, to ensuring their safety, media professionals should not be required by law-enforcement agencies to hand over information or material (for example, notes, photographs, audio and video recordings) gathered in the context of covering crisis situations nor should such material be liable to seizure for use in legal proceedings.[35]

As a result, many States have strengthened and/or broadened their laws to protect journalists' sources and related materials. A good example of this is the Belgian legislation. Following a critical 2003 European Court of Human Rights decision,[36] the Belgian Parliament adopted comprehensive legislation[37] giving broad protection to any person "who directly contributes to editing, gathering, production or distribution of information for the public" from having to disclose the identity or any documents or information that may reveal their sources, the type of information given to them, the author of texts, or the documents or the content of information. The protection was broadened even further after the Cour d'arbitrage ruled in 2006 that it was not inclusive enough.[38] Surveillance or searches cannot be used to bypass the protections and journalists cannot be prosecuted for refusing to testify, receiving stolen goods or breaching professional secrecy. The protections can only be overridden by a judge in cases relating to terrorism or serious threats to the physical integrity of a person and the information is of crucial importance and cannot be obtained any other way.

A number of States have now also enacted stricter rules on the searching of newsrooms. In France, the Criminal Code specifically limits the use of searches of media offices only if it is ensured that "such investigations do not violate the freedom of exercise of the profession of journalist and do not unjustifiably obstruct or delay the distribution of information."

In Germany, Section 97 of the German Code of Criminal Procedure provides that it is illegal to seize documents, sound recording media, data storage media and other items containing information if they are kept by journalists, an editorial department, a publishing house, printers or a broadcasting company. There are only two exemptions. First, seizures are not prohibited if there is probable cause to suspect that a journalist himself has committed a punishable crime in obtaining the information, has aided the perpetration of a serious offence, or has handled stolen goods, or in cases of obstruction of justice. Second, it is legal to seize material that was used for the commission of a crime, or that have resulted from the commission of a crime.[39] For example, it is legal to seize a letter sent by a terrorist group claiming responsibility for the commission of a terrorist attack and announcing new ones.[40] But even in these cases, the authorities must consider the proportionality of their proposed action in light of the constitutional guarantee of freedom of the press. Generally speaking, the impact of the police action must not

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[33] Committee of Ministers Recommendation No. R (96) 4 on the Protection of Journalists in Situations of Conflict and Tension, 3 May 1996.
[34] Declaration on freedom of expression and information in the media in the context of the fight against terrorism, 2 March 2005.
[35] Guidelines of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis. Adopted by the Committee of Ministers on 26 September 2007 at the 1005th meeting of the Ministers' Deputies.
[36] *Ernst v. Belgium*, 15 July 2003, Application no. 33400/96.
[37] Loi du 7 avril 2005 relative á la protection des sources journalistiques.
[38] Judgment of 7 June 2006.
[39] Section 97 V 2, II 3 Code of Criminal Procedure
[40] BVerfG, NJW 2001, 507

be disproportionate. The authorities are therefore required to consider whether alternative means of obtaining evidence of a similar value would be possible.

In Sweden the Freedom of Press and Freedom of Expression acts shield from search and seizure any material that is covered under journalistic privilege.[41]

In Austria, the Media Act provides for protection of sources. While the Code of Criminal Procedure does allow for searches of media premises under certain conditions, Article 31 of the Media Act states that such searches should not be used to circumvent the principle of protection of sources.

In Switzerland, Article 28a of the Swiss Penal Code extends broad protection to the source of published information, as well as to the identity of the author (in case of anonymous publication), the content of the publication and all research materials used. The same provision also shields journalists and media premises from search and seizure.

In the UK, the Police and Criminal Evidence Act 1984 (PACE) has long provided enhanced protection for all journalistic materials. S. 9 of PACE allows for production orders to be made by a judge if persuaded by the police that certain "access conditions" contained in schedule 1 are satisfied. However, there is no explicit requirement that judges consider the interests of press freedom – although an argument can be made that such a requirement must be "read in" pursuant to the Human Rights Act 1998.

Similar laws and practices have been enacted and prescribed in other parts of the world as well. Particularly as regards searches of newsrooms, the New Zealand Court of Appeals in 1995 set out stringent general principles.[42]

The Ontario Court of Justice ruled in October 2006 that the surveillance and search of the home and office of *Ottawa Citizen* reporter Juliet O'Neil under was "abusive" under the Canadian Charter of Rights and Freedoms because the investigation was "for the purpose of intimidating her into compromising her constitutional right of freedom of the press, namely, to reveal her confidential source or sources of the prohibited information."[43]

In the US, federal law has long prohibited law enforcement authorities from searching newsrooms for documents or journalistic work product – even if the materials do not identify confidential sources – except in certain limited circumstances, such as probable cause to believe the possessor of the information "has committed or is committing the criminal offense to which the materials relate," or that the search or seizure is "necessary to prevent death or serious injury."[44]

c) Safeguards

Both legislation and case law, in Europe and elsewhere in the world, have introduced a set of safeguards to prevent arbitrary disclosure of journalists' sources and journalistic materials. Two elements are commonly found:

1. Disclosure may be ordered only by a judge; and
2. Disclosure may be ordered only to aid the prevention or detection of a serious crime and as a matter of last resort.

i) Judicial authorisation

[41] See Ch 27 Art. 2; Ch 38 Art. 2; and Ch. 39 Art. 5 of the Freedom of Press Act. The Freedom of Expression Act provisions are analogous and broaden protection to media other than print.
[42] Television New Zealand Ltd v Attorney-General [1995] 2 NZLR 641.
[43] Canada (Attorney General) v. O'Neill, 2004 CanLII 41197 (ON S.C.), (2004), 192 C.C.C. (3d) 255.
[44] Privacy Protection Act of 1980, 42 U.S.C. § 2000aa et seq.

Echoing the *Goodwin* Court's scrutiny of review procedures and the Committee of Ministers' recommendation that non-disclosure of sources be sanctionable only under "judicial authorit[y]" (Rec. No. R(2000)7, Principle 5(c)), many national laws state that only courts may compel disclosure of information identifying confidential sources. The following can be taken as typical examples of legislation to this effect:

- Law on Radio and Television Broadcasting, Art. 7 (Romania), July 11, 2002, Law No. 504 (revisions in force 3 December 2008) [Legii audiovizualului] (only law courts may compel disclosure of a journalist's confidential sources);
- Media Act (Croatia), Art. 30, 5 May 2004, Official Gazette No. 59/2004 [Zakon o medijima] (similar);
- Code of Criminal Procedure, Art. 180 (Poland), 6 June 1997, Law No. 97.89.555 [Kodeks Postepowania Karnego] (right to keep sources confidential is a testimonial privilege);
- Law of the Republic of Armenia on the Dissemination of Mass Information, Art. 5, 13 December 2003, [http://www.parliament.am/legislation.php?sel=show&ID=1890&lang=eng] (disclosure may be compelled only by a "court decision, in the course of a criminal proceeding" of certain serious crimes);
- Radio and Television Law, Section 15 (Bulgaria), 23 November 1998, Decree No. 406 (as amended June 2009) [Закон за радиото и телевизията] (allowing for disclosure only in "pending court proceedings or a pending proceeding instituted on an appeal from an affected person" where court issues appropriate order).

Courts have stressed the same. The Lithuanian constitutional court, investigating the compatibility of that country's sources laws with the standards set by the European Court of Human Rights, has held that "the legislator ... has a duty to establish, by law, also that in every case it is only the court that can decide whether the journalist must disclose the source of information."[45]

In Germany, search and seizure warrants may be issued only by a judge.[46] Only when there is imminent risk may a prosecutor order such a search.[47] The authorising judge or prosecutor must always consider the impact of the proposed action on press freedom; and whether a search or seizure has been ordered by a judge or by a prosecutor, *ex post facto* judicial review must always be available.[48]

In the United States, prior judicial review of efforts to compel information from journalists is a baseline requirement. In nearly all circumstances, law enforcement authorities must issue a subpoena to try to compel journalists to turn over information, which the journalists may then challenge in court before providing the information.[49] In the very limited circumstances where police may proceed by search warrant (as stated above, these include probable cause to believe the possessor of the information "has committed or is committing the criminal offense to which the materials relate," or that the search or seizure is "necessary to prevent death or serious injury"[50]) a judge must issue the warrant.[51]

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[45] Lithuanian Constitutional Court, Decision of 23 October 2002, Lietuviškai http://www.lrkt.lt/dokumentai/2002/r021023.htm

[46] Section 98 German Code of Criminal Procedure; see also BGH NJW 1999, 2051

[47] BGH NJW 1999, 2051

[48] BVerfG, NJW 2007, 1117 Tz. 68 ff. – Cicero

[49] See S. Rep. 96-874 (July 28, 1980) at 4-5, 1980 U.S. Code Cong. & Admin. News 3950, 3951 (legislative history of Privacy Protection Act of 1980, stating that "use of the warrant process" required by the Constitution was insufficiently protective of press freedom, because it would "allow the government to invade the personal privacy of nonsuspects in instances where a less intrusive means of obtaining the material—either voluntary compliance or a subpoena—will achieve the same goal."

[50] Privacy Protection Act of 1980, 42 U.S.C. § 2000aa et seq.

[51] See 28 C.F.R. § 59.4(a); see also id. § 59.4(c) ("The fact that the [possessor of] the materials may have grounds to challenge a subpoena or other legal process is not in itself a legitimate basis for the use of a search warrant.").

ii) Disclosure only as a matter of last resort

Many of these laws reflect the principle that journalists should be compelled to disclose sources only as a last resort. For example, Armenia's Law on the Dissemination of Mass Information states that courts may order disclosure only where "all other means to protect public interest are exhausted".[52] Similarly, Croatia's Media Act states that source confidentiality may not be broached until it is determined "that a reasonable alternative measure for disclosing data on the source of information does not exist or that the person . . . seeking the disclosure of the source of information has already used that measure".[53]

The Lithuanian constitutional court has held that "the legislator, while establishing, by law, the powers of court to decide the issue of disclosure of the source of information, has a duty to establish such legal regulation whereby the court has to decide whether the journalist must disclose the source of information only in the case that all other means of the disclosure of the source of information have been used.."[54]

The German Constitutional Court's judgment in the 2007 *Cicero* case is particularly instructive.[55] The case concerned a police raid on the publishers of the magazine *Cicero*, which had published an article about Al Qaeda leader al-Zarkawi which cited from a classified police document. The prosecutors accused the journalists concerned of aiding and abetting the leaking of state secrets and therefore argued that the search of *Cicero*'s offices was legitimate as it would help them identify the source of the leak. The Constitutional Court, however disagreed, holding that search and seizure orders against media houses are unconstitutional if they are "purely or mainly intended to detect the identity of an informant". The Court furthermore strengthened the degree of suspicion of involvement in crime required for a search to be legitimately conducted. It held that, in light of the constitutional guarantee of freedom of the press, mere publication of a classified document is not sufficient to create probable cause that the author is guilty of aiding and abetting the leaking of state secrets.

III Impact of Grand Chamber decision in *Sanoma*

A number of the statutes discussed above represent a substantial effort by 'newer' members of the Council of Europe to bring their laws into accord with general European practices. The interveners are concerned that in these States, and even in many of the 'older' member States of the Council of Europe, laws on protection of sources continue to be breached or circumvented. This is particularly true in the context of the so-called "war on terror".[56] In other words, in many member States, the principle of protection of sources is newly established and easily displaced; while in others even a well-established principle has proved very vulnerable under pressure from police and prosecution.

Any ruling by the Court on compelled disclosure of confidential sources that casts doubt on the importance of prior review by an independent judicial authority, exhaustion of alternative avenues, or the proper weight owed to the freedom of the press and sources' interest in confidentiality in the balancing of public interests would send a conflicted message. Such a message would, as Judge Power cautioned in her dissent from the Chamber decision in this case, "send out a dangerous signal to police forces throughout Europe."[57]

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[52] Art. 5, Law of 13 December 2003.
[53] Art. 30 (Croatia), 5 May 2004, Official Gazette No. 59/2004, [Zakon o medijima]
[54] Lithuanian Constitutional Court, Decision of 23 October 2002, Lietuviškai http://www.lrkt.lt/dokumentai/2002/r021023.htm
[55] BVerfG, NJW 2007, 1117 – Cicero
[56] See Council of Europe, *Speaking of Terror: A survey of the effects of counter-terrorism legislation on freedom of the media in Europe*, November 2008: http://www.coe.int/t/dghl/standardsetting/media/Doc/SpeakingOfTerror_en.pdf
[57] Impugned Decision, Dissenting Opinion, final paragraph

In some countries, in some circumstances, it would embolden law enforcement authorities to compel journalists to identify sources who then may face reprisals – including arrest, threats and violence – for divulging information to the press. In countries where police have used and continue to use criminal investigations as a pretext to harass, threaten and extract information from journalists – or even to shut down news outlets entirely – the Chamber's decision, if allowed to stand, would make it that much harder to foster a strong press and free flow of information. In countries that still lack strong statutory protections for the confidentiality of sources, the Chamber's decision in Sanoma, if allowed to stand, may retard efforts to enact such laws. In countries that have enacted laws in line with *Goodwin*, the Third Section's ruling that the "regrettable lack of moderation"[58] exercised by the Dutch authorities did not violate the Convention or contravene prior jurisprudence risks undermining efforts at enforcement of source protections. This would exacerbate an already precarious situation in many countries.

For example, Bulgaria has struggled to consolidate progress on press freedom. In 2006, Reporters Without Borders ranked Bulgaria thirty-fifth in the world in press freedom. Since then, Bulgaria has fallen to sixty-eighth, the lowest ranking in the European Union. Although Section 15 of Bulgaria's Radio and Television Act provides for protection of journalistic sources, in the last few years several journalists' phones have been tapped and other journalists have been harassed and arrested, including Yorgo Petsas, who in 2008 was arrested and interrogated for seven hours on suspicion of posting leaked government documents to his internet-based news site. On 20 September 2008, the Bulgarian parliament's Internal Security Committee released a report alleging that the State Agency for National Security had tapped the phone lines of a number of parliamentarians and journalists, possibly with the intent of discovering the sources of documents leaked to the press.

Similarly, police in Croatia have coerced journalists with the aim of uncovering journalistic sources, despite the protections legislated in the 2004 Media Act. In 2007, Croatian police arrested journalist Zeljko Peratović on charges of revealing state secrets, and seized his papers and computer. Peratović's arrest reportedly was linked to his reporting of evidence linking members of the Croatian government to war crimes.[59]

In some Council of Europe member states, similar and even more egregious instances of police and prosecutorial abuse are regrettably commonplace. One of the interveners, the Committee to Protect Journalists ("CPJ"), has observed that sometimes, law enforcement investigations are used as a pretext to harass reporters, seize journalists' documents and equipment, and in some cases, to silence journalists and shut down newspapers and Internet news sites. In 2009, persistent pressure from Russia's state media regulatory agency, Rossvyazokhrankultura, forced the closure of a Moscow-based English-language newspaper, The eXile. The CPJ at the time stated that "Russian authorities are using politicized inspections and broadly worded extremism legislation to silence critical journalists and media outlets."[60] In the Russian Republic of Dagestan, prosecutors have brought criminal charges against an editor and four staffers of the independent weekly Chernovik, whom they have accused of extremism and incitement. Chernovik regularly publishes articles critical of police practices in the North Caucasus.[61]

These examples highlight the risk that police forces and prosecutors will interpret the Third Section's decision as condoning heavy-handed police and prosecutorial treatment of independent journalists.

The interveners have contacted media organisations in several European countries as well as with global media outlets with bureaus in Europe. All have expressed serious concern about the

[58] Impugned Decision, ¶ 63
[59] Reporters Without Borders, Release of Journalist Held on State Secrets Charge, Oct. 26, 2007, http://www.rsf.org/Release-of-journalist-held-on.html
[60] Committee to Protect Journalists, English-language paper closes because of state harassment, June 19, 2008, http://cpj.org/2008/06/englishlanguage-paper-closes-because-of-state-hara.php
[61] Committee to Protect Journalists, Dagestan authorities try to close independent weekly, June 17, 2009, http://cpj.org/2009/06/dagestan-authorities-try-to-close-independent-week.php

potential impact of a decision in this case that would appear to condone heavy-handed policing and exposure of confidential sources of information. (see attached statements from media companies and associations.)

IV Conclusion

Clear guidance from the Court that reinforces the principle of source protection and recognises that the European Convention requires strong substantive and procedural protections for journalistic sources will encourage countries to prevent abuses, protect the free press and journalists, and ensure a consistent treatment of source confidentiality across Europe. That clear guidance will be provided by reversing the chamber decision and providing compensation to Mr B for the unacceptable treatment that he received at the hands of the police and prosecutors. We would urge the court in its judgment to:

(1) Re-emphasise the rationale of source protection as explained in paragraph 39 of *Goodwin v UK*.

(2) Endorse the principle that Article 10(1) establishes a presumption in favour of protecting journalistic sources, which can be overridden only by evidence strictly proving that disclosure of the source is necessary in a democratic society.

(3) Rule that Article 10 requires that any such decision must be made by an independent judge and be subject to a right of appeal *before* the order can be carried out.

(4) Insist that judges should make source disclosure orders only if satisfied to a high standard of probability that the information is essential to prove guilt or innocence of a grave crime or to prevent torture or death or to prevent serious and continuing damage to national security.

These standards have been recommended by the Council of Europe Committee of Ministers in the Recommendations referred to above. The recommendations have already been agreed by all States; but implementation has been haphazard. Clear guidance from the Grand Chamber on this point would help set a strong standard and ensure better adherence to the fundamental right of the media to inform the public on matters of public interest – and for the public to receive that information.

BACKGROUND INFORMATION ABOUT THE INTERVENERS AND SUPPORTERS:

The Open Society Justice Initiative an operational program of the Open Society Institute, promotes rights-based law reform and strengthens legal capacity worldwide through hands-on

technical assistance; litigation and legal advice; advocacy, research and reporting. The Justice Initiative works to secure accountability for international crimes; combat racial discrimination and statelessness; improve national-level pre-trial justice; address abuses flowing from national security and counter-terrorism policies; expand freedom of information and expression; and pursue remedies for corruption arising from the exploitation of natural resources. Its staff are based in Abuja, Almaty, Amsterdam, Brussels, Budapest, Freetown, The Hague, London, Mexico City, New York, Paris, Phnom Penh and Washington, D.C.

The Committee to Protect Journalists ("CPJ") is an independent, non-profit organisation that works to protect the freedom of journalists worldwide. CPJ is dedicated to the principle that all journalists everywhere should be able to report freely and without fear of reprisal. This principle encompasses situations in which press freedom is threatened by interference with journalists' ability to guarantee confidentiality to those who provide information, often at great personal risk. CPJ's work includes advocacy on behalf of journalists whose rights have been violated, and in support of laws and legal precedents that protect journalistic freedom. CPJ maintains close ties with journalists in Europe and around the world. It publishes a comprehensive annual survey of word press freedom, which includes detailed reports on countries in Europe and elsewhere, was well as articles, news releases, and special reports, such as a recent investigative report on impunity in killings of journalists in Russia. For many years, CPJ has participated in intervention or *amicus* efforts in cases involving press freedom, including cases before the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights, and in domestic courts in Croatia and Taiwan.

The Media Legal Defence Initiative is a non-governmental charity which works in all regions of the world to provide legal support to journalists and media outlets who seek to protect their right to freedom of expression. It is based in London and works closely with a world-wide network of experienced media and human rights lawyers, local, national and international organisations, donors, foundations and advisors who are all concerned with defending media freedom.

ARTICLE 19 is a human rights pioneer, defends and promotes freedom of expression and freedom of information all over the world. It monitors, researches, publishes, lobbies, campaigns, sets standards and litigates on behalf of freedom of expression wherever it is threatened. It provides expertise on international human rights standards and for legislation that protects the right to speak and right to know in countries emerging from conflict, war and genocide or repression. It campaigns to safeguard media pluralism, independence and diversity of views. It promotes the right to know of poorer communities and advocate for the implementation of freedom of information.

Guardian News Media Limited is the core division of Guardian Media Group. It publishes the Group's flagship national newspapers – the Guardian and the Observer – as well as the www.guardian.co.uk website. GNM also operates a number of other titles and businesses: The Guardian Weekly is one of the world's best-selling international weekly newspapers, and the Guardian Professional, a division of GNM, provides a range of services in the education, media and public sectors

The Associated Press is a news cooperative operating under the Not-for-Profit Corporation Law of New York State, with more than 240 news bureaus around the world and services delivered in five languages to newspapers and broadcast news outlets in 121 countries, including most of Europe.

Bloomberg News is the world's largest newsgathering organization, comprised of more than 2,500 journalists around the world in more than 120 bureaus, many of which are located in Europe. Bloomberg provides business, legal and financial news through the Bloomberg Professional Service, Bloomberg's website and Bloomberg Television.

Index On Censorship is Britain's leading organisation promoting freedom of expression. With its global profile, its website provides up-to-the-minute news and information on free expression

from around the world. Its events and projects put its causes into action. Its award-winning magazine shines a light on these vital issues through original, challenging and intelligent writing.

Condé Nast Publications publishes twenty magazines in the U.S. (including *Architectural Digest*, *Glamour*, *Golf Digest*, *GQ*, *The New Yorker*, *Vanity Fair* and *Vogue*), and operates numerous websites associated with its print publications.

The European Newspaper Publishers Association (ENPA) is an international non-profit association that represents over 5,200 national, regional and local newspaper titles, published in 25 European countries. The ENPA is an advocate for the interests of the European newspaper publishing industry at different European and international organisations and institutions.

Hearst Corporation is privately held and one of the world's largest diversified media companies. Its major interests include ownership of more than 50 newspapers and interests in an additional 117 newspapers; hundreds of magazines; 29 television stations; ownership in leading cable networks; business publishing; television production; newspaper features distribution and real estate. Hearst's international interests include Hearst Magazines International, the largest U.S. publisher of magazines worldwide, with more than 200 editions for distribution in more than 100 countries, such as *Cosmopolitan, Esquire*, *Good Housekeeping*, *Harper's BAZAAR*, *Popular Mechanics*, and *Seventeen*, as well as other titles through joint ventures in the U.K., Australia, Russia and China. In Great Britain, a wholly-owned subsidiary, The National Magazine Company Limited, publishes 20 magazines.

The National Geographic Society is one of the world's largest nonprofits scientific and educational organizations. Through various media vehicles, including *National Geographic* magazine, and other magazines, films, television programs, cable channels, and other media, the Society reaches more than 325 million people a month. National Geographic magazine, published in English and 31 local-language editions, is read by more than 40 million people each month. The National Geographic Channel reaches more than 270 million households in 34 languages in 166 countries.

The New York Times Company publishes *The New York Times*, which is read throughout the world and has bureaus in London, Paris, Rome, Berlin and Moscow, and the *International Herald Tribune*, which is headquartered in Paris. The Company also owns and operates *The Boston Globe*, 15 other daily newspapers and more than 50 websites, including NYTimes.com, Boston.com and About.com.

La Repubblica is one of the most widely circulated newspapers in Italy. First published in 1976, *La Repubblica* is a daily general-interest newspaper that is owned by Gruppo Editoriale L'Espresso (The Espresso Group).

Reuters serves the financial markets and news media with real-time, high-impact, multimedia news and information services and is the world's largest international news agency. Through Reuters.com and affiliated websites around the world and via multiple platforms including online, mobile, video and outdoor electronic displays, Reuters provides trusted, unbiased, professional-grade business news, financial information, market data and national and international news directly to an audience of business professionals around the world. In addition, Reuters publishes a portfolio of market-leading titles and online services, providing authoritative and unbiased market intelligence to investment banking and private equity professionals. Reuters is the editorial and media arm of the Markets Division of Thomson Reuters.

Time Inc. is one of the largest magazine publishers in the world. Its more than 130 magazines reach total audiences of more than 300 million. Among its well-known magazine titles are *Entertainment Weekly*, *People*, *Southern Living*, *Sports Illustrated*, and *Time*. Time also owns IPC Group Limited, the UK's top magazine publisher.

The Washington Post Company is a diversified media and education company whose principal operations including newspaper and magazine print and online publishing, television broadcasting and cable television services. It publishes the *Washington Post*, *Newsweek* magazine, Slate, and several other print and online journalistic operations, and regularly engages in newsgathering operations in Europe and throughout the world.

The World Association of Newspapers and News Publishers (WAN-IFRA) is a world-wide service and representative organisation of newspapers and of the news publishing industry, grouping national and regional press associations. It is a non-profit, non-government organisation that represents more than 18,000 publications internationally. The main objectives of WAN-IFRA include: defending and promoting press freedom and the economic independence of newspapers; contributing to the development of print and digital news publishing; and promoting co-operation between its member organisations.