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PROTECTING JOURNALISM SOURCES IN THE DIGITAL AGE

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UNESCO SERIES ON
INTERNET FREEDOM



SWEDEN



WORLD
EDITORS
FORUM

with
WAN-IFRA



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

These are the emerging findings of global research into the state of journalistic source protection, undertaken for UNESCO by the World Editors Forum (within the World Association of Newspapers and News Publishers, WAN-IFRA), with funding from Sweden, and support from the University of Wollongong.

Disclaimer: While the research was conducted for UNESCO and funded by Sweden, ideas, opinions and findings are those of the author, Julie Posetti, they do not necessarily reflect those of UNESCO or Sweden and do not commit these parties.

DIGITAL PROTECTION: THE ISSUES

"...Privacy is essential to protect journalistic sources, which enable a society to benefit from investigative journalism, to strengthen good governance and the rule of law, and such privacy should not be subject to arbitrary or unlawful interference..."

UNESCO Resolution on internet-related issues, November, 2013.

"National security agencies across a range of countries have gained access to journalists' documents, emails and phone records, as well as to massive stores of data that have the potential to enable tracking of journalists, sources and whistleblowers"

UNESCO World Trends Report, 2014

The forthcoming study maps changes over the past eight years in protections for the confidentiality of sources of journalism. The research has contributed to a global examination of Internet-related issues, as requested by UNESCO's 195 Member States.¹

The investigation responds in part to acknowledgement in both the UN General Assembly and the UN Human Rights Council of "the particular vulnerability of journalists to becoming targets of unlawful or arbitrary surveillance or interception of communications in violation of their rights to privacy and to freedom of expression".²

More than 100 countries had some form of source protection framework in place in 2007, according to the 2014 UNESCO report titled *World Trends in Freedom of Expression and Media Development*. In this new study, 121 states were reviewed, and in many of the countries studied it was found that legal source protection frameworks are being actually or potentially:

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

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

¹ Resolution 52 of the 37th General Conference of UNESCO, 2013, requested a comprehensive study on Internet-related issues in the four areas of (i) access to information and knowledge, (ii) freedom of expression, (iii) privacy and (iv) ethics. An 18-month global multi-stakeholder consultation produced this research and recommendations, published as *Keystones to Foster Knowledge Societies. Access to information and knowledge, Freedom of Expression, Privacy, and Ethics on a Global Internet*, <http://bit.ly/1QP1KFK>

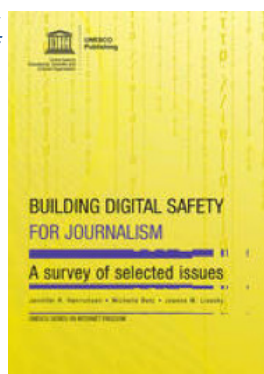
² UN General Assembly Resolution on The Safety of Journalists and the Issue of Impunity, A/RES/69/185; UN Human Rights Council Resolution on The safety of journalists, A/HRC/27/L7

COMPANION STUDIES

[Building Digital Safety for Journalism, A Survey of Selected Issues](#)

- Avoiding paranoia and complacency, this book provides recommendations and points to the value of threat assessments
- It outlines the value of using international standards to make the case for digital safety
- It provides a list of resources for media actors

NEW!



[Fostering Freedom Online, The Role of Internet Intermediaries](#)

Internet companies play a key mediating role between authors of content and audiences. This UNESCO publication provides in-depth analysis on how "Internet intermediaries" impact on freedom of expression and privacy.



THE PROBLEM, THE SOLUTION

Where source protection is compromised, the impacts can include:

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

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

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

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

The study concludes that editors and publishers can play an important role in promoting public understanding of these issues, and in advocating for change at all levels.

³UN General Assembly Resolution A/RES/69/166 on the Right to Privacy in the Digital Age

UNESCO's work to support the safety of journalists and their sources is part of the Organization's leading role in:

- World Press Freedom Day, every 3 May
- the UN Plan of Action on the safety of Journalists and the Issue of Impunity
- International Day to End Impunity for Crimes Against Journalists, every 2 November

The Riga Declaration:

Calls on UNESCO Member States to "ensure that surveillance and data collection regimes show respect for the privacy of journalists and protect the confidentiality of sources" World Press Freedom Day conference statement, 3-4 May 2015.

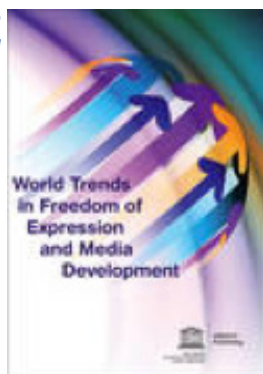
"Journalists must be able to rely on the privacy, security and anonymity of their communications. An environment where surveillance is widespread, and unlimited by due process or judicial oversight, cannot sustain the presumption of protection of sources."

UN Special Rapporteur
Frank La Rue, 2013

COMPANION STUDIES

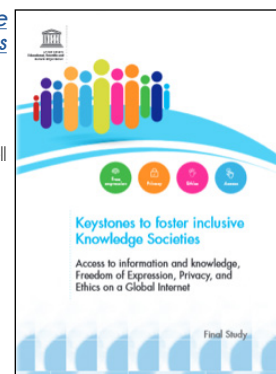
[World Trends in Freedom of Expression and Media](#)

Recent evolutions have impacted on media freedom, independence, pluralism and journalist safety. This analysis also covers the issues of gender and of global media.



[Keystones to foster inclusive Knowledge Societies](#)

A two year global consultation yielded significant insights into the major Internet issues of our time, as well as key proposals for UNESCO's role regarding Internet issues.



A major output of the study is a 11-point assessment tool for measuring the effectiveness of legal source protection frameworks in the digital era. In terms of this, a model framework should:

MODEL FRAMEWORK

1. Recognise the value to the public interest of source protection, with its legal foundation in the right to freedom of expression (including press freedom), and to privacy. These protections should also be embedded within a country's constitution and/or national law,
2. Recognise that source protection should extend to all acts of journalism and across all platforms, services and mediums (of data storage and publication), and that it includes digital data and meta-data,
3. Recognise that source protection does not entail registration or licensing of practitioners of journalism,
4. Recognise the potential detrimental impact on public interest journalism, and on society, of source-related information being caught up in bulk data recording, tracking, storage and collection,
5. Affirm that State and corporate actors (including third party intermediaries), who capture journalistic digital data must treat it confidentially (acknowledging also the desirability of the storage and use of such data being consistent with the general right to privacy),
6. Shield acts of journalism from targeted surveillance, data retention and handover of material connected to confidential sources,
7. Define exceptions to all the above very narrowly, so as to preserve the principle of source protection as the effective norm and standard,
8. Define exceptions as needing to conform to a provision of "necessity" and "proportionality" — in other words, when no alternative to disclosure is possible, when there is greater public interest in disclosure than in protection, and when the terms and extent of disclosure still preserve confidentiality as much as possible,
9. Define a transparent and independent judicial process with appeal potential for authorised exceptions, and ensure that law-enforcement agents and judicial actors are educated about the principles involved,
10. Criminalise arbitrary, unauthorised and wilful violations of confidentiality of sources by third party actors,
11. Recognise that source protection laws can be strengthened by complementary whistleblower legislation.