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BALKAN JOURNALS

The Concept of Media-Self Regulation as Goalkeeper of Freedom of Expression in Contemporary Society

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Abstract

The global landscape has changed. Beyond traditional actors of global politics - the states, we are now facing the fact that even a tiny piece of information on one side of the globe can seriously shake traditional structures of power. Traditional media outlets, once dominated by the official press, now coexist alongside citizen journalists, independent bloggers, and online-only news websites. In the digital age, the definition of a journalist become fluid. An enabling legal and regulatory environment is essential for guaranteeing freedom of expression and, in particular, media freedom. That is why the concept of media self-regulation has become even more popular than before; thus, however, there is an ongoing debate on whether it is enough and how it shall be modified and adapted to the new digital realm.

Keywords: media, self-regulation, freedom, international, law

The Notion of Media Self-regulation

Media self-regulation is a process where media organizations and professionals establish and pursue their own set of regulations and ethical standards without direct government intervention. This approach aims to ensure responsible journalism maintains public trust and provides accurate, fair, and ethical reporting while preserving the independence of the media and preventing censorship. This system helps balance the media's freedom, fostering a democratic media landscape and preventing the so-called "chilling effect." The "chilling effect" in media self-regulation refers to the phenomenon where journalists and media organizations may avoid certain topics or self-censor their content due to fear of repercussions, such as legal action, fines, or loss of reputation. This effect can undermine the freedom of the press and the public's right to information (CIMA, 2023).

Media self-regulation is seen to uphold the quality and credibility of journalism while protecting freedom of expression. It allows the media to operate independently from government control, fostering a more open and democratic society (Poposka, 2023).

Self-regulatory instruments can take the form of ethics codes, press and media councils, and professional guidelines.

The general resistance to regulation outside the media world rests on two basic assumptions. The first is that the market is a self-correcting set of mechanisms and that interfering with it will produce distortions, inefficiencies, and sub-optimal outcomes. The second is that regulation is an intrusion on individual liberty; that individuals know best what is good for them, and that no external state body should impose such choices on them (Finkelstein and Tiffen, 2015). In the case of media, such theses become even more visible and sensitive. As regards the press, Cohen-Almagor states: "As it is unthinkable to allow other agents of power in society to act without proper professional standards, so it is unthinkable to allow journalists to act with complete freedom and oblivious attitude to risks and harmful consequences (Cohen-Almagor, 2014).

Media self-regulation is a joint endeavor by media professionals to set up voluntary editorial guidelines and abide by them in a learning process open to the public. By doing so, the independent media accept their share of responsibility for the quality of public discourse in the nation while fully preserving their editorial autonomy in shaping it (OSCE, 2008).

Self-regulation is a solemn promise by quality-conscious journalists and media to correct their mistakes and to make themselves accountable. But for this promise to be fulfilled there must be two conditions: journalists and media have to behave ethically, and governments should not interfere in the media or use legal means to monitor and control the work of journalists.

Self-regulation in the media sector usually has one or both of the following components:

- a code of conduct;
- a body, typically a council and/or an ombudsperson, charged with the promotion or enforcement of the code, although, as indicated above, the duties of the body may be

By promoting standards, self-regulation helps maintain the media's credibility with the public. This is particularly welcome in new democracies, most of which are also new to an independent press.

Media self-regulation helps convince the public that the free media are not irresponsible. At the same time, self-regulation protects the right of journalists to be independent and to be judged for professional mistakes not by those in power but by their colleagues. When it comes to correcting factual errors or violations of personal rights by the press, satisfaction over the judgments of self-regulatory bodies lessens the pressure on the judiciary system to sanction journalists (UNESCO, 2011).

The other option rather than self-regulation is governmental regulation, which can be harmful to media freedom even if it is created with the best possible intention. Undue legal restrictions passed by freely elected governments can be almost as oppressive for the press as the dictatorial arbitrariness of the past.

This is especially the case when legal restrictions are created (or misused) with the clear intention of eliminating independent reporting and opinion. Such malicious media laws might, for example:

- Discriminate against non-state media outlets, in favor of the still-existing state-owned press, for example, in the administration of such spheres as registration, taxation, printing, subscription, and distribution;

- Unfairly control the issue of broadcast licenses;
- Criminalize dissenting views or unwelcome investigative stories;
- Use a selective approach in the application of criminal or civil provisions protecting personal rights (OSCE, 2008).

The Nature of Self-regulation

The spirit of media self-regulation is a complex structure that affects the voluntary obedience to ethical guidelines and standards by media organizations without direct government intervention or oversight. Self-regulation in the media industry encompasses various mechanisms and practices sought to uphold ethical communication and maintain professional standards. These methods can include codes of ethics, guidelines, newsroom statutes, press councils, audio-visual councils, ombudspersons, and media and social media observatories. In recent years, self-regulation initiatives have gained momentum, particularly in the realm of social media (Aznar, 2019).

The rise of social media has presented new challenges and opportunities for self-regulation in the media industry.

With the active policy of the European Commission, self-regulation initiatives in social media have emerged, addressing issues such as online disinformation. For instance, in 2018, major social media platforms such as Facebook, Google, Twitter, and Mozilla signed the Code of Practice to Fight Online Disinformation (EC, 2018).

This code aimed to combat online disinformation by promoting transparency, authenticity, and accountability in digital media platforms (EC, 2022).

It is important to emphasize that the nature of media self-regulation is never about political context. It is about how is journalistic profession practiced, enabling standards and excellence. Self-regulation is not censorship and not even self-censorship. It is about creating bottom principles on ethics, truthfulness, personal rights and so on while fully preserving editorial freedom on what to report and what opinions to express.

Self-regulation is likewise a pledge by quality-conscious media professionals to maintain a dialogue with the public, as well as the political establishments and public figures. A complaint mechanism is set up to deal with justified concerns rationally and autonomously. Self-regulation can be set up both industry-wide and in-house (OSCE, 2008).

As soon as the pandemic of Covid-19 started spreading and the demand of citizens to access reliable information about the crisis increased, press and media councils reacted by reminding journalists and media across their countries about their codes of ethics (SEMM, 2020).

Self-regulatory Mechanisms

Code of Ethics

Codes of ethics are the basis for conducting ethical journalism. No matter how much they differ from country to country or from organization to organization, they always recall the minimum standards of journalistic profession and Ethical journalism that should be accurate and fair. Journalists should be honest and courageous in gathering, reporting and interpreting information, minimizing harm and acting independently (SPJ, 2023).

Codes of ethics openly define the functions, rights, and duties of journalists and thus provide journalists with guiding principles on how to best exercise their profession. The names of these codes vary ethics standards, ethics charter, code of conduct, code of practice, code of ethics, etc. However, they all have similar purposes: safeguarding the autonomy of the profession and serving the public interest.

There is not a unified code of ethics to be taken as an example. This is because firstly, backgrounds of journalism differ from one country to another. Secondly, some countries act or react more gradually than others to develop and amend their guidelines. Thirdly, and most importantly, there are diverse understandings within every society based on the nature of democracy and the socio-cultural-ethnic-religious codes of conduct. These sensitivities are often reflected in the news content. News outlets are aware of and influenced by the variety of national, local, and private codes. This promotes good standards.

As a form of global policy to be looked upon, the International Federation of Journalists Global Charter of Ethics for Journalists was adopted at the 30th IFJ World Congress in Tunis on 12 June 2019. It completes the IFJ Declaration of Principles on the Conduct of Journalists, known as the "Bordeaux Declaration". This international declaration specifies the guidelines of conduct for journalists in the research, editing, transmission, dissemination, and commentary of news and information and in the description of events in any media whatsoever (IFJ, 1954).

Different codes can coexist in the same country. Newspapers, radio stations, television channels, and Internet sites are as diverse and fluid as the content of journalism itself. Every news outlet can develop its code of ethics according to its needs. It may be appropriate to have one common code, one for print and one for broadcast. A code widely approved nationwide may serve as the main source for various types of individual codes. International practice shows that what matters is the

commitment of each news outlet to its standards. Indeed, in rare cases, a common code might even cause indifference or neglect.

The codes should be drafted by Journalists. The quality of a newspaper is defined by certain components – accuracy, fairness, balance, honesty, and so on — that place responsibility for drafting a code of ethics in the hands of the professionals who contribute to its production. The industry groups/media owners can be consulted, but it is not a necessity. If media owners are active journalists in the news outlet, they should be consulted. In some rare cases, the code may be subject to the approval of the industry. But the ultimate responsibility should rest with the editors.

Developing a code of ethics is only the first step towards effective media self-regulation. It is crucial to establish a body to supervise it and provide sanctions against those who break its rules (self-regulatory bodies). These bodies may have various forms. The main types are ombudsperson and self-regulatory press councils.

Self-regulatory bodies can appropriately be used to oversee all types of media. They may be best suited to dealing with editorial matters, however, rather than the type of technical issues that can arise about broadcasting.

Broadcast media may require more specific regulations because they are licensed in a way that print media is not. Indeed, the licensing process requires particular oversight.

Self-regulatory mechanism - The Press Council

"Press council" (The archetype of a self-regulatory body) is the most common form of a self-regulatory body. Mainly composed of media professionals, these councils are independent of political influence and serve as safeguards against abuse of power. Their main task is to deal with complaints about the work of the media through collective decision-making, usually but not necessarily on a national level (OSCE, 2008).

The importance of an efficient press council is virtually growing by the day. In their role as 'the watchdogs of democracy,' the media are, to an increasing extent, held publicly accountable for their behavior. In that context, it is important to note that the media are undergoing major developments in contemporary society. Take the rise of the new media, the emergency of citizen journalism, and the development of cross-media, for example. More and more, it prompts the question of what constitutes journalistic activity and who can be held accountable for it (Koene, 2009).

Each established press council is unique, the result of its country's particular history and media environment. It should include representatives of all stakeholders — journalists, editors, media owners, and members of the public. Usually, every press council has an organ to act upon petitions and complaints. The number of members that should be responsible for handling complaints differs. This depends on how many media outlets are involved in self-regulation and on national circumstances. The number should be large enough for different views to be heard, which helps to preserve the council's objectivity and build trust in the idea of self-regulation, but not so large that it cannot reach a common conclusion. The number should be uneven to avoid tied votes. An optimum number could be between 7 and 11 members. These members do not have to have a judicial background; they are usually also journalists or media professionals (OSCE, 2008).

The code of ethics is not an official legal document, and the council does not make juridical decisions. Members need personal and professional moral integrity rather than any law-related knowledge. Unlike court decisions that combine justice with punishment, press council decisions are corrective, upholding journalistic standards and defending society's right to receive objective information. These decisions do not prevent a possible court case on behalf of the complaining side (UNODC, 2018).

The most common governance model for organizations considered is to include a mixture of industry and independent or public representatives on the Press Council and on subcommittees that decide on complaints (if the full council does not adjudicate). However, some also specifically include judges, some include academic voices, while one (Germany) has a Press Council composed entirely of industry figures and argues that this is true 'self-regulation'. In some of the countries considered here an industry-only or industry-majority, the management board sits alongside the more public-facing council and is responsible for the Press Council's funding, constitution, code of practice, and/or appointments to the Press Council itself (Fielden, 2012).

The main duties of the press council are:

1. To accept complaints from any person towards any journalistic article or publishing to check the quality of the form and content;

2. To verify that they fall within the responsibility of the code of ethics;

3. To evaluate it;

4. To serve as a mediator between the plaintiff and the media;

5. To make decisions on complaints based on rules and regulations with fairness;

6. To single out the media for breaching ethics guidelines;

7. To secure transparency and publicity of all decisions taken;

8. To analyze and comment on media trends and provide guidance about the code's requirements;

9. To suggest amendments to the code of ethics (if mandated to do so);

10. To set journalistic professional standards;

11. To defend press freedom.

Approaching the press council does not prevent court action or action of law enforcement agents when they have jurisdiction over specific cases, thus however this may vary from country to country due to state practice and democratic culture.

The financing of the press council is a special concern toward ensuring neutrality and independence. Press Councils may be funded by the publishing industry alone, by the journalists, or by a combination of both, and sometimes with government assistance. A Press Council will usually publish a code of conduct with the approval of journalistic and media organizations (Article 19, 2005).

Media Ombudsperson

The ombudsperson promotes dialogue between those who read, listen, and watch a news outlet and those who work for it. The idea is to bid a contract for the users and, by encouraging self-criticism, to enhance the trustworthiness of the news outlet, especially if its image is not particularly good. The ombudsperson ensures respect for the rules and customs established by the media outlet, providing a sort of internal quality control. The ombudsperson collects criticisms and suggestions from media users as well as explanations from the editorial board, management or administration. Besides acting as a mediator, the ombudsperson also considers how the news outlet operates and points out deviations from the implicit contract with the readership. For print media, all these aspects are made public in a regular column.

The origins of the concept emerge from the popular French newspaper "Le Monde". In the 1960s, the director, assisted by a deputy, replied to letters himself by publishing extracts and ensuring that all identified errors were rectified. In 1994, following a serious crisis of confidence and loss of readership, an ombudsperson was

appointed to head the readers' letters department and renew dialogue between readers and editors. It worked, even though after some years, relations between management and the ombudsperson became strained. The ombudsperson is independent of the editor-in-chief and answerable only to the managing director, who decides on the appointment. The ombudsperson cannot impose sanctions but expresses opinions in a weekly column, being free to choose the topic to be discussed. The column cannot be edited, cut, or modified by others without the ombudsperson's permission (OSCE, 2008).

The ombudsperson is totally independent of the editor-in-chief and answerable only to the managing director, who decides on the appointment.

The ombudsperson cannot impose sanctions but expresses opinions in a weekly column, being free to choose the topic to be discussed. The column cannot be edited, cut, or modified by others without the ombudsperson's permission. De facto, the ombudsperson acts like some kind of internal quality control.

The role of the ombudsperson is different in different media outlets. There are different ways ombudsperson can react. When criticism arrives (by letter, e-mail, telephone call, etc.), the ombudsperson first decides whether it is justified or not and takes appropriate measures that are in his or her power.

The media ombudsperson can be an individual with a background in journalism or media ethics, possessing a deep understanding of the principles and standards of responsible journalism. Additionally, the media ombudsperson must be impartial and free from any form of bias. Furthermore, the media ombudsperson should have high moral character, impartiality, integrity, and qualifications. This ensures that they are capable of fulfilling their role objectively and fairly (Poposka,2023).

The first step towards creating an ombudsperson is establishing a media users' correspondence department to receive messages (by post, e-mail, or telephone), process them, reply, pass on comments to the people concerned, and, if necessary, publish extracts from the messages (OSCE, 2008).

Contemporary Challenges to the Concept of Media Self-regulation

Self-regulation had a great potential to work effectively in traditional media outlets, where editorial and journalists' responsibilities could be tracked easily. Thus, however, in the digital world, due to the Internet and fast development of artificial intelligence, it remains quite a challenge.

User-generated content (UGC) indicates that today, everybody can produce their own media or media-like content and distribute it on the Internet without considerable financial investment or technical skills. This does not make user-generated content professional journalism, let alone valuable content, but the basic human right to freedom of expression is not reserved for editorial offices or conventional media outlets. It is important to ponder that the right to freedom of expression also applies to individual users and citizens, online as well as offline. There is a huge debate over who should control the user-generated world. Basically, it should be decided on case-by-case analysis since it depends on the type of content that should be removed. Trivial offenses can be resolved by interaction with the person that uploaded the content in question. Criminal offenses need to be dealt with by law enforcement organs and institutions. Sometimes, it would be appropriate for the service provider to suspend the content if the content represented an imminent physical threat to one or more people.

There is not a common definition of who is a journalist and the notion of what a journalist is has changed in the online world. According to the Council of Europe recommendations, 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" qualifies as a journalist.

Unlike government regulations, self-regulatory bodies often lack the authority to enforce their decisions. This can make it difficult to hold media organizations accountable when they violate ethical standards. Since self-regulation is voluntary, not all media outlets may choose to participate. This can lead to inconsistencies in the application of ethical standards across different media organizations. Media organizations may face conflicts of interest, especially when financial considerations or relationships with advertisers influence editorial decisions. This can undermine the credibility of self-regulation. The fast-paced evolution of digital media and social platforms presents new ethical challenges that traditional self-regulatory frameworks may struggle to address, such as misinformation, fake news, and the role of algorithms in content distribution. Smaller media organizations may lack the resources to implement and adhere to comprehensive self-regulatory measures. This can create disparities in the quality of journalism between larger and smaller outlets. Media organizations often operate across borders, making it challenging to apply consistent self-regulatory standards internationally. Different cultural and legal contexts can complicate the implementation of universal ethical guidelines.

Conclusion

Adapting media self-regulation to digital challenges is crucial for maintaining ethical standards in the rapidly evolving media landscape. Traditional ethical guidelines need to be revised to address new issues such as misinformation, fake news, and the ethical use of algorithms. This includes setting standards for transparency in content creation and distribution. Leveraging technology to monitor and report on ethical breaches in real time can help self-regulatory bodies respond more quickly and effectively. This might involve using AI and machine learning to detect and flag problematic content. Media organizations should work closely with social media platforms and tech companies to ensure that ethical standards are upheld across all digital channels. This includes developing joint initiatives to combat misinformation and promote accurate reporting. Given the global nature of digital media, establishing international standards for ethical journalism can help create a more consistent regulatory environment. Collaboration between self-regulatory bodies across different countries can facilitate the sharing of best practices and resources. Media organizations and tech companies should be transparent about how their algorithms work. This includes disclosing the criteria used for content ranking and recommendation, which can help identify and address potential biases. Ensuring that the data used to train algorithms is diverse and representative can reduce bias. This involves including data from various demographic groups and perspectives to avoid reinforcing existing prejudices. Conducting regular audits of algorithms can help detect and correct biases. These audits should be performed by independent bodies to ensure objectivity and credibility. Combining algorithmic decision-making with human oversight can help catch biases that algorithms might miss. Human editors can review and adjust algorithmic outputs to ensure they align with ethical standards. While self-regulation is key, engaging with policymakers to advocate for regulations that address algorithmic bias can also be beneficial. Media organizations can provide expertise and insights to help shape policies that promote ethical AI use.

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