

UNESCO INTERNET STUDY: Privacy and journalists' sources

RESEARCH CONCEPT DOCUMENT

Under the project “Promoting an Enabling Environment for Freedom of Expression: Global Action with Special Focus on the Arab Region” funded by the Swedish International Development Cooperation Agency ([Sida](#)), UNESCO has commissioned research being conducted by the [World Editors Forum](#) within the World Association of Newspapers and News Publishers (WAN-IFRA) to investigate the protection of journalists' sources in the digital age

WAN-IFRA

WAN-IFRA, is the global organisation of the world's press, representing more than 18,000 publications, 15,000 online sites and over 3,000 companies in more than 120 countries.

WAN-IFRA has special status with UNESCO and the UN as a representative of the international press and works extensively in the areas of press freedom and media development.

The World Editors Forum is the agency for editors within WAN-IFRA, whose vast network facilitates research, professional debate and learning, along with mentoring of editors and newsroom executives across the globe, as they navigate the journalistic and publishing challenges of the digital age.

UNESCO and the background to the study

UNESCO is the United Nations specialized agency with a mandate to defend and promote freedom of expression and its corollary press freedom. By [Resolution 52 of the 37th General Conference in 2013](#), UNESCO is mandated to conduct a comprehensive and consultative study on Internet-related issues, the results of which should include options that inform the Organization's reporting to the 38th General Conference in 2015. The study includes freedom of expression and privacy, amongst its issues of concern.

The privacy of journalists' sources is a focus that has been identified at the nexus of these two rights.

From a UN point of view, there is recognition of this issue. The Human Rights Council resolution (A/HRC/21/L.6) on the safety of journalists passed in September 2012 stressed "the need to ensure greater protection for all media professionals and for journalistic sources".

Also relevant is the 2013 Report (A/HRC/23/40) of the UN Special Rapporteur on Freedom of Opinion and Expression, Frank la Rue, which states: "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."

More recently, and as noted within the UNESCO Resolution which mandated the Internet-issues study, "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 that such privacy should not be subject to arbitrary or unlawful interference."

The results of the full study being undertaken by WEF/WAN-IFRA will feed into the wider [UNESCO Internet Issues study](#), as discussed above. UNESCO will also separately publish the full report within an update of the [UNESCO World Trends report](#).

Existing research

UNESCO's recent publication *World Trends in Freedom of Expression and Media Development* states that more than 100 countries worldwide have laws or jurisprudence providing legal protection of journalists' sources, and a handful of countries even specify this protection in their constitutions. This finding draws on a five-year old study by Privacy International¹, which in turn is based upon an earlier study titled "Silencing sources" completed in 2007. The new research outlined here will work from these sources, and it will also tap into WAN-IFRA's extensive worldwide network, to compile updated information, particularly with a view to including issues related to digital developments in the past seven years.

¹ <https://www.privacyinternational.org/reports/model-brief-on-the-protection-of-journalists-sources>

Issues and Purpose

The issue of protecting the confidentiality of sources is justified largely in terms of ensuring a free flow of information, and especially in regard to whistle-blowing information. Without this, a “chilling effect” is likely, with holders of sensitive information being reluctant to come forward. As another knock-on effect, when media outlets or individuals doing journalism know they will be put under pressure to reveal sources, they may well become less likely to subsequently use information supplied on condition of confidentiality, with concomitant shrinkage of public interest -content as a result.

The confidentiality of sources is well established in professional codes of journalists worldwide as an obligation. In some cases it is also a legal right, whereby protection of confidential sources is so strong that journalists can be prosecuted for revealing them. Regional instruments exist, such as the Declaration of Principles of Freedom of Expression by the African Commission on Human and Peoples’ Rights (2002). This Declaration upholds qualified protection of the confidentiality of journalists’ sources. The Council of Europe and OSCE have also developed positions on the issue. And there are relevant rulings by the European Court of Human Rights.

The legal dimension of confidentiality, how it is defined and applied, raises a number of issues, several of which take on new aspects relevant to the digital age. Posed as questions, one may ask:

1. Since the last global survey, are there changes in the number of countries who have “shield” laws or jurisprudence concerning journalists’ sources?
2. What is the extent to which laws shield sources from governmental actors as well as private companies or individuals seeking the revelation of the sources?
3. What are the patterns and processes as regards exceptions to confidentiality?
4. How are the laws or jurisprudence being applied? Are there cases that have progressed to court, and have past jurisprudence or other arrangements played a role? Are there countries where protection is solely symbolic or simply not applied?
5. How are those actors eligible for protection defined, and are they (or institutions such as media houses) required to be ‘licensed’ as a condition for protection with what attached conditions?
6. What definitions exist for eligibility to claim the protection of shield laws where they exist in different countries? Are they limited to professional journalists paid by mainstream media organisations? How does the definition of who is eligible for protection relate to the new range of actors producing journalism on digital

platforms, and to Internet intermediaries who may possess information about communications with sources e.g. bloggers, social media users?

7. How does the definition of what is covered by protection relate to issues of meta-data versus content, and to issues of data retention?
8. Do national laws and jurisprudence on confidentiality have any cross-jurisdictional issues – for instance, applying to content published on servers in a different jurisdiction, but where the publisher has a presence in the given national jurisdiction?
9. In an era of extensive digital footprints and surveillance by various actors, is there now a distinction to be made between secrecy (which may be increasingly difficult) and confidentiality, the latter relating to legal protections and limits on the use of any intercepted or retrieved digital communications?

The purpose of this research is to provide contemporary and evidence-based answers to these questions, thereby producing new information that can assist all stakeholders with interests in the topic and, in particular, contribute to the UNESCO study on Internet-related issues.

WAN-IFRA Research Fellow and World Editors Forum Research Editor, Julie Posetti ([University of Wollongong](#), Australia) will lead the study.

It will involve a combination of qualitative and quantitative research methods.

The study is scheduled for completion in 2015.



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