

## Media Law and Ethics (JoCo2015)

### Introduction

Law can be defined as a set of rules that attempt to guide human conduct and a set of formal, governmental sanctions that are applied when those rules are violated. There are two types of laws. Natural laws are the set of rules established by nature to regulate natural phenomena. E.g. law of gravitation. And human laws are also the set of rules established by human authorities to regulate human behavior within a given community or country.

Human-made laws can be categorized into two broad divisions, namely, civil and criminal laws. Civil law seeks to protect civil or private rights while criminal law defines criminal offences and specifies punishments for their breaches. While the violation of civil law is an offence against an individual, the breaking of criminal law is considered as an offence against the state. Some crimes are against humanity, such as genocide, slavery, child prostitution and other such heinous offences.

### The Purposes of Law in the Society

There are five important purposes of law to the society.

- **Regulation of human conduct:** law exists as a social control of customs and morality to ensure that citizens conduct themselves in an orderly manner.
- **Reconciliation of the interest of the individual to that of the community:** the interest of the individual must be balanced with the welfare of the community, for the good of all and the public good in particular.
- **Pointing out when interest exists:** the court of law examines cases brought before it and identifies and protects the interest of the parties whose interests have been violated.
- **Man owes his dignity to law:** the rule of law, not the rule of man, controls every civilized society. The basic assumptions of the rule of law is that the law is supreme, that all man subject to the law of the land and that the inalienable rights of citizens are guaranteed by the constitution. It is the rule of law which recognizes the civil and political rights of the citizen.
- **Law initiates changes in economic, political, social and religious structures:** every society moves with the changing times. As the social, economic and political orders changes, society restructures itself to ensure progress and continuity. These changes are initiated by laws.

1

From the above discussion we can understand that the purpose of laws is not necessarily to punish offenders, but to ensure peace and harmony in the society. If laws could be religiously

observed by everyone then the society will be a good place to live and everyone will be happy. Such a place doesn't exist on earth, but there are places where things are better than in others.

## Part One: Media Law

### 1.1 The Function of Media

Before looking into the laws that govern media practices, it is better to review the functions of media. The importance of media in a given society is expressed as follow “**only democracy can insure the survival of human civilization and there can be no democracy without well-informed citizens and there cannot be such citizens without quality media.**” With crucial role in the society, media are expected to fulfill their functions well enough. Otherwise the society may raise crucial question regarding media practices i.e. how can the media be improved?

To play such crucial role in the society, the purpose of media should not be just to make money. Also they should not be totally free. Freedom is necessary but not sufficient. The goal for the media is to serve all citizens well. Then, should all media, on the contrary, be set under state control? No. however, in every democracy in the world, there is agreement over the fact that media must be free but cannot be entirely free. The problem is balancing the right and responsibilities of the media.

To judge whether the media serve the public well, you need to know what services they are supposed to provide. These fall into about six categories.

1. **To watch the environment.** In present day society, only the media are capable of providing us with a quick and full report on events taking place all around us, over and under the surface of reality. Their role is to obtain the information, to filter it, to analyze it, to interpret it and then to circulate it, in terms accessible to all. In particular, they must keep an eye on three political powers (executive, legislative and judiciary) in the interval between elections.
2. **To ensure social communication.** Media are the means for social and other discussions. They are useful tools to create peaceful co-existence in the society.
3. **To provide an image of the world.** Nobody has a direct knowledge of the whole planet. Beyond the range of one's experience, what one knows comes from the schools, from conversations, but mainly come from media. For the ordinary person, the areas, the people, the issues that the media do not mention, do not exist.
4. **To transmit the culture.** Transmission of culture is the main job of schools and media. This is true especially for the West. Churches have no longer role like that of in the previous eras.

5. **To contribute to happiness: to entertain.** Entertainment is mainly provided by the media.
6. **To sell.** Media are major vehicle of advertising. Their owners' primary purpose, quite often, is seduce a public and then to sell it to advertisers. They try and create a favorable environment for the ads.

## 1.2 The Role of Journalists

In such situations and expected media functions, journalists play different role depending on many reasons. The role of journalists played in the media functions can be seen from two dimensions; **passive- active dimensions** and **neutral- advocate dimensions**.

From the **passive- active point of view** the passive journalist is the one who act as the instrument of actors outside the news systems, such as government officials, party leaders, interest group advocates, or others. In contrast, the active journalist is one who is more fully a participant in his or her own right, actively shaping, interpreting or investigating political subjects.

When we look at the **neutral- advocate dimensions**, the neutral journalist is one who does not take sides in political debates, except for a preference for good (clean, honest) government as opposed to bad (corrupt, incompetent) government. In contrast, the advocate journalist takes sides and does so in a consistent, substantial and aggressive way.

## 1.3 Essence of Media Law

Consequently, laws are needed to force the media to provide adequate service to all publics. What is meant by "the law" is acts of parliament, rules edict by regulatory agencies, court decisions, and contractual promises made by firms so as to obtain licenses. Enforcing those obligations belongs to the police, the magistrates and regulating commissions.

Democratic law intervenes to prescribe certain practices, all the rest being permitted. If everyone agrees that some measure is in the public interest, why not make it into a law, against libel for instance or against incitement to murder? Advertising for cigarettes is forbidden on television in many countries. But the law is not restricted to prohibiting.

The law is not restrictive by nature. It can help the media do their job. The Swedish press law grant, news people an exceptional series of guarantees; there can be no censorship, even in time of war journalists cannot be asked about their sources everyone has access to official archives (with a few exceptions) media get very special protection if ever they are taken to court. The judiciary power, especially when it is independent, can encourage the media to assume their functions fully- and can interpret restrictive laws to their advantage. The European court of

human right has confirmed to British journalists that they have a right to protect their sources, which was denied to them by British courts.

## 1.4 Freedom of Expression Vs. Unprotected Expression

### 1.4.1 Freedom of Expression or The Press

It is generally accepted among members of the media that the public's right to know provides the moral basis for the journalists' freedom to get gather and disseminate information. This concept has been used to justify a wide range of media activities from coverage of court rooms and campaigns to investigative journalism involving elaborate deception and invasion of privacy.

#### The Right to Know

- Various conceptions of the right to know can be found in media ethics

Good win (1983)

- According to him the right to know means
  - ✓ The public has legal right to know what its government is doing and the press is the and
  - ✓ The press is the representative of the public in finding that out.

Barney (1986)

- Argued that the right to know is a basic component of a participatory society".
- He pointed out that in order for consistently intelligent social decision to be made, adequate information to the individual produces greater awareness of the alternatives.

Fink (1988)

- Described the people's right to know in terms of a duty , so that “ while the first amendment gives the press the right to freely print the news , the people's right to know gives the press the duty to print it “
- Generally it appears that the moral right to know, belonging to the public

## 4

### Freedom of the Press

- Means constitutional or lawful protections pertaining to published material.

- It may include protection of any establishment of mass medium activity such as newspapers, magazines, periodicals, journals, pamphlets, news agencies, radios, television, motion pictures, pictures, films, cartoons, books, music, electronics, publishing, plays and includes all medium of mass communication.

### Freedom of Expression

- Denote any act of seeking, receiving and imparting information or ideas, regardless of the medium used without interference by public authority and regardless of frontiers
- Example, demonstration, public discussion, through any means of mass media etc.
- More general than the press (gestures, oral, written etc.)

### Freedom of Speech

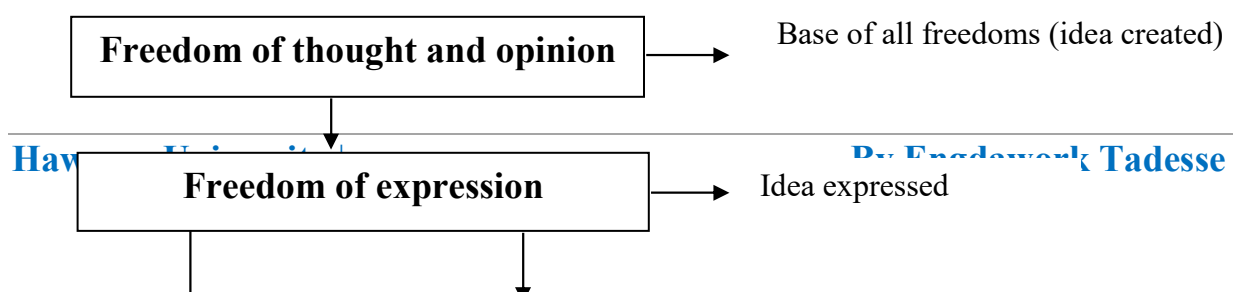
- Is the freedom of speak freely without censorship or limitations.
- It is a verbal one
- This right is only limited if
  - The speech is pornography or hate speech
  - There is legal sanction
  - To prevent harm to others etc.

### Freedom of Thought and Opinion

- It is called freedom of conscience and freedom of ideas.
- It is freedom of an individual to hold or consider a fact, view point independent of others' viewpoints.
- Rests on the individual to believe whatever one thinks is best

The freedom of thought protects persons against being compelled through force and violence to reveal what opinions they are suspected to hold.

5



### 1.5 Essence of Freedom of Information and of the Press

Disputes about freedom of information often become disputes between the government and the media. The government regards itself as the “owner” of information and the judge who decides what should be known by whom. The media often claims to be the judge of whether the government is effective, efficient and fair, and therefore claims to be entitled to freedom of information because of its own importance and prestige.

However, freedom of information is not in the first place a contract between government and media. It is a contrast between government and the citizens of the country. Freedom of information and openness in about governments being accountable to the people in whose name they rule. Information is the basic tool a population needs in order to tell whether the government is ruling well or badly; is honest or is corrupt.

In this relationship between government and governed the media plays the role of a questioner, a gatherer and an interpreter, a vital link in the chain by which information is received, sorted and explained. Freedom of information is fundamental to democratic and successful government. It is not one of the rights specifically mentioned in the universal declaration of human rights, but is one of the basic obligations necessary before human rights can be enforced.

### 1.6 Standards of Free Press

Some want the press to be an advocate, to champion causes, and to take political positions. Others believe the press should be objective and nonpartisan. Some believe that the press should respect and reflect social institutions and traditions. Others believe that the press should question and challenge them. However, despite these disagreements there are standards that describe the privileges and responsibilities of a free press in a free society.

6

#### 1.6.1 A Free and Independent Press Is Essential To Any Free Society

But what do we mean by a free press? For our discussion, we mean a press that is not subject to undue government control and regulation, one that is free from undue financial influence from the private sector, including advertisers, and economic or business pressures from private sector businesses. A free and independent press provides its readers, viewers, and listeners with the information they need to participate fully as citizens in a free society.

### **1.6.2 A Free Press Is Courageous and Will Pursue Those Stories That Are Important To Its Readers and Viewers, Without Fear or Favor;**

It will challenge assumptions, it will question authority, and it will seek truth, no matter where that search may lead- to the highest corridors of power, to the owners of the news organization, or even if it leads to death, as was the case with investigative Russian journalist Anna Politkouskaya, gunned down in a contract killing in Moscow in 2006.

### **1.6.3 A Free Press Is Responsible**

Perceptions of responsibility vary from country to country, and even from year to year. For many, the standard in times of peace and stability may seem very different than in time of war or national emergency. Yet some essential principles remain constant. A free press must seek truth and report it. It must be tireless in seeking and achieving accuracy. The press must never knowingly publish a falsehood.

Most societies would agree that even the freest press must exercise its freedom with a clear understanding that actions editorial decisions have consequences, some of them significant.

The press has great power to affect the lives of millions of people. Like any other powerful institution, it must be prepared to listen to complaints, to explain its decisions to readers and viewers, and to acknowledge and correct mistakes. But it must also be prepared to take unpopular positions and to face critics bravely when important principles are at stake. Some may call this arrogance. It is courage.

## **1.7 Importance of Freedom of Information**

Freedom of information and press is necessity, not a luxury. Some political leaders regard freedom information and other related freedoms as luxuries which cannot be afforded when a country is struggling for survival or development. In fact freedom of information and expression are essential in the struggle for survival, because they are the only way that people can debate differences and agree to unite on the way forward. Strong (as opposed to repressive) governments tend to be open, while governments which restrict information and expression are usually those that are not able to deliver on the basics of life. Freedom of information and

freedom of expression cannot wait for material comfort; they are at their most vital when a country is struggling for basic necessities.

Without access to adequate information it is not possible for people to participate in social interaction and democratic and development activities. Lack of information hinders participation and disables people from making informed choices. Openness is a necessity for accountable and responsible government. Open government permits parliament, pressure groups and the public to participate in policy decision making. Openness improves the quality of decision making. In order to ensure accountability of government officials, information pertaining to government activities must be freely accessible. The people should be allowed access to all official information unless there are compelling public interest reasons for denying access.

Aidan White, General Secretary of the International Federation of Journalists, speaking at a seminar in Harare said; ‘when the struggle to improve the quality of life is of the highest priority, campaigns for freedom of information may sometimes appear as luxury items on a political agenda dominated by campaigns against hunger, disease and social dislocation. But media freedom and access to information are not marginal to the process of development. In fact, they should be key elements in African strategies for prosperity and social improvement. Citizens need to be closely involved in the democratic process; they need to have confidence in development projects, they need a voice in the shaping of their own future. For that reason a commitment to openness and transparency in public affairs is essential to meet the challenge of development in Africa. Respect for social, democratic and human rights provides a coherent path to economic independence and social justice by providing African citizens with the right to know.

## 1.8 What Information Do People Need?

The government holds the key to freedom of information in three ways. **Firstly**, as the executive power, it holds an immense amount of information without which it is impossible to understand properly what is happening in a country. **Secondly**, as the leadership of the country, it sets the note by which official and quasi- official bodies work. If the government fosters a climate of secrecy, that has an influence even with organizations which are not strictly under state control. The private sector, for example, finds it is easier to act in secret, if governments are not open. **Thirdly**, as the legislative body, the government decides on the framework under which state organizations and journalists work. The law sets a framework for secrecy or for openness. The legislature also decides the framework under which the police and judiciary respond to requests for information.



Any attempt to make a list of the essential information which needs to be in the public domain is likely to fall short of what is needed, but the Government has direct control over information in the following areas;

- Basic information **about the citizens of the country** including census information, the health status of the population, birth rate, death rate, statistics about gender and ethnicity.
- Basic **economic data** such as the GNP (gross national product), the main imports and exports by volume and by value, the amount of money in circulation, economic trends, unemployment statistics, numbers employed in each sector, etc.
- Information **about government itself**; - how many people employed by department (including the police and military), the amount spent by each department with a breakdown as to how it has been spent, details of loans made to or by government; audited government accounts.
- Information connected with **the openness and integrity of president, ministers, MPs and senior officials**, including salaries, declarations of business interests and links, details of loans or gifts made to individuals or to the parties to which they belong.
- Information **about legislation proposed**, such as draft bills in good time for them to be publicized and debated, access to all Parliamentary and committee sessions, with absolute right to accurately report what is said or decided, and access to records of past debates.
- Information **about police, judicial system and the prison service**, including information about people arrested, any charges they face, details of court hearings in advance, open court hearings so that the evidence can be heard and reported, access to statements from lawyers, information about sentences, including where sentences are served and the conditions under which prisoners are held; (information about who is in custody and what happens to them is one of the key tests of an open society);
- Information **about education and social services**, including the number of children in and out of school, and access to official reports on public bodies such as schools, hospitals and prisons.
- Information **about quasi- government bodies**, including industries owned by the state, and their accounts.
- Information **from regional legislative bodies and access to their meetings**;
- Information **held in archives, state and academic**, so that journalists and others can research recent and past history and compare today with yesterday; this should include an agreed time after which time past secret information ( such as cabinet discussions) as revealed.

As well as information the government has the power (through legislation and through its role as employer) to decide on levels of access by journalists to public officials, whether in the civil service or police and emergency services. Reasonable access to public officials should be

allowed, according to their expertise and seniority. The right to find details of police operations and to question senior police officers is important in a free society.

Access may not just be to individuals, but also to see facilities such as hospitals and prisons which are paid for by public money. Access to government records should be limited only by the need to protect an individual's privacy or state secrets, with a system of administration which can handle requests for information promptly and without discrimination. Any restrictions on information about individuals should not be used to protect public servants or politicians from fair scrutiny.

## **Cult of Secrecy**

All information in the hands of government or quasi- government bodies should be accessible unless there is a good reason why not. Such reasons should be publicly given and should be subject to challenge in the courts, according to clearly defined criteria.

It would be wrong to regard African governments as being unique in wanting to preserve a culture of secrecy. It is practiced by many governments in other parts of the world. However, many African countries lack a large scale independent media with the resources to challenge secrecy, and to develop alternative sources of information. Where journalists do not have the resources to travel to remote areas they are more dependent on official information.

In some African countries court protection for journalists and court independence from the executive is weak, while powers of arrest and confiscation are close to being arbitrary. Severe penalties faced by some journalists who are trying to do their jobs make a pressing case to define and enforce new standards of openness.

## **1.9 How Is Press Freedom Restricted?**

### **1.9.1 Violence and Fear**

Journalists can be restricted in a number of ways. Although legal restrictions are those most commonly quoted, the most lethal external curbs of journalists occur when there is little respect for law and the protection it can offer citizens. Fear and insecurity induced by violence can come from the state or forces sympathetic to the state. It can come from those opposed to the government or simply be a product of civil strife and a breakdown in law and order. Violence as a means of putting pressure on journalists can also be used by criminals.

### **1.9.2 Legal Restrictions**

In most countries the law pays at least lip service to press freedom and the right to know. The Universal Declaration of Human Rights enshrines freedom of expression and this is reflected in the African Charters of Human and People's Rights, which states in Article 9:

1. Every individual shall have the right to receive the information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

Similar wording may be written into the constitutions of individual countries, but written out of existence by other clauses in the same constitution. Restrictive laws in many of the African countries are often based on the laws of the colonial power. Most of the legal tools were first used by the British, French or other colonial powers.

At the end of the colonial rule, the pattern of state ownership continued, and the liberation governments were as vigorous in controlling the media as the outgoing colonial power. The gradual shift in many countries towards multiparty democracy, and a general easing of restrictions on ownership of the press (and a lesser extent to broadcasting) has brought some examples of more liberal press laws. But these laws have often been short lived before being reversed, and in any case have not prevented the Government from controlling the media.

### **1.9.3 The Main Ways In Which The Laws May Be Used Against Journalists Are:**

#### **1.9.3.1 Officials Secrets Act or Laws on Sedition**

Most journalists would accept that such a law should be on the Statute book and that this will constrain freedom of information. However, in general these laws are far wider than their names and in practice an official secret comes to refer to something that embarrasses and inconveniences Government, rather than something that threatens the security of the state. In extreme cases the law will say that nothing may be disclosed unless its release has been specifically authorized.

#### **1.9.3.2 Restricting Officials**

In many countries officials have to take an oath of secrecy, which effectively puts all official information in the category of state secret. This usually includes officials in the Ministry of Information (in our country Ministry of Government Communication Affairs) who are supposed to be in charge of giving out information.

#### **1.9.3.3 Restrictions on Receiving Information**

In some countries it is an offence to possess official information which has not been officially received. In Cameroon a journalist was prosecuted for publishing copies of letters written by a Minister, in an attempt to protect government officials from public scrutiny.

#### **1.9.3.4 Protection of Sources**

Few countries allow journalists to protect sources. The ease with which they can be compelled to give them up varies. In most countries it takes a court order, and many journalists have defied the courts and been fined or jailed. Where the courts have power to compel journalists to reveal sources, then the extent to which this authority is used depends on the way in which legislation is framed, and on the independence of the judiciary. This is cudgel aimed at making people less willing to talk to journalists, by rendering null or void a journalist's assurance that they could do so in confidence. Where the source is an official, the state often presses for the maximum penalty.

#### **1.9.3.5 Bureaucratic Means and Harassment**

Using the law is cumbersome and time consuming and it may be open to legal challenge as unconstitutional. More commonly state officials use administrative means to block information, to discriminate against journalists or media organizations regarded as being unfriendly. This can be range from bureaucratic blockages that make it impossible for journalists to respond quickly, to actual harassment.

Ministries of Information (in our country Ministry of Government Communication Affairs) are controversial in many countries. Many journalists feel that they are simply another layer of bureaucracy for journalists to pass through.

#### **1.9.3.6 Economic Bullying**

The state has other ways to "punish" media outlets which do not toe the line. Most notably the state spends a large amount of money on advertising, either on promoting Government initiatives or in advertising Government jobs. By refusing to place advertisements in certain titles, a Ministry can damage chances of survival.

State owned or approved TV channels, radio stations and newspapers are often invited to travel with Ministers to remote parts of the country to report. Low circulation of newspaper rarely have the budgets for such travel and if excluded from the official party are unable to bring back independent reports. This makes stat favored publications seem more authoritative. Journalists who cannot travel may be forced to rely on official information about remote rural regions. Radio stations aimed at rural areas, using local languages, provide opportunities for independent journalism and may be seen as a threat to state control of information.

### 1.9.3.7 Private Business Secrets

The emphasis in Africa has been on the need to get information from the state. Economic liberalization increasingly raises the issue of secrecy in the private sector. How are the deals under which private companies receive licenses to exploit natural resources made? What are the environmental considerations of the business and the way it is done? What are the rights of employees and how safe are they? The media are entitled to find answers to these questions.

### 1.9.3.8 Suppression of Distribution

The final step that a hostile government can take is to prevent or harass distribution of newspapers and magazines. This can be done through an order to suppress an edition or simply through police harassment of distributors without any legal basis.

### 1.9.3.9 Censorship

Censorship can be defined as

- The official government suppression of any public expression that a governing authority believes to threaten either its power or the accepted social and moral order.
- The suppression of speech, public communication or other information which may be considered objectionable, harmful, sensitive, politically incorrect or inconvenient as determined by governments, media outlets, authorities or other groups or institutions.
- The control of the information and ideas circulated within a society

Censorship has been a hallmark of dictatorships throughout history. In the 20th Century, censorship was achieved through the examination of books, plays, films, television and radio programs, news reports, and other forms of communication for the purpose of altering or suppressing ideas found to be objectionable or offensive.

Governments, private organizations and individuals may engage in censorship. When an individual such as an author or other creator engages in censorship of their own works or speech, it is called self-censorship. Censorship may be direct or it may be indirect, in which case it is called soft censorship. It occurs in a variety of different media, including speech, books, music, films, and other arts, the press, radio, television, and the Internet for a variety of claimed reasons including national security, to control obscenity, child pornography, and hate speech, to protect children or other vulnerable groups, to promote or restrict political or religious views, and to prevent slander and libel.

Direct censorship may or may not be legal, depending on the type, place, and content. Many countries provide strong protections against censorship by law, but none of these protections are

absolute and frequently a claim of necessity to balance conflicting rights is made, in order to determine what can and cannot be censored. There are no laws against self-censorship.

Censorship occurs when another party prevents the public or private display of a work of art because that party finds something about it offensive. This includes a wide range of activities — painting over a mural, forbidding the production of a play, or changing the lyrics of a song. The censorship may be the result of governmental review or review by a private individual or group.

### **1.9.3.10 Self-Censorship**

By far the most important way in which a journalist can be restricted is through self-censorship. As result of any of the above, or the culture of secrecy that surrounds the government, or the spirit of submissiveness and defense that grows up in a newsroom, the journalists ceases to challenge, and to push for freedoms. He or she stop asking the questions to which he or she knows no answer will be given. The news desk does not encourage journalists to interview people whose views are known to cause offence to the authorities; the editors become an expert in knowing which legal restriction will prevent each investigation.

Eventually the shackles are in the head, and the journalists become content with interpreting official handouts, while the senior “experts” repeat the official line in full, giving only coded hints about dissenting voices. Unfortunately few people understand the code. The newspaper and radio station becomes a tame poodle for the authorities. “Responsible” journalism has been achieved.

### **Good Practice Questions: Class work-Group discussion**

1. What are the most important legal barriers in your Ethiopia to freedom of expression?
2. What are the most important bureaucratic obstacles to freedom of expression in Ethiopia?
3. Why do authorities place so much stress on revealing sources after publication?
4. Are there ways in which news organizations in Ethiopia has begun censoring itself, because of the obstacles to freedom of information and freedom of expression?
5. Does Ethiopia have a climate of secrecy or a climate of openness?

## A Brief History of Press Freedom in Ethiopia

Media in Ethiopia has in fact had a long history in its presence, but it has contributed little to the improvements of the political culture of the country. When we look at its role beginning from Menelik II to the current regime, there are no basic changes. Its instrumental role to the government has continued. That is, journalists have always been the mouthpiece of the rulers. It was during the last hours of Haile Selassie's regime and the early days of the military government that the print media was a forum for the anti-government opposition movement. During which national issues such as democracy, form of government, and land tenure were subjects of open discussion between various opposing forces in the government media. The recent history also shows that even if the current regime allows the private print media to function in the country legally, there are many practical problems for the journalists.

Until the 2005 parliamentary election, journalists in print media were relatively free. Newspapers and magazines had been publishing news stories that criticize the government; they had reflected their criticisms through cartoons and jokes and even through their editorials; and opposition parties have counter attacked the ruling government through these media. As a result the media have been usually clashing with the government. However, after the 2005 parliamentary election, things have changed. Many newspapers and magazines have been closed. The government has begun crackdown on journalists. In his address to the First Press Freedom Forum on Ethiopia, Martin Hill, Horn of Africa Researcher, Amnesty International (AI), regretted that:

The situation is not getting better in Ethiopia despite the supposed protection that the constitution provides for journalists... the new press laws are not laws for press freedom, but rather against press freedom. Changes to the criminal code have also been introduced to make it more difficult for people like Kifle [Former President of the EFJA living in exile in Uganda at that time] and his association to document arrests of journalists for carrying out their legitimate functions.

Like many African countries, in Ethiopia, radio and television have been controlled by government since their introduction during Haile Selassie I. Most African governments have recognized that newspapers are the media for the small educated urban elite; while radio is considered as the primary vehicle for reaching the vast majority living in rural areas; hence it is called 'the people's medium'. As a result, like their colonial predecessors, most African governments "treat radio as the backbone in their strategy to secure support from the people, especially those in the rural areas". Because of this and other reasons in its longer history in Africa, radio has rarely contributed to the democratic process of the continent.

15

There are now some expansions in community and private FM radios in Ethiopia. Some private broadcasters and regional governments have been licensed for community and FM radios. Despite this expansion, however, the commercial or private FM radios are very few in number



and are giving services only around the capital city of the country. Exceptionally, in 2009, radio Fana has expanded its FM transmission to six major towns of the country.

### **Initial Assumptions by the Transitional Government of Ethiopia (TGE)**

The transitional period of Ethiopia which took place from 1991 to 1994 has presented both opportunities and challenges for the TGE. The dismantling of the feudal system and later of the dictatorial military and Marxist government in Ethiopia heralds a historic moment, ripe with challenges and opportunities. It is a challenge because it is a test for Ethiopia's emerging democratic institutions and their ability to participate in reshaping the future of the country. It is an opportunity because it provides the means to promote democracy in the real sense of the word thus enabling the people to heighten and deepen their awareness of their fundamental rights.

With these challenges and opportunities the TGE has promised many democratic reforms. One of the initial promises is to liberalize Ethiopia's historical pattern of authoritarian rule and introduce a more tolerant and participatory political system including independent media and professional journalists. It would convert the state media monopoly to a genuine public corporation and allow the establishment of independent media channels/initiatives.

Moreover, it "loudly advocated democracy and the freedom of expression for a people who had lived in forced absolute silence for decades. This was like real birth of democracy, the government press and media were the front runners to herald to the millions of Ethiopians and the world that freedom of expression and of the press had finally become a reality. The most hated system of censorship is no more".

The commitment of TGE has been manifested by its first Charter, which guarantees freedom of expression and individual human rights. Article 1 and sub article 10 of Article 9 of the Transitional Period Charter of Ethiopia focuses on the fundamental democratic rights which include freedom of speech that is guaranteed by Universal Declaration on Human Rights and fair usage of mass media, respectively. "This, needless to say, is a step in the right direction. In view of the democratization process the country has embarked upon, under the new leadership".

However, according to Cohen (1994), most of the initial promises of democratic and good governance issues could not be achieved by the TGE because of many reasons. Tensions have been increased due to practical demands of the promised democratic and governance issues by the public in general and civil societies in particular. "The formality with actuality, declaration and implementation, rhetoric and reality, remains a palpable one".



Even though there have been no non-governmental media reforms during the regime of Emperor Haile Selassie and Mengistu, there were two golden periods<sup>1</sup> of freedom of the press that ever occurred again. The first period was during Prince Zewditu. At that time Ras Tafari Makonnen (the future Emperor Haile Selassie) and his followers as progressive persons were writing about basic political and social changes and reforms freely. Unfortunately, it was short-lived. The second golden period was the early three years of the revolution starting from 1974 to 1977. In this period there was an almost uninhibited discussion of national issues, with various individuals and groups advancing their respective recipes for social transformation. These two periods of freedom of the press were unique in that both took place within the framework of a government-owned press. These are remarkable events in the twentieth century history of media in Ethiopia.

However, actual media (press only) reform has occurred since 1992. Many political and economic changes in the country have influenced the reform of media landscape. But the very relevant event was the promulgation of new press law in October 1992 in the country. The free press has gained legal rights and responsibilities. As a result a number of private newspapers and magazine have mushroomed. This period is known as the third golden period of freedom of the press. Despite the expansion of private press in this period of time, many problems have been witnessed regarding the press law and the relationship between government and independent journalists.

Not only have the owners and editors of the papers been the victims of sustained government harassment under the cover of a restrictive press law, but they themselves have also not shown the highest standards of journalism in the execution of their task. The perfect balance between government tolerance and professional responsibility—two important pre-conditions for the thriving of a free press—has thus remained elusive. The financial viability of most of the papers is also highly problematical. These circumstances have engendered a considerably high attrition rate. But, despite the obvious problems and shortcomings, the private press has contributed significantly to the emergence of a situation far removed and improved from the monolithic picture that had prevailed in the Imperial and Derg eras.

The provision of broadcasting proclamation in 1999 has shown hopeful sign of private commercial radio and television can be licensed and the need of reconfiguring the state broadcast media as genuine public service broadcasters by the government. Until this period of time the government broadcasting were regulated by Proclamation 6/1991 which states ‘that Radio

<sup>1</sup> The press was also free during the short period of Endalkachew Mekonnen who was the last prime minster of Haile Selassie I regime. His period took place from February 28 to July 22, 1974. Endalkachew was trying to change the bad image of the regime by being more tolerant to the revolutionists and do some political reforms including proposal of constitutional reforms.

Ethiopia (RE) and Ethiopian Television (ETV), described as the "mass media", will remain state-owned and controlled by the Ministry of Information under the new political dispensation," (Article 19, 2000, p. 9). However, private and many community radios have come in reality lately after six years.

The recent phenomenon regarding media reform with legal frameworks is the revision of both the press and broadcasting proclamations. Broadcasting Service Proclamation, Proclamation No. 533/2007 and Freedom of the Mass Media and Access to Information Proclamation, Proclamation No. 590/2008 have been issued in 2007 and 2008, respectively. Following this revision there are some improvements. However, media reform is still unfinished job for the government. Compared it with other African countries, our media development is still fragile. More works need to be done.

### **Current Status of Freedom of Media in Ethiopia**

The slow and restrictive reforms of media landscape in the country results worsen situations to freedom of the media in Ethiopia. As discussed above, in principle, the government has accepted basic democratic declarations by international organizations, however practically it considers media as adversary. As a result it limits their freedom. This is where the problem begins to surface in the Ethiopian media history since 1992. Many international media organizations, writers and local journalists express their concern in many ways.

In the beginning, the EPRDF government has tolerated numerous critical and sometimes misinforming or abusive articles and cartoons, which were published in the private press without being threatened by the government. But some years later the authorities did take harsh measures against the private press on many occasions, particularly over articles reporting on armed conflicts that dispute the government policies.

No better condition for freedom of expression has come until 2003 and 2004. Amnesty International in 1998, World Press Freedom Review in 2000 and Human Rights Watch in 2001 have reported that:

The EPRDF authorities have responded harshly to those who have accused their policy, particularly embezzlement of officials and the abuse of power... journalists who are critics of the government policies were arrested and later released without charge after a month. But many of these have complained of ill treatment during detention... One of the most worrying practices is the authorities willingness to play 'cat and mouse' with media workers. Over a dozen of journalists have left the country, alleging that they have been persecuted for their professional journalistic daily activities and publishing free opinions, dissemination of false information by a cynical nature of harassment and intimidation.

The editors-in-chief of nine private newspapers in Ethiopia have expressed the situation in which freedoms of expression and of the media have been practiced and the worsening relationship between the government officials and the independent journalists in their report in 2003. They have expressed the gap, mistrust and partisanship between the government and the private press. They have prepared the report after they evaluate the then draft law based on the idea that giving guidance and recommendations for consideration by the government and showing mismatches between some parts of the draft laws and international standards relating to freedom of information.

The relative freedom of expression and of the media has been seen in the pre-election period of the 2005 national election. It has been vibrant period to both government and private media. European Union (2005) states in its report that: State and private media provided generally balanced coverage. During this period, there was a notable opening of the state media to the political parties contesting the elections, and print space and airtime was afforded to the main coalitions challenging the ruling party. Live broadcast of debates between the main political actors permitted genuine democratic discussion and raised public interest in the electoral process throughout the country.

The truly multiple points of views have been expressed through the Ethiopian public media in 2005 election campaign. On the other hand the government has accused private press as being the organ of opposition parties. This period of time has been short-lived. Following the aftermath of the 2005 election, however, the situations have become more difficult for the journalists. Many of them have been imprisoned and accused of crime against the constitutional order of the country. Many of the private newspapers and magazines have been closed. Kifle Mulate, who was the former president of EFJA, says “Ethiopia has made a sad history for itself by becoming not only the African country with the largest number of journalists in prison, but also the country with the largest number of journalists living in exile,”. Human Rights Watch in its 2010 report entitled “*One Hundred Ways of Putting Pressure*” *Violations of Freedom of Expression and Association in Ethiopia*” states:

Over the past five years the Ethiopian government has restricted political space for the opposition, stifled independent civil society, and intensified control of the media. As this report describes, this has been a long-term policy with the relative freedom of the 2005 pre-election period standing out as an anomaly. Repression has gained greater momentum as the 2010 elections approach, with the government taking measures to avoid a replay of the events of 2005.

Many international media freedom advocacy groups ranked Ethiopia at the bottom of the list of nations with the worst records on press freedom: in the 2009 Freedom House's ‘Press Freedom Rankings’, Ethiopia came in at a dismal 165/195 countries. Reporters Without Borders ranked Ethiopia at 140/175 countries in 2009. The Committee to Protect Journalists on May 2, 2007

ranked Ethiopia as number 1 among the ‘top 10 backslider’ countries ‘worldwide where press freedom has deteriorated the most over the last five years’.

Despite these degradations of media freedom in the country since the 2005 election, the government said that there are improvements in media and government relation. The 2008 Media Sustainability Index (MSI) states that: However, in what is seen as a big step forward in relations between the government and private media, no journalists have been convicted this year and no journalist is currently jailed. At the same time, high-profile government officials and agencies are slowly opening their doors to private newspapers and have shown signs of engaging the country’s two private FM radio stations.

However, with the passage of the two media laws and other media related proclamations many complaints are being heard still this moment.

- Broadcasting Service Proclamation, Proclamation No. 533/2007;
- Freedom of the Mass Media and Access to Information Proclamation, Proclamation No. 590/2008, which had been debated for years;
- Anti-Terrorism Proclamation, Proclamation No. 652/2009; and
- Charities and Societies Proclamation, Proclamation No. 621/2009

Many international organizations such as Article 19 and Human Rights Watch have commenting the laws since their draft periods. They express that the laws are highly restrictive and do not guarantee freedom of the media and its practitioners. Many articles in the proclamations are ambiguous and gave the government authorities more power to invade freedom of expression. But the government on the other side says that the laws i.e. the Charities and Societies (CSO law), anti-terrorism bill, and media law would not have any adverse impact on civil society and the media. The “Ethiopian officials have claimed that the CSO and media legislation will “empower” the Ethiopian people, and that the CSO law resembles legislation in industrialized democracies,”

Nevertheless, the media situation in the country has becoming more worsened. MSI in its 2009 publication states that: Officials display little respect for press freedom and freedom of speech, crushing demonstrators agitating for their rights, forcing many journalists into exile, and holding others in detention for years. The media labor in an atmosphere clouded by intimidation, fear, and self-censorship. The few surviving independent voices feel forced to tread cautiously, often avoiding penning any articles that criticize the government.

The problems are not only external i.e. from the government, but also from the journalists themselves. Journalists are not professionally and ethically qualified. MSI in its 2008 publication states that “major constraints to investigative and niche reporting include politics, lack of professionalism, and ethics. Among the private media, journalists who attempt to investigate

specialized subjects are hindered by their editors' biases and lack of buy-in. They also encounter the ethical problems arising from their own personal and vested political interests,"

## A Case Study

### Freedom of Journalists in Ethiopia: A Case Study of FM Addis 97.1 and Sheger FM 102.1

*This is a case extracted from a thesis entitled "Challenges of Journalists in Reporting Politics: A Comparative Study of FM Addis 97.1 and Sheger FM 102.1". The discussants are from both FM radios. Be remind that the points discussed here represent only the participants' points of view. Look at into each points of discussion carefully and try to provide reasonable reflection for the instruction following the case.*

**To what extent journalists should be free? What do we mean when we say freedom of journalists?** Such questions have been forwarded to the participants in **Focus Group Discussion (FGD)**. Most of the participants have underlined that such concept in journalism is difficult to have common interpretation and application across countries and regions. Not surprisingly, the government and private FM radios' journalists show differences in their expression of freedom of media and of journalists'. However, there are also some common understandings among them.

Discussant 4, a Producer with fifteen years of experience in FM Addis 97.1, says that the extent to which a journalist is free is depends on the media station in which he or she is working. Any journalist should work with the editorial policy and aims of the station. However, impartiality is questionable. Discussant 2, a News Editor with three and half years of experience, has supported the idea of working for the aims of the station, but he argues that no one should interfere with the journalist's work. No one should say to the journalist add this one and omit that one. However, he ascertains that the freedom should be with some limitation on issues such as public welfare and sovereignty of the country.

In contrast, Discussant 1, in the same station, emphasizes that freedom and looseness are two conflicting things in the discussion of professional freedom. According to this participant, as long as journalists are working in the government media which follow development journalism, they have to be biased to development. In the first place they are citizens of the country.

Messay Wendmeneh, Deputy Director of FM Addis 97.1, focuses on the relativity of media freedom. He considers that there is a relative freedom of media in this country. He also mentions that their news making process can be taken as example. In their news making process everybody is free to come up with his news idea and discuss it in their weekly editorial meeting. If it is ok professionally, the journalist would be allowed to do it. This is a sign of journalists' freedom. Sometimes, however, there is the role of agenda setting, that is to say, some important

agendas would be brought up by the top management and government officials to them to be covered and fostered.

Discussant 5, a Reporter with one year of experience, in Sheger FM 102.1, expresses that a journalist should be free from all sorts of influence. The journalist has to be free even from his or her own attitude. Discussant 3 and 2 also concur in holding that if a journalist is free it means that he should be free from any political influence and other forms of interference. The journalists have to have maximum freedom as long as they satisfy the needs of the society.

Practical view of freedom of journalists in our context has offered by Discussant 4, a Reporter with one year of experience in the station. She says that freedom of journalists refers the right to write and speak freely. But in this country, such a freedom is found only on the paper, not in practice. The other informant Discussant 1, a Reporter with two years of experience, says that any profession has its own professional principles and ethical guidelines. Therefore when we say a journalist is free we mean that he is working freely with these professional and ethical frameworks and with the country's laws and regulations.

Silleshi Tesema, Executive Producer of News and Information of Sheger FM 102.1, says that:

In Ethiopia the limit is there in the laws of the country. What is allowed to write or not is decided by laws. For press freedom, the development of the country and professional maturity of the journalists are preconditions. Generally there are three important things which have to be considered whenever we discuss about press freedom beyond laws and regulations. First, press needs fair criticisms of the activities of government. Second, there should be government which is open and tolerant for criticism. Lastly, there should be professional excellence on the part of the journalists. Press freedom is the sum of all these things.

Tsegaliul Woldekidan, in **Ethiopian Journalists' Association**, expresses that the journalists' freedom should also be seen with respect to their access to government information. Officials should not prohibit journalists getting the public information. Additionally full responsibilities should be given to the journalists themselves.

On the other hand, Wondwosen Mekonnen, president of **Ethiopian Free Journalists' Association** says that:

This [freedom of journalists] is ideal. The basic things are your journalistic report should be balanced, fair and impartial. But you cannot restrict a person from his own personal beliefs and an attitude...What you call 'freedom' is related with Westerners' attitudes. I do not accept it completely. On the other hand, still we have seeing that there are some

journalists who are totally sided. Actually we can see such partisanship in abroad. But this is not good trend for our country.

To sum up, all participants have forwarded their views of freedom of journalists. With some commonalities and differences they have reflected their important ideas that would help us to understand their current situation. To some extent journalists from the government radios focus on the individual journalist's responsibility; and the private ones are more interested on the external factors that intervene in the works of journalists.

## Assignments

### Group Assignment One (7%)

#### Instruction

Discuss the following questions based on your reading of the above case. You are expected to write minimum of 250 words for the first question, 300 for the second and 400 for the last one.

1. Which points of argument makes you interested? Why? (2pts)
2. Are you comfortable with ideas mentioned by the government journalists? Why not? What about the private ones? (2pts)
3. What are your overall reflections on the current status of freedom of journalists in Ethiopia? (3pts)

**Submission Date:**                      **There will be presentation of your work**

### Group Assignment Two (8%)

An Assessment of Video Discussion on Freedom of Media and Developmental State in Ethiopia

The discussion was held at Addis Ababa University Graduate School of Journalism And Communication. The participants are academicians, politicians, students and other invited guests. Hence, they can represent all of the concerned bodies.

#### Instruction

Watch the video discussion carefully and reflect your opinion. Write at least a page and half.

**Submission Date:**                      **There will be presentation of your work**



## 1.10 Unprotected Expression

### Legal Principles of Publication

When a news report is published, the nature of its content poses three principal legal risks to a journalist: that the report contains incorrect information that harms someone's reputation, contains correct information that invades that someone's privacy, or contains materials that is subject to someone else's copyright. This section provides an overview of the law of libel, privacy and copyright infringement, by examining what a plaintiff is required to prove against news organizations to succeed on such claims and the defenses that are available.

#### 1.10.1 Public Officials and Public Figures

To understand the laws that concern journalists, you need to be able to identify **public officials**, **public figures** and **private citizens**. **Private Citizens** include the vast majority of people who are not in the public spotlight.

##### 1.10.1.1 Public Official

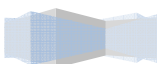
Sometimes it's clear who is a public official. Public officials are people who are paid with your tax dollars, who are elected, have control of government and have access to the media. Sometimes it's not so clear. Is a police officer a public official? Is a teacher?

For example, courts in most states in U.S. have ruled that police officers may be considered public officials, because they have the power to make arrests, which is a form of government control. Courts also have said teachers and others in public education are not public officials, because they carry out policies set by others. When trying to decide if someone is a public official, editors and reporters look at how most court cases turned out and consult with lawyers who work in the field of communication law.

##### 1.10.1.2 Public Figure

The definition of a public figure is broader than the definition of a public official. Public figures are people whose achievements or notoriety put them in the public spotlight. This includes the actors and athletes in glossy magazines and newspaper sports pages. It includes the regular people who attain some celebrity by being on a reality television show. People who seek attention by voluntarily putting themselves into public controversy also are considered public figures. This includes someone such as a community activist. People who end up in the spotlight involuntarily may not be public figures. If there is a question, it may need to be settled in court.

**How do public officials and public figures differ from private citizens?**





The difference between public officials or public figures and private citizens is important because there are different standards for proving libel, or making a false and damaging statement about somebody. Private Citizens may have an easier time proving they were libeled, because they don't have the same access to media to defend themselves as have public officials and public figures. Avoiding a libel suit takes diligence in everyday reporting. Most cases happen because reporters under deadline pressure make careless mistakes, not because reporters purposely write falsehoods. Truth is a defense against libel, but it doesn't always get you off the hook.

### 1.10.2 What is Defamation?

Defamation can be defined as the transmission to a third party, either orally or in writing, of information which tends to damage the reputation of another person. It is the publication of a statement, which exposes a person to hatred, ridicule, contempt and/or causes him to be shunned or avoided by right thinking members of society. A statement to be defamatory of a person, that statement must be false and calculated to:

- Lower him in the estimation of right-thinking men; or
- Cause him to be shunned or avoided, or
- Expose him to hatred, contempt or ridicule, or
- Conveys an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business.
- Injures his financial credit

Whoever by words either spoken or reproduced by mechanical means or intended to be read or signs or by representations, makes or publishes any imputation concerning any person, intending to harm the reputation of such person, is said ... to defame that person.

#### There are two types of defamation

##### 1.10.2.1 Libel

Libel is defined as defamation by means of writing or by any other permanent form such as video tapes, pictures, was work, effigy etc. It is also defined as a defamatory statement made in a visible or permanent form such as written or printed statements as in books, newspapers, notes, circular, letter, or by way of effigy, caricature, painting, photograph, film, radio, and television broadcasts, any recorded audio – visual material and so forth.

25

Libel is one side of the coin called "defamation," slander being the flip side. At its most basic, defamation means injury to reputation. Libel is generally distinguished from slander, in that a libel is written, or otherwise printed, whereas a slander is spoken. While defamation published in

a newspaper universally is regarded as libel, it is perhaps not so self-evident that, in many states, defamation broadcast by television or radio also is considered libel, rather than slander: Because broadcast defamation is often recorded on tape and carried to a wide audience, it is viewed as more dangerous to reputation than a fleeting, unrecorded conversation, and so is classed with printed defamation. In any case, the term defamation generally includes both libel and slander. Words, pictures, cartoons, photo captions and headlines can all give rise to a claim for defamation.

#### **The conditions for libel are the following**

- The publication must be in writing
- The publication must be false
- The publication must be published to some other person aside from the plaintiff and the defendant.
- The publication must refer to the plaintiff and must be defamatory of him.
- The publication must be by the defendant.

#### **1.10.2.2 Slander**

Slander is defamation through the spoken word or gesture. It is not generally actionable upon mere publication. However, there are instances where slander could be actionable per se, that is, without proof of special damage.

They include:

1. Allegation of a criminal offence punishable with imprisonment, such as theft, rape etc.
2. Imputation or allegation of a contagious disease which may necessitate the exclusion of the suffering from other members of society e.g. AIDS, leprosy etc.
3. Allegation of unchastely against a young woman.
4. Imputation of incompetence or unfitness against a workman, which can injure him in his trade, office, trade or profession.

#### **1.10.2.3 What is the Purpose of the Law of Defamation?**

The purpose of the law of defamation is to protect the reputation of people resulting from injurious statements, or acts by others. It is concerned with safeguarding the plaintiff's interest in the good opinion which other people hold of him. However, if the plaintiff has no reputation in respect of what is said, then the law cannot protect him and he will not be entitled to any redress. For example, if the person has been expelled from school for certificate forgery, it will not be defamatory to call him a "bloody liar" or "rogue".

### 1.10.2.4 The Five Things a Successful Libel Plaintiff Must Prove

Although the terminology may differ from state to state, a libel plaintiff suing a reporter or a news organization will have to prove five things in order to prevail on a claim for defamation:

- A defamatory statement was made.
- The defamatory statement is a matter of fact, not opinion.
- The defamatory statement is false.
- The defamatory statement is about ("of and concerning") the plaintiff.
- The defamatory statement was published with the requisite degree of "fault."

By developing an understanding of the legal elements of a claim for libel, reporters and editors can fashion guideposts that will assist them in practicing their craft in a way that avoids wrongfully injuring the reputation of the subjects of their stories - and thereby to reducing the legal risk to the publications for which they write.

#### 1. A Defamatory Statement was Made

It may seem self-evident that a libel claim cannot exist unless a defamatory statement was made, but subjects of news stories (and their lawyers) often bring claims for libel without being able to demonstrate that what was written about them is capable of conveying a defamatory meaning. Put differently, not every negative news report is defamatory.

Generally, statements accusing someone of being a criminal, an adulterer, insane or infected with a loathsome disease are considered automatically "capable of defamatory meaning," as are statements that injure someone's professional reputation (such as that they are corrupt or incompetent). However, to determine whether any particular statement is susceptible of defamatory meaning, reference must be made, first, to the definition of libel adopted in the relevant country, and second, to the full context in which the challenged statement appeared when it was published.

While each potentially defamatory statement must be assessed in its own context, particular caution is in order where the statement involves allegations of crime or similar wrongdoing, incompetence or unprofessionalism, or infidelity.

In other words, the offending statement must have been published. Publication means that the statement was communicated to a third party, other than the plaintiff. The writing of a libelous matter or the speaking of a slanderous matter to only the plaintiff does not amount to publication. For example, if you receive a letter from a jilted lover in which she thoroughly abused you, but there is no proof that she copied the letter to any other person, you cannot sustain an action of defamation against her. However, the plaintiff must give the name of that third party in court as

evidence that the offending matter was actually published. Furthermore, communication of defamatory matter by husband to wife and vice versa, does not amount to publication since they are regarded as one person, for that practical purpose.

## **2. The Defamatory Statement is a Matter of Fact, Not Opinion**

To be actionable as libel, a defamatory statement must be provably false (or carry a provably false implication). Stated differently, only factual statements that are capable of being proven true or false can form the basis of a libel claim. "Opinions" that don't include or imply provably false facts cannot be the basis of a libel claim. Similarly, epithets, satire, parody and hyperbole that are incapable of being proven true or false are protected forms of expression.

The common thread to these variations is that opinions offered in a context presenting the facts on which they are based will generally not be actionable. On the other hand, opinions that imply the existence of undisclosed, defamatory facts [i.e., if you knew what I know) are more likely to be actionable. In addition, a statement that is capable of being proven true or false, regardless of whether it is expressed as an opinion, an exaggeration or hyperbole, may be actionable.

## **3. The Defamatory Statement is False**

In almost all libel cases involving news organizations, the plaintiff has the burden of proving that the defamatory statement is false. Nonetheless, as a practical matter, a libel defendant's best defense is often to prove that the statement is true. While this may sound like six-of-one-half-dozen-of-the-other, there is considerable significance to placing on the plaintiff the legal burden of proving falsity: Where a jury feels it cannot decide whether a statement is true or false because the evidence is mixed, it is required to rule against the plaintiff - ties go to the defendant.

## **4. The Defamatory Statement is about the Plaintiff**

Since the law of libel protects the reputation of an individual or a business entity, only the individual or entity whose reputation has been injured is entitled to complain. Thus, a libel plaintiff must prove that the defamatory statement was "of and concerning" the plaintiff. It often is obvious whether a statement is about a particular person (for example, because it gives his or her full name, place of residence and age). But even where no name is used, a libel claim may be brought if some readers would reasonably understand the statement to be about the plaintiff. For example, the statement referring to "the woman who cooks lunch at the diner," when there is only one woman who cooks at that diner, will be considered "of and concerning" the female cook.

A few words about "group libel." Where a statement impugns a group of persons, but no individual is specifically identified, no member of the group may sue for libel if the group is

large. For example, the statement, in a large city, that "all cab drivers cheat their customers out of money," does not allow any cab driver to sue for libel as a result, no matter how many fares the plaintiff cab driver may have lost because of the published statement. But, beware of publishing the same statement in a newspaper in a town with only a handful of cab drivers, where a court might well conclude the readers would reasonably think the statement was specifically referring to each of the town's four cab drivers, despite the absence of their names in the statement.

Finally, a word about the dead: It is mostly correct that you cannot defame the dead. Again, because libel protects personal reputation, and one has no practical need for a good personal reputation in this world after one has departed it, most states do not permit a person's survivors to bring a claim for statements made after the person's death.

### 5. The Defamatory Statement was Published with the Requisite Degree of Fault

There might be a requirement that a public official must demonstrate not only that an error was made, but also a high degree of fault by the publisher in order to prevail on a libel claim. This additional burden was required under the U.S. First Amendment, in order to provide the "breathing room" for the exercise of free speech that is essential to public discussion by citizens on matters concerning their self-government.

#### 1.10.2.5 More Essentials of Defamation

- **Actual Malice**

Another essential ingredient of defamation is that the offending statement must have a malicious intent. Malice is evil motive or spite. If the plaintiff can prove the existence of a malicious intention, the defense of fair comment by the defendant will be defeated. The court in U.S. has explained that "actual malice" means publication with knowledge that a statement is false, or in reckless disregard for whether it is true or false. The concept of "knowing falsity" is easy to understand. "Reckless disregard" has required further elaboration by the courts, which have described it as publication of a statement "with a high degree of awareness of its probable falsity." Put differently, a reporter may act with reckless disregard for truth if he or she publishes despite holding serious doubts about the truth of the published statement.

- **Damage**

Damage is quantifiable loss as a result of the defamation. In a situation where the defamatory statement is not actionable per se on mere publication, the plaintiff must prove some special or actual damage to succeed in his claim.

- **Repetition**

Though it is not an essential condition for defamation, every repetition of a defamatory statement in writing, orally or in any other form, amounts to a fresh publication. And this may create a fresh cause of legal action. Repetition and dissemination of defamatory matter may necessitate the suing of the printer, publisher, author and vendor news agent, in the case of books, newspapers and magazines. This is as far as the theory goes. But in practice, vendors are rarely joined in any action of defamation, as the law views their involvement leniently, regarding them as innocent disseminators. However, should a vendor be joined in an action, he can easily be let off the hook if he can show that he did not know that the matter he is circulating is libelous and that his ignorance is not due to negligence on his part.

- **Innuendo**

Innuendo is where defamation occurs, not by the natural meanings of the words used, but by some kind of inference or connotation. If a plaintiff alleges innuendo, then he must establish that the particular meaning of the word used refers to him and can be understood as such. There are two kinds of innuendo: true (legal) innuendo and false (popular) innuendo. It is a mere academic exercise trying to distinguish between true and false innuendo, since in either case the court would require the plaintiff to prove that the matter complained about was to his discredit.

- **Unintentional Defamation**

A person who suffers defamation through any publication can sue and collect whether or not the offensive matter as intended to ridicule him. If an author creates a fictitious character in a fictional book or film and it defames a real person whom the author never knew existed, the real person can bring an action. It is to forestall this kind of situation, which could cause hardship for writers and publishers of fiction, that the law of defamation has been amended in many countries. The change allows for the publication of a reasonable correction and apology in the case of unintentional defamation. This is to forestall litigation and the eventual award of damages.

- **Assent to Publication**

If a person assents to a publication either expressly or impliedly, then he has no case if some people now interpret that publication to be negative of him. It is more so if the ordinary meaning of the published matter is not derogatory.

### 1.10.2.6 What are the Defenses to Defamation?

Where a news story is written in such a way that a plaintiff might be able to prove all the five and the aforementioned elements of a libel, the law nevertheless affords defenses to news organizations in certain circumstances. Among the most prominent are the followings. They are referred to as privileges because, where properly invoked, a news organization is "privileged" to print what otherwise would be an actionable libel. These defenses are commonly available to news organizations, journalists, authors, publicists, publishers, etc.

- Justification or Truth
- Fair Comment
- Fair and Accurate Report
- Neutral Reportage
- Privilege
- Consent to Publication
- Death of the Plaintiff
- Res Judicata
- Accord and Satisfaction
- Innocent Dissemination

#### 1 Justification or Truth

If the publication complained about is true, entirely or even substantially, it can form a solid defense to defamation. But the burden is on the defendant who pleads justification to prove that the publication is true.

#### 2 Fair Comment

Fair comment is a defense against defamation if the defendant can prove that the publication complained about is a fair comment made in the interest of the public. A comment to be “fair comment” it must satisfy the following conditions.

1. The matter commented on must be of public interest.
2. The matter commented on must be an expression of opinion by the defendant and not an assertion of fact by him.
3. The comment on the plaintiff must be fair.

31

Indeed, the beauty of fair comment is that if a commentator expresses an honest opinion on a matter of public interest, it does not even matter if the opinion is wrong in that it will bring the

subject of the comment to public ridicule, it is still a solid defense against an action of defamation.

### 3 Fair and Accurate Report

Under this privilege, a fair and accurate report of a public proceeding (such as a city council hearing) or document (such as a pleading filed in court) generally cannot be the basis of a libel suit. The privilege, in Texas U.S., applies to "a fair, true and impartial account" of: (a) judicial proceedings; (b) an official proceeding to administer the law; (c) all executive and legislative proceedings; and (d) the proceedings of public meetings dealing with public purposes.

In order to qualify for the privilege in the country that recognize it, the account must be both substantially accurate and fair. This does not mean the newspaper is required to publish a verbatim account of an official proceeding or the full text of a government document, but any abridgement or synopsis must be substantially accurate and fairly portrayed. Where it applies, the privilege relieves a news organization of responsibility for determining the underlying truth of the statements made by the participants in these contexts, precisely because the very fact that the comments were made in an official proceeding is newsworthy regardless of whether the statements are actually true. It bears emphasis, however, this privilege is limited to statements made in the contexts defined under countries' law, and it behooves practitioners to learn the particulars of the privilege in the countries' in which they practice journalism.

### 4 Neutral Reportage

Where recognized, the neutral report privilege protects a fair, true and impartial account of newsworthy statements, regardless of whether the reporter knows or believes those statements to be true, if the statements have been made by prominent and typically responsible persons or organizations. The rationale is that some statements are newsworthy, and should receive public attention just because of who has made them.

### 5 Privilege

Privilege means a benefit or immunity enjoyed by someone or a class of people which does not apply to the general public. In communication, privilege is the freedom enjoyed in certain circumstances whereby statements can be made without the bogey of an action of defamation. As a defense against defamation privilege is in two kinds: absolute and qualified privilege.

#### (a) Absolute Privilege

Absolute privilege is the unhindered liberty to make statements orally or in written form to the extent that anyone who feels that he has been defamed by the statement cannot seek redress in a



law court, nor can the court entertain such as action. This is regardless of whether the statement is false and/or malicious.

Those who enjoy absolute privilege in the courts of their official duties include the Head of State, governors, High Court judges, magistrates, even lawyers and witnesses, legislators. Thus no action can be brought against any of the above mentioned if they defame anyone in the course of their official duties. Also, communication between husband and wife enjoys absolute privilege.

### **(b) Qualified Privilege**

There is qualified privilege to make defamatory statements when the person who makes it has a duty, legal, social or moral, to make it and the person to whom it is made has a duty, legal, social or moral, to receive it. However, the statement must have been made honestly and without malice. For, malice defeats privilege.

## **6 Consent to Publication**

If a person willingly invites the press to cover his function or he grants an interview on his own volition, then the press can plead consent if the person turns round to bring an action of defamation. However, if the publication goes beyond the limit of the initial approval, there may be grounds for an action.

## **7 Death of the Plaintiff**

If the person allegedly defamed is dead, it will be difficult to sustain the action because reputation is a personal possession and only the owner of the reputation can sue for it.

## **8 Res Judicata**

If a case of defamation has been tried, lost and won, it will be a waste of time to file a fresh action on the same matter. Res judicata is to say that the case has come to a logical end and had died a natural death.

## **9 Accord and Satisfaction**

It shall be a defense to defamation if there is a mutual settlement between the two parties to the satisfaction of both of them.

## 10 Innocent Dissemination

The person circulating the offensive matter can plead that he is ignorant of what he is disseminating and should therefore be excluded from any legal action. The plaintiff and the court usually exonerate this category of persons especially in view of the fact that they cannot pay any damages should the case be awarded against them.

### 1.10.2.7 Remedies for Defamation

If a case of defamation has been established and accepted by the court, then the plaintiff is entitled to one or a combination of the following remedies. Damages; Injunction, which may be interim, interlocutory or perpetual; and Publication of apology and offer of amends.

### Publication of Retraction or Correction

A correction acknowledges an error in a story and sets the record straight. Published studies have shown that lawsuits against the press can sometimes be avoided if requests for corrections or clarifications are dealt with seriously, promptly and fairly. Anyone making a retraction demand should be dealt with courteously, and the request should be communicated promptly to the appropriate editor.

Do not be too hasty in drafting a correction, however. It is important to ensure that the correction is actually warranted, that it corrects all aspects of the story that may need correction, and that the correction itself is accurate. You should be aware of any legal requirement in your country setting a time within which a correction must appear.

Transmitting a corrective does not necessarily safeguard the journalist against legal action. In fact, transmission of a corrective may itself have legal consequences because it formally acknowledges an error. Because of potential legal implications, a news manager or supervisor needs to approve all correctives and clarifications, before they are transmitted.

In addition, the bureau chief or news editor must prepare and maintain a file containing:

- Wire copy of the original story and of the kill or corrective that was sent.
- Wire copy of the substitute story, corrective or clarification filed.
- A copy of any source material used by the writer or editor in preparation of the story, including member clip, reporter's notes and the like.

## Document Preservation and Discovery

Different reporters follow different practices about retaining their notes. There are potential litigation advantages and disadvantages from following a policy of either keeping notes for a number of years or disposing of notes as soon as they are no longer needed for reporting. The best practice is the one that best advances a reporter's journalistic goals. Whatever practice you follow, however, should be followed uniformly. A difficult issue is presented in litigation if a reporter generally keeps notes, but just doesn't happen to have the notes for a disputed story. Similarly, a reporter who never keeps notes, but happens to save them for a story that ends in litigation, can send a message that the story posed some unique concerns. Adopt a policy and follow it consistently.

Of course, once a lawsuit arrives, no documents should be destroyed, regardless of your usual practice. At that point any notes and drafts are potential evidence and their destruction, with knowledge of the lawsuit, may be illegal.

## Other Laws

Another set of laws that journalists need to understand are shield laws and freedom of information laws, or sunshine laws. Shield laws allow journalists to keep certain conversations confidential. Some countries have shield laws and some may not. Some news organizations have been trying to minimize the use of confidential sources in recent years. However, some stories—particularly those that reveal wrongdoing on the part of government or business—would never be told if reporters had to reveal their sources.

Freedom of information laws are sometimes called sunshine laws because they relate to the business of government being carried out in the open, or in the sunshine. The notion behind freedom of information laws is that the people have the right to know what their government and government officials are doing.

### 1.10.3 Invasion of Privacy

An invasion of privacy has been defined as an unwelcome intrusion on a person's solitude or personal affairs. That means, for example, private information such as your school or medical records cannot be printed in a public forum like a newspaper without your permission. It also means you have a right to be left alone. Applied to journalism, that means reporters cannot come onto your property without your consent.

35

News organizations that find themselves in court on privacy issues try to show that the published information was “newsworthy.” For public officials and public figures, almost anything can be

considered newsworthy. For private individuals, it could be tougher to prove, but certain information, such as reports of criminal behavior, could be considered newsworthy.

It can generally be said that when people become involved in a news event, voluntarily or involuntarily, they forfeit aspects of the right to privacy. A person somehow involved in a matter of legitimate public interest, even if not a bona fide spot news event, normally can be written about with safety. However, the same cannot be said about a story or picture that dredges up (mention something unpleasant from the past) the sordid details of a person's past and has no current newsworthiness.

### 1.10.3.1 Overview of Privacy Law

Privacy laws protect individuals from intrusion into their personal lives and from the unauthorized use of their names or likenesses for commercial purposes. For media producers, this means that it is necessary to secure a written release from each person who appears in a production. In addition, if the production will include location footage shot on private property, it is necessary to obtain a written release from the property owner. Failure to do so can leave a production open to lawsuits for invasion of privacy or other claims.

#### **There are four Fairly Clear Categories of Privacy Protection:**

Over the decades, legal commentators have vigorously debated the scope and nature of a cause of action for privacy, and identified four distinct forms of the "right of privacy:" (1) misappropriation of someone's name or likeness for a commercial purpose; (2) public disclosure of private facts; (3) unreasonable intrusion upon seclusion; and (4) false light in the public eye. In recent times, these causes of action have taken on significance to the press as plaintiffs have attempted to avoid the heavy burdens of proof placed on the libel plaintiff by alleging an invasion of a form of the right of privacy, instead.

The four distinct "branches" of the privacy tort each seek to protect a different aspect on individual's privacy. The "intrusion" tort primarily seeks to protect against physical intrusions into a person's solitude or private affairs. The tort does not require publications of information for recovery, and it is discussed previously as a newsgathering tort. The other three branches of privacy all require publication of some information in order for the plaintiff to have a claim.

- **Misappropriation**

36

This form of invasion of privacy recognized by the courts is misappropriation of the name or likeness of a living person for purposes of trade or advertising without that person's consent. In other words, individuals have a right to protection against the unauthorized use of their names or likenesses for commercial purposes (a right that is often referred to as the **"right of publicity"**).

It may involve voice as well as name or likeness. This tort is intended to allow people to control the commercial use and exploitation of their own identities.

The misappropriation tort is not generally a concern to reporters because it applies to the commercial exploitation of a person's name and likeness. It does not bar editorial uses and provides no remedy when a person's name or image (questions of copyright aside) is used in a news report. This branch of privacy is of little concern outside of the advertising department of a news organization.

### • **Public Disclosure or Publication of Private Facts**

Individuals have a right to protection against the public disclosure of embarrassing facts about their private lives (the law provides less protection for public officials than private citizens). When most people speak of an "invasion of privacy," they have in mind the public disclosure of highly embarrassing private facts. The elements of a cause of action generally include:

- (1) "publicity" given to private information,

The first element of the tort requires "publicity" given to private information. This requires some element of widespread disclosure to the general public, not simply a communication to a single person or small group of people. Conversely, facts that are already known to the general public cannot be the basis of a public disclosure claim, while facts known only to a small group can be.

For example, a California court allowed a privacy claim to be based upon the publication of a photograph of a Little League team in a national magazine to illustrate a story about the team's coach who had sexually abused some of the athletes. Although the photograph had been given to all the members of the team, the identities of the minors shown in the photograph were not known to a broader national audience. The court said their identities could therefore be considered "private" in the context of the story about sex abuse. Some courts have similarly ruled that a person who is recognizable in a picture of a crowd in a public place is not entitled to the right of privacy, but if the camera singled him out for no news-connected reason, then his privacy might be invaded.

- (2) that a reasonable person would find highly offensive,

The second element of the tort requires that the disclosure be "highly offensive" to a reasonable person. This factor goes to the embarrassing nature of the information itself. Reporting someone's age, for example, would not be highly offensive to a reasonable person, even if that information were not widely known. Reporting, over their objection, that someone was a victim of sexual abuse or suffered from an incurable disease might be.

(3) which is not of any legitimate public interest.

The lack of "legitimate public interest" or lack of "newsworthiness" is an element of the tort, meaning it is a plaintiff's burden to prove. This element is an affirmative defense and the defendant must show how the information was indeed a matter of legitimate public concern. In all cases, newsworthiness is a complete defense to the tort.

Finally, no claim will lie if the information is newsworthy, or of legitimate public concern. Courts generally will defer to reporters and editors to determine what is "newsworthy," but the line is not always clear. Even in the context of a report on a plainly newsworthy topic, the disclosure of a highly embarrassing private fact may give rise to a claim for invasion of privacy if the facts are not logically related to the matter of public concern. For example, disclosure of the intimate sexual practices of a celebrity might support a claim for invasion of privacy if it were unrelated to any newsworthy report and amounted to prying into someone's life for its own sake.

- **Unreasonable Intrusion**

Individuals have a right to protection against unwarranted intrusion on their solitude and private affairs.

- **False Light**

Individuals have a right to protection against disclosures of private facts that place them in a false light before the public.

A claim for false light basically complains about publicity that places the plaintiff in a false light in the public eye. The publicity must be of a kind that would be highly offensive to a reasonable person, and the defendant generally must have acted with the same level of fault that would be required if the plaintiff had filed a libel claim.

One form in which a claim for false light occasionally arises occurs where an opinion or utterance is falsely attributed to the plaintiff. In another version of the claim, the plaintiff's picture is used to illustrate an article to which he has no reasonable connection, as where the picture of an honest taxi driver is used to illustrate an article about the cheating propensities of cab drivers.

Together, these four areas of privacy protection constitute the individual's "**right to be left alone.**" Significantly, the right to be left alone includes the right to be left out of media productions. When individuals consent to waive this right, the waiver should take the form of a written, signed release that is retained by the producer.

### 1.10.3.2 Types of Releases

- **Performer Releases**

As the preceding paragraphs have suggested, releases play an important role in protecting productions from the possibility of invasion-of privacy lawsuits. As a rule, producers should secure written releases from all performers who appear in a production. The only exceptions would be those individuals who show up as faceless forms in crowd scenes or remote shots. Just make sure that these individuals truly do appear in a form that would not be recognizable to family, friends, or a judge and jury.

For performers who are professional actors, the release language is usually included in a complete contract that covers all aspects of their appearance in the production. For other performers, including employees depicted in corporate video productions, a release agreement should suffice. Although the exact wording will differ, all releases should share the following characteristics:

- Releases should be written, even though oral releases are valid in some states.
- Releases should define the duration and extent of the producer's right to use the performer's name, likeness, and performance.
- Releases should require the performer to warrant that he or she is free to appear in the production and to sign the release.
- Releases should describe the consideration (compensation) that the performer will receive for appearing in the production.

- **Audience Releases**

Some productions, particularly recordings of live presentations or performances, feature shots of audience members. Ideally, each audience member should execute a written release, when production logistics prevent this; you should post the following notice prominently at all entrances to the production location:

This performance is being videotaped for television and other public exhibition. The production will include shots of the audience. Anyone not wishing to appear in the production is hereby advised against attending this taping. By entering the premises, you are granting permission to be included in the production for all purposes and in all media. Thank you, and enjoy the taping.

Some producers combine the posting of this notice with a short-form written release that audience members are required to sign before entering the production site. This option works

well for live studio audience productions when the audience is relatively small and the producer is in control of the production venue.

- **Location Releases**

Part of the right to privacy is the right to “zones of solitude” where individuals can reasonably expect to be left alone. Under most legal definitions of privacy, these zones include places that generally are recognized as private, particularly a person’s home. Under some statutes and case law, however, privacy zones can include public places (such as offices, hotel rooms, restaurants, and parks) where there is a reasonable expectation of privacy.

If you plan to conduct a shoot in a private area, be sure to obtain a location release. Otherwise, you leave yourself open to action for trespass or invasion of privacy, even though it may be only the person’s property pictured in the production. Along with protecting you from charges of illegal intrusion, location releases serve as contracts that define the terms under which you will be allowed to occupy the property and the rights you will have to use pictures and footage from the shoot.

Like performer releases, location releases should be written rather than oral. They should specify the following:

- The dates that the production company will be allowed to occupy the property, with a provision for changing the dates if weather conditions or production delays require shifts in the schedule
- The rights of the production company to bring equipment and sets onto the property
- The rights that the production company will have to use and distribute the video and sound material recorded at the location
- The consideration that the property owner will receive for allowing the location to be used for the shoot

### **1.10.3.3 Requiring Releases**

As the preceding sections have shown, releases can help protect productions from charges of violating a person’s right of publicity—the area of privacy law that raises the most immediate concerns for most media producers. Of course, obtaining this sort of blanket protection requires one key ingredient: a subject or subjects who are willing to sign the release form. When this ingredient is missing, producers should find another subject or shooting location. Proceeding without the appropriate release is simply too risky.



### 1.10.3.4 Other Privacy Concerns

Obtaining the appropriate releases is a key step in protecting a production against invasion-of-privacy challenges. Producers may also find themselves in situations that pose other, more complex privacy concerns, however. Several of those situations and concerns are discussed next.

#### Privacy Laws and News Programs

Privacy presents special challenges for producers of news programs. By their nature, news programs often disclose embarrassing facts about individuals. In addition, the individuals portrayed in news productions often are unwilling to sign releases authorizing either the disclosure of those facts or the use of their names or likenesses. This is particularly true when the program deals with matters that may be the subject of a criminal investigation.

Fortunately for news producers, the courts have acknowledged that, along with the special challenges that news programmers face, they also enjoy special privileges. Specifically, the courts have recognized “newsworthiness” as a legitimate defense in lawsuits that center on the public disclosure of private facts. If a producer can show that the disclosure of private facts served a legitimate news purpose, the lawsuit challenging that disclosure usually will be dismissed. This common law defense does not necessarily protect news producers who have knowingly placed a person before the public in a false light, however, or news producers who have obtained private facts by trespassing on private property or by trampling on an individual’s right to solitude and seclusion. It also does not protect news producers who have deliberately or recklessly misrepresented the facts.

Furthermore, the newsworthy defense does not protect media producers who appropriate news footage for non-news uses. In other words, a producer who takes news footage of a celebrity and uses it in a music video or television commercial would not be protected against a lawsuit for illegal appropriation simply because the original footage was newsworthy. In these instances, the producer’s appropriation of the celebrity’s image clearly would not have served a legitimate news purpose, and the celebrity in all likelihood could bring a successful right of publicity action. The only certain defense to such an action is to obtain, in advance, the individual’s consent, preferably through a written release.

#### Celebrity Look-Alikes and Sound-Alikes

Some producers try to get around the right of publicity problem by using celebrity look-alikes or sound-alikes in their productions. Courts have found, however, that this often can be considered a violation of the right to publicity because it does in fact involve an appropriation of the celebrity’s image.

## The “Changed Name” Defense

Is it safe to disclose private facts about individuals or facts that place individuals in a false light as long as you do not use their real names? This issue is particularly relevant, and particularly problematic, to producers of docudramas or other fictional works that are based on real events or real people. As a result, producers who are planning a docudrama or other work of “faction” should consult a lawyer who is familiar with the latest precedents and other developments.

## The Privacy Checklist

Here is a privacy checklist that should help clarify some of the confusion surrounding the areas of privacy law that are most relevant to media producers. To use it, simply answer yes or no to each question. If all of the responses come up no, you probably are protected from privacy challenges. One or more yes responses indicate a potential problem, and a call to a lawyer who is experienced with privacy law is in order. The more yes responses, the more vulnerable you are to successful privacy lawsuits.

- 1 Have you violated someone’s right of publicity by appropriating his or her name or likeness for commercial purposes without his or her permission?
- 2 Have you conducted a location shoot on private property without the property owner’s permission? Whenever you shoot on private property, be sure to obtain a written location release
- 3 Are you disclosing embarrassing or offensive facts about a private individual?
- 4 Might your production place someone in a false light?
- 5 Does your production include fictional material that is based on real people or events?

### 1.10.4 Copyright Infringement

Copyright is the right of an author to control the reproduction and use of any creative expression that has been fixed in tangible form, such as on paper or computer desk. It gives an author or other originator of an intellectual production whereby he is invested with the sole and exclusive privilege of reproducing and selling copies of his work. It is usually expressed in warnings like the example below in books and phonographic recordings:

*All rights reserved. No part of this work may be reproduced in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior written permission of the publisher/author.*

The essence of the law of Copyright is to protect intellectual property from being reproduced and sold by unauthorized persons, so that the owner of the work can enjoy the fruit of his labor. But the advance in technology is making it increasingly difficult to enforce copyright laws.

This is because hundreds of thousands of copies of books and phonographic materials of all kinds can now be easily reproduced by pirates, thanks to the ubiquitous photocopying machines and audio/visual recorders. In schools and universities indigent students photocopy whole books for their use, even where such materials are available and affordable. Also, at the ubiquitous road side markets in the cities it is common to find poor quality reproductions of recommended text books on sale at rock bottom prices – the fruit of piracy.

The types of creative expression eligible for copyright protection include literary, graphic, photographic, audiovisual, electronic and musical works. In this context, "tangible forms" range from film to videotape to material posted on the Internet. Personal letters or diaries may be protected by copyright even though they may not have been published and may not contain a copyright notice. Probably of greatest concern to reporters and editors are the copyrights in photographs used to illustrate a news report.

A copyright comes into existence the moment an original work of expression is captured in a tangible form. No government approval or filing is required for a work to be protected by copyright. Upon creation of the work, ownership of the copyright in that work is vested in the "author" of a work - the person to whom the work owes its origin.

The owner will generally be the author of the work, or the photographer in the case of an image. Under certain circumstances, however, someone other than the person who actually created the work may be deemed to be the work's "author" and thereby own the copyright. Under the work made for hire doctrine, copyright ownership of a particular work vests with the employer of the author when the work is created by an employee who is acting within the scope of his or her employment.

The owner of a copyright is given the exclusive right to reproduce, distribute, display and prepare "derivative works" of the copyrighted material. In U.S., for example, these rights exist for the life of the author plus 70 years. In the case of a "work for hire" owned by a corporation, the right exists for 95 years from the first publication or 120 years from creation, whichever is shorter.

#### 1.10.4.1 Limitations on Copyright

Not all uses of copyright material constitute infringement. The most important limitation on the reach of copyright law for journalists is that ideas and facts are never protected by a copyright. What is protected by the copyright law is **the manner of expression**. The copyright pertains only to the literary, musical, graphic or artistic form in which an author expresses intellectual concepts.

For example, an author's analysis or interpretation of events, the way the material is structured and the specific facts marshaled, the choice of particular words and the emphasis given to specific developments, may all be protected by copyright. The essence of a claim for copyright infringement lies not in taking a general theme or in covering specific events, but in appropriating particular expression through similarities of treatment, details, scenes, events and characterizations.

This printed page illustrates the distinction between protected expression and unprotected ideas and facts. Despite the copyright protecting this page, a subsequent author is free to report any of the facts it contains. The subsequent author may not, however, employ the same or essentially the same combination of words, structure, and tone, which constitute the expression of those facts.

A second limitation of the reach of copyright is the doctrine of "**fair use**." This doctrine permits, in certain circumstances, the use of copyright material without its author's permission. Courts will invoke "fair use" when a rigid application of the copyright law would stifle the very creativity the law is designed to foster.

To determine whether a particular use is "fair" and hence permitted, courts are required to evaluate and balance such factors as: (1) the purpose of the use; (2) the nature of the copyrighted work that is being used; (3) the amount and substantiality of the portion used in relation to the copyright work as a whole; and (4) the effect of the use upon the potential value of the copyright work. In addition, courts generally consider how "transformative" the use is. Uses that can be said to have transformed the original work into something new by building upon it in some fashion are more likely to be considered fair uses. Uses that merely supplant the work by presenting it essentially as was in the original version tend not to be fair.

News reporting, criticism, and comment are favored purposes under the fair-use doctrine, but "scooping" a copyright holder's first use of previously unpublished material is not. Note, though, that "purpose" is only one of the fair-use factors. Thus, a use for a proper purpose may nevertheless constitute an infringement if other factors weigh against that use's being fair. Here are some general guidelines to keep in mind when dealing with material written by others:

- Fair use is more likely to be found if the copyrighted work is informational rather than fictional.
- In U.S., documents written by the federal government are not protected by copyright, but documents written by state and local governments may be.
- The greater the amount of the copyrighted work used, the less likely that a court will characterize the use as fair. The use of an entire copyrighted work is almost never fair. Size alone, however, is not decisive; courts have found uses not to be fair when the portion used was small but so important that it went to the heart of the copyrighted work.

- Uses that decrease any potential market for the copyrighted work tend not to be fair. For instance, if a literary critic reproduces all five lines of a five-line poem, the potential market for the poem will be diminished because any reader of the critic's piece can also obtain a copy of the poem for free.

It is always possible to obtain permission from the copyright holder. Reporters and editors having questions about whether their use in a news story or column of copyright material is a fair use should review these factors. No mathematical formula can yield the answer.

In using copyright material in a news story or column, writers should make sure that no more of a copyrighted work than is necessary for a proper purpose is used, and that the work is not used in a way that impairs its value. Photographers in particular pose copyright issues. Any use of a photograph without permission of the owner of the copyright is likely to raise legal issues.

#### 1.10.4.2 Works Eligible for Copyright

The following works as those eligible for copyright violation

- Literary Works:** They include writings such as novels, stories, poetry, plays, film, broadcasts and teleplays, text books, biographies, essays, articles, etc
- Musical Works:** Included here are all kinds of musical works, whether accompanied by lyrics or instrumental.
- Artistic Works:** Such as paintings, drawings, etchings, lithographs, woodcuts, engravings, prints, maps, plans, diagrams, sculptures, photographs, etc.
- Cinematograph Films:** Films of all sorts, whether or not they can be shown as moving pictures.
- Sound Recording:** Any sound recording that can be perceived aurally.
- Broadcast:** All broadcasts via radio, television, satellite, cable, or rebroadcasts.

#### 1.10.4.3 The Remedies for Copyright

The remedies for copyright violation as contained in the Copyright Act are:

- Damages** are the compensation which may be recovered in the courts by any person who has suffered loss or damage.
- Injunction** is a court order requiring a party to a dispute to do or refrain from doing something. In the case of copyright violation, it is handed down to the pirate to stop further selling or using of the work in question.
- Account** in this sense is the assessment of the gains which accrued to the violator of copyright from the work.

- d) **Delivery up** means that the court orders the copyright infringer to give up all the pirated work still in his possession

## Legal Principles of Newsgathering

The legal standards that govern the work of reporters and editors have undergone significant change. With respect to newsgathering activity, there are three key legal issues facing journalists: Access to government information, including the rules governing reporter's access to the courts and to government information generally; Confidential sources, including the law relating to promises of confidentiality and the reporter's privilege; and Newsgathering conduct, including common law and statutory rules that may create liability for actions taken while a reporter is seeking out the news.

With respect to news content, we have addressed the legal principles in three branches of the law that govern liability for the publication of information above: Defamation, including the elements of a claim arising from the publication of a false statement, and the common law and constitutional defenses to liability; Privacy, including claims for the disclosure of private facts, misappropriation and "false light," which can arise when the facts reported are true; and Copyright infringement, including the elements of a copyright claim and the "fair use" defense.

Several legal rules have special importance to the way the news is gathered. This portion takes up three of them: the affirmative rights that can be invoked to compel access to government proceedings and the release of government documents; the legal protections that often allow reporters to obtain information through a promise of confidentiality; and, the "laws of general applicability," such as intrusion, trespass, and misrepresentation, that reporters must usually follow, even when they inhibit the ability to seek out the news.

### 1.10.5 Access to Government Information

Public access to information about the actions of government is essential to the functioning of a democracy. In 1822, James Madison made just this point: "A Popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives."

The press and public have affirmative rights, both constitutional and statutory, to compel access to the type of government information that is essential to the functioning of democracy. The right of access extends to official proceedings, including court trials, hearings, and the meetings of some legislative bodies and administrative agencies. Access rights also extend to the inspection of documents held by the government, with only specific exceptions. Given the independence of the three branches of government, the scope of access to judicial proceedings and court records is

largely governed by constitutional and common law principles articulated by judges, while access to information in the executive and legislative branches are largely governed by statutes and administrative regulations.

These access rights are not absolute; they can be abridged in a number of situations. Nonetheless, clear legal standards define the scope of these rights and the procedures available to reporters to enforce them.

There is no set format for making a Freedom of Information Act request for documents. Although most agencies have adopted regulations describing specific steps to follow, any reasonably precise identification of the information sought, submitted to the proper person, will trigger an obligation for an agency to respond. Here are a few elementary steps to consider in making a Freedom of Information Act request that may help avoid problems:

- Call the public information office of the agency you believe has the records before filing your request, to make sure you have the right agency and the right address for filing it.
- Be as specific as possible about what you want.
- Even if you are using the letterhead stationery of a news organization, state specifically that you are a reporter for that organization and plan to use the material in news stories.
- Request a waiver of search and copying fees.
- If you want field office files checked as well as those at headquarters, be sure to request that specifically.
- Ask the agency to cite specific exemptions for each item it withholds in the event that any part of the request is denied.
- Request that redacted copies of documents be provided if only a specific portion of a document is subject to an exemption.
- If your initial request is denied, file an administrative appeal. Some agencies take a very different view on appeal.
- An appeal can be made through a simple letter that explains why the public will benefit from disclosure and asks for a review of the grounds on which the request was denied.

### 1.10.6 Issues Concerning Sources

For better or worse, some sources who possess important information of great public significance will speak to a journalist only if they are promised confidentiality. The use of confidential sources remains an important means for reporters to uncover the news. Such sources make available to the public more than the sanitized "spin" of government and corporate press releases. Yale professor Alexander Bickel took note:

Indispensable information comes in confidence from officeholders fearful of superiors, from businessmen fearful of competitors, from informers operating at the edge of the law



who are in danger of reprisal from criminal associates, from people afraid of the law and government- sometimes rightly afraid, but as often from an excess of caution - and from men in all fields anxious not to incur censure for unorthodox or unpopular views. ("The Morality of Consent," 1975.)

In U.S., for example, in one study of some 10,000 news reports conducted in 2005, fully 13 percent of the front-page newspaper articles reviewed were based, at least in part, on anonymous sources.

Promising confidentiality to a source always raises a number of issues legal and journalistic. If a reporter refuses to identify a source, there is always the potential that a publisher may be hauled into court or a reporter thrown into jail. If a publisher is sued for libel, having a story based on sources that were promised confidentiality creates an entirely separate set of concerns: it is hard to prove the "truth" of a statement if the source of the information cannot be revealed.

### • A Promise to a Source Creates an Enforceable Agreement

A reporter who reveals the name or identity of someone who was promised confidentiality can be held liable for breach of the agreement.

Reporters can unwittingly create problems for themselves in making agreements with sources to protect confidentiality, or in failing to clarify with the source the meaning of an agreement. A few common-sense steps can minimize the risk that problems with sources will develop:

- Before making any promise, consider whether it is worth doing: How important is the information that the source is going to provide? Can the information be obtained or confirmed from any "on-the-record" source?
- If a promise of some protection is to be made, express it in terms of the steps that will be taken to protect the source rather than the result to be achieved. For example, promise a source to not use the name, or agree on how the source will be identified in the story (a "high ranking military officer," or a "knowledgeable Defense Department official"), rather than promising "no one will know you gave me this information." If a photograph or videotape is involved, the key is still to promise a specific action ("I will photograph you only from behind") rather than promising a result ("no one will recognize you").
- Make sure the source has the same understanding of the scope of the promise made, as you do. Avoid using ambiguous terms as a shorthand for an agreement, such as "this will be off the record," or this is "confidential." Instead, be specific about the terms of the agreement and how far the promise extends. Must confidentiality be maintained if litigation results? If a court order requires disclosure? Or, will the source allow disclosure in certain situations?

- Follow through with any agreement, making sure to inform editors and others who need to know to carry out the promise. The broader the promise, the more the effort needed to make sure that it is upheld.

The bottom line is this: promises of confidentiality or anonymity should be made cautiously, and only after a determination that the risk of such promises is outweighed by the need for the information. When a promise is made, make sure it is as precise as possible, and then make sure it is carried out.

### • Reporter's Privilege

Given the importance of confidential sources, reporters have long asserted a right to protect the identity of those to whom confidentiality was promised.

**Here are some of the legal theories that can create problems for the unwary reporter.**

### • Intrusion upon Seclusion

A claim for intrusion exists in most states in U.S. if someone intentionally commits a "highly offensive" intrusion upon another's solitude or seclusion, invading either a physical space or the private affairs of the plaintiff, such as reviewing private financial statements or personal e-mail without permission. Intrusion claims against the press most commonly arise in three contexts:

- (1) surreptitious surveillance;
- (2) trespass of private property, and
- (3) instances where consent to enter a private setting for one purpose has been exceeded (as where a reporter gains access to information under false pretenses).

Intrusion is a branch of the law of privacy. Where the potentially offending conduct occurs is therefore important. For example, a person generally has no legitimate basis to complain if a picture is taken in a public place, but if the picture is taken in or around the person's home, a claim for intrusion may exist if the person had a "reasonable expectation" of privacy where the photograph was taken.

A claim for intrusion generally requires

- (1) an intentional intrusion,
- (2) that impinges upon the solitude or seclusion of another, or his private affairs, and
- (3) that would be highly offensive to a reasonable person. The term "highly offensive" is ill-defined, but can include harassing behavior, surreptitious surveillance, or the use of high-power lenses and listening devices to invade typically private places.

The tort of intrusion is based on wrongful conduct rather than on the publication of any information, so a claim may exist even when the news story being pursued is never published. For this reason, in many states it is no defense to an intrusion claim to assert the newsworthiness of the information that was being sought. The issue is whether a reasonable person would view the conduct as highly offensive under all the circumstances.

## • Trespass

A person commits a trespass by entering property that is in the possession of another, without authorization or consent. To avoid a claim, permission must be obtained by an owner, a tenant or someone acting on their behalf. Like intrusion, a trespass claim arises from conduct in gathering news, not from the content of any report that may subsequently be published.

Permission to be on private property can be implied by custom or by the nature of the premises. For example, someone has implied permission to enter a store or restaurant during business hours, even though it may be located on private property. There is similarly an implied right to approach someone's house on a driveway or sidewalk to see if they are home. Permission, whether express or implied, can also be revoked. If a posted sign says "Do Not Enter." or if the owner came to the door and said to leave, remaining on the property would be a trespass.

Trespass is also a strict liability tort. Entering on someone's property without permission, even by accident or mistake, will constitute a trespass. On the other hand, trespass protects only against a physical invasion of property; it does not limit the collection or use of information. The law of trespass does not restrict a reporter on a public sidewalk from using what can be seen or heard on the adjacent private property.

The impact of trespass on newsgathering is also tempered by the nature of the damages that may be recovered through a claim for trespass. The trespass tort is intended to protect property, not privacy or reputation. A trespasser therefore can be held responsible only for physical harm done while on the land and other injury that is a "natural consequence" of the trespass. Courts generally will not recognize injury to reputation or emotional distress caused by the later publication of a photograph obtained during a trespass to be a "natural consequence" of the trespass itself.

A vivid example of a trespass claim involved a television camera crew that was preparing a report on credit card fraud. The United States Secret Service obtained a warrant to search an apartment for evidence of credit card fraud, and a news magazine camera crew followed the Secret Service into the apartment. Part of the search was taped, including a sequence of a mother and child cowering on the couch asking not be photographed. In refusing to dismiss a lawsuit asserting claims for trespass and a constitutional tort (for improperly accompanying federal agents in executing a search warrant), an outraged court said the reporters "had no greater right

than that of a common thief to be in the apartment." Like intrusion, the trespass was complete once the invasion of private property occurred. The trespass claim could be asserted even though the news report being pursued was never broadcast.

In situations rife with the potential for trespass, common sense can once again minimize the risk of litigation:

- Whenever possible, ask the property owner or those who appear to be in charge for permission to enter, or seek their approval to remain. In situations where police or fire officials have taken control of a crime or disaster scene, they may stand in for the owner and grant or deny access. Their presence does not defeat the owner's rights. However, and the owner can still require a reporter to leave private property.
- Always identify yourself – verbally, by displaying a press credential, and through insignias on clothing and cameras - so that those present know you are a reporter and will not assume you are part of any police or emergency response team. If not asked to leave, the very fact that your status as a reporter was disclosed may be sufficient to establish an implied consent to remain.
- If asked to leave, retire to the sidewalk, street, or other position on public property.
- Consent obtained through fraud or misrepresentation will not be considered valid consent and will not defeat a claim for trespass.
- Consent obtained from minors or others who are not legally capable of giving consent (mentally incapacitated people, for example) will not defeat a claim for trespass.

### • **Electronic Eavesdropping**

In U.S. in many states, law regulates the electronic recording of conversations, including telephone conversations. A conversation may not be recorded without the consent of at least one of the participants. That means reporters are not prohibited by federal law from recording any conversation that they participate in, whether or not they disclose that the conversation is being recorded. But, leaving a hidden tape recorder in a room to record a conversation between others, secretly listening in on an extension phone and recording the conversation, or recording a telephone call picked up on a scanner or listening device, is a violation if done without permission of one of the parties.

### • **Misrepresentation and Similar Forms of Wrongdoing**

Laws of general applicability govern the actions of reporters, yet conduct that might sometimes be deemed "deceit," "misrepresentation" or "fraud" can be useful in ferreting out the news. Reporters are often less than candid in dealing with those from whom they want information. Recognizing this reality, some courts have held that claims such as fraud and misrepresentation

cannot be pursued against journalists unless the wrong is "particularly egregious." or part of a broader pattern of wrongdoing. Other courts have been less willing to weigh the public interest in a news report against the allegedly wrongful conduct. Remember, the basic rule says that reporters must obey rules and regulations when they are gathering the news. While there are some exceptions, the First Amendment will not generally provide a defense to a reporter whose conduct while gathering the news violates the law.

### 1.10.7 Legal Framework for Freedom of the Press

National legal systems vary. Some nations often adopt detailed and precise statutory schemes that govern the rights, duties and obligations of journalists. Others established broad legal principles that encompass press freedom, even if these laws do not always directly address journalists.

Regardless of the particular legal, theoretical and philosophical thinkers, including Confucius, Milton, Rousseau, Meiklejohn, and Mill, among others, supplies the intellectual underpinnings for contemporary media law and media ethics.

#### 1.10.7.1 International Standards

International standards supply guarantees of free expression. But these standards also typically acknowledge certain legitimate grounds for the state's restriction of free expression. The Universal Declaration of Human Rights, proclaimed by United Nations General Assembly 1948, pronounces in Article 19 that:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinion without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 29 then qualifies this right as:

...determined by law solely for the purpose of securing due recognition and respect for the rights and freedom of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Similarly, Article 10 of the European Convention on Human Rights states that:

Everyone has the right to freedom of expression. The right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

However, that absolute language is qualified further in this convention:

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Many international documents, conventions, and treaties embrace a similar approach, among them the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights, and the American Convention on Human Rights, as well as many others. The details differ, but all recognize freedom of expression as a fundamental right, but one that can be limited by duly enacted laws tailored to protect equally compelling societal interests.

### 1.10.7.2 African Standards

Many African countries as members of the United Nation and African Union are legally bound to protect freedom of expression in accordance with international law and their own regional declarations. Many of the declarations including the Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR) are:

- African Charter on Human and Peoples' Rights (ACHPR) adopted in 1981
- The Windhoek Declaration on Promoting an Independent and Pluralistic African Press adopted in 1991
- The 2000 Constitutive Act of the African Union (AU), ratified by 53 African countries (except Morocco)
- Declaration of Principles on Freedom of Expression in Africa (DPFEA),
- The 2001 African Charter on Broadcasting
- African Charter on Democracy, Elections and Governance (ACDEG) adopted in January 2007 (Berger, 2007)

Despite these international and continental initiatives in the legal provisions of freedom of expression and media freedom, there are many problems on the ground in many countries of Africa. For instance, Reporters sans Frontier (RSF) reported that:

53

In spite of gains made over the last several years' freedom of the press in Africa was badly damaged in 2007. On at least 12 occasions during the year, men received orders to kill journalists. Police received orders on almost 150 occasions to make an arrest, not of a corrupt minister or a notorious killer but of a journalist. Even governments of countries in

which Reporters without Borders had invested some hope in previous years, have brought instruments of repression to bear against the press.

The other problem is that some countries in the continent are recently using restrictive laws for further control of media and to punish/harass journalists and media practitioners who publish articles that are critical to the government. Other problems associated with media freedom are:

- Reluctance to adopt access to information laws by state parties;
- Failure to the achievement of professional standards by the journalists; and
- Lack of responses from some state parties to the African Charter and other international declarations

The identified reasons for such problems are two: one is the lack of will (by the governments) to transform those rights (freedom of expression and of media) from words to deeds and the second one is the political culture inherited from colonial states in much of Africa tended to be centralized, authoritarian, mono-party rule devoid of room for choice and participation.

Researchers observed that, over the last seven or eight years, two key factors have contributed to a worsening of the landscape for both freedom of expression and accountability in Africa. The first is the global human rights setback, resulting from the economic and banking crises in many countries across the globe, the “war on terror” and its security agenda, and the emergence of a multipolar world with human rights-unfriendly actors such as China exercising an increasingly crucial influence. The second factor that has triggered a specific continent-wide setback has been the holding of a number of elections across Africa. The widespread manipulation of the competitive electoral processes over the last seven years or so has both required and resulted in the curtailment of dissenting voices and independent media reporting. Both journalists and civil society were at the center and the forefront of the repression required to flaw elections results.

On the other hand, access to information is the other side of the same coin to freedom of expression. “It has been entrenched in the constitutions of many countries in Africa”, however, “only a handful of these countries have enacted laws that give effect to this right”. Ethiopia is one of the six countries in Africa that has been mentioned here as exemplary for enacting law that guarantees the right to access to information. The other countries with access to information legislation are South Africa, Zimbabwe, Angola, Uganda and Liberia.

Whether the African countries have enacting legislation on access to information or not, still there are many problems related with this right. Many of the governments’ officials in Africa have closed their door to journalists. As a result the journalists are being dependent on the less newsworthy and ordinary people for information. This would have negative impacts on the democratic principle of accountability and professional quality of journalism.



### 1.10.7.3 National Standards

National constitutions also frequently guarantee press freedom. For example, Article 25 of the Belgian constitution which dates from 1831 provides that:

The press is free; censorship can never be established; security from authors, publishers or printers cannot be demanded. When the author is known and resident in Belgium, neither the publisher, nor printer, nor distributor can be prosecute.

The First Amendment to the United States constitution, ratified in 1791, is similarly absolute:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

Other national constitutions acknowledge the right of free expression but do not regard it as absolute. For example, Article 8 of the Senegal constitution guarantees freedom of expression and opinion “subject to the limitation imposed by laws and regulations”. Similarly, Article 36(1) of the constitution of Kyrgyz Republic explicitly declares that the “mass media are free” but then qualifies that statement in Article 17(2):

Restrictions to the exercise of rights and freedom is allowed by the constitution and laws of the Kyrgyz Republic only for the purposes of ensuring the rights and freedoms of other persons, public safety and order, territorial integrity and protection of constitutional order. But in doing do, the essence of constitutional rights and freedom shall not be affected.

It is probably fair to say that no country in the world regards the cherished universal or fundamental right of free expression as absolute. It is subject to limitation and modification when competing rights are deemed to outweigh it. As a result, some press freedom laws can weaken rather than strengthen the protections afforded a free press.

### 1.10.8 The Ethiopian Legal Standards

#### 1.10.8.1 Constitutional Provision

Freedom of expression was for the first time given juridical recognition in modern Ethiopia by the Revised 1955 Constitution. The Eritrean Constitution of 1952 had already recognized freedom of expression as a right of all residents of Eritrea prior to the adoption of the 1955 Revised Constitution which was influenced by the Federation with Eritrea. Freedom of expression was also a right that was given recognition in the 1974 Draft Constitution. The 1987

Constitution of the Peoples' Democratic Republic of Ethiopia, which had a clear socialist orientation, also gave recognition to freedom of expression. Hence, at least on paper, freedom of expression has been given recognition in Ethiopia for more than half a century. However, anybody who is familiar with modern Ethiopian history would know that these constitutional guarantees of freedom of expression were not effective in fostering political dissent and freedom of the press. On the ground, there was hardly any free press or freedom for political dissent despite what these constitutions provided.

A dramatic change occurred as far as freedom of expression was concerned with the collapse of the 'Derg'. Not only did the Transitional Charter recognize freedom of expression, but freedom of the press and speech became a reality with an unprecedented proliferation of privately run newspapers and magazines. The extent to which that freedom has subsisted till this day is a debatable issue, but what is certain is that in our constitutional history, freedom of expression was stipulated in the 1995 FDRE Constitution in the most elaborate manner.

Article 29 of the FDRE Constitution provides for the 'Right of Thought, Opinion and Expression' in the following terms:

- 1) Everyone has the right to hold opinions without interference.
- 2) Everyone has the right to freedom of expression without any interference. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice.
- 3) Freedom of the press and other mass media and freedom of artistic creativity is guaranteed. Freedom of the press shall specifically include the following elements: (a) Prohibition of any form of censorship; (b) Access to information of public interest.
- 4) In the interest of the free flow of information, ideas and opinions which are essential to the functioning of a democratic order, the press shall, as an institution, enjoy legal protection to ensure its operational independence and its capacity to entertain diverse opinions.
- 5) Any media financed by or under the control of the State shall be operated in a manner ensuring its capacity to entertain diversity in the expression of opinion.
- 6) These rights can be limited only through laws which are guided by the principle that freedom of expression and information cannot be limited on account of the content or effect of the point of view expressed. Legal limitations can be laid down in order to protect the well-being of the youth, and the honor and reputation of individuals.
- 7) Any citizen who violates any legal limitations on the exercise of these rights may be held liable under the law.

In addition to enshrining freedom of expression as a fundamental 'democratic right', the Constitution stipulates that the third chapter of the Constitution (i.e. its bill of rights) should be interpreted in accordance with the Universal Declaration of Human Rights (UDHR) and

international human rights instruments ratified by Ethiopia. Accordingly, one should always bear in mind that the relevant provisions of the UDHR, the ICCPR (International Covenant on Civil and Political Rights), the ACHPR (African Charter on Human and Peoples' Rights) and other pertinent human rights instruments ratified by Ethiopia should be read alongside this constitutional provision in order to have a full picture of the legal regime that is expected to accord protection to freedom of expression in Ethiopia.

In general, the legal literature has attributed two purposes of expression: **Firstly**, intrinsic purpose which means free exchange of feeling, opinions and ideas is essential to the full development of human personality. To be challenged, provoked or encouraged by the ideas of others is said to be essential to the formation of personal beliefs and hence to the capacity for self-definition. **Secondly**, instrumental purpose that focuses on its relevance to a representative democracy. Expression is a means of attaining truth and knowledge in the broad sense. Flow of ideas makes it possible to clarify the relevant issues and the accountability of the elected government.

### 1.10.8.2 The Criminal Code of Ethiopia

The proclaimed Criminal Code, No. 414/2004, of Ethiopia incorporates provisions related to mass media with a view “to ensuring freedom of expression while preventing abuse” (Article 42). A person who was registered as editor in chief or deputy editor of a media shall be liable when crimes are committed against the honor of other people, public or private safety or any other legal right protected by law.

Liability for crimes committed through broadcasting media shall rest with the person in charge of the program if cannot be found, the licensee shall be liable (Article 43 (3)).

Any person who by contributing as an author, originator or publisher to the product published or diffused through mass media shall be criminally liable if participates in the commission of crimes including: armed rising or civil war, treason, espionage, crimes against humanity, incitement to disorder military order, disclosure military secret, breaches of military and official secrecy specified by law (Article 44 (1)).

While Article 45 ensures that publishers or editors may not be compelled to disclose pen names and sources, the court may order otherwise where a crime is committed against the Constitutional order, national defense force, or security of the State constitution resulting in clear and imminent danger (Article 45 (3)). In addition, this can happen in case of proceedings of a serious crime, where such source does not have any alternative and is decisive for the outcome of the case.

### 1.10.8.3 The Media Laws

- **The First Press Law (Proclamation No. 34/1992)**

The first press law in the history of the nation was adopted in 1992. According to Proclamation No. 34/1992, titled the “**Proclamation to Provide for the Freedom of the Press**”, the freedom of press was recognized and respected in Ethiopia and censorship of the press and any restrictions of a similar nature were prohibited (Article 3). The proclamation stated that any Ethiopian national would receive press license from the Ministry of Information or from the Information Bureau (for regions) by submitting specific information required by the proclamation. Despite its shortcomings, “There is broad agreement among informed opinion, and especially people in the media, that the press law of 1992 has opened the door to the growth of the private press in the country.”

Moreover, two principles were deemed particularly important: the abolishment of prepublication censorship (article 3(2)), and the right for any Ethiopian citizen to open a media outlet (article 5(1)). The two severest restrictions for media activity in the previous regimes were thus formally scrapped. Other principles included for instance the right of foreign correspondents to freely gather news in Ethiopia; the right of access to information; the right of reply; and the duty of government officials to cooperate with the press.

Compared to the two previous regimes who had indicated in their constitutions the undeniable rights of the citizenry to freedom of expression but had forbidden its exercise and implementation, the Press Law of the Transitional Government of Ethiopia (Proclamation 34/92) enacted in October 1992, is a remarkable step forward. The Press Law (PL) in principle appears to be a generous gift to this country by a regime openly committed to ensure freedom of expression in an endeavor to build a democratic culture. At the outset the Press Law has freed the press from the captivity of pre-print censorship.

One can say without exaggeration, that the Transitional Government of Ethiopia had paved the way for journalists of all colors to write freely, though within limited borders. Despite its shortcomings, the Press Law has helped to elevate public awareness and readership. It is undeniable that people are much more and better informed than any time before, thanks to the Press Law.

- **The Second Press Law: Version 2003 and Version 2008**

The second press law titled “**Freedom of the Mass Media and Access to Information Proclamation**” was initiated for the first time in 2003 by the Ethiopian government. The draft law has passed various stages of evaluations and discussions since its inception in 2003. The

other (revised) version of the draft proclamation was released in 2008. In general, though the new media law included few improved articles (in comparison with the 1992 media law) such as the lifting of jail terms for journalists convicted of press offences, and the right to form an independent professional organization, it has also very repressive articles.

In May 2008, the House of Peoples' Representatives of Ethiopia discussed the draft proclamation. The "Mass Media and Freedom of Information Proclamation" was approved by the House of Peoples' Representatives on 1 July 2008 by majority vote though 70% of the opposition MPs opposed it. In general, 290 MPs from the EPRDF supported the bill, 77 opposition MPs opposed, and 9 opposition MPs abstained.

The current press law is founded on the base of the general direction put for the Ethiopian media in 2002 by the government as part of the key players in the process of building a democratic system in the country. The government has been closely monitoring the activities of the press since the inception of the private press and making sure that the press is discharging its responsibilities: informing the public. So to make sure that the media play a key role in the growth effort of the nation and to create conducive media environment, it was found important to enact a new press law, according to Ministry of Information.

The realities of the Ethiopian media are construed as the preconditions for making the draft of the new Mass Media and Information Freedom Proclamation. Hence a meticulous assessment on the role of the Ethiopia media for the development of the country necessitated the draft of the new proclamation.

The press proclamation that operated till 2008 had shortcomings such as: the registration system created unnecessary pressure on the media in addition to its license renewal system. It included articles that contained criminal decrees and responsibilities which should have been in the criminal law. It also lack decrees that would ensure diversity of media outlet and content. It did not have a system to reduce accusations on the press and above all it did not have details on the issue of access to information and also on those categories of prohibited information along with the obligations of information delivery. In order to address the above problems it was important to initiate and enact a new press law. Hence, the Freedom of the Mass Media and Access to Information Proclamation was enacted in 2008.

The contemporary proclamation has five parts under fifty one (51) articles. The very first part of the proclamation is a prelude about the need to freedom of the mass media and information supported by the core notions from the constitution on freedom of expression and the press.

- **Part one:** This one deals with general provisions about the proclamation, definitions and statements about freedom of the press.

- **Part two:** It is about the right to engage in mass media activities including issues of ownership and registration.
- **Part three:** This is in fact the broadest section of the proclamation and it is predominantly concerned with access to information (the right to access information), request to obtain information, duty to publish, exempted information, appeals against refusal of information among others.
- **Part four:** rights and responsibilities of the media which talks about right of reply or correction.
- **Part five:** The last part of the proclamation is about the lawful measures to be taken on the media for failing to act pursuant to the law.

Proclamation No.590/2008 bans censorship of private media and the detention of journalists. A statement from Ethiopian Parliament states, “Under the new law, previous restrictions against private media outlets, such as detention of journalists suspected of infringement of the law, has been scrapped”.

However, opponents, including media practitioners, claim the law is contradictory and ambiguous, with measures such as a ban on censorship of the private media and detention for journalists conflicting with more restrictive provisions. For example, although the law bans censorship of private media and detention of journalists suspected of law infringement in certain circumstances, it allows prosecutors to impound publishing materials prior to publication; ... cases of libel and defamation saw increased fines and were prosecuted as criminal offenses with imprisonment under the penal code.

### • **Broadcasting Proclamation No.178/1999**

The “Broadcasting Proclamation No. 178/1999 is enacted “to Provide for the Systematic Management of Broadcasting Service”, and is applicable to every private and government broadcasting service established within Ethiopia (Article 3).

The Proclamation includes six parts dealing with general definitions, establishment of the Ethiopian Broadcasting Agency, licensing, transmissions of programs, obligations of licensee and other miscellaneous provisions.

### • **Broadcasting Service Proclamation No. 533/2007**

This proclamation does not differ from its predecessors that far; the only difference appears to be in terms of its accountability to the Ministry of Information as provided under Art. 2/19. For the surprise of the media practitioners and scholars working on it, this was repealed after a year when Government Communication Affairs Office was established in 2008. Accordingly, the

Ethiopian Broadcast Authority became accountable to the Office of the Prime Minister as it did under the Proclamation No. 34/1992 and Proclamation No. 178/1999.

The major difference between Proclamation No. 178/1999 vs. Proclamation No. 553/2007 is the earlier broadcast proclamation No. 178/1999 had a total of 45 Articles while the newly endorsed broadcast proclamation No. 553/2007 has a total of 50 Articles, which means an addition of 5 Articles.

A significant change between the two proclamations is that the name of the regulatory body is changed from Ethiopian Broadcasting Agency to Ethiopian Broadcasting Authority. The name change has to do with structural adjustments of overall government policies. Accordingly those bodies which are accountable to the Prime Minister and the parliament are named as commissions, while those accountable to the respective ministry offices are named as authorities and agencies for regulatory and daily routines, respectively.

#### 1.10.8.4 Media Related Laws

- **Anti-Terrorism Proclamation No. 652/2009**

We have reviewed the 2009 Anti-Terrorism Proclamation and find that a number of the sections of the Proclamation undermine international protections on freedom of expression. Of particular concern is the broad definition of terrorism, which would appear to apply to many legitimate acts of expression; the undermining of protection of journalists sources including by surveillance and an excessive duty to cooperate and provide information; and vaguely defined provisions on “encouraging” terrorism that would criminalise the legitimate exercise of freedom of expression and have a real chilling effect on debate on matters of public interest.

##### Anti-Terrorism and Free Expression

Anti-terrorist laws trigger executive powers that are very restrictive on human rights, often with reduced judicial oversight. We believe therefore that, as a matter of principle, they should be used only in circumstances when the exercise of these powers is truly “necessary”. The laws should be narrowly drafted and be proportionate to the legitimate aim pursued – protecting national security.

##### Definition of Terrorism

As a preliminary matter, the definition of terrorism set out in the Proclamation is both overly broad and vague. Under international human rights law, criminal offences and any executive measures that interfere with rights such as free assembly, expression and privacy must be clearly



and narrowly defined by law, serve a legitimate aim and be “necessary” in a democratic society. We believe that the definition of “terrorism” in the Proclamation fails this test, and we urge serious reconsideration of the definition.

Article 3 of the Proclamation defines “terrorist acts” as those that:

Whosoever or a group intending to advance a political, religious or ideological cause by coercing the government, intimidating the public or section of the public, or destabilizing or destroying the fundamental political, constitutional or, economic or social institutions of the country...

Under Article 3(6) of the Proclamation, a terrorist act would include anything that causes “serious interference or disruption of any public service”. It applies to many types of legitimate, non-violent protest and dissent. This can include public transport or communications “systems established to give public service”.

#### Protection of sources and information

The Proclamation sets out a series of powers for government bodies and duties for private individuals including the media to facilitate the collection of information about terrorist offenses. These sections collectively raise serious issues about the right of journalists’ to protect their confidential sources and the role of the media in acting as an independent investigator in society.

- Article 12, “Failure to Disclose Terrorist Acts”, requires all persons, including the media, to provide information or evidence relating a terrorist act:

Whosoever, having information or evidence that may assist to prevent terrorist act before its commission, or having information or evidence capable to arrest or prosecute or punish a suspect who has committed or prepared to commit an act of terrorism, fails to immediately inform or give information or evidence to the police without reasonable cause, or gives false information, is punishable with rigorous imprisonment from 3 to 10 years.

- Article 14, “Gathering Information”, gives broad powers to the National Intelligence and Security Service to conduct electronic surveillance of telecommunications including Internet communications.
- Articles 17 and 18, “Covert Searches”, gives police broad powers to conduct covert searches without any explicit protections for confidential information held by the media,

lawyers, religious officials or other persons who are internationally recognized as have a legal obligation to protect confidential information.

- Article 22 “Duty to Give Information”, provides broad powers to force disclosure of information:

The police may request from any government institution, official, bank or a private organization or an individual to be given information or evidence which he reasonably believes could assist to prevent or investigate terrorism cases. Any one so requested shall have the duty to give the information or evidence.

### Criminalizing “Encouraging” Speech

Article 6 of the Proclamation, entitled “Encouragement of Terrorism” sets out broad prohibitions on speech directly or indirectly “encouraging” or “inducing” terrorist acts. There is no definition of encouragement. The introduction of these penalties is likely to result in the criminalization of perfectly lawful statements and the chilling of much political speech and debate. Article 6 states:

Whosoever publishes or causes the publication of a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission or preparation or instigation of an act of terrorism stipulated under Article 3 of this Proclamation is punishable with rigorous imprisonment from 10 to 20 years.

It is very clear that these prohibitions violate the right to freedom of expression. The offences of “direct or indirect encouragement or other inducement” are extraordinarily broad and vague offences that fail the limitations for restrictions on rights required under international human rights law. While “encouragement” and “inducement” are vague terms, “indirect encouragement or other inducement” is so vague as to be without meaning. They create a subjective standard based on what “some...members of the public” may understand which can be applied (or misapplied) to nearly any statement made in the media as being supporting of terrorism.

It is not legal under international human rights law for any form of expression concerning terrorism or any form of violence can be prohibited unless it is clearly intended to directly incite such conduct. It is fundamental to the guarantee of freedom of expression that any restriction for the purpose of preventing terrorism is closely linked to preventing imminent violence. Restrictions of this sort have historically been abused and courts have sought to promote an appropriate balance between the need to ensure security and the fundamental right to freedom of expression by requiring a close nexus between the speech sought to be sanctioned and the risk of harm to security.

The Proclamation seriously undermines freedom of expression rights in a manner that is unlikely to improve security. It gives broad and vaguely defined powers to authorities to criminalize speech that is not directly inciting terrorism and undermines the media's fundamental right to protection of sources. In doing so, it violates Ethiopia's obligations under international law. It should be amended to fully recognize free expression rights under international and regional human rights law.

### • **Charities' and Societies Proclamation No. 621/2009**

The proclamation to provide for the registration and regulation of Charities and Societies (Proclamation No. 621/2009) was enacted on 13 February 2009 taking effect as the overall legal framework under which charities, societies, associations, non-governmental and civil society organizations are governed. As outlined in the Preamble of Proclamation No. 621/2009, the Charities and Societies Law has two basic objectives, namely, to:

- i. realize citizens' constitutional right to freedom of association and
- ii. enhance and strengthen the role of charities in the overall development of Ethiopia;

According to the Proclamation, the legal definitions for operating CSOs in Ethiopia are as follows:

1. 'Ethiopian Charities' or 'Ethiopian Societies' shall mean those charities or societies that are formed under the laws of Ethiopia, all of whose members are Ethiopians, generate income from Ethiopia and wholly controlled by Ethiopians. However, they may be deemed as Ethiopian charities or Ethiopian societies if they use not more than ten percent of their funds which is received from foreign sources; (Article 2, sub-art.2 of the CSP)
2. 'Ethiopian Resident Charities' or 'Ethiopian Resident Societies' shall mean those charities or societies, formed under the laws of Ethiopia and which consist of members who reside in Ethiopia and who receive more than 10% of their funds from foreign sources (Article 2, sub-art.3 of the CSP)
3. 'Foreign charities' shall mean those charities that are formed under the laws of foreign countries or which consist of members who are foreign nationals or are controlled by foreign nationals or receive funds from foreign sources (Article 2, sub-art.4 of the CSP)
4. 'Mass-based societies' shall include professional associations, women's associations, youth associations and other similar Ethiopian societies. (Article 2, sub-art.5 of the CSP)

Article 14 of the CSP defines a Charity as "an institution which is established exclusively for charitable purposes and gives benefit to the public". A distinctive feature of charitable activities is the fact that they are intended to benefit the public. A public benefit shall be deemed to exist where:

- The purposes of the charity can generate an identifiable benefit to the public;
- The purposes of the charity do not create a situation where in its benefits exclude those in need;
- Any private benefit of individuals and organizations could be acquired only incidentally and as a secondary consequence of the organization's activities (Article 14 (3)).

The Proclamation has provided for the establishment of an independent body called Charities and Societies Agency (ChSA) to oversee the activities of CSOs, which fall under its scope. The Agency shall have the following objectives as Article 5 puts it:

- to enable and encourage Charities and Societies to develop and achieve their purposes in accordance with the law;
- to create a situation in which the operation of Charities and Societies is transparent and accountable;
- to ensure that Charities and Societies operate legally;

### Positive Reviews on the CSP

Some of the main policy objectives and rationales of the draft proclamation were:

- The fact that the former law is outdated and does not correspond to the level of development, characteristics, and activities of civil society in Ethiopia.
- The regulations currently in force are too cumbersome and unsuitable for registering the organizations, regulating their operations and ensuring their accountability.
- The need to facilitate for civil society organizations to become development partners of the government.
- The need to create a conducive environment to enable citizens to exercise their constitutionally guaranteed right to associate.
- The need to legislate a law that enables to identify illegal activities within the civil society organizations and to penalize the offenders.
- The drafting of a separate legislation focusing on CSOs: as the former law does not create an enabling environment for their operations because it was not formulated in such a way as to accommodate the diversity of civil society institutions, their operations and unique characteristics.
- The incorporation of specific provisions for different types of CSOs.
- Making provision for the establishment of consortium of charities and societies.
- Allowing charities and societies to engage in income generating activities.
- Exemption from income tax for charities.

## Negative Reviews on the CSP

According to CIVICUS (2008), “the Proclamation severely limits civil society space, is discriminatory and reflects a deep official distrust of CSOs rendering valuable services to the people of Ethiopia. Further, it is unconstitutional and against public interest to restrict a substantial section of civil society to a limited set of activities. Article 31 of the Constitution of Ethiopia guarantees: Every person has the right to freedom of association for any cause or purpose.”

Though the Forum for Social Studies had put forward the positive aspects of the proclamation, some the concerns they raised are as follows:

- Instituting accountability in the institutions of civil society can best be realized primarily not through government control, but through the CSOs internal systems of control and accountability.
- The primary cause of the problems encountered in the existing regulatory practices is not one of law, but one of implementation and institutional capacity. Consequently, the first step should have been to identify the operational deficiencies that hamper the CSOs registration office from effectively dispensing with its regulatory and monitoring responsibilities in accordance with the existing law.

## General Commentaries

To make matters worse, since 2009, these stumbling blocks have worn the guise of legality with the proclamation of the Anti-Terrorism Law and the Charities and Societies (CSO) Law, which regulates Nongovernmental Organizations (NGOs). The former, a deeply flawed decree, is being used by the Ethiopian government to systematically suppress free speech in the country while the latter has had the practical effect of banning much of the human rights-related work, conflict resolution, government accountability and democracy if NGOs rely on foreign donors for over 10 percent of their funds. The Anti-Terrorism Law is so broad that it can make peaceful protest a serious offence under the law. The effect of these two laws, coupled with the state’s determination to suppress independent coverage of the country’s leaders, is grim.

The two laws seem to impinge on Ethiopian people’s freedom of expression and association, which are protected in Ethiopia’s Constitution. They could limit Ethiopian people’s participation through the media or increase government control over civil organizations. More importantly, the laws advocate the government’s deep mistrust of the media as partners in achieving democracy. Literarily, Ethiopians are gradually becoming spectators of, and not participants in, the economic growth boasted by the government, and feted by western countries that support it through budgetary and military backings. This is happening despite the government’s disregard of citizens’ rights.

Since 2009, thirty journalists and opposition members have been convicted under the country's Anti-Terrorism Proclamation, according to Human Rights Watch. Ethiopia is one of the top 10 countries from which journalists have been forced into exile. From

2012 to 2014 alone, nearly ten journalists fled the country fearing government persecution. According to CPJ, Ethiopia is Africa's second worst jailer of journalists (after Eritrea), and has blocked over 70 news and opinion websites in 2013. As recently as on April 23, 2014, six 'Zone9' blogger-activists were arrested and they remain in prison to date.

The day-to-day reality in Ethiopia does not indicate a better future for free expression in the country. Repeatedly, government officials publicly state that development comes before democracy and freedom, showing a repressive regime that views the existence of a free press as unnecessary evil working against its control.

The officials reject the call to amend the Charities and Societies Proclamation and the Anti-Terrorism Proclamation. For instance, Ethiopian State Minister of Foreign Affairs, Berhane Gebre-Kristos denied that there were any jailed journalists or that there was any abuse of the Anti-Terrorism Proclamation at the government level. In November

2013, during the 6th African Media Leaders Forum (AMLF) held in Addis Ababa, Deputy Prime Minister Demeke Mekonnen told journalists and media managers from across the world: "No journalist in Ethiopia has been jailed. There is only one case in court against an editor of a local tabloid." When an Ethiopian participant asked him, "It is your word against the world. Nobody believes that they are terrorists. So when do you think this kind of conversation comes to an end?" Demeke responded by saying, "The case is not related to their profession and their journalistic act. It is related to their terrorist network."

Thus, a danger lies when journalists do their jobs, as such work is often perceived as an act of terrorism or against the constitutional rule of the country. There are few journalists, Tamrat Woldegiorgis, owner and managing director of Fortune newspaper in Ethiopia, who say that "it is possible, at the same time difficult to criticize the government and report stories that are deemed negative to the authority." But still, the reality rests; Ethiopian journalists exist in an environment of uncertainty, not knowing what is "possible" or what is "difficult", forcing them thereby to self-censorship.

- **Copyright and Neighboring Rights Protection Proclamation No. 410/2004**

- **Advertisement Proclamation No.759/2012**

- ⇒ **Maintaining independence**
- ⇒ **Minimizing harm**

Ethics deals with the nature of human values and moral conscience of choosing and following “right” rather the “wrong”. It provides stability and security essential to the living of human life. It also deals with “owes” and “ought”, what obligation we owe or to responsibilities we have and what we “should do” to make the world a better place.

Ethics deals with principles, values and virtues which guide the morality of journalistic actions. Principles are guidelines which serve as a compass to give direction to one’s actions regarding what constitutes right or wrong good or bad action. E.g. journalists should report the truth. Values are what individuals aim at doing or achieving. E.g. it is good for a reporter to report the truth. Virtues are the qualities of a person which help him achieve the values he has set out to achieve by following a principle. E.g. a report or cross-checks information

## Ethics vs. Law

Ethics	Law
<ul style="list-style-type: none"> <li>• Regulate human behavior</li> <li>• Has commanding element</li> <li>• Appeals to the concerns of journalists</li> <li>• There is no such strong sanctions</li> </ul>	<ul style="list-style-type: none"> <li>• Regulate human behavior</li> <li>• Has commanding element</li> <li>• Sets the minimum/bottom line/ below which you shouldn’t fall</li> <li>• Sets sanction for failure to comply with commanding provisions</li> </ul>

Regardless of their difference they have common elements. Journalistic projects might fell legal test pass ethical one and vice versa. Reasons why ethical decision making might be difficult

1. The choice is not merely between right and wrong
2. Ethical principles sometimes may contradict with each other
3. Contextuality of ethics and ethical decision making
4. Ethical decision making is subjective.

The gray area between the right and wrong is frightening large or intricate. When the media act irresponsibly several things are happen. Some of them are:

- Some harm come to the public
- The media may lose its credibility



goodness or badness of its consequence. The act which produces the most good is always right decision. For them nothing is inherently right or wrong about the act itself; only the result of the act is judged right or wrong. (ዋሽቶ ማስታረቅ) most journalists favor teleology theory of ethics to respect the public interest. But what is ‘good’ itself. It must be defined because we cannot define it the good for the egotist persons in this teleology view.

Majority is the measure for teleologists whether the result harms or benefits. The common maxim for teleologists is “the end justifies the means,” instead of saying this maxim it is better to say “the end weighs heavier than means.” When it is applied to journalism this theory means that go ahead and report a story if its outcome would be good for the individual or the society or for both. There are two types of teleological ethics: **Egoists**- Teleological ethicist who hold that the good that results from an action must be for self and **Utilitarianists**- Teleological ethicists who maintain that it must be for the greatest number.

#### Advantages of teleology

- Focus on result benefits journalism
- The emphasis on the ‘best’ outcome; not simply on the ‘good’ one for the majority.
- Going in favor of the majority goes along with preference to public interest.
- Avoid the so called Hentz dilemma (an ideal person, do not exist in the world)

#### Disadvantages of teleology

- It can easily turn back on vulnerable minority groups. They can be ignored or under emphasized
- Not always easy to foresee both short term and long term consequences of a certain reporting. Even if possible, it tends to be subjective.

### ***B. Deontology***

Driven from the term ‘Deon’ duty. Ethical decisions are made by the principles of duty or according to the principles of duty. Developed in 18<sup>th</sup> C. by German philosopher Emanuel Kant who lived (1724-1804). According Kant all people have a duty to behave morally, correctly, even if it is contrary to their character or desire. For Kant ethical principles are universal. Intention or motive behind the act is what is important not the consequence as such. In deontology “the end can never justify the means” because the means or ways a journalist obtains information must be based on good intentions and ethical principles as well.

It matters the principle upon which the action is based and not the consequences. Deontological reporter would be one who after holding to the principle that reporters must report the truth, goes

Human beings perform actions because they feel that they are obliged out of duty. E.g. Duty from our self, professional body, employer, religious affiliations etc. A reporter may feel responsible to report the truth because: report the truth out of self-respect; his/her editor requires his/her to report the truth; s/he belongs to media association or council which requires its members to report the truth; and s/he is Christian or Muslim.

There are two types of normative ethics: **traditional legalistic ethics**- requires people to focus on the rules as a guideline for their action. In this case reporters may only follow what the media code of ethics says. They do no more any less. If the code of ethics says that they should report the truth and say nothing about reporting accurately, they wouldn't be bother about the accuracy in their news stories because that is not specified in the code. **Antinomian ethics**: this is sometimes known as non-ethics. The only guide to action is what the individual person feels like doing at a particular moments. Ethicists are not consistent. They will rely upon their feeling. E.g. they should report the truth if they are feel comfort today but not tomorrow

## 2.3 Basic Ethical Guidelines

### 2.3.1 Accuracy

Accuracy- getting things right, numbers, data, norms, fact correct. “Accurate reporting is not the best way of reporting, but it is the only way of reporting. (Don’t chance it; check it). If you mother says “I love you,” check that out. Accuracy is a starting point for ethical journalism because journalists are duly bound to all the truth, to report it and honor it.

**Why such huge emphasis on accuracy?**

1. Inaccuracy can cause irreparable personal harm
2. It prevents the public from making uninformed decision on important matters such as business and election
3. It is very likely to affect the media’s credibility and integrity as well as that of the journalists
4. The public do need to be served by honest journalists.

### 2.3.2 Fairness

Even though fairness is very important for journalism because unfairness comes abuse harm for the society. The major principle in journalism profession is “maximizing truth and minimizing harm.” The more the unfair you are the greater the harm you will likely to call.

your relation, if you have to report this kind of relationship. This is important to assign another person and/or to reduce uncertainty. So disclosure is the very important solution.

- **Financial Interest:**
- **Embedded Journalism:**
- **Citizens' right:**
- **Citizens duty (controversial) obligation**

If you observe some action, the court /policy can enforce you to handle information/to speak something on that. If the issue is related to the professional you are to give priority for your professional secrecy. There may be injured.

- **Moon lighting (doing part time job)**

You cannot do to serve for two media. But you can work for another organization, even it may be some dilemmas if you assigned to gather information about the organization.

- **Freebies (gift of any kind )**
- **Worthy Cause**-causing issues which do have positive tendency
  - The issues may exaggerated- poverty, gender issues
  - It is a kind of politics in NGO. Many NGO's report about Africa tend to give bad image

### 2.3.4 Impartiality

Journalists are expected to keep their distance from the people and organizations they cover so that they can be impartial when they write about them. Impartial means being objective, putting aside personal opinions, and not accepting gifts, meals, trips or anything else that could be seen as seeking to influence the news. It also means avoiding any conflict of interest. An example of conflict of interest would be reporters who write about companies in which they own stock, or an organization to which they belong, or even the schools their children attend.

Journalists often are sent free books, CDs, movies and other material by sources who would like the journalist to write about them. Are these items gifts that attempt to influence the reporters? Not usually. Most news organizations allow reporters to use and keep material that is clearly intended for mass press consumption, though some organizations strongly encourage employees to give such material to libraries or charitable organizations when their use for a story is complete. Critics and reporters on entertainment and sports beats often are offered tickets to games, concerts, theaters or movies. Some organizations require that reporters buy tickets to any event they cover so there is no question about the impartiality of their reporting. Others allow reporters to attend screenings intended only for press, or use seats set aside for press that would

understands that his or her name will be published. Some ways to do that would be: (1) Directly ask the principal if she is leaving at semester's end, or (2) ask the superintendent of schools if the principal will be moved. If the information comes from one of those credible, named, transparent sources, the truth of the story is verified and readers can see where it originated.

## 2.4 Privacy

My home is (not always) my castle. Privacy is both ethical and legal concern. Journalists always involved in the base of violating privacy. Before 1830s privacy was not a concern. 1890 it was only the first privacy related case was introduced.

### The three kinds of privacy

1. **Bodily or physical privacy**
2. **Mental (communicational) privacy**- completely psychological, ideas, thoughts, feelings, opinion and ideologies
3. **Informational privacy**- it prevents the disclosure of personal information held in place of private and public offices

### Why privacy is valuable

Privacy is invaluable for the following reasons: Others are not entitled to know about us; It just protect people from being ridicule or scorn; It helps people control their reputation; and It helps to keep other people at a distance and regulates your social interaction.

**Some areas of problems:** Ambush interview (door stepping); Trauma; and Reporting on sexual matter

## 2.5 Ethical Violations

News organizations recently have been faced with a number of cases where journalists have violated the ethical standards of truth, honesty and accuracy. They caused great embarrassment for their colleagues and their employers, and all were fired from their jobs. Ethical violations are serious because they cause a breakdown in the trust between a news organization and its audience. They have the power to destroy credibility. The common violations are the following.

### 2.5.1 Propaganda

Propaganda is a form of communication that is aimed at influencing the attitude of a community toward some cause or position so as to benefit oneself or one's group. As opposed to impartially providing information, propaganda, in its most basic sense, presents information primarily to

**Reasons of Media Bias:**

- Media bias can happen due to various reasons. It occurs when a journalist or people connected with reporting of a particular event have a prejudiced opinion about things, which ultimately results in a distorted version of the story.
- Sometimes, there are certain media that may show a political bias towards certain news events. This happens when the publication or channel is in favor of a particular political party or a candidate.
- A journalist may also be biased towards a particular incident and may add his/her personal opinion to the news report. This kind of media bias is purely based on the journalist's own opinion which is not considered to be purely ethical as well.
- Racial bias and religious bias can happen when the journalist or news reporter gives reports in favor of a particular religion/race. Racism is a major issue, which can also end up in biased news reports.
- Advertisers or corporate companies may also influence the way certain reports are presented. Reports in this case, are presented in favor of the particular corporate to give it prominence.
- Media bias can also be seen when an editor may give importance to a specific story on the page. This can happen when he/she wants to highlight the same for personal reasons or outside influences.
- A particular form of media bias can also happen when the publication or news channel wants to sensationalize one particular news event. This is termed as sensationalism wherein one section of the news is over hyped to gain attention.

**2.5.3 Plagiarism**

Plagiarism is the unethical practice of lifting information (news, statistics, ideas, passages, etc.) from existing materials and presenting it as if it originated from the writer. It is copying the work of others and passing it off as your own. It's the same as stealing, and it is never allowed. Copying from others is not allowed in school, and it's not allowed in journalism. However, the chief plagiarizers are students at all levels. Frequently they “dub” copiously from books, journals, newspapers and magazines without attributing their sources. Plagiarism is a very serious offence in the academia, punishable by removal from the job whenever proved beyond reasonable doubt.

Some journalists believe there have been more cases of plagiarism—whether it be stealing a sentence, a paragraph or a whole story—since the Internet became the first tool of research. The Internet and the computer programs journalists use to write and edit make it easy to cut and paste words from an article used in research right into their own story, sometimes without realizing it. Still, there are no excuses for plagiarism, just as there are no excuses for stealing someone's

All citizens, including journalists have a moral responsibility to obey the law. In emergency situations, however, when a higher principle on moral obligation is involved a just law may unusually be violated. Not all ethical issues should be legally codified. Violation of the law prescribed penalties, but ethical behavior doesn't.

Code of ethics is self-imposed duty (responsibility) by the journalists themselves. Unlike the law which includes a certain rules and principles that must be adhered to. A code which merely advocates ideals standards of behavior for journalists and makes no link between these standards and what actually people do would be considered relevant by practicing journalists, and hence, would be unlikely to influence their actions.

A code is just a moral compass. It is a roadmap towards ethical behavior. It is an important tool that plays between the public's right to know and the journalists' responsibility, for the people. Code of ethics protect (safeguard) the media from government interference. The first code of ethics was began in America in 1910 by William Miller Kansas.

### 2.6.2 Debates in Favor Of 'Code of Ethics'

Reasons why code of ethics as important

1. It is a better to ethical guidelines than to have nothing at all
2. A code help to create ethical consciousness without which ethics easily becomes situation-based, extreme flexibility minimize personalization-It avoids deciding based on personal preference and wish
3. If ethical principles are important, why don't we consider them?
4. It is a meaningful way to ensure accountability for their code of ethics.
5. A code of ethics helps journalists to not take decision individually it initiates group (collective) decision making.
6. It helps watchdog role and keeps the profession on its toes.
7. It defines some potential probes
8. It creates public trust
9. It plays an important public relations role

The more responsible the media behave the shorter stick with which the government can hit this particular dog.

### 2.6.3 Arguments against Journalistic Code of Ethics

1. It can work against the independence of free press
2. It easily leads to self-censorship

are more likely to perceive them as reasonable. Companies may be more willing to comply with rules developed by their peers rather than those coming from the outside.

- **Fourth**, it is argued that self-regulation is less costly to the government because it shifts the cost of developing and enforcing rules to the industry. Of course, the government may still be involved in supervision, but supervision requires fewer resources than direct regulation. Self-regulation may also be justified where the rules or adjudicatory procedures differ from the surrounding community or the rules of the surrounding community are inapplicable.

Finally, self-regulation may be used instead of governmental regulation to avoid constitutional issues.

### 2.7.3 Arguments against Self-Regulation

Critics of self-regulation question the basis for the arguments in favor of self-regulation. For example, while acknowledging that industry may possess greater technical expertise than government, Professor Peter Swire questions whether companies will use that expertise to the benefit of the public, suggesting instead that they are more likely to employ their expertise to maximize the industry's profits. Similarly, the idea that industry will comply more willingly with its own regulations than those imposed from the outside seems somewhat weak where industry is actively involved in developing regulations at the agency.

- Other criticisms are directed against self-regulation itself. Leaving regulation to the industry creates the possibility that industry may subvert regulatory goals to its own business goals; or as one article put it, “self-regulators often combine—and sometimes confuse—self-regulation with self-service.”
- Many question the adequacy of enforcement in self-regulatory regimes. Industry may be unwilling to commit the resources needed for vigorous self-enforcement. It is also unclear whether industry has the power to enforce adequate sanctions.
- Without adequate incentives to comply, “bad actors” will be unlikely to comply, and the “good actors” that do comply will be placed at a competitive disadvantage.
- Another problem with self-regulation is that it can facilitate anticompetitive conduct.