ARTICLE 19's Response to UNESCO Questionnaire for a Global Study on Internet-Related Issues

A. Questions related to the field of access to information and knowledge

1. What can be done to reinforce the right to seek and receive information in the online environment?

The right to seek, receive and impart information is a vital pre-requisite for access to knowledge. It is important to bear in mind however that 'access to information', the 'right to information' or 'freedom of information' has evolved as a relatively discrete area of international human rights law, one concerned primarily with the obligations of states to proactively publish and respond to requests for information from the public about the activities and policies of government. It only extends to information held by private bodies insofar as they exercise public functions. As such, there is therefore no general obligation on private entities to make information freely available.

In terms of freedom of expression online more generally, there is often conflict between freedom of expression and copyright. Copyright is increasingly used to discourage the free exchange of information at the expense of the wider public interest. This however need not be the case. Freedom of expression is the engine of creativity, which copyright seeks to promote. In our flagship principles, *The Right to Share: Principles on Freedom of Expression and Copyright in the Digital Age*, ARTICLE 19 laid down some basic principles to redress the balance between freedom of expression and copyright. Among other things, we recommended that copyright terms should be shortened and exceptions to copyright interpreted broadly. Our principles also set out our view of what proportionate copyright enforcement should look like. Finally, we called on States to adopt positive measures to promote access to knowledge and culture, including by promoting the use of Creative Commons licences, requiring that substantially publicly funded work should be made as widely accessible to the public as possible and ensuring that people with disabilities should be given equal access to knowledge.

Our proposals were recently endorsed by the organisation Open Media. In their report *Our Digital Future: A Crowdsourced Agenda for Free Expression*, they made it clear that prioritising free expression in the debate on copyright reform was long overdue. They set out four key components for this agenda: preventing censorship; protecting fair use and fair dealing; promoting access and affordability; and creating clear rules to govern the sharing of knowledge and culture online.

As countries such as Brazil and the European Union seek to revisit their copyright laws, it is vital that policy-makers make the protection of free expression and access to knowledge a priority. UNESCO should contribute to this effort and work with the World Intellectual Property Organisation to re-balance the protection of intellectual property rights with the right to freedom of expression.

B. Questions related to the field of Freedom of Expression

6. What are the current and emerging challenges relevant to freedom of expression online?

ARTICLE 19 has identified three key challenges to the right to freedom of expression online:

1. Increasing repressive legislation: The application of existing criminal laws to online expression and new legislation criminalising speech online are on the rise, generally in breach of international standards on the right to freedom of expression. Similarly, countries are increasingly trying to regulate internet content through so-called "cyber-crime" legislation. Many recently adopted laws are vague, overly broad and open to arbitrary interpretation, thereby threatening the protection of the right to freedom of expression.

2. Blocking, filtering and content removal: sadly, whereas filtering and blocking online content used to be the exception, they are becoming increasingly commonplace. Decisions to block, filter and remove content are severe types of censorship often undertaken in the absence of domestic legislation and without independent oversight.[1] We have seen a sharp increase in the practice of filtering websites, both regulated and unregulated, across Russia, Turkey and Azerbaijan and Central Asia to name but a few. Vast swathes of information therefore disappear without Internet users even noticing. This is despite the well-documented lack of effectiveness of blocking and filtering measures.

3. Mass surveillance: The practice of mass surveillance by governments against each other and against citizens has had a chilling effect on freedom of expression online.[2] The indiscriminate and unregulated monitoring of communications promotes self-censorship by users and overly self-protective censorship by private companies and ISPs. In the absence of due process and legal certainty, coupled with a lack of transparency, the threat to freedom of expression online is exasperated.

7. How can legislation in a diverse range of fields which impact on the Internet respect freedom of expression in line with international standards?

The internet is governed by a complex regulatory framework, incorporating civil and criminal law, which has the potential to unduly restrict freedom of expression online. Each of these laws should comply with the requirements of Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR) as interpreted by the UN Human Rights Committee, the UN body tasked with monitoring the Covenant. In particular, restrictions on the right to freedom of expression should be strictly and narrowly construed and comply with the three-part test, namely (i) be provided by law; (ii) pursue a legitimate aim; and (iii) conform to the strict tests of necessity and proportionality.[3]

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[1] In a 2011 report on the right to seek, receive and impart information online, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression expressed deep concern at the 'increasingly sophisticated blocking or filtering mechanisms used by States for censorship.' UN Doc. A/HRC/17/27, 16 May 2011 at para. 70

[2] http://www.hrw.org/reports/2014/07/28/liberty-monitor-all-0

[3] See HR Committee, Velichkin v Belarus, Communication No. 1022/2001, U.N. Doc. CCPR/C/85/D/1022/2001 (2005).

The UN Human Rights Committee has clarified how these standards should be applied in its General Comment No. 34 on Article 19. Amongst other things, it underscores that when a State invokes a legitimate ground for restricting the right to freedom of expression, it must demonstrate, in a specific and individualised fashion, the precise nature of the threat, the necessity and the proportionality of the specific action taken and establish a direct and immediate connection between the expression and the threat.[4]

The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has also developed several standards that should be reflected in legislation impacting on freedom of expression online. As regards intermediary liability, for instance, he has made it clear that internet censorship should never be delegated to private entities, and that intermediaries should not be held liable for refusing to take action that infringes individuals' human rights. He has also clarified which types of content should be prohibited and indicated the various factors that the law should take into account in that respect. Finally, he has regularly highlighted that any legislation restricting the right to freedom of expression must be applied by a body that is independent of any political, commercial or other unwarranted influences in a manner which is neither arbitrary nor discriminatory, and with adequate safeguards against abuse, including the possibility of challenge and remedy against its abusive application.[5]

8. Is there a need for specific protections for freedom of expression for the Internet?

Consistent with the United Nations General Assembly Resolution 68/167, ARTICLE 19 believes that as a starting point, the rights that are protected offline should be equally protected online. If an act is not considered criminal offline, it should not be criminal online. This position was recently recognised by the House of Lords Communications Committee in the context of social media prosecutions.

Similarly, the types of information or expression that may be restricted under international law in relation to offline content may equally be restricted in relation to online content.[6] It is therefore generally unnecessary to create a new set of offences specifically for acts committed using social media.

However, whilst legislation should be technologically neutral as a matter of principle, the context of the medium should be taken into account. As stated by the Special Rapporteurs 2011 Joint Declaration on Freedom of Expression and the Internet 'greater attention should be given to developing alternative, tailored approaches, which are adapted to the unique characteristics of the Internet, for responding to illegal content, while recognising that no special content restrictions should be established for material disseminated over the Internet.' By way of example, online news sites should not be liable for third party comments as publishers where they have not interfered with the content in issue.[7] For certain areas of law, therefore, it would be desirable for public bodies and other relevant stakeholder groups to develop guidance as to how legislation that was developed for the offline world may be applied in an online environment. Such guidance should be clear and precise and compatible with international standards on the right to freedom of expression.

[4] CCPR/C/GC/34, para. 36
[5] A/66/290, para. 17
[6] A/66/290 para. 15
[7] See ARTICLE 19's third-party intervention in the case of *Delfi AS v Estonia,* Application no. 64569/09

At the same time, for freedom of expression to flourish online, Internet intermediaries must be protected from liability for third party content lest they engage in blanket monitoring and widespread censorship. For this reason, the special mandates on freedom of expression have long recognised that technical Internet services should be immune from liability for content generated by others as long as they do not specifically intervene in that content or refuse to obey a court order to remove that content where they have the capacity to do so ('mere conduit principle'). [8] Furthermore, they have made it clear that at a minimum, intermediaries should not be required to monitor user-generated content and should not be subject to extrajudicial content takedown rules which fail to provide sufficient protection for freedom of expression.[9]

These important principles should be reflected in domestic legislation and supported internationally by international organisations such as UNESCO. They are also an example of the type of positive measures that should be adopted to protect freedom of expression online.

9. To what extent do laws protect digitally interfaced journalism and journalistic sources?

At the outset, ARTICLE 19 should make it clear that our position is that the definition of journalism should be a functional one. As such, we believe that international human rights law must protect bloggers just as it protects journalists to reflect the fact that journalism is an activity, which can be exercised by anyone. The same is true of the protection of sources. Indeed, a number of courts have already recognised that bloggers' sources should be protected.[10]

At the same time, in those countries where journalism is regarded as a profession, which is tightly controlled by the state, online news outlets are increasingly made subject to the same restrictions as the print media. This is the case, for instance, in countries such as Jordan or Iran.

For this reason, ARTICLE 19 sought to clarify the basic principles that should to apply for the protection of bloggers in our policy paper *The Right to Blog*. This included the following:

- Bloggers should never be required to obtain a licence to blog or publish online. Nor should they be required to register with the government or other official bodies;
- Accreditation schemes must meet international freedom of expression standards;
- To the extent to which they are engaged in journalistic activity, bloggers should be able to rely on the right to protect their sources and requests to disclose sources should be strictly limited to the most serious cases and approved by an independent judge;
- State authorities must guarantee the safety of bloggers using a variety of measures and carry out independent investigations into threats or violent attacks against bloggers engaged in journalistic activity online;

[8] http://www.osce.org/fom/78309?download=true

[9] Ibid.

[10] See Cornec v Morrice & Ors [2012] IEHC 376 (18/09/2012); available at http://bit.ly/UHTaOG. The Court considered that "a person who blogs on an internet site can just as readily constitute an "organ of public opinion" as those which were more familiar in 1937." It also found that there was a high constitutional value in ensuring the blogger's right to contribute to public discourse, and that being compelled to reveal their sources would compromise the "right to educate (and influence) public opinion, [which] is at the very heart of the rightful liberty of expression;" para 66; see also O'Grady v. Superior Court 139 Cal. App. 4th. 1423, 2006 WL 1452685 (Cal. App, 6th Dist., 26 May 2006); see also here and here.

- In general, bloggers should not be held liable for comments made by third parties on their blogs in circumstances where they have not intervened or modified those comments;
- For certain types of content, consideration should be given to adopting notice-and-notice procedures whereby bloggers would be required to pass the complaint to the statement maker, without removing the material upon notice;
- Bloggers should not be forced to abide by ethical codes or codes of conduct developed by traditional media and should be free to decide to follow the standards of traditional media of their own accord and/or develop their own voluntary code.

The same principles are equally applicable to 'traditional' journalists who publish information online. This also includes immunity from liability for third-party content. In ARTICLE 19's view, online newspapers should not be held liable for their users' comments in circumstances where they do not modify such comments.[11] In other words, online news sites should be considered as hosts rather than publishers for the purposes of user-generated comments. Similarly, they should retain immunity from liability if they voluntarily put in place a moderation system.

10. What are the optimum ways to deal with online hate speech? How can Media and Information Literacy empower users to understand and exercise freedom of expression on the Internet?

ARTICLE 19 believes 'hate speech' legislation should not be employed to stifle dissenting or minority voices and highlighted that free speech is a 'requirement for, and not an impediment to, tolerance. Rather, combatting hate speech demands a targeted range of non-legal, soft law and educational measures to address the root causes of discrimination.

Principle 5 of the Camden Principles on Freedom of Expression and Equality asserts that all states should have in place a public policy and regulatory framework for the media, including new media, to promote pluralism and equality. Similarly, the four special mandates on freedom of expression in their 2006 Joint Declaration stressed the importance a free and diverse media in 'promoting tolerance, diffusing tensions and providing a forum for the peaceful resolution of differences.'[12]

The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has promoted a multi-stakeholder approach to addressing hate speech on the internet, especially from the private sector.[13] In this regard, ARTICLE 19 believes that user policies and terms and conditions should provide greater certainty as to what amounts to hate speech, providing examples where necessary, in order to clearly define the contours of legally protected speech. To assist, the Rabat Plan of Action should be followed to help determine whether online speech constitutes hate speech. At the same time, all stakeholders involved should be reminded that the scope of Article 19(2) 'embraces even expression that may be regarded as deeply offensive.'[14]

[11] See ARTICLE 19's submissions in *Delfi v Estonia,* cited above.
[12] International Mechanisms for Freedom of Expression, Joint Declaration of 20 December 2006.
[13] Report of the SR on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. 6th May 2014 UN Doc A/HRC/26/49
[14] UN Doc. CCPR/C/GC/34 at para. 11

11. What are the optimum systems for independent self-regulation by journalistic actors and intermediaries in cyberspace?

Bloggers

Self-regulation has a long tradition in the news media, especially the press. It typically involves a voluntary adoption of a code of practice, compliance of which is usually overseen by press councils which operate independently of the state.

In our policy brief, *The Right to Blog*, ARTILCE 19 posited that it would be highly problematic to judge bloggers by reference to the standards developed for traditional media for two main reasons:

(i) Lack of resources: the majority of bloggers do not have the same resources and technical means as newspapers or television stations, especially as regards fact checking.

(ii) Bloggers are already 'regulated': it should not be forgotten that bloggers are already required to comply with the laws of the country in which they reside. There is no reason in principle why standards should be developed for online content beyond what is already required by law. In addition, the Internet is already subject to a degree of self-regulation, for example the provision of moderators for discussion groups, informal criticism from other users, success being dependent on the quality of content and peer review, and the fact bloggers tend to abide by a form of online 'etiquette'.

At the same time, ARTICLE 19 considers that it is entirely reasonable for traditional media using new media (e.g. newspapers' websites) to extend the existing mechanisms for self-regulation to their online activities. Furthermore, bloggers should remain free to voluntarily abide by the standards established for traditional media or to set up their own ethical codes. However, we would oppose any form of legal 'incentive' or threat of sanction aimed at encouraging bloggers to comply with such codes.

Finally, it should be borne in mind that many blogs take the form of opinion pieces, which are not properly the subject of journalistic ethical standards. In fact, the right to hold opinions is not limited under Article 19 of the ICCPR.

Intermediaries

Internet intermediaries, such as ISPs, search engines, 'hosts' and social media platforms, play a crucial role in enabling access to and the dissemination of information. The self-regulation of intermediaries is based on the assumption that they are immune from liability for third party content. In addition, intermediaries are usually private entities and are therefore free to establish their own user policies, terms and conditions.

In the 2011 Joint Declaration on Freedom of Expression and the Internet, the four Special Rapporteurs on freedom of expression recommended that no one should be liable for content produced by others when providing technical services. They stated liability should only be incurred if the intermediary has specifically intervened in the published content and intermediaries should only be required to take down content following a court order, contrary to the practice of notice and takedown.[15]

[15] The 2011 Joint Declaration on Freedom of Expression and the Internet, *International Mechanisms for Promoting Freedom of Expression*, June 2011

In 2011, the UN Special Rapporteur on freedom of expression further recommended that intermediaries should: [16]

- Only implement restrictions to the right to freedom of expression and privacy after judicial intervention;
- Be transparent about measures taken with the user involved and, where applicable, with the wider public;
- Provide, if possible, forewarning to users before implementing restrictive measures;
- Strictly minimise the impact of any restrictions to the specific content involved;
- Put in place a redress mechanism or appeals procedure for wrongful content removals.

In our 2013 policy brief, *Internet Intermediaries: Dilemma of Liability* , ARTICLE 19 made the following recommendations:

- Hosts should not be liable for third-party content;
- Notice-to-notice procedures should replace the notice and takedown model;
- Content which is illegal under international law should be dealt with by law enforcement authorities so that any allegation of serious criminality is properly investigated and dealt with according to the established procedure of the criminal justice system.

C. Questions related to the field of Privacy

12. What principles should ensure respect for the right to privacy?

The principles that govern the right to privacy online have been developed under international human rights law and in particular Article 17 of the ICCPR, which prohibits "arbitrary or unlawful" interferences with the right to privacy. The Human Rights Committee's General Comment 16 provides important guidance on these terms, although ARTICLE 19 believes there is scope for further development in the online context.

The UN Special Rapporteur's report on the promotion and protection of the right to freedom of opinion and expression in April 2013, outlined comprehensive recommendations on, *inter alia*, how to update and strengthen legal safeguards, facilitate private and secure communications, increase public awareness of threats to privacy online and develop human rights standards.[17]

With regard to surveillance interfering with the right to privacy, the Necessary and Proportionate Principles provide a framework to evaluate whether current or proposed surveillance laws and practices are compatible with international standards on human rights. The Principles are based on recognised international standards and best practice in this area which are laid out in the supporting legal background paper to the Principles.

In addition, data protection law has a vital role to play in ensuring that only the minimum personal data necessary for a limited purpose is collected with the consent of the individual concerned. Data protection standards are particularly well-developed in the European Union.

[16] Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinions and expression, 16 May 2011, A/HRC/17/27 para. 47

[17] UN Doc. A/HRC/ 23/40 17th April 2013

The case-law of the Court of Justice of the European Union and that of the European Court of Human Rights provide useful guidance in that respect.[18]

13. What is the relationship between privacy, anonymity and encryption?

Encryption is the technical way in which to ensure the confidentiality of online communications. Whilst anonymity is not recognised as an international human right, it is vital for the meaningful exercise of the right to freedom of expression online. In 2011, the UN Special Rapporteur called upon States to ensure that individuals have the right to express themselves anonymously online. In 2013 at the 23rd session of the Human Rights Council, he reiterated that anonymous expression and secure communication are critical for an open society and that any restrictions on anonymity chill free speech. He concluded that States should refrain from compelling the identification of users as a precondition for access to communications, including online services, cyber cafes or mobile telephony. The UN watchdog further highlighted that "[w]ithout adequate protection to privacy, security and anonymity of communications, no one can be sure that his or her private communications are not under states' scrutiny."[19]

14. What is the importance of transparency around limitations of privacy?

Transparency is essential for democratic accountability. In the Legal Background Paper to the Necessary and Proportionate Principles, ARTICLE 19 and EFF noted that the absence of transparency concerning the operation of laws in relation to covert surveillance was breeding ground for arbitrariness and lack of accountability of law enforcement agencies and intelligence services. It is vital that the laws restricting the right to privacy are sufficiently clear, predictable and accessible to all. This is not just a requirement under international human rights law. A law that is not public is not law, for it is an essential component of the rule of law that the laws must be known and accessible to all.

E. Broader issues

24. What international, regional and national frameworks, normative guidelines and accountability mechanisms exist of relevance to one or more fields of the study?

International Frameworks on Human Rights

Article 19 of the ICCPR guarantees the right to freedom of expression and information. Article 17 ICCPR protects the right to privacy. The implementation of the ICCPR at national level is monitored by the UN Human Rights Committee. The Committee produces both observations on state parties to the ICCPR and general comments on the Covenant's interpretation. The first Optional Protocol to the ICCPR establishes an individual complaints mechanism, permitting individuals to submit complaints to the Human Rights Committee should they believe their rights under the ICCPR have been violated.

A number of other core international human rights instruments, and their reporting mechanisms, protect the right to freedom of expression and privacy of specific groups. These include the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the International Convention on the

[18] See Fundamental Rights Agency, Handbook on European data protection law, 2nd edition, available at: http://fra.europa.eu/sites/default/files/fra-2014-handbook-data-protection-law-2nd-ed_en.pdf

[19] http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13400&LangID=E

Elimination of All Forms of Racial Discrimination International (CERD) and the Convention on the Rights of Persons with Disabilities (CRPD).

With regard to soft law, inter-governmental and civil society organisations have produced a number of non-binding but influential principles. The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has produced reports on the implications of surveillance of communications on the rights to privacy and to freedom of opinion and expression, key trends and challenges to the right of all individuals to seek, receive and impart information and ideas of all kinds through the Internet, the right to freedom of opinion and expression exercised through the internet and Internet governance and human rights, freedom of expression and defamation, and security and protection of media professionals. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance provided normative guidance on hate speech on the internet in his 2014 annual report.

A landmark UN Human Rights Council resolution, titled The Promotion, Protection and Enjoyment of Human Rights on the Internet, was passed by consensus in July 2012 and affirmed that human rights enjoyed offline are equally enjoyed online. This was reiterated in a resolution unanimously adopted in June 2014. The UN General Assembly has adopted a resolution on the right to privacy in the digital age which led to the UN High Commissioner for Human Rights publishing a report on the right to privacy in the digital age in June 2014. In November 2014 ARTICLE 19 issued a joint letter to call on the UN General Assembly to 'reinforce the High Commissioner's findings by echoing her powerful language in its forthcoming resolution' on privacy and the internet and ask the Human Rights Council to mandate a Special Rapporteur on the right to privacy.

Civil society have been active in forming guidelines around protecting both freedom of speech and privacy online. ARTICLE 19'S Right to Share and Right to Blog principles, along with the ARTICLE 19 policy brief on Internet intermediaries, provide useful guidelines on freedom of expression and copyright, blogging and intermediary liability respectively. The Necessary and Proportionate Principles, articulate principles for the application of international human rights law to surveillance. In November 2014 the Intercessional Panel of the Commission on Science and Technology for Development produced a report mapping the international Internet public policy issues. The Rabat Plan of Action on the prohibition of incitement and the Camden Principles on Freedom of Expression and Equality may also be of relevance.

Regional Frameworks on Human Rights

The African Charter on Human and People's Rights (the African Charter) guarantees the right to freedom of expression and information under Article 9. The right to privacy is not explicitly referenced. The African Commission is the body charged with interpreting the African Charter. In 2004 the African Commission established the Special Rapporteur on Freedom of Expression and in 2007 renewed the rapporteur's mandate with the amended title, the Special Rapporteur on Freedom of Expression and Access to Information in Africa. Furthermore, in 2014 civil society launched the African Declaration on Internet Rights and Freedoms.

In the Americas, freedom of expression is guaranteed by Article 13 of the American Convention on Human Rights (the ACHR). Article 11 guarantees the right to privacy. The Inter-American Court of Human Rights was established to inforce and interpret the ACHR. The Inter-American Commission on Human Rights also works to protect the guarantees of the ACHR and, in 1997, created a Special Rapporteur on Freedom of Expression.

At European level, Article 10 of the European Convention of Human Rights (ECHR) enshrines the right to freedom of expression, while Article 8 protects the right to respect for one's private and family life. The European Court of Human Rights (ECtHR) interprets the ECHR through its case law. The Charter of Fundamental Rights of the European Union (EU Charter), as interpreted by the Court of Justice of the European Union (CJEU), protects freedom of expression and information under Article 11, respect for private life under Article 7 and personal data under Article 8. The European Ombudsman is empowered to decide on EU citizens complaints against EU institutions. The Council of the European Union have recently adopted guidelines on freedom of expression online. Finally, the Parliamentary Assembly of the Council of Europe adopt resolutions, and have adopted many that are pertinent to online speech and the Council of Europe's Committee of Ministers adopted a guide to human rights for Internet users earlier this year.

Article 32 (1) of the Arab Charter on Fundamental Rights protects the right to information and to freedom of opinion and expression, though its exercise is qualified by article 32 (2) which dictates that it must be 'exercised in conformity with the fundamental values of society'. Article 21 protects against unlawful interference into a person's privacy.

In 2012 the ASEAN states passed the ASEAN Declaration of Human Rights in the hope of laying a foundation to 'establish a framework for human rights cooperation in the region and contribute to the ASEAN community building process.' Paragraph 23 articulates the right to freedom of expression and information and paragraph 21 sets out the right of freedom from arbitrary interference with privacy.

26. What are the intersections between the fields of study: for example, between access and freedom of expression; ethics and privacy; privacy and freedom of expression; and between all four elements? Responses may wish to distinguish between normative and empirical dimensions to these questions.

The right to privacy is essential for individuals to express themselves freely. ARTICLE 19 has previously asserted in an oral statement to the UN Human Rights Council that where privacy online is threatened, trust in the Internet is diminished, which has a chilling effect on freedom of expression online.

As noted by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Internet empowers individuals to engage in public debate without having to reveal their real identities, for example through the use of pseudonyms.[20] Anonymity enables privacy online and therefore facilitates open debate. Anonymity is a powerful tool for all individuals, but is of particular importance to journalists, human rights activists and individuals living under oppressive regimes.

However, as highlighted by the Special Rapporteur, tensions also exist between the right to privacy and the right to freedom of expression, such as when private information is disseminated online without the victim's consent in the context of what is known as 'revenge porn'. ARTICLE 19 stresses that in some cases, where for example a reporter publishes explicit photos involving a well-known politician, prosecution would have a chilling effect on freedom

[20] A/HRC/17/27 para. 53

of expression. In such cases, international jurisprudence indicates that reference should be made to the overall public interest on the matters reported.[21]

Freedom of expression and the rights to privacy and data protection have also come into conflict in the context of the so-called 'the right to be forgotten'. In the landmark *Costeja* case, the CJEU found that individuals had a right to request Google and other search engines operating in the European Union to remove links from results generated by a search for their name.[22] The decision raises serious concerns for freedom of expression. In particular, the *Costeja* judgment considerably and - and in ARTICLE 19's view - unreasonably broadens the scope of data protection law beyond its original intended purposes. We set out our concern about the judgment in our response to the Google Advisory Board's questionnaire on the so-called 'Right to be Forgotten'.[23] In particular, we highlighted that the right to know must be given equal weight in the balance with the right to privacy and that there should be an overarching presumption that information already legitimately in the public domain should remain in the public domain. We further pointed to the case-law of the European Court of Human Rights provides useful guidance in balancing the right to freedom of expression and the right to privacy.[24]

[21] UNESCO, Global Survey on Internet Privacy and Freedom of Expression, 2012, pp. 53 and 99.
[22] http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-05/cp140070en.pdf
[23] http://www.article19.org/data/files/medialibrary/37733/A19-comments-on-RTBF.pdf
[24] Ibid.