

# The Rights of Journalists

Andrew P. Smith, M.A.

Presentation to

Impact Justice Media Law Seminar, Barbados

February 23 -25 2016

# Contents

1. Definitions
2. Responsibilities of Journalists
3. Right to Freedom of Expression and Freedom on Information.
4. World Press Freedom
5. Right to Access the Internet
6. Human Resource Rights.
7. Rights for Safety and Security.
8. Freelancers' Rights
9. Authors' Rights

# Definitions

- **Journalism** is “a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the Internet or elsewhere.” (Reporters sans frontiers, 2015).
- The **rights and duties of journalists** devolve from the public’s right to have access to fact and opinion. (Swiss Press Council Foundation, 2008).
- “For journalists, freedom of expression and freedom of information are among the most important human rights.” (Monique Villa, 2015)

# Responsibilities of Journalists

1. To seek out the truth, in the interests of the public's right to know, whatever the consequences to him- or herself.
2. To defend freedom of information, freedom of commentary and criticism, and the independence and dignity of the journalistic profession.
3. Not to publish information, documents, images or sound recordings of which the origin is unknown to the journalist. Not to suppress information or any essential elements of a story. Not to misrepresent any text, document, image or sound recording, nor people's expressed opinions. If information is unconfirmed to clearly say so. To indicate when photographic and/or sound material has been combined to make a montage.
4. Not to use dishonest methods to obtain information, recordings, images or documents. Not to manipulate them, or have them manipulated by a third party with a view to falsification. To prohibit plagiarism in not passing off the work or ideas of others as one's own.

# Brian Walski/ LA Times. March 2003



# Responsibilities of Journalists

5. To rectify any published information that is revealed to be factually incorrect.
6. To respect professional secrecy and not reveal the source of any information obtained in confidence.
7. To respect peoples' privacy in so far as the public interest does not demand otherwise. To disregard anonymous or unfounded accusations.
8. In respecting human dignity, the journalist must avoid any allusion by text, image or sound to a person's ethnic or national origin, religion, gender, sexual orientation as well as to any illness or physical or mental handicap that could be discriminatory in character. The reporting of war, acts of terrorism, accidents and catastrophes by means of text, image and sound should respect the victims' suffering and the feelings of their loved ones.

(Swiss Press Council, 2008)

# The Right of Freedom of Expression

- Article 19 of the United Nations Universal Declaration of Human Rights, 1948 states:
  - *Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*



# Freedom of Information (Fol)

- The right to access information held by public bodies.
- Guided by the premise that ALL information held by governments is in principle public and may only be withheld if there are legitimate reasons - such as privacy and security - for not disclosing it.
- The free flow of information and ideas lies at the heart of democracy and is crucial to effective respect for human rights. (UNESCO)

# Freedom of Information



# Freedom of Information

- Freedom of Information
  - Contributes to government openness and accountability,
  - Is an important instrument to prevent and combat corruption
  - Helps increase government efficiency and responsiveness, along with civic trust.
  - Addresses poor governance through open informed debate

# Freedom of Information – Jamaica's Elections

- “We are not prepared to participate in any debate with the Jamaica Labour Party unless and until the Leader of the Opposition satisfactorily addresses the integrity related and other issues which we have raised publicly and published in the media.” (PNP press release dd. February 16 2016).
- “To eliminate what has become an important source of information for the public would be a huge step backwards, and one we would condemn strongly” (PAJ President Dionne Jackson Miller.).
- “The (PAJ) believes it would be unacceptable in a modern Jamaican democracy for either of the parties to refuse the public the opportunity to see and hear its representatives questioned about issues of national importance. (Press Association of Jamaica)

# Protection from Defamation

- Criminal defamation laws are inconsistent with freedom of expression.
- Jamaica's Defamation Bill 2013.
  - Replaced the 1851 Libel & Slander Act and 1961 Defamation Act.
  - Abolished criminal defamation and provides a 'wire service defence'.
- The European Court of Human Rights (*Cumpana Mazare v. Romania*), stated that cases of hate speech or incitement to violence are exceptions and practitioners can be imprisoned.

# RWB 2015 World Press Freedom Index

- The Reporters Without Borders (RWB) World Press Freedom Index ranked the performance of 180 countries according to:
  - Media pluralism and independence.
  - Respect for the safety and freedom of journalists.
  - The media's legislative, institutional and infrastructural environment.

# Ranking of Press Freedom

- Finland (1)
- Canada (8)
- Jamaica (9)
- Belize (30)
- United Kingdom (34)
- Eastern Caribbean (37)
- Trinidad & Tobago (41)
- United States (49)
- Haiti (53)
- Guyana (62)
- Dominican Republic (63)
- Russian Federation (152)
- Cuba (169)
- China (176)
- North Korea (179)
- Eritrea (180)

# Right of Safety & Security

- Press Freedom Barometer 2015

- Killed

- Journalists: 64
- Media Assistants: 6
- Netizens & Citizen Journalists: 19

- Press Freedom Barometer 2016

- Killed

- Journalists: 8
- Media Assistants: 0
- Netizens & Citizen Journalists: 0

- Imprisoned

- Journalists: 154
- Media Assistants: 14
- Netizens: 163

# Right of Safety & Security

- *Every journalist killed or neutralized by terror is an observer less of the human condition. Every attack distorts reality by creating a climate of fear and self-censorship” (Barry James, 2002).*
- 2016 : Three Mexican journalists killed.
- 2014 – 2016: Saudi blogger Raef Badawi is sentenced to 1000 lashes and 10 years imprisonment.
- 2015: Four secular Bangladeshi bloggers killed as “enemies of Islam”.
- 2012 – 2015: Syrian journalists Mazen Darwish detained by authorities.
- 2014-2015: Gao Yu, Chinese investigative reporter detained for disclosing state secrets, her third such sentence since 1989.

# Right of Safety & Security

- Military police in Brazil insulted and beat Karinny de Magalhães while covering demonstrations against World Cup-related spending. She was told by the police that journalists were “*a cancer of the world,*” and that “*you should all die.*”
- In 2014, James Risen of the New York Times was threatened with imprisonment if he did not identify his source at the trial of a former CIA officer charged with leaking information.
- Since 2004, 34 environmental journalists have been killed in India, Russia, Indonesia and Argentina; covering logging, mining, pollution, and land conflicts; targeted by both governments and illegal groups.

# Principles for the Safety of Journalists (RSF)

1. Commitment. Seek ways to reduce risks in dangerous areas.
2. Free will. Coverage is voluntary and assignments can be terminated.
3. Experience. To cover crises. Team first-timers with veterans.
4. Preparation. Specialised training.
5. Equipment. Safety and communication equipment.
6. Insurance. For illness, disability and loss of life provided by media.
7. Psychological counselling. Trauma and stress.
8. Legal protection. Attacks on journalists are deemed a war crime.

# Right of an Accessible Internet

- *As journalists we understand that Net Neutrality is at its core about people's access to information. The future of journalism...depends on an open and free flowing Internet.*
- *With Net Neutrality we can support newspapers' transition to the digital era, and at the same time foster a new cadre of voices online.*
- *Net Neutrality ensures that innovative local news websites and nonprofit reporting projects can be accessed just as easily as legacy media sites.*
- *Net Neutrality encourages journalists to pioneer new tools and modes of reporting and lowers the bar for citizens to participate. It is about creating a level playing field for all voices. (Stearns, 2009)*

# Occupational Rights

- The right to adequate and continuous professional training.
- The right to benefit from work conditions guaranteed by a collective agreement.
- The right to benefit from an individual employment contract guaranteeing material and moral security. In particular, an appropriate remuneration.....should ensure his or her economic independence.
- The right to transparency as to the ownership of the company for which the journalist works. The right of a member of an editorial team to be informed in time, and to be heard before, any decision that affects the future of the company. (Swiss Press Council, 2008)

# Rights of Freelance Journalists

- Freelance journalism is no longer an “atypical” form of work. In many countries the majority of journalists are freelance.
- Many would prefer traditional employment and have been forced into “fake freelance” positions by employers who break local rules on employment by using freelances to fill full-time posts while avoiding state welfare and social charges.
- Contracts and fees, training, authors’ rights and professional standards are all key issues for the freelance community of journalists. (European Federation of Journalists)

# CHARTER OF FREELANCE RIGHTS



1. Every freelance has the right to organise in a union and by collective work seek to improve the situation for freelances and other journalists. Freelances and their unions should have the right to offer services to foster the solidarity among freelances and between freelances and staff, such as recommendations of fees and collective bargaining.

2. Every freelance should have the same professional rights as an employee, the same right to seek information, to protect sources, to uphold ethical standards.

3. Every freelance has a right to a written contract. Every freelance has the right to be treated as a fair partner when negotiating.

4. Every freelance has the right to hers/his authors' rights. All freelances must have unwaivable moral rights. Freelances must have the right of collective bargaining regarding their authors' rights.

5. Every freelance has a right to choose the best suitable form for hers/his way of freelancing. A fake or forced freelance who is

economically dependent should be treated as an employee and will receive all statutory rights and benefits.

6. Every freelance should have the right to equal protection by social security institutions on equal terms with employees' such as:

- a) sick pay
- b) retirement pension
- c) unemployment allowance
- d) maternity/paternity allowance equivalent to a comparable employee

This can be organised differently according to national circumstances.

7. Every freelance has the right to equal treatment and to receive decent fees and thus not undermine the positions of staff through providing cheap work.

This includes the right – when sent on dangerous assignments – to have the same training, insurances and security system as employees in the same situation.

# Copyright vs. Authors' Rights

## Anglo-American

- Corporations are recognised as authors.
- Work is created '*in the course of employment*', the employer is the original owner of copyright in it and the employee has no economic rights.
- No employed journalist has any moral rights, and no freelance has moral rights in work for publication in a newspaper or magazine or that reports current affairs.

## Continental Europe

- Authors' rights can only be held by real people. Authors grant rights for use of work, ***but can never lose their position as the legally-recognised creator.***
- All authors have moral rights and they cannot be altered, transferred or waived by any contract.

# Authors' Usage Rights

## Anglo-America

- Journalists' usage rights are transferred entirely and automatically to the employer once the work is created.
- Many freelancers sign “work made for hire” contracts under which all rights go to the client as if the freelancer was an employer.

## Continental Europe

- Employers must purchase the usage rights from the authors via an individual or collective agreement.
- The law takes precedence over the contract, which is the opposite in Anglo-America. In Europe, the principle of *in dubio pro autore* – “in case of doubt, rule for the author” is applied.

# References

1. FirstLook. (2016, February 17). *PNP still says no to debate*. Retrieved from <http://go-jamaica.com/pressrelease/item.php?id=6165>
2. Government of Jamaica. (2011). *Access to Information Unit*. Retrieved from <http://www.ati.gov.jm/>
3. Griffen, S. (2013, November 6). Jamaica decriminalises defamation. *International Press Institute*. Retrieved from <http://www.freemedia.at/newssview/article/jamaica-decriminalises-defamation.html>
4. International Federation of Journalists. (n.d.) *Authors' Rights* Retrieved from <http://www.ifj.org/issues/freelances-rights/category/freelances-rights/>
5. International Federation of Journalists. (n.d.) *Authors' Rights: a Manual for Journalists*. Retrieved from [http://www.ifj.org/fileadmin/images/Authors\\_\\_Rights/Authors\\_Rights\\_documents/EFJ\\_Author\\_s\\_Rights\\_manual.pdf](http://www.ifj.org/fileadmin/images/Authors__Rights/Authors_Rights_documents/EFJ_Author_s_Rights_manual.pdf)
6. International Federation of Journalists. (n.d.) *Freelances' Rights* Retrieved from <http://www.ifj.org/issues/authors-rights/>
7. The Press Association of Jamaica. (2016, February 15). *PAJ Calls for Debates to go on*. Retrieved from <http://pressassociationjamaica.org/paj-calls-for-debates-to-go-on/>

# References

8. Reporters Without Borders (2002, March). *Charter for the Safety of Journalists Working in War Zones or Dangerous Areas*. Retrieved from [http://www.rsf.org/IMG/pdf/charter\\_en.pdf](http://www.rsf.org/IMG/pdf/charter_en.pdf)
9. Reporters Without Borders. (2015). *Defence Handbook for Journalists and Bloggers*. Retrieved from <http://rsf.org/files/Handbook-RWB.pdf>
10. Reporters Without Borders. (n.d.) *2015 World Press Freedom Index*. Retrieved from <http://index.rsf.org/#/>
11. Stearns, J. (2009, October 21). Nearly 50 Online Journalism Innovators Pledge Support for Net Neutrality. *Free Press*. Retrieved from <http://www.freepress.net/blog/09/10/21/nearly-50-online-journalism-innovators-pledge-support-net-neutrality>.
12. Swiss Press Council Foundation (2008, June 5). *Declaration of the Duties and Rights of a Journalist*. Retrieved from [http://www.presserat.ch/Documents/Declaration\\_2008.pdf](http://www.presserat.ch/Documents/Declaration_2008.pdf)
13. UNESCO. (n.d.). *About Freedom of Information* Retrieved from <http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/freedom-of-information/about/>
14. United Nations. (1948, December 10). *Universal Declaration of Human Rights*. Retrieved from [http://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf)
15. Wall Street Journal. (2014, March 22). *Michelle Obama Pushes for Free Speech on China Tour*. Retrieved from <https://www.youtube.com/watch?v=CiJ-yrpp7Yc>

# THANK YOU!!