



# The Media Policy and Democracy Project

exploring how the media can work better for society

## ***Considering a cross-platform media accountability system for broadcast, print and digital news media in South Africa***

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This study has been undertaken by the Media Policy and Democracy Project, a collaborative research project between the Department of Communication Science at the University of South Africa (UNISA) and the Department of Journalism, Film and Television at the University of Johannesburg (UJ).

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**Media, Policy and Democracy Project:  
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print and digital news media in South Africa**

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## 1 Introduction

The Media Policy and Democracy Project (MPDP) is an inter-university collaborative research project between the Department of Communication Science at UNISA, and the Department of Journalism, Film and Television at the University of Johannesburg which was launched in 2012, and aims to promote participatory media and communications policymaking in the public interest.

Since its launch the MPDP has collaborated with academics and researchers from various institutions throughout South Africa and the world, including the University of Queensland (Australia), Jamia Millia University (India), the University of Leuven (Belgium), the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the Nelson Mandela Metropolitan University (NMMU), and Rhodes University.

The MPDP has also collaborated with civil society organisations which have a specific focus on media and communications policy-making, and which have a central concern for the public interest and a ground-up audience based approach, such as the SOS - Support Public Broadcasting Coalition and the Right2Know Campaign. The MPDP has engaged with national media policy-makers such as the Parliamentary Portfolio Committee on Communications, the Press Council of South Africa (PCSA), the Press Freedom Commission (PFC), the South African Broadcasting Corporation (SABC), the Print and Digital Media Transformation Task Team (PDMTTT), the Independent Communications Authority of South Africa (ICASA) and others.

In December 2014 the MPDP was approached by the Director of the PCSA, Joe Thloloe, and by the committee investigating cross-platform media accountability systems for South Africa, and requested to produce this report. The MPDP is an academic research project, performs independent social-scientific research, and does not act in the interests of either the PCSA, the media sector, nor the cross-platform media accountability system investigative committee.

### 1.1 Contextualising this report

The South African media industry produces an array of print, broadcast and online materials. The diversity of this media content can be observed through the numerous radio stations, newspapers (print and online versions) and magazines that cater to the public. The most challenging areas of the industry are the concentrated ownership of various media by big business, along with a lack of diversity in television broadcasting and limited access to online internet content. Regardless of such challenges, the South African populace engages with and consumes these materials according to their accessibility. In cases where the public are dissatisfied with, or offended by content put into the public sphere, they are able to complain to the bodies which regulate media content.

Three organisations currently exist to regulate media content in South Africa. Firstly the Press Council of South Africa (PCSA) regulates newspapers and magazines in the print industry, secondly the Broadcasting Complaints Commission of South Africa (BCCSA) regulates broadcasting content on television and radio, and thirdly the Interactive Advertising Bureau South Africa (IABSA) which holds jurisdiction over digitally published online media.

The PCSA operates as a co-regulatory body and hosts both public and media representatives. The PCSA administers complaints, advocates for press freedom and encourages a high standard of journalism within the print sector (PCSA 2014). In administering complaints against the press, the PCSA operates according to a code of ethics, the current version of which came into operation in 2013, after an examination of over 100 codes from around the world (Thloloe 2012, 111-113). Sanctions vary from the right to reply, an apology, a retraction, and/or publishing of the press

councils ruling with prominence (PCSA 2014). The BCCSA monitors broadcasting complaints from the public. The BCCSA sets the standard for broadcast journalism through two codes of conduct introduced in 2011: one for free-to-air broadcasters and one for subscription broadcasters. Any broadcaster found in contravention of the code can be fined up to R60 000 (BCCSA 2010).

The third organization, the Interactive Advertising Bureau South Africa (IABSA) was previously known as the Digital Media and Marketing Association (DMMA), which was operational between 2010 and 2014. Prior to the change in 2010, the DMMA was the Online Publishers Association (OPA) which monitored online sites, but did not formerly regulate the online industry (IMCC 2013). The DMMA joined the international Interactive Advertising Bureau (IAB) in February 2014, as the first African partner to join the other 40 digital regulators situated around the world. The IABSA represents 200 organisations which consist of roughly 96 local bloggers and online publishers and over 93 digital media agencies. With its headquarters in New York, the IAB allows partners to network globally, share research and maintain global standards (IAB 2014a). As a member of the IAB, South Africa's digital industry follows a code of conduct outlining the principles of digital media publishing. The code outlines "procedures and guidelines for the purpose of determining when violations or failures occur and for allowing the members to participate in a resolution and remediation process that is both reasonable and fair to the members and the industry in which the members do business" (IAB 2014b). The IABSA evaluates complaints to this effect, and through the processes of mediation and arbitration, find an amicable solution between the parties concerned.

Despite the differences in content regulated by each body, their similarities provide an interesting parallel. With regards to their mandate, each of the bodies regulate media content, aim to uphold ethical principles and enhance the quality of the media industry. The funding models are also comparable, as the bodies are funded by a myriad of media organisations in order to maintain independence from the state. And all are comparable in purpose and method as the PCSA, BCCSA and IABSA rely on public submissions of complaint and public participation in the mediation process. Currently, these organisations are run as separate entities; each have individual codes of conduct and a distinct constitution, with its own ombudsman/chairperson and administrative team. Considering the numerous similarities between these bodies, this study aims to evaluate the possibility of a combined council for print, broadcast and digital media regulation, and whether such an amalgamated media regulatory body would be appropriate within the South African context.

## **1.2 Objectives**

- To evaluate the structure of national media regulatory councils, especially cross-platform media accountability systems, operational in 2014 around the world.
- To investigate the institutions regulating media content in South Africa and whether this would be improved by the introduction of a single cross-platform media accountability system.
- To explore a possible structure for a cross-platform media accountability system in South Africa (considering Berger's 2011 conditions for borrowing, entitled *A three-way test to avoid selective borrowing and adhoc transplants*).

## **1.3 Research question**

Is a cross-platform media accountability system for the regulation of content in the mediums of print, broadcast and digitally published news media more suitable than separate regulatory bodies within a South African context?

## 2 Methodology

### 2.1 Methodological approach of this study

Firstly, the study identifies a selection of foreign developed cross-platform media accountability systems (CPMASs) according to a particular set of criteria (see section 2.2) for analysis.

Secondly, the study makes use of Guy Berger's (2011) fit-for-purpose borrowing formula to establish which aspects of the selected foreign developed CPMASs could potentially be incorporated into an appropriate model for a South African CPMAS.

Thirdly, this study assesses the South African content regulation environment in detail, and provides a list of recommendations for the adoption of a South African CPMAS.

### 2.2 Selection of countries

The methodology of this study includes a comparative analysis of the CPMASs adopted in a selection of foreign countries and their applicability to South Africa. The compilation of this research report suffered significant time restraints, and was completed within a period of 2.5 months. Therefore, the MPDP was not able to assess the CPMAS of each country where a cross-platform regulatory system has been adopted, but necessarily limited the analysis to a selection of countries.

The countries selected for analysis were done so purposefully, using the combined criteria of 1) the status of their democracy's and democracy rating, 2) their press freedom rating according to two separate international press freedom indices and, 3) the presence of a CPMAS within the country for the content regulation of media platforms. Utilising this criteria, a selection of 13 such countries are identified on the Addendum to this report. However, due to the above-mentioned time constraints for this research, a selection of 5 of these countries were identified for analysis in section 4, which are Norway, Denmark, New Zealand, Finland, and Switzerland.

The Democracy Index (2010) published by the Economist Intelligence Unit (EIU) was used to determine the top 13 listed democracies in the world, out of 167 countries covered by the index. Secondly, the study cross-references the Freedom House Press Freedom Index for each country to determine the press freedom point system rating for each democracy, along with its ranking on the index out of 197 countries, as well as its outcome as a Free Press, a Partially Free Press or Not Free Press. Thirdly, the study consults the findings of the Reporters Without Borders Index (2014) for press freedom rating out of 180 countries on the index; the ranking is allocated according to a score between (0-100), with 0 being the best score of a completely free press and 100 being the worst score for a not-free press. Finally the study evaluates the type of regulation and the structure of the media council in each country, bearing in mind that only countries which have adopted a CPMAS have been included for the purposes of this study (see the Addendum to this report).

Additionally, three sub-Saharan African countries have been included for analysis in section 4, which are Namibia, Ghana and Tanzania. These three countries were purposefully selected for analysis regardless of their democracy rating according to the EIU, or their press freedom rankings according to the indices mentioned above, but due to their adoption of a CPMAS for the regulation of media content, and in order to contextualise the South African regulatory environment within the sub-Saharan African region.

### 3 Theoretical framework and approach

To consider the adoption of practices by other regulatory bodies, it is helpful to use Guy Berger's study entitled *Best practice in media self-regulation: A three-way test to avoid selective borrowing and ad hoc transplants* (2011). Berger reviews various self-regulatory systems and questions whether or not the models of these countries should be incorporated into the South African regulatory system. This framework can be adopted to discover the best practice related to cross-platform media regulatory councils (CPMAS). Nkuna, following the work of Berger (2011) in the Unisa submission to the Press Freedom Commission (2011), explains that different factors must be considered before transplanting a set of practices from one regulatory body to another, as Berger (2011a:38) asserts that the criteria that suits one country may not be best criterion for another. Berger (2011) theorizes a formula to determine the 'best practice' for 'borrowing', which relies on meeting predetermined criteria. For a practice to be adopted it should meet three criteria, by firstly analysing its purpose and fitness-for-purpose within extant context, by secondly developing general principles, and thirdly being fit-for-purpose within the destination context. Only when an element in the model passes all three phases, may it be considered best practice and relevant for adoption by a particular country.

This study analyses the purpose and fitness-for-purpose of CPMAS within extant context, as Berger (2011a:43) explains that the purpose of that particular regulation must correspond to the borrowers purpose. Nkuna (2011: 26) furthers the idea that fitness-for-purpose requires that the system of regulation in question should make an impression in its context, to serve best interest elsewhere. Secondly Berger (2011a:44) identifies that developing general principles using qualitative and quantitative methods assists in determining best practice for regulation. In the case of CPMAS general principles shared across various bodies could be such an example of relevant criteria. Thirdly the criteria considered should be fit-for-purpose within the destination context, as Nkuna (2011: 27) explains that before regulation can be duplicated, one must take into consideration the cultures, political economy, and social dynamics in the destination environment. Thus before a practice can be adopted, its relevance in a South African context should be evaluated.

## 4 Summary of foreign cross-platform media accountability systems (CPMASs)

The efficiency of media councils and the ombudsmen who oversee them are questioned frequently, resulting in dynamic systems which are continuously improved to enhance the system of media accountability. Traditionally press councils regulated the print sector only, which has changed in recent years as councils opt to monitor more than one medium. The instance of councils which monitor a combination of mediums has become more prevalent, resulting in cross-platform media accountability systems (CPMASs) in a selection of countries across the globe.

For the purpose of this study, we have adopted the term 'cross-platform media accountability system', in keeping with the term 'media accountability system' or '\*M\*A\*S' adopted by media theorist Claude-Jean Bertrand (2002) in his comprehensive work, entitled *Media ethics and accountability systems*. In this report the term 'cross-platform media accountability system' refers to a regulatory body which administers public complaints on content for more than one medium, and is abbreviated as 'CPMAS'. In some cases the CPMAS will administer complaints for two media types, such as for print and online media, or for print and broadcast media, whilst in other cases the CPMAS will encompass the regulation of all three mediums (print, broadcast and online), such as in Sweden, New Zealand and Ireland.

Since its inception the Press Council of South Africa (PCSA) has operated as a regulatory body monitoring the print industry, the Broadcasting Complaints Commission of South Africa (BCCSA) administers complaints relating to the broadcast industry, whilst the Interactive Advertising Bureau of South Africa (IABSA) monitors online and digital media. Supporting the need for a continuously improving system of news media accountability, this study questions the feasibility and desirability of a South African cross-platform media accountability system (CPMAS). This study begins with a brief assessment of CPMASs which have been adopted in countries elsewhere, before assessing the South African regulatory environment and whether such a system could be appropriated in local conditions.

### 4.1 Norway

The *Norsk Presseforbund* adopted its first code of conduct in 1936 and updated it numerous times, most recently in 2013 (NPC 2013a). The Council monitors different mediums, including online, broadcast and print content providers and uses one code of conduct for all three media platforms (NPC 2014). The code covers expectations for journalistic conduct such as their role in society, integrity, responsibility, relationship with sources etc., whilst directly relating each section to the online, print and broadcast mediums specifically (NPC 2013b).

The organisation is funded through external media donors, to maintain a sense of independence from governmental organisations (NPC 2013a). The council is run by the chairman and deputy chairman, supported by a regulatory board comprising of thirteen members; two representatives of the Norwegian editors Association, four national broadcasting representatives, two Media Business representatives, two academic/magazine representatives, two editors, two representatives selected by Norwegian journalists and one representative from other media sources (NPC 2015a).

Complaints can be submitted via mail or online at no cost to the complainant, whom should expect a process of 3-4 months before the conclusion of the administration of the complaint. The Council does not accept third party complaints, unless the complaint is accompanied by a letter of consent. In extreme cases, when it is not possible to attain such consent, the complainant must inform the council, who will determine whether or not to proceed with the claim depending on the nature thereof (NPC 2015b). Sanctions for media transgressions include publishing the press council

statement in a prominent place in the publication or giving the complainant relevant airtime. Sanctions also extend to online, print and broadcast media creating new materials that are more appropriate based on the findings of the council (2013a: 28).

## **4.2 Denmark**

The Danish Press Council was formed in 1960 to address matters of court reporting and crime, and has been restructured numerous times, most recently in 1992. The council follows co-regulation between the state and the media, and pledges a responsibility to uphold press ethics and accountability (Denmark Press Council 2014). The six members include two members recommended by the media to represent the editors, two members recommended by the Danish Journalists' Union, and two public representatives recommended by the Danish Council for Adult Education (Denmark Sound Press Ethics 2013). The members of the council serve for a period of four years and the council is comprised of a Chairman, Deputy Chairman (recommended by the President of the Supreme Court), and six members appointed by the Minister of Justice upon the recommendation of professionals (Denmark Media Liability Act 2014).

Set up as an independent public tribunal, the organisation monitors the mass media, and is considered a cross-platform media accountability system (CPMAS) since its jurisdiction extends to television, radio, newspapers, magazines, periodicals and electronic news content. The Danish media are expected to uphold the "Advisory rules of sound press ethics" in Section 34(1) of the Media Liability Act, which forms part of the Media Liability Bill of 1991 edited on the 22 May 2013 (Denmark Media Liability Act 2014). These advisory rules, serve as a code of conduct for all mediums and delve into three major areas, firstly the issue of correct information, facts, commentary etc., secondly the area of suitable conduct for a journalist when covering victims, children and digital information etc., and thirdly the area of court reporting (Denmark Sound Press Ethics 2013).

When the media transgress Section 34(1) of the Media Liability Act; companies, associations and people affected by the media product can complain to the council, but no third party claims are accepted (Denmark Press Council 2014). After the complaint is dealt with, sanctions are imposed which include the right of reply, criticism of the offending publication/broadcaster, payment of damages or cancellation of content (Denmark Media Liability Act Section 54, 2014). If the sanctions are not followed, the transgressor is punishable by a fine or imprisonment for up to four months (Denmark Media Liability Act Section 53, 2014).

## **4.3 New Zealand**

The New Zealand Press Council (NZPC) was established in 1972 as a voluntary self-regulatory body and is funded by the print industry (New Zealand Press Council). The body traditionally focused its mandate on the print sector through the regulation of magazines and newspapers, but expanded on this mandate in March 2014 to include digital news media and bloggers (New Zealand Press Council Statement 2014). Broadcasting is regulated separately by the Broadcasting Standards Authority (BSA) and the broadcasters' Online Media Standards Authority (OMSA) (New Zealand Press Council Statement 2014). The NZPC is led by an Independent Chairman (a retired high court judge), an Executive Director, six public representatives and five media representatives (New Zealand Press Council Annual Review 2013, 2).

The council lobby for freedom of the media and provides an independent space for resolving complaints regarding print and digital news media conduct. The NZPC bases its eleven principles of media conduct on the Treaty of Waitangi and NZ Bill of Rights Act. The principles extend to print and online media publications, and address various issues including accuracy, privacy, minors,

discrimination confidentiality etc. (New Zealand Press Council Annual Review 2013, 69). If the media transgress the principles of media functioning, the public may complain as an aggrieved party or as a third party complainant. Third party complaints are only accepted when the complainant has the consent of a person affected by the story. As per procedure, complainants must submit the complaint to the editor in writing, if they are dissatisfied with the response or receive no formal response in 100 working days, they may then complain directly to the council (New Zealand Press Council Annual Review 2013, 71). Sanctions for transgressing the press code include the right of reply, correction, retraction, censorship, allocation of prominence by the council (such as placement of the ruling and pointers on the front page), and removal of online stories (New Zealand press council complaints).

#### **4.4 Finland**

The Finnish Council for Mass Media established in 1968, functions as the Press Council in Finland and operates as a self-regulating organization (The Council for Mass Media in Finland 2008b). The council serves for a term of three years, led by a chairman and thirteen board members, eight media representatives and five public representatives. The council is funded by donors and media organisations, but also accepts subsidy funding from government (Council for Mass Media Finland 2013).

The Council for Mass Media monitors cross-platform mediums such as online content, print publications and broadcast media. The organization serves as a platform for public grievances, accepting complaints by affected individuals and third parties, via post and electronic mail. Where corrections are concerned, the council will only do so after the complainant has asked the offending medium/media outlet to correct the complaint formally (Finland Complaints Procedure 2008). The media are required to accept the authority of the council and adhere to the Guidelines for Journalists, which outlines the acceptable standards of media conduct for broadcast, print and online materials. The guidelines include the professional status of a journalist, information gathering and dissemination, public and private information, interviewer and interviewee rights and the right to reply (Council for Mass Media Finland 2014). Sanctions for transgressing the guidelines include; if reprimanding a paper or magazine it must publish the reprimand in full in the print edition and online, if only in an online publication, the verdict is published online only, while radio and television media can publish the reprimand as part of a news release on the relevant program's website (Council for Mass Media Finland 2015).

#### **4.5 Switzerland**

The *SchweizerPresserat*, press council of Switzerland was established in 1977 (SPC 2008). The council regulates complaints relating to broadcast and printed media materials. Led by the Council President and two Vice Presidents, the council consists of twenty-one members, six public representatives and fifteen media representatives. The council also uses a selection criterion, guaranteeing that six members are French speaking, two Italian speaking and some Romansh speaking members (SPC 2011a). The council serves for a period of four years, endorsed by funding created through media donations to the "Foundation of the Swiss Press Council" (SPC 2011b).

The authority of the council extends to "ethical issues of all public, periodic and /or the timeless related media" (SPC 2011b). Journalists who author these products are expected to uphold the eleven Duties of a Journalist, which serves as their code of conduct, together with the Declaration of Journalistic Rights. The eleven ethical duties relate to broadcast and print media, covering the expectations around truthfulness, professionalism, privacy, advertising versus editorial, etc., whilst the journalistic rights cover free access to information, transparency and the like (SPC 2008). Upon

the transgression of the code by the media, the public may complain to the council at no cost (SPC 2011a).

#### **4.6 Namibia**

The Namibian Council, created to fend off government intervention, operates as a self-regulatory body (NMO 2010). The first press ombudsman appointed by the Editors Forum of Namibia (EFN) on the 11 August 2009, was later joined in office by Media Complaints Committee appointed on 13 December 2009. The Media Complaints Committee consists of four media representatives and four public representatives, who assist the press ombudsman to adjudicate complaints and maintain press freedom in Namibia (NMO 2014b). The Editors Forum is also responsible for funding of the council and was instrumental in creating and advising the council (NMO 2010).

The Namibian Council serves as a cross-platform media regulatory council (CPMAS) overseeing the print and broadcast industries in Namibia (NMO 2014a). Print and broadcast media that ascribe to the authority of the ombudsman follow one code of conduct, which covers fifteen ethical principles of journalism. The code specifies rights and expectations relating to print and broadcast media including reporting, corrections, public interest, watershed periods for broadcast etc. If mediums are in contravention of the principles, complaints can be submitted to the ombudsman for arbitration (NMO 2015). Only individuals with a vested interest in the story may lay a complaint and must waive their right to legal action, thus no third party complaints are accepted. The ombudsman sanctions the complaints according to severity through the right to a reply, a retraction, an apology, or a follow-up article (NMO 2014a).

#### **4.7 Ghana**

The National Media Commission of Ghana is established in accordance with the National Media Commission Act of 1993 (GNMC 1993). The Media Commission is an Independent Governance Institution dedicated to supporting democracy in Ghana; the body monitors the mass media content for print and broadcast industries (GNMC 2015). The Commission is made up of eleven persons, and is run by a chairperson selected from the committee. The committee has a structure regulated by the act and comprises of two people nominated by the president, three people nominated by Parliament and representatives nominated by exterior groups; one from the Ghana Bar Association, one by the owners of the Private Press, one from the Ghana Library Association, one from the Ghana Association of Writers, one from the Christian group, one from the Muslim council (GNMC 1993).

The commission functions to promote freedom and independence of the press, maintain high standards of journalism, settle complaints and facilitate relations between state owned media and the state (GNMC 1993). For the purpose of settling public complaints, the Media Commission established a "Settlement Committee" comprising of the chairperson of the commission and six members of the commission acting as three public representatives and three media representatives. Only individuals directly affected by the story published/broadcast may lay a complaint, therefore no third party complaints are accepted. Ghanaian media follow two codes of conduct, one for print which delves into issues of news production, conflict of interest, plagiarism etc., and a separate code for broadcast dealing with national programming, language broadcasts, morality, and the like. The Settlement Committee deals with complaints and issues sanctions such as corrections, apologies, public responses, or disciplinary action (GNMC 1993).

#### **4.8 Tanzania**

The Media Council of Tanzania (MCT) is a voluntary, independent, regulatory body established in 1995 to counter the government's attempt to create a statutory media regulatory body. The council monitors print and broadcast media in Tanzania. The body began operations in 1997 to promote media freedom, media accountability and settle complaints. The council expanded its activity to include publication of material and research of media related matters (MCT 2015). Any member of the public can lay a complaint to the council, on behalf of themselves, a third party, or in the public interest (MCT 2009). Complainants can submit documentation regarding the media's transgression to the MCT and propose a form of remedy such as an apology, right to reply, a correction or time on air. If dissatisfied with the outcome, the complainant can resort to court action, but no information of the MCT settlement/complaint may be used in a court of law (MCT 2009).

## 5 Considering a cross-platform media accountability system for South Africa

### 5.1 Problems arising from separate regulatory bodies and convergence

The main impetus for the current debate concerning the viability and desirability for establishing a cross-platform media regulatory mechanism (CPMAS) in South Africa seems to stem directly from the steady trend of convergence. Whilst news media content is delivered across the traditional platforms of print and broadcast media, as well as online, in an increasingly converged way, the regulatory mechanisms responsible for administering complaints on such content are still separate and remain un-converged, operating in silos from one another. Resultantly, some areas of content produced by news media outlets are currently, strictly speaking, unregulated since it does not fit comfortably within the regulatory jurisdiction of the PCSA nor the BCCSA. The news media content in question is that which appears online, and while it has been assumed that this would logically be covered by the IABSA, this is not a regulatory body per se, meaning that online news content is yet to find a comfortable regulatory home.

Put differently, there are currently ‘gaps’ within the over-arching regulatory framework through which online news content slips. The problem with this situation is that it opens the entire framework of self-regulation, fostered from a media and public partnership for the regulation of media content, at risk of diminishing credibility. The risk of political pressure and criticism also arises again, since from a regulatory perspective, South African online news publishers are currently not held tightly to account for errors in journalistic practice. Proponents for more statutory regulation of media content would argue here that online news publishers are able to do as they please without being held to account (although counter arguments would explicate that they do not, in most cases, do so since this would harm the credibility of the online news publisher itself). But most importantly, while more and more of our news content is reproduced or appears exclusively in an online format, such gaps in the regulatory framework create a space in which news producers are arguably unaccountable to the public and the consumers of their content, at least in regulatory terms. The online news audience rightly deserves the same channels of recourse as the ‘off-line’ audience.

Additionally, the fundamental principles which form the foundation of high quality ethical journalism are just as applicable to news that appears online as they are to news that appears within a hard-copy printed newspaper. Whether one reads an article on a computer screen, or on a printed page, one expects to receive news that is fair, balanced, accurate, believed by the publication to be reasonably true and so on. Although there are important variances between the mediums of print and online news, which must be taken into account with regard to content regulation, the fundamental principles of good and ethical journalism remain the same.

Therefore, it is necessary to examine the ‘gaps’ within the overall regulatory framework with regard to online news production and digital news publication, and although remaining sensitive to the very particular characteristics of the online medium and how it differs from broadcasting and print, examine ways in which to close such ‘gaps’ which are appropriate to the online space, do not limit freedom of expression, encourage high standards of journalism and adherence to a code of ethics, and offer the audience of online news the same or similar options of complaint to those offered to broadcast and print audiences.

### 5.2 An analysis of selected complaints

While establishing the specificities of how the above mentioned regulatory gaps have manifested in a South African situation, the MPDP examined a selection of 20 complaints recently received by the PCSA – each complaint involved content which was produced by an online news publisher.

The complaints laid against online news publishers with the PCSA which were examined by the MPDP for the purposes of this study can be tallied as follows.

Online news publisher	Number of complaints examined	Type of complaint	PCSA referral
News24	14	2 – users having difficulty with posting their own user generated comments 1 – the Presidency 1 – South African Sports Confederation and Olympic Committee (Sascoc) 10 – Third party	14 – IABSA
Daily Maverick	3	Third party	3 - IABSA
EWN	2	Third party	1 – IABSA 1 – BCCSA
3 <sup>rd</sup> Degree (Facebook page)	1	Third party	1 – BCCSA
<b>Totals</b>	20 complaints examined in total	1 – the Presidency 1 – South African Sports Confederation and Olympic Committee (Sascoc) 2 – users having difficulty with posting their own user generated comments 16 – Third party	18 referrals to the IABSA  2 referrals to the BCCSA

After assessing the table above, as well as the content of all 20 complaints examined by the MPDP, the following aspects can be identified as problematic areas with respect to the regulation of online news content:

- The PCSA has received a number of complaints regarding the content of an online news publication. Because online content does not strictly fall within the jurisdiction of the PCSA, the Public Advocate has referred the majority of these complaints to the IABSA. A minority of complaints were referred by the PCSA to the BCCSA.
- The IABSA is not a regulatory body, but operates as a voluntary industry representative body: this is an important distinction (IABSA, Code of conduct). Its code of conduct, although comprehensive, is not specifically aimed at journalistic ethics, nor the protection of the right of freedom of expression. On receiving complaints against online publishers from the PCSA, the IABSA has dealt with such complaints in an ad hoc informal manner, which involved acting as a mediator between the complainant and the online publisher to reach settlement, or advising the PCSA on how to deal with the complaint (Allison 2015 & Spira 2015). However, the IABSA does not include within its structures, an office for an Ombudsman, an appeals mechanism, a formal complaints procedure and the like – all of which are part of the structure of the PCSA. Whilst the PCSA is a specialised body, structured specifically and exclusively to handle complaints against media content, this is not the core mandate of the IABSA and its structures do not include, nor are they designed, for this function (see also section 5.3).

- Two complaints were referred to the BCCSA. One such complaint referred to content which was published on the Facebook page of the television programme 3<sup>rd</sup> Degree. The second complaint referred to a cartoon which was published on the Eye Witness News website: the BCCSA informed the complainant that this case did not fall within its ambit, and referred the complainant to the Human Rights Commission (HRC). The referral of complaints by the PCSA to the BCCSA raises three problematic aspects which must be considered with regard to the content regulation of online news, which are:
  - Should content regulators have jurisdiction over the social media platforms of news media outlets (such as in the 3<sup>rd</sup> Degree case), and/or should they have jurisdiction over the user generated comments posted by readers/users on either their official websites or on their social media sites?
  - Which regulatory body is to be responsible for aggregated content? For example, in the case of Eye Witness News (ewn.co.za): news content is published on the ewn.co.za website, but this content is also duplicated on the news bulletins of various radio stations. Should such content be regulated by a regulatory body for online content, or by the BCCSA, considering that the content has appeared on both platforms (online and broadcasting)?
  - Although a case of online video content was not included in the selection of complaints assessed by the MPDP, the question of jurisdiction over online video content is nonetheless pertinent. Should a complaint be laid against, for example, a YouTube video that has been posted on an online news publisher's website, would this complaint be handled by the online content regulator, or because it consists of video content, by the broadcast regulator (the BCCSA)?
- Three complaints examined by the MPDP were laid against the *Daily Maverick*, which is a news outlet that publishes content exclusively in an online format and does not produce a hard-copy printed equivalent. Which regulatory body ought to have jurisdiction over such an outlet? Should such complaints be handled by the PCSA, which specialises in the regulation of news/journalistic content but does not have jurisdiction over online content, or the IABSA, which although not a regulatory body, seemingly has jurisdiction over online content?

The above mentioned problem areas are part of the impetus for the necessary consideration of an amalgamated media council for South Africa, or a cross-platform media regulatory mechanism (CPMAS). Although these regulatory difficulties and 'gaps' may potentially be addressed by the establishment of a CPMAS, and although much can be learned from other countries where such amalgamated councils have already been established, there are a number of additional factors within a South African environment to consider before taking this leap, which pertain to the structure of the regulatory landscape and which intersect with concerns for freedom of expression, as will be outlined in the remainder of this report.

### **5.3 The IABSA and online regulation**

As mentioned above, a significant number of complaints against news content published online have been referred by the PCSA to the IABSA. The question is whether or not the IABSA is the appropriate organisation to be administering such complaints.

First, it is important to recognise that such complaints must indeed be taken seriously by one regulatory body or another, and do not ‘fall through the cracks’. For example, one of the complaints examined by the MPDP involved a News24 report on a 19-year-old youth who had been shot and killed outside of his home in the community of Alberton (News24 2013). The headline of the story implied that the youth had been shot because he was playing music very loudly, and the story indicated that the youth was killed by his neighbour. The third party complainant claimed that the story was factually incorrect in a number of instances, that the killer was in fact no longer a neighbour and had not lived next to the youth’s family for quite some time, but had targeted the youth and returned to the area in order to find the youth and harm him. Although the nuances of the difference between the reported story on News24 and the content of the complaint may seem slight, it is nonetheless a serious complaint. Factual inaccuracies in such a story may cause significant emotional anguish to the grieving family, as well as affront the dignity of the deceased youth. It is important that such complaints are investigated by an Ombudsman and council, and if needs be, the publication should receive the appropriate sanction (which in this case may include the publication of a correction, and an apology to the youth’s family).

Understanding the seriousness of the regulation of online news complaints, we return to the question of whether the IABSA is the appropriate institution for the administration of such complaints, albeit that those complaints refer to content published online?

The Code of Conduct of the IABSA opens like such: “The IAB South Africa is not a regulatory body, but a member-driven voluntary association seeking to grow the digital industry”, and continues, “The IAB South Africa (formerly DMMA), is an independent body and voluntary association aimed at building trust in the digital medium as a viable and lucrative platform for South African advertisers to reach and engage with their target audiences and increasing the share of advertising, sponsorship and marketing spend which is directed at the South African digital industry; and ensuring a sustainable and vibrant digital industry in South Africa”.

An assessment of the IABSA’s operational documents, including its constitution and code of conduct, clearly indicate that its core mandate does not involve the administration of complaints against digitally published news or journalistic content, which was confirmed in two in-depth research interviews conducted by the author (Reid) with the IABSA chair of regulation, Andrew Allison, and the chair of the IABSA’s publication committee, Tim Spira. The IABSA functions as a voluntary representative body, and its focus is on market-driven profit-orientated concerns pertaining to the marketing and advertising industry, and how these can more effectively operate within the digital online sphere. The IABSA, being a market-driven organisation and therefore decidedly dissimilar to the PCSA in orientation, does not have the public interest as its primary focus, but rather the interests of its (mainly marketing and advertising) industry members. How effectively the IABSA serves the interests of its members is a matter which falls outside of the scope of this report, and has therefore not been investigated nor will it be discussed here. The purpose of this report is rather to assess whether the structure, orientation and procedures of the IABSA are ‘fit-for-purpose’ with regard to the administration of complaints against digitally published online news.

The field of journalistic ethics is a highly specialised one. The administration of complaints laid against the content of news media platforms (whether print, online or broadcasting) therefore necessarily requires a particular set of expertise. As can be seen in various non-statutory media accountability systems, or content regulatory councils such as press councils or broadcasting regulators, from around the globe, a particular set of procedures and structures must necessarily be established and instituted for the fair administration of complaints which constitute ‘best practice’. Ideally, such procedures and structures should be arrived following a meaningful and inclusive consultative process with all interested stakeholders, in keeping with participatory democratic

principles. Although various non-statutory media accountability systems around the world are instituted in many different ways, there are a number of emergent characteristics evident in many of them, which have become common-practice and which ought to be in place for the administration of complaints against media content.

Broadly speaking, such commonly instituted procedures and structures can be summarised as follows:

- A constitution and code of ethics: the primary emphasis of these operational documents, especially the code of ethics, must encompass both the protection of the rights of freedom of expression and the encouragement of a high standard of journalistic ethics,
- A council, representative in its nature according to the sectors requiring representation agreed upon during consultation,
- The office of an Ombudsman, to rule on complaints and institute sanctions,
- An appeals mechanism, perhaps in the form of a separate appeals panel and led by an independent chair (not the Ombudsman), and,
- A clear, easily accessible, easy-to-follow and properly instituted complaints procedure.

In South Africa, the PCSA has all of the above and is specifically designed as a fit-for-purpose structure for the administration of complaints against journalistic and editorial news content. The IABSA, however, has none of the above.

In its defence, and as outlined above, the administration of complaints against online digitally published news content has never been part of the mandate of the IABSA. Recognising, the importance thereof, however, the IABSA (according to Allison and Spira) have recently established a relationship with the PCSA, where the IABSA has consulted with the PCSA on online complaints received, offering advice on how to administer such complaints, specifically pertaining to the differing ways in which news content and user generated comments ought to be handled. The IABSA has also acted as a mediator between complainants and online publications in an effort to reach settlements, on complaints which were not handled by the PCSA (Allison, 2015 & Spira 2015).

While the IABSA's efforts thus far are commendable, such an ad hoc situation is not sustainable in the long term and must therefore be revised. It is additionally concerning that all such complaints administered by the IABSA are done so in the absence of any of the procedures and structures of media accountability systems as summarised above.

Clearly, a media accountability system for the administration of online complaints, whether in the form of a three-tier CPMAS or whether an already established regulatory body extends its ambit to online news content, is necessary. This should be addressed with some urgency since, while this regulatory 'gap' persists, it both damages the credibility of the overall voluntary regulatory system, as well as opening the entire system up to added political pressure and criticism.

### **Recommendation**

- As a regulatory mechanism which specialises in the administration of complaints against journalistic and editorial news content, and a fit-for-purpose accountability structure, the PCSA should extend its regulatory ambit to the administration of complaints against digitally published online news content. Such complaints should not be administered by the IABSA. This recommendation could perceivably be adopted as an immediate interim measure, until the establishment of a cross-platform media accountability system, or as a permanent arrangement, should such a CPMAS not be established.

## 5.4 The Press Freedom Commission

This report recognises the recommendations for digital publishing contained within the final *Report on Press Regulation in South Africa*, produced by the Press Freedom Commission (PFC) in 2012, and specifically the arguments delivered by the PFC on pages 55-59 in the section entitled 'Digital publishing' of its final report. Here, this report interrogates the points delivered by the PFC on digital publishing.

The PFC rightly recognises that during its own internal process of review conducted from 2010 – 2011, the PCSA resolved that its jurisdiction should be extended to online publications which are members of the (then) PMSA and other online publications that subscribe to the Press Code. The PFC, however, proceeded to reach the opposite recommendation, stating that “[w]hile the PFC acknowledges that regulation of digital publishing is crucial, it does not believe that it is best regulated by the Press Council” (Press Freedom Commission 2012: 57).

The PFC lists a number of arguments for why the extension of the PCSA’s jurisdiction to online or digital publishing would be inappropriate, each of which will be discussed here:

- The PFC asserts that while deadlines are an important aspect of print news media publishing, stories that appear on online platforms can do so continuously throughout the day, as a story unfolds. The PFC does not elaborate on why this would prevent the PCSA from handling online complaints. The PCSA complaints procedure operates on a post-publication principle, which means that the immediacy of news production and publication should not adversely impact the complaints procedure of the PCSA. That is to say, whether information about a story is published within 24 hours or within 1 hour, the content of the published story should nonetheless adhere to the same fundamental principles of ethical journalism as well as adhere to the provisions of the Press Code.
- The PFC refers to user generated comments which appear on online news websites, and the difficulties surrounding the regulation of the content of such comments. This report, however, recommends that no regulatory body, whether the PCSA, the IABSA, the BCCSA or an amalgamated CPMAS, should have jurisdiction over the regulation of user generated comments. This position is detailed in section 7 of this report. Nonetheless, this does not disenable the PCSA from regulating the content produced by online news publishers entirely, but only content which is produced by users: journalistic and editorial content produced by online news publishers could reasonably be regulated by the PCSA, while user responses (comments) on such content ought not to be.
- The PFC mentions social networks such as Twitter and Facebook, recognising how users utilise such platforms to spread information. In a similar vein to the previous point, and as detailed in section 7 of this report, the MPDP recommends that the PCSA should not regulate the content of social media platforms whatsoever. Again, this does not disenable the PCSA from regulating digital content produced by online news publishers, but only user responses to such content, should user responses appear on social media platforms.
- The PFC notes that, “websites and publishing platforms are hosted in different countries around the world and not just in South Africa; this poses challenges to jurisdiction with regard to potential complaints” (Press Freedom Commission 2012: 57). This seeming problem of jurisdiction can be nullified by the principle of voluntary subscription to the PCSA and the Press Code. The same principle could also be applied to hard-copy print newspapers, in that, should a South African newspaper select not to subscribe to the PCSA and the Press

Code, the PCSA would have no jurisdiction over this particular newspaper, and yet the newspaper would not face any impediments (legal or otherwise) from publishing. The largest majority of print news media publications in South Africa however, select to voluntarily subscribe to the PCSA and the Press Code since this increases their own credibility as a news content producing outlet. Digital and online news publishers ought to be offered the same 'carrot'. Whether such platforms are hosted within South Africa or not, makes small difference here. Digital publishers who report predominantly on South Africa, and whose reporters are based predominantly within South Africa, would benefit from the credibility gained amongst what would then be a predominantly South African audience, by voluntarily subscribing to the PCSA and the Press Code.

- The PFC mentions that Internet Service Providers (ISPs) in South Africa are, according to the Films and Publications Act No.65 of 1996, obliged to report information on child pornography to the Film and Publications Board (FPB) as well as take steps to prevent the circulation of child pornography via their services. Although that may be so, the PFC does not elaborate on why or how this would prevent the PCSA from regulating complaints laid against digitally published online news. The genres of journalistic/editorial news and current affairs, and that of child pornography, are vastly different and should be treated as such. It is clear that the FPB maintains jurisdiction, by law, over the regulation of child pornography. But that does not mean that the vast spectrum of online digitally published news content (a different genre entirely) should remain unregulated. It should also be noted that the current Press Code takes heed of the need to protect children: Section 8 of the Press Code is dedicated entirely to the representation of children by the press, while clause 8.2 states that “[c]hild pornography shall not be published”, in accordance with the Film and Publications Act (The South African Press Code 2013: 16). Should the jurisdiction of the PCSA be extended to online news publishers which have voluntarily subscribed to the Press Code, and in the event that content containing child pornography is published on such a platform, the PCSA Ombudsman could either 1) sanction the online publisher according to clause 8.2 of the Press Code, or 2) refer the case to the FPB, or 3) both.
- The PFC states that, “as technology advances, so new publishing platforms emerge... this occurs at quite a rapid pace” (Press Freedom Commission 2012: 57). Again, this argument is nullified by the principle of voluntary subscription by online news publishers. The reception of digital news content is not platform-specific, and should not be delineated for regulatory purposes according to platform/reception classifications. Users can today consume digital news content via cellphones, tablets or desktop computers, and such options are likely to expand as technology advances. This report proposes that the PCSA have jurisdiction over the content produced by online news publishers who voluntarily subscribe to the Press Code, regardless of the digital platform(s) on which they select to distribute their content. Whether a story which contravenes the Press Code is consumed by a user via a tablet, or a desktop computer, should not deter from considerations as to whether the content of the story is in infringement of the Press Code.
- The PFC states that, “Digital publishers who belong to the Digital Media and Marketing Association (DMMA) [now the IAB] do not currently have a relationship with the Press Council and the Ombudsman”(Press Freedom Commission 2012: 57). This can be changed.
- The PFC states that, “Digital publishers are merely a small fraction of the people who are able to publish digitally” (Press Freedom Commission 2012: 57). Again, this argument is nullified by the principle of voluntary subscription by online news publishers. It would be nonsensical and impractical to extend the jurisdiction of the PCSA to all digitally published

content. Additionally, many digital publishers would have no interest in subscribing to an institution which specialises in the regulation of journalistic content, since their publications are not news-orientated (for example, digital publishers such as *Gumtree.co.za*, or *Kalahari.com*). The PCSA's jurisdiction over online content would extend only to digital news-orientated publishers who have voluntarily subscribed to the PCSA and the Press Code.

The PFC report refers to the DMMA (which has since been re-launched in South Africa as the IABSA) and acknowledges that, "[t]he main work of the DMMA appears to be about growing and sustaining the digital publishing industry as well as creating common interests as strategies amongst its members. Its core business does not include robust regulation of content" (Press Freedom Commission 2012: 58). Despite this observation, the PFC goes on to suggest that if the code of the DMMA were viewed widely, then it should not preclude the possibility of the DMMA from "bringing within its ambit the regulation of the content of what is published digitally". The DMMA has since been re-launched as the IABSA, and its current code of conduct opens with as clear indication that the IABSA is indeed, not a regulatory body. Instead it acts as an industry representative body. Its code, though robust and detailed, is not specific to the regulation of journalistic content and does not focus on the encouragement of adherence to journalistic ethics. Were this particular code be utilised by working journalists as a guide for the production of ethical journalism, it would fall short, but that is not its purpose.

If the current IABSA were to include content regulation in its ambit, it would involve a great deal of restructuring of this organisation, including the adoption of a code of conduct catering specifically for the production of news and journalism, the institution of an Ombudsman's office, a council and an appeals mechanism and panel for the administration of complaints, the adoption of a suitable complaints procedure, a public awareness campaign detailing the IABSA's new ambit, and a considerable increase in its resourced capacity, both financially and with regard to human resources. The IABSA would also need to enter a consultative process with its members to reach consensus on whether it should remain a purely representative body, or restructure itself to become a regulatory body. So, to recommend that the IABSA should include content regulation of digital publishers within its ambit, is not a 'quick fix' solution to the problem of online news regulation: were the IABSA to reach the point where it could reasonably be expected to perform such a role on a regular basis, it would come at the end of a lengthy process of restructuring and consultation. And all the while, the PCSA already has such fit-for-purpose structures and procedures in place.

Due to all of the above points contained within this section, the MPDP is in disagreement with the recommendations delivered by the PFC with regard to digital publishing.

### **Recommendations**

- The MPDP recommends that the PCSA returns to its own original recommendation, outlined in the Review document which it published in April 2011, stated as such:

#### **"Extended jurisdiction**

The Team deliberated on the advisability of extending its jurisdiction to the internet and accepted a submission that jurisdiction should be extended to the online publications associated with the publications listed in 1.4 of the Constitution.

Proposal: The jurisdiction of the Press Council should be extended to online publications of the members of Print Media South Africa and other publications that subscribe to the Press Code" (Press Council of South Africa, Review 2011: 43).

- Additionally, the MPDP recommends that the PCSA allow for the voluntary subscription of online digital news publishers who are not members of the PDMSA, to the PCSA and the Press Code.

## 6 Lessons learned from foreign cross-platform regulatory bodies and their applicability to South Africa

Taking the review of foreign amalgamated media councils or CPMAS's presented earlier in this report (see section 4) into account, while at the same time remaining cognisant of the specificities of the South African regulatory environment and political context, what follows below is a discussion of recommendations for aspects of foreign developed regulatory bodies which may be suitable in South African conditions, as well as aspects of such foreign developed mechanisms which would not be suitable in our country. This discussion, as mentioned earlier, is conducted whilst adopting the theoretical framework developed by Guy Berger for this particular purpose, which outlines a three-step broad criteria for 'best practice' in 'borrowing' from foreign self-regulatory councils (Berger 2011:36-57).

Perhaps the country of most significant interest to the current discussion is New Zealand, because this country's Press Council has recently undergone a process of review which included detailed consideration of the regulation of online news content (see the report published by the Law Commission in 2013, entitled *The news media meets 'new media'. Rights, responsibilities and regulation in the digital age*).

On 23 March 2014 the New Zealand Press Council (NZPC) released a statement explaining that as of 1 May 2014 it would include in its ambit the administration of complaints dealing with online news websites. While originally established to adjudicate complaints originating from print newspapers and magazines (similar to the PCSA), the jurisdiction of the NZPC was extended to include the websites of its member's publications. Additionally, the NZPC opted to offer a new form of membership to "non-newspaper digital media, conditional to their agreeing to the same conditions as those applying to current members" (New Zealand Press Council Statement 2014:1). Effectively, digital online publishers of news content now have the option of subscribing to the NZPC and its code of ethics, which was until recently, not the case in New Zealand.

As such, the NZPC currently delineates itself as such: "If you have a complaint about the editorial content of a newspaper, magazine or periodical in circulation in New Zealand (including their websites) you may complain to the Press Council. You may also complain about digital sites with news content, including blogs characterised by news commentary, that have been accepted as members or associate members of the Council" (New Zealand Press Council 2014).

The motivation for this move appeared to be a willingness on the part of the NZPC to offer digital consumers of news media the same avenues for complaint as print consumers, as well as increasing the credibility of online news publishers. This is an avenue of action which the MPDP recommends is given serious consideration by the PCSA.

One aspect of the NZPC's recent inclusion of online regulation in its ambit may prove problematic in South Africa, however, which the MPDP strongly recommends is not adopted by the PCSA. Blogs that deal predominantly with news and current affairs commentary are also offered the option of subscribing to the NZPC, which is not problematic so long as such subscription remains voluntary and at the discretion of the relevant blogger(s). Bloggers posting commentary on news and current affairs may opt to subscribe to a content regulatory body and code of ethics in order to increase the perception of credibility of their blog site. However, in New Zealand, bloggers are required to pay a subscription fee to the NZPC in order to be considered official members: "A new fee structure will be set based on the size of the digital entity and its commercial or non-commercial status"(New Zealand Press Council Statement 2014:1).

The NZPC admirably concedes that it will adjust its fee structure as indicated above, meaning that independent bloggers are not expected to pay the same fees as commercial media outlets. In South Africa, however, it would be inappropriate and even unethical to request that independent bloggers, or non-commercial online digital news publishers pay a subscription fee to the PCSA at all.

For example, South Africa boasts a number of non-profit-generating online community news websites, as well as civil society orientated online news publications, most of which do not generate income from advertising nor subscriptions, but whose content is populated by volunteer writers. Independent bloggers currently contribute a diversity to the media landscape of the country, and are largely enabled to do so because blogging via free-of-charge blog platforms means that the only financial outlay involves having access to a computer that is connected to the internet – and even then, the costs of internet access and data in South Africa, when compared to the rest of the globe are exorbitantly high and disenable the communications rights of the majority.

Where New Zealand is largely a middle-income country, the same cannot be said of South Africa – the popularly repeated fact relevant here is that we live in one of the most unequal countries in the world. Within the South African context, were the PCSA to require a subscription fee of any kind from independent bloggers or non-profit-generating online news publishers, this requirement would rightly be met with opposition and be framed in public discourse as an attack on freedom of expression, as well as serving to disenable the potential offered by the internet to increase levels of media diversity within the country, which due to our highly monopolised media market as well as diminished levels of access and accessibility to the media for the majority, is currently sadly lacking (Angelopulo & Potgieter, 2014 and Reid & Malila, 2014).

A counter argument here would posit that subscription to the PCSA is voluntary, implying that if such online news publishers found the subscription fees unaffordable then they could opt to not subscribe to the PCSA and its Press Code. However, the primary motivation for such online publishers to subscribe to the PCSA and the Press Code would be to increase the credibility of the content offered on their platform. Criticism would no doubt include the position that it would be unjust to expect that online publishers were only entitled to gain such credibility if they had the money to pay for it.

In South Africa, we are a society which is still in a process of transition, reconciliation and reconstruction. Stories from a grassroots level, which take a ground-up approach to news reporting, are rarely carried by the mainstream commercial press (with a few notable exceptions) but they are of crucial importance to the health of democracy and the societal whole. Although data costs within South Africa are still high, and resultantly meaningful internet access and penetration is low, this will hopefully change in the near future. Grassroots community reporters will likely take to the internet in greater numbers in order to report on community stories, as their options for freely expressing such stories are limited within the commercial media (a freedom of expression issue) and will therein contribute content to the media sphere which is decidedly different in orientation to that carried by the commercial media (a media diversity issue). To place an additional financial barrier before such news content producers within the given context would be unethical, unjust, morally indefensible and wrong. The MPDP therefore recommends that the PCSA does not adopt the practice of requiring subscription fees from bloggers and online news content producers in the same manner as the NZPC, whilst nonetheless offering membership to such online publishers, free of charge.

The manner in which a compulsory subscription fee to the PCSA for independent bloggers and non-profit-generating news orientated websites may arguably adversely impact media diversity, carries with it political concerns. Much of the impetus for the PCSAs 2010 internal review process, as well as

the subsequent PFC 2011 review, stemmed from the political pressure applied by, and criticism emanating from, certain voices within the ruling ANC party. The same can be said of the Print and Digital Media Transformation Task Team (PDMTTT) in 2013. Throughout all three processes the content of criticism emanating from the ANC included that the print media sector remains 'untransformed', lacking in diversity and displays poor commitment to ensuring increased transformation. Such criticisms are formalised in official ANC documentation, in particular and most recently in the African National Congress (2013:62-63) *Resolutions of the 53<sup>rd</sup> National Conference*. One of the resolutions listed in this document includes that: "...the ANC reaffirms the need for parliament to conduct an inquiry on the desirability and feasibility of a media appeals tribunal within the framework of the country's Constitution that is empowered to impose sanctions without the loss of any constitutional rights" (ANC 2013:63). It is significant that this resolution is preceded by concerns for a lack of media transformation within the print media sector, as well as a concern for a lack of access to a diverse media amongst the economically disadvantaged (the document states that: "The reality arising out of this situation is that the majority of South Africans do not have media that report and project their needs, aspirations and points of views onto the national discourse" (ANC 2013:63)). Notably, the document expresses only a reserved appreciation for the changes implemented to the PCSA system after the PFC process, while suggesting that this process should be re-examined and form the basis or starting point of a parliamentary investigation for a potential further review of the system.

Regardless of the validity or invalidity of the arguments presented in this ANC document, it is nonetheless significant that the question of content regulation (of print) is framed within the overarching debate surrounding media transformation and diversity. The PCSA should remain cognisant of the trajectory of this political argument. Therefore, within such a context, it would be politically inadvisable for the PCSA to institute procedures which could be perceived to have a negative impact on the encouragement of media diversity within South Africa (such as the institution of subscription fees for independent bloggers and non-profit-generating news orientated websites).

## **Recommendations**

- The PCSA could establish a relationship with the New Zealand Press Council (NZPC) in order to engage in an 'experience-sharing' dialogue, particularly with regard to the various nuances and challenges surrounding the regulation of the content of online digital content. It would be valuable for the PCSA to engage with the NZPC specifically on issues that have arisen with the regulation of online complaints since the NZPC took this new area of regulation into its ambit on 1 May 2014, since it is likely that the NZPC has already encountered difficulties with this new ambit which cannot be anticipated before the inclusion of online regulation within such a body's regulatory responsibilities. The PCSA could learn much from how the NZPC has either stumbled or navigated such difficulties.
- The PCSA should offer membership to independent bloggers and online news publishers, most especially non-profit-generating news orientated websites, without the requirement of a subscription fee.

## 7 The PCSA and the regulation of digitally published online news content: delineating the online regulatory category and examples from other countries

A traditional and somewhat conservative understanding of the term 'press' limits this term to indicate news content which is published in hard-copy format, usually in the form of a printed newspaper. When considering the term 'press' in the digital era, and with a consideration of convergence, this term could be understood to mean not simply news in the form of the printed word, but rather, news in the form of the *written* word. As news content converges across multiple platforms and reception devices, this is a seemingly small but pivotal and necessary paradigm shift.

When understood as *news in the form of the written word*, the spectrum of what is encompassed by the term 'press' expands to news content presented on digital platforms. As mentioned earlier in this report, the fundamental principles of what constitutes high quality and ethical journalism do not differ between the platforms of print hard-copy newspapers and digitally published news, if we understand the meaning of the term 'press' according to this paradigm. Whether presented in hard-copy or via a digital platform, news content ought to be factual, accurate, balanced, unbiased, fair, believed by the publication to be reasonably true, the right to reply and seek comment should be respected and so on.

Nonetheless, a distinction must be drawn between what would fall within the spectrum of what a media accountability system could reasonably regulate as news content with regard to digitally published online content, and what it should not. A wide spectrum of digitally published content does not fall within the media genre of journalism, or editorially produced news and/or current affairs content, and the requirement of adherence to journalistic code of ethics would in such cases be irrelevant and inappropriate. This conundrum is somewhat addressed by the principle of voluntary subscription to a media accountability system and its code of ethics, where digital publishers which carry news content would voluntarily subscribe to a media accountability system and its code of ethics, in order to increase their own credibility as a news outlet: such digital publications would then naturally fall within the ambit of what such a mechanism can regulate, while digital publishers that do not opt for such voluntary subscription would not.

The regulation of online news content has become an area of necessary debate globally, as newspapers migrate online in the digital age. As newspapers, these printed publications uphold the ideals of journalism, belong to a regulatory community and many attempt to maintain a high standard of journalism. Yet the same cannot always be said of their online counterparts, as online news media has not traditionally been regulated in the same manner as printed news. This is largely because regulation of the online industry has been met with great contention for a variety of reasons, not excluding opposition from 'netizens', many of whom believe that online regulation would impede freedom of expression in the online arena (Oats 2015).

Various cyber activists such as Sarah Oats call for balance between regulation and the rights of citizens online. Upon examination of twenty-one online manifestos and online codes of conduct, Oats suggests a system of self-governance reflected through six online rights that should be protected, including the right to privacy, the right to own data, the right to a personal life, the right not to be forced offline, the ability to switch off by choice and the right to public spaces for civil debate (2015). These rights are relevant and important, and coincide with numerous codes of conduct recognized and practiced by print news agencies globally. Thus the public's rights of privacy, dignity and protection of personal information (Retief 2002, Kruger 2004) align with the ideal online rights that should be afforded to citizens operating in an online environment.

It is important, therefore, for any media accountability system which takes the regulation of online news content into its ambit, to be sensitive to the very particular complexities of the internet environment with regard to the rights of citizens, online journalists and the protection of freedom of expression. As such, this report recommends that the regulation of content published online by the PCSA (or another mechanism) should be strictly and narrowly defined to include only news and editorial content, produced by a digital news publisher (not by its users) where the digital publisher has voluntarily subscribed to the accountability system.

An assessment of how a selection of CPMAS's in other countries have tackled the delineation of online news content is worth mention here.

The Norwegian *NorskPresseforbund*, as a regulator of broadcast, print and online material, has adopted a code of conduct that specifies the ideal of a free press operating in a society founded on freedom of expression and democracy. The code generalizes the rules and expectations for journalism across all three mediums: the document does not specify separate provisions for each platform – instead all three platforms are held accountable to the same set of principles, which include the principles of integrity, responsibility, journalistic conduct and the like. Online media is referred to only twice within the guidelines on digital news journalism.

The first such instance cautions digital editions to clearly mark links (Code of ethics section 4.16, 2014). The segment also requires 'good press' to create dialogue regarding online content by informing users on interactive services, how the publication registers and how users can make use of the service (Code of ethics section 4.16,2014).

Secondly, section 4.17 of the guidelines differentiates between online publication and user-generated content.

The sections of the Norwegian press code relevant to digitally published online news content are as follows:

“4.16. Beware that digital publication pointers and links could bring you to other electronic media that do not comply with the Ethical Code. See to it that links to other media or publications are clearly marked. It is considered good press conduct to inform the users of interactive services on how the publication registers you, and possibly exploits your use of the services.

4.17. Should the editorial staff choose not to pre-edit digital chatting, this has to be announced in a clear manner for those accessing the pages. The editorial staff has a particular responsibility, instantly to remove inserts that are not in compliance with the Ethical Code.

(see <http://www.presseforbundet.no/Saker/CODE-OF-ETHICS-OF-THE-NORWEGIAN-PRESS>)

Clearly, the Norwegian press code does not explicitly delineate the type of digitally published online news content which falls within the regulatory ambit of the *NorskPresseforbund*. However, since the *NorskPresseforbund* is an independent and non-governmental organization, publications are not legally bound to membership of the organization. Therefore, the principle of voluntary subscription again applies: this principle effectively nullifies concerns for which digital publishers fall within the ambit of the *NorskPresseforbund* and those which do not, since only digital publications which have voluntarily subscribed to the body will receive its regulatory attention. Additionally, the Norwegian press code requires digitally published news content to adhere to precisely the same principles of ethics as are expected for the platforms of print and broadcasting. The only provisions within this code that apply to the online platform only, are specific to the communicative mechanism of online news production (ie. they would not be relevant, in most cases, to the production of broadcast or

print news), and then only because these two technical capabilities unique to online news publication (including links to other sites and user generated comments) may involve occasional breaches of the code of ethics.

With regard to the sanctioning of online articles found to have breached the Norwegian press code: a separate section of the *NorskPresseforbund* website states the following:

**“To be labelled online articles that are fields in PFU**

**For electronic media shall damning or critical statements published so that the likelihood is maximized so that those who heard or saw the defendant article or touches also hear or see the statement.**

Articles that are fields of PFU shall be marked with a frame containing information about this as well as PFU logo (to download logo see bottom of article). The frame must be in the beginning of the article and include a link to the full text of the ruling. If common concerns a case where it is admitted anonymity in proceedings must editorial ensure anonymity in all versions of it or the articles fields. Editors must also consider whether the articles should be placed on an area that is barred to the public. It is good press to save trips articles or items in such a way that users retrieve them from archives, also made aware of the statement”.

(see <http://www.presseforbundet.no/Alt-om-Norsk-Presseforbund/Pressens-Faglige-Utvalg-PFU/Slik-merkes-nettartikler-som-er-felt-i-PFU>)

The text above has clearly been incorrectly translated from Norwegian to English. Nonetheless, the meaning appears to indicate that where a digitally published online news article has been sanctioned by the *NorskPresseforbund*, the digital publisher is required to publish the logo of the *NorskPresseforbund* as well as a link to the full text of the ruling, in a such a manner that increases the likelihood of users whom read the original article gaining exposure to the ruling/correction also.

The Finland Council for Mass Media is a combined council or CPMAS handling complaints for print, broadcast and online media. The council offers a set of *Guidelines for Journalists* and makes use of an *Annexure to the Guidelines*, specifying how to deal with material generated by the public on a media website. The first code addresses journalistic broadcast, print and online content media, whilst the second is a supplement specifying scenarios of user-generated content.

In terms of the first code for journalistic practice, the guidelines cover a range of principles that apply to print, broadcast and online media; such as the professional status of journalists, responsibility, objectivity, information, truthfulness, interviewer rights, right to reply, public interest etc. The code makes special mention of online materials in section 20 as such:

“20. Essentially incorrect information must be corrected without delay and so as to reach, to the highest extent possible, the attention of those who have had access to the incorrect information. The correction must be publicised on the editorial website of the media in question, as well as in the publication or broadcast in which the incorrect information was originally given.

The degree of attention brought to the correction must correspond to the seriousness of the error. If there are multiple factual errors in an article, or if the incorrect information might result in significant damage, the editors must publish a new article in which the incorrect information is identified and corrected.

In terms of the correction of essential information in the Internet, it is not enough that the incorrect information or article is removed, the public must also be told about the error, as well as how and when the correction was made.

It is advisable that the media in question make clear to the public those practices and principles by which they correct their own errors.”  
(see[http://www.jsn.fi/en/guidelines\\_for\\_journalists/](http://www.jsn.fi/en/guidelines_for_journalists/) )

The second of the Finnish codes delves into the topic of user-generated content on websites that are maintained by the media and explains that this content is not considered editorial material. In summation, the guidelines request that editorial offices do the following:

- “1. The editorial office shall monitor their websites and try to prevent the publication of content that violates privacy and human dignity. In addition to discrimination, the violation of human dignity includes for example content that incites violence and stirs up hatred towards an individual or group.
  2. The editorial office shall promptly delete content that comes to its attention that violates privacy and human dignity.
  3. Online forums directed at children and the young must be monitored particularly carefully.
  4. The public must be given the opportunity to inform editorial offices of inappropriate content in such a way that the informant receives due confirmation.
  5. A clear demarcation must be kept on media websites between forums reserved for the public and editorial content”.
- (see[http://www.jsn.fi/en/guidelines\\_for\\_journalists/](http://www.jsn.fi/en/guidelines_for_journalists/) )

With regard to the regulatory ambit of the Finland Council for Mass Media in administering complaints against user generated content, the Annex states that:

“The Annex concerns content generated by the public on websites maintained by the media. This should not be regarded as editorial material. The Council and the chairperson may deal with the activity of an editorial office in administering online forums containing material generated by the public only from the point of view whether the editorial office has complied with the principles of this Annex. The principles of the Annex in applying to the prior and subsequent moderation of public online forums are dealt with equally”.

(see[http://www.jsn.fi/en/guidelines\\_for\\_journalists/](http://www.jsn.fi/en/guidelines_for_journalists/) )

First, a distinct difference between user generated content and editorial material is identified. Second, the Annex specifies that the Finland Council for Mass Media will only intervene and administer a complaint against user generated content which appears on the website of a digital news publisher, if the editorial office has not satisfactorily complied with the provisions in points 1 – 5 above. The responsibility of monitoring and administering user generated content published on the platforms of digital news outlets is left largely up to the editorial office (although online news outlets are provided with the guidelines above), and the Finland Council for Mass Media then only actively becomes involved in such complaints under exceptional circumstances.

The New Zealand Press Council (NZPC) uses a simple code for print and online news. The code extends to accuracy, fairness, balance and privacy. The sections also cover vulnerable groups and children. The code generally deals with comment versus fact, discrimination, diversity, confidentiality and subterfuge. The code covers conflicts of interest, images and corrections, but does not distinguish between online and print media at all (New Zealand Press Council Annual Review 2013, 69-71). However, the homepage of the NZPC explains its regulatory ambit as such:

“If you have a complaint about the editorial content of a newspaper, magazine or periodical in circulation in New Zealand (including their websites) you may complain to the Press Council. You may also complain about digital sites with news content, including blogs characterised by news commentary, that have been accepted as members or associate members of the Council”.

(see <http://www.presscouncil.org.nz/#sthash.LtdONtE0.dpuf> )

In its statement of principles, the NZPC further describes its regulatory ambit as follows:

**“Scope**

The Press Council’s scope applies to published material in newspapers, magazines and their websites, including audio and video streams, as well as to digital sites with news content, or blogs characterised by their news commentary”.

(see <http://www.presscouncil.org.nz/principles.php> )

The only provision of the NZPC press code, appearing in section 5, which mentions online news publication reads as follows:

**“5. Columns, Blogs, Opinion and Letters**

Opinion, whether newspaper column or internet blog, must be clearly identified as such unless a column, blog or other expression of opinion is widely understood to consist largely of the writer’s own opinions. Though requirements for a foundation of fact pertain, with comment and opinion balance is not essential. Cartoons are understood to be opinion. Letters for publication are the prerogative of editors who are to be guided by fairness, balance, and public interest. Abridgement is acceptable but should not distort meaning”.

[http://www.presscouncil.org.nz/principles\\_2.php](http://www.presscouncil.org.nz/principles_2.php)

First, and similar to the CPMAS’s adopted in Norway and Finland, the digitally published online press in New Zealand is required to adhere to the same code of ethics, and therefore the same principles of good journalism, as the printed or hard-copy press.

Secondly, the NZPC makes no mention of user generated content in its operational documents (unlike the Finland Council for Mass Media), and neither does it specify the prominence of its sanctions (whether for print or online sanctions). The only provision relating to online publications, although not specific to online publications, is that opinion, when published, must be clearly identified as such.

**Recommendations**

After analyzing the practices of foreign developed CPMASs with regard to their regulation of digitally published online news content, the following could be considered within the South African context for applicability in the PCSA:

- In order to be sensitive to the very particular complexities of the internet environment with regard to the rights of citizens, online journalists, netizens and the protection of freedom of expression, the ambit of the PCSA with regard to its regulation of digitally published online news content should be strictly and narrowly defined to include only news and editorial content, produced by a digital news publisher (not by its users) where the digital publisher has voluntarily subscribed to the PCSA and its press code.
- Voluntarily subscribed digital online news publishers must be required to adhere to the same fundamental principles of journalistic ethics as are required of printed newspapers. An

amended South African Press Code could however, include additional provisions which take the particularities of the online platform into account.

- In South Africa, the Ombudsman has, in recent years, strictly specified the severity of each sanction as well as the prominence of the publication of the ruling/correction for print publications. The same principle could be applied to online news publishers, perhaps similarly to the manner adopted in Norway. Since the technicalities of specifying the prominence of the publication of a ruling differ somewhat in the online sphere than they do for the print platform, the manner in which this can be done should be agreed to by means of a consultative process involving discussions between the IABSA, the PCSA and the voluntarily subscribed digital news publishers. A trial period of digitally published online rulings/corrections will determine the suitability of the procedure arrived at during consultation, after which amendments to the procedure for the specification of the prominence of the publication for online rulings can be implemented.
- The scope of the regulatory ambit of the PCSA could be formulated in a similar manner as that of the NZPC, but include the term 'voluntary subscription' or 'voluntary membership'.
- Similar to the practice of the Finland Council for Mass Media, this report recommends that a clear distinction be made between editorial and journalistic content, and content which is produced by users.
- Furthermore, the MPDP recommends that user generated content should not fall within the regulatory ambit of the PCSA, and that the monitoring and administration of user generated content be the responsibility of the editorial offices of digital news publishers.
- Content published on social media platforms, whether making reference, or containing a link, to a digitally published online news article must be understood to fall outside of the regulatory ambit of the PCSA. Social media platforms are a conversational-medium, and are self-regulatory by their very nature. In the interest of freedom of expression, their content should not be regulated by any \*M\*A\*S or CPMAS, even if it were possible and/or practical to do so, which it is not. The regulation of the social media profiles of working journalists should be left to the discretion of journalist employers.

## 8 Considering a cross-platform media accountability system for South Africa: the challenge of broadcasting

As is outlined above, this report considers favourably the notion of the PCSA extending its ambit to the regulation of digitally published online news content, thus becoming a CPMAS in that it encompasses the regulation of *two* platforms: print and online – similar to Sweden, New Zealand, Australia, Austria, and Germany. The question remains as to whether broadcasting regulation ought to be included in this mix, and whether including the regulation of broadcast content in a CPMAS would be appropriate to South African conditions.

An important experience from New Zealand should be noted here. The 23 March Statement (2014:2) released by the NZPC notes that, “[l]ast year [2013], the Law Commission produced a report entitled *The News Media Meets ‘New Media’*. It recommended the merger of the Press Council, the Broadcasting Standards Authority and the broadcasters’ Online Media Standards Authority (OMSA) into a new, self-regulatory body to handle complaints against all media. The majority of print media opposed the recommendation, preferring instead to strengthen the Press Council”. According to Prof. P Eric Louw (University of Queensland) the reasons for the rejection of the Law Commission’s proposal to merge the regulation of online and print media, with that of broadcasting was twofold. First, the New Zealand government eventually decided that the Law Commission had not provided a suitably substantive argument in favour of such media regulation and second, there is a strong trend in both New Zealand and Australia currently toward deregulation in favour of libertarianism, and thus hostile sentiments toward additional governmental controls over the media (Louw 2014). Additionally, the NZPC’s statement (2014:2) clearly indicates that the print media in New Zealand opposed the proposal to be regulated by a mechanism which included the ambit of broadcasting.

It is likely that the print media sector, as well as the online digital publishing sector in South Africa would also oppose a proposal to be regulated by the same mechanism as the broadcasting platform.

First, there are few to no legislative implications of extending the regulatory ambit of the PCSA to digitally published online news content, nor to the establishment of an entirely new CPMAS to cover the print and online media platforms. However, there are significant legislative implications to including the regulation of the broadcasting platform in such a CPMAS in South Africa.

The BCCSA is subject to legal restrictions and is not permitted in terms the Electronic Communications Act 2005 to amend its Broadcasting Codes without the agreement of the Independent Communications Authority of South Africa (ICASA). The PCSA, however, is not subject to legal restrictions and can amend its constitution, code, policies and procedures without incurring legal implications (as it has done in recent years). Because of the legislation adopted in South Africa which governs the regulation of broadcasting, the broadcasting regulatory environment in the country is comparatively inflexible when compared to a body such as the PCSA. As such, an amalgamation of the PCSA with the BCCSA would result in a further loss of flexibility in the media regulatory environment. Also, the PCSA, due to its amalgamation with a legally restricted body, would stand to lose some of its independence, or the perception thereof.

The legislative restrictions applied to the medium of broadcasting are not necessarily understood to be inappropriate, since broadcasting utilises the finite national asset of spectrum, and since public service and community broadcasters are required to fulfil a public mandate with regard to content. The mediums of print and online news production, however, are not as strictly bound by such aspects, especially with regard to the comparative ‘infinity’ of these platforms, which do not utilise a finite national asset during their dissemination of content. Merging the regulation of print and online

media, into a regulatory body which includes broadcasting, can in this vein, also be understood to be unnecessary and undesirable.

Arguments could be made for the isolation of legislative restrictions to the medium of broadcasting within an amalgamated council that included all three media platforms: that is to say, although print, broadcasting and online content are regulated by the same body, the legislative requirements applied to the regulation of broadcasting would not necessarily be applied in the regulation of print and digitally published content. Although this could be the case, it would not nullify the psychological effect of 'proximity': the print media sector and digital online publishing sector, unused to legislative restrictions, may undoubtedly feel uncomfortable were the regulatory mechanism for their platforms to operate in such close proximity to a regulatory mechanism subject to strict legal restrictions.

Additionally, and as discussed in section 5.1 above, the necessity to solve the conundrum of how to regulate complaints against online news content, and by whom, is immediate and must be addressed with urgency. Extending the ambit of the PCSA to online news content, although a major step for the PCSA, is nonetheless a faster and simpler solution than setting up an entirely new CPMAS which includes the ambit of broadcasting. The latter is likely to take years, due to the legislative concerns described above and the inflexible nature of the BCCSA as opposed to the PCSA, and would require a major overhaul of the regulatory environment, possibly including its laws. In the interim the problem of how to regulate online news content would remain unsolved, further weakening the credibility of the media regulatory environment.

### **Recommendation**

- The PCSA should extend its ambit to the regulation of digitally published online news content, thus becoming a CPMAS for the content regulation of print and online platforms, which excludes the regulation of broadcasting and does not involve amalgamation with the BCCSA.

## 9 Additional considerations for a cross-platform media accountability system in South Africa

### 9.1 Third party complaints

It is significant that in the sample of 20 complaints against online digitally published content assessed for this study (see section 5.2), 16 (80%) of them were third party complaints.

The PCSA has only officially accepted third party complaints for a short time (since 2013), and in that time the majority of complaints against print content were not from third party complainants. The same cannot be expected for online complaints. It is likely, as can be seen from the sample of online complaints recently submitted to the PCSA, that the majority of complaints against digitally published content will be third party complaints.

The MPDP strongly recommends that no matter which regulatory system or structure is finally arrived at after the conclusion of the current process, that the system allows for the acceptance of third party complaints for both print and online content (with regard to broadcasting, the BCCSA already allows for third party complaints and has done so for some time). In a similar vein, the waiver/complaints declaration, which was instituted by the PCSA in the past, should not be reintroduced since it effectively disenables the possibility of a third party complaint.

The MPDP advocated for the introduction of third party complaints at length and in detail during the PCSA Review (2010-2011) and during the PFC process (2011-2012), and the position of the MPDP is explicated in its written submission to the PFC (Reid 2011b). These arguments and discussions will therefore not be repeated in this report. The process of how the PCSA arrived at including third party complaints in its ambit and motivations for doing so are outlined in *Third-party complaints in the system of press regulation: Inviting the reader to take part in journalistic accountability and securing press freedom* (Reid 2014), and see also Reid (2011a) and Reid (2012).

Together this collection of literature clearly indicates why the acceptance of third party complaints cannot only be considered 'best practice', in that refusal to accept third party complaints would be unethical, but it also makes political sense and increases the credibility of the regulatory system.

### Recommendations

- The MPDP strongly recommends that no matter which regulatory system or structure is finally arrived at after the conclusion of the current process, that the system allows for the acceptance of third party complaints for both print and online content.
- Should the PCSA broaden its ambit to include complaints against digitally published online news content: a trial period should determine whether the increased ambit to online for the PCSA results in an unmanageable influx of complaints (including third party complaints) for which the PCSA is not suitably resourced (especially with regard to human capacity) to administer within an acceptable turn-around time. If after a trial-period this is found to be the case, the PCSA should be allocated the necessary additional resources.

### 9.2 A single body versus a single entry-point

A relevant part of the discussion during the PCSA Review (2010-2011) and the PFC (2011-2012) was the ease of access to the regulatory system, and whether the system proved to be 'user-friendly' for complainants. This report clearly argues for the extension of the ambit of the PCSA to the

administration of complaints against online content, but does not recommend the amalgamation of the PCSA with the BCCSA into a single CPMAS for all media. In such a scenario, two separate \*M\*A\*Ss will co-exist, one for print and online platforms, and the other for broadcasting.

This does not preclude the possibility of establishing a single entry-point for the complainant, in an effort to make the entire regulatory system more accessible to the complainant. The single-entry point could possibly function as a 'referral office', which would receive complaints and after assessing the content of the complaint, refer the complaint to the relevant/appropriate regulatory body. The institution of the office of the Public Advocate has proven invaluable at the PCSA over the past two years: a Public Advocate position could similarly be established within such a referral office, in order to assist complainants with the process of laying a complaint. Such a referral office could go some way to making the regulatory system(s) more accessible to those who wish to use it, as it would offer a single entry-point to complainants. Should such a referral body be established, it would necessarily have to be accompanied by a public awareness campaign, alerting media consumers to its existence and function.

Alternatively, the current process of referrals could continue but be formalised in order to keep complainants better informed on the status of the administration of their complaints. Both the PCSA and the BCCSA, on receiving a complaint which falls within the jurisdiction of the other, could refer the complaint to the other. On doing so, a formal and standardised letter of referral should be sent to the complainant. This letter should 1) notify the complainant that the complaint has been referred to another body, 2) inform the complainant of the regulatory jurisdiction of both bodies, 3) assure the complainant that the complaint will be administered by the appropriate regulatory body, and, 4) include the contact information of both regulatory bodies, including the contact information of the Public Advocate, as well as links to the codes of conduct, and complaints procedures of both bodies. A memorandum of understanding could be established and agreed to between the PCSA and the BCCSA to this effect.

## 10 Conclusion: list of recommendations

Regarding the establishment of a cross-platform media regulatory mechanism for South Africa, the full list of recommendations contained within this report above, are as follows:

### Recommendations

- As a regulatory mechanism which specialises in the administration of complaints against journalistic and editorial news content, and a fit-for-purpose accountability structure, the PCSA should extend its regulatory ambit to the administration of complaints against digitally published online news content. Such complaints should not be administered by the IABSA. This recommendation could perceivably be adopted as an immediate interim measure, until the establishment of a cross-platform media accountability system, or as a permanent arrangement, should such a CPMAS not be established.
- The MPDP recommends that the PCSA returns to its own original recommendation, outlined in the Review document which it published in April 2011, stated as such:

#### “Extended jurisdiction

The Team deliberated on the advisability of extending its jurisdiction to the internet and accepted a submission that jurisdiction should be extended to the online publications associated with the publications listed in 1.4 of the Constitution.

Proposal: The jurisdiction of the Press Council should be extended to online publications of the members of Print Media South Africa and other publications that subscribe to the Press Code” (Press Council of South Africa, Review 2011: 43).

- Additionally, the MPDP recommends that the PCSA allow for the voluntary subscription of online digital news publishers who are not members of the PDMSA, to the PCSA and the Press Code.
- The PCSA could establish a relationship with the New Zealand Press Council (NZPC) in order to engage in an ‘experience-sharing’ dialogue, particularly with regard to the various nuances and challenges surrounding the regulation of the content of online digital content. It would be valuable for the PCSA to engage with the NZPC specifically on issues that have arisen with the regulation of online complaints since the NZPC took this new area of regulation into its ambit on 1 May 2014, since it is likely that the NZPC has already encountered difficulties with this new ambit which cannot be anticipated before the inclusion of online regulation within such a body’s regulatory responsibilities. The PCSA could learn much from how the NZPC has either stumbled or navigated such difficulties.
- The PCSA should offer membership to independent bloggers (those predominantly orientated toward news and current affairs commentary and on a voluntary basis) and online news publishers, most especially non-profit-generating news orientated websites, without the requirement of a subscription fee.
- In order to be sensitive to the very particular complexities of the internet environment with regard to the rights of citizens, online journalists, netizens and the protection of freedom of expression, the ambit of the PCSA with regard to its regulation of digitally published online news content should be strictly and narrowly defined to include only news and editorial

content, produced by a digital news publisher (not by its users) where the digital publisher has voluntarily subscribed to the PCSA and its press code.

- Voluntarily subscribed digital online news publishers must be required to adhere to the same fundamental principles of journalistic ethics as are required of printed newspapers. An amended South African Press Code could however, include additional provisions which take the particularities of the online platform into account.
- In South Africa, the Ombudsman has, in recent years, strictly specified the severity of each sanction as well as the prominence of the publication of the ruling/correction for print publications. The same principle could be applied to online news publishers, perhaps similarly to the manner adopted in Norway. Since the technicalities of specifying the prominence of the publication of a ruling differ somewhat in the online sphere than they do for the print platform, the manner in which this can be done should be agreed to by means of a consultative process involving discussions between the IABSA, the PCSA and the voluntarily subscribed digital news publishers. A trial period of digitally published online rulings/corrections will determine the suitability of the procedure arrived at during consultation, after which amendments to the procedure for the specification of the prominence of the publication for online rulings can be implemented.
- The scope of the regulatory ambit of the PCSA could be formulated in a similar manner as that of the NZPC, but include the term 'voluntary subscription' or 'voluntary membership'.
- Similar to the practice of the Finland Council for Mass Media, this report recommends that a clear distinction be made between editorial and journalistic content, and content which is produced by users.
- Furthermore, the MPDP recommends that user generated content should not fall within the regulatory ambit of the PCSA, and that the monitoring and administration of user generated content be the responsibility of the editorial offices of digital news publishers.
- Content published on social media platforms, whether making reference, or containing a link, to a digitally published online news article must be understood to fall outside of the regulatory ambit of the PCSA. Social media platforms are a conversational-medium, and are self-regulatory by their very nature. In the interest of freedom of expression, their content should not be regulated by any MAM, even if it were possible and/or practical to do so, which it is not. The regulation of the social media profiles of working journalists should be left to the discretion of journalist employers.
- The PCSA should extend its ambit to the regulation of digitally published online news content, thus becoming a CPMAS for the content regulation of print and online platforms, which excludes the regulation of broadcasting and does not involve amalgamation with the BCCSA.
- The MPDP strongly recommends that no matter which regulatory system or structure is finally arrived at after the conclusion of the current process, that the system allows for the acceptance of third party complaints for both print and online content.
- Should the PCSA broaden its ambit to include complaints against digitally published online news content: a trial period should determine whether the increased ambit to online for the PCSA results in an unmanageable influx of complaints (including third party complaints) for

which the PCSA is not suitably resourced (especially with regard to human capacity) to administer within an acceptable turn-around time. If after a trial-period this is found to be the case, the PCSA should be allocated the necessary additional resources.

### **Additional recommendations**

Returning to the analysis of a selection of 20 complaints assessed by the MPDP which were laid with the PCSA against digitally published online news content, the list of questions regarding the administration of such complaints arising from the analysis (see section 5.2) and in light of the discussions explicated in this report, what follows is a list of recommended solutions to the list of questions offered in section 5.2:

- The PCSA should desist from referring complaints against digitally published online news content to the IABSA or the BCCSA, and instead administer these complaints within the structures of the PCSA.
- As discussed in section 5.3, the IABSA is not suitably structured for the administration of complaints referring to journalistic or editorial news content.
- With regard to the complaints which were referred by the PCSA to the BCCSA:
  - As discussed in section 7, the PCSA should not have regulatory jurisdiction over social media platforms, or user generated content of any kind.
  - Aggregated content: the regulatory body responsible for the platform on which the aggregated content is carried on which a complaint is laid, should be responsible for the administration of the complaint. The relevant regulatory body could, at its discretion, advise the relevant news outlet to correct the content across all of its platforms (including online) and/or engage with the regulatory body responsible for the platforms also carrying the aggregated content, alerting it to the complaint against the content.

For example, if the BCCSA receives a complaint against a radio news broadcast where the content of the radio broadcast is also carried on the website of a news outlet, the BCCSA should first, administer the complaint against the radio broadcast, and second either 1) engage the relevant media outlet on the content of the online version of the report, alerting them to the problematics therein, and/or 2) alert the PCSA to the relevant online content.

- Online video or audio content, posted on the platforms of digital news publishers who are voluntary subscribers to the PCSA and the press code, should be administered by the PCSA and not by the BCCSA. Legally, such content does not fall within the jurisdiction of the BCCSA (such content is not broadcast via spectrum). The BCCSA does not, and arguably should not, have jurisdiction over any online content whatsoever.
- As discussed in section 7, digital online news-orientated publishers that publish exclusively on an online platform, and have no hard-copy print equivalent, should be offered voluntary subscription to the PCSA and the press code, giving the PCSA jurisdiction over such publications.

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## Addendum: Comparative table of the 2014 indices of regulatory bodies

<b>Country</b>	<b>Economist Intelligence Unit index</b>	<b>Freedom House index</b>	<b>Reporters Without Borders index</b>	<b>Type of Regulation</b>	<b>Structure of Media Council</b>	<b>Reference</b>
According to EIU index  *Type of Regime	Democracy listing	Rank on Index (OUTCOME)  Points scored	Rank on Index  Points Score	*Self-regulation  *Independent regulation  *Statutory regulation  *Co-regulation	Which mediums they handle complaints for	Sources Consulted
Norway *Full democracy	1	Ranking: 1 (FP) Scored: 10	Ranking: 3 Scored: 6.52	Self-regulation	The <i>Norsk Presseforbund</i> is a combined press council handling complaints for print, broadcast and online news content	<a href="http://www.presseforbundet.no/">http://www.presseforbundet.no/</a>
Iceland *Full democracy	2	Ranking: 6 (FP) Scored: 12	Ranking: 8 Scored: 8.5	Self-regulation	The Ethics Committee of the Icelandic Union of Journalists is the council which regulates complaints for the print and broadcasting mediums	<a href="http://eic.net/media/landscapes/iceland">http://eic.net/media/landscapes/iceland</a>
Denmark *Full democracy	3	Ranking: 6 (FP) Scored: 12	Ranking: 7 Scored: 7.43	Co-regulation	The Danish Press Council is a combined council handles complaints for print, broadcast and electronic news content	<a href="http://www.pressenaevnet.dk/Information-in-English.aspx">http://www.pressenaevnet.dk/Information-in-English.aspx</a>
Sweden *Full democracy	4	Ranking: 1 (FP) Scored: 10	Ranking: 10 Scored: 8.98	Self-regulation	The Swedish Press Council handles complaints for print (magazine and newspaper) publications and online news content.	<a href="http://www.po.se/english/how-self-regulation-works">http://www.po.se/english/how-self-regulation-works</a>
New Zealand *Full democracy	5	Ranking: 22 (FP) Scored: 18	Ranking: 9 Scored: 8.55	Self-regulation	The New Zealand Press Council is a combined council. Originally the council dealt with print in the form of newspaper, magazines and periodicals. The council included digital media and bloggers to their directive in March 2014.	<a href="http://www.presscouncil.org.nz/#sthash.LtdONT.E0.dpuf">http://www.presscouncil.org.nz/#sthash.LtdONT.E0.dpuf</a>
Australia *Full democracy	6	Ranking: 33 (PFP) Scored: 22	Ranking: 28 Scored: 16.91	Self-regulation and voluntary acceptance of the code	The Australian Press Council deals with newspaper, magazine and online news content.	<a href="http://www.presscouncil.org.au/">http://www.presscouncil.org.au/</a>
Finland *Full democracy	7	Ranking: 4 (FP) Scored: 11	Ranking: 1 Scored: 6.4	Self-regulation and voluntary acceptance of the code	The Finland Council for Mass Media is a combined council handling complaints for print, broadcast and online media.	<a href="http://www.jsn.fi/en/">http://www.jsn.fi/en/</a>
Switzerland *Full democracy	8	Ranking: 6 (FP) Scored: 12	Ranking: 15 Scored: 10.47	Self-regulation	SchweizerPresserat – The Swiss Press Council is a combined council handling complaints for broadcast (television and radio) and print (magazine and	<a href="http://presserat.ch/">http://presserat.ch/</a>

					newspaper) publications	
Canada *Full democracy	9	Ranking: 26 (FP) Scored: 19	Ranking:18 Scored:10.99	Self-regulation Voluntary acceptance of the code/council authority	The Canadian Regulatory system makes use of several press councils. Some are singular, whilst one is a combined council <ol style="list-style-type: none"> <li>1. The Alberta Press Council for print</li> <li>2. Atlantic Press council for print</li> <li>3. British Columbia Press Council</li> <li>4. Manitoba Press Council</li> <li>5. Ontario Press Council</li> </ol> Separate bodies for broadcast and online <ol style="list-style-type: none"> <li>6. Quebec Press Council which regulates television, print and online content</li> </ol>	<a href="http://www.rjionline.org/MAS-Press-Councils-Canada">http://www.rjionline.org/MAS-Press-Councils-Canada</a>
Netherlands *Full democracy	10	Ranking: 1 (FP) Scored: 10	Ranking: 2 Scored: 6.46	Self-regulation	The Netherlands Press Council is a combined council dealing with complaints regarding print and broadcast	<a href="http://www.rvdj.nl/english">http://www.rvdj.nl/english</a>
Ireland *Full democracy	12	Ranking: 15 (FP) Scored: 16	Ranking: 16 Scored: 10.87	Independent regulation	The Ireland Press Council handles complaints for print media (newspaper and magazine), and has separate councils for broadcast	<a href="http://www.presscouncil.ie/">http://www.presscouncil.ie/</a>
Austria *Full democracy	13	Ranking: 30 (FP) Scored: 21	Ranking: 12 Scored: 10.01	Self-regulation	The Austrian press council handles complaints for the print industry (newspaper and magazine) and online news organisations	<a href="http://www.presserat.at/">http://www.presserat.at/</a>
Germany *Full democracy	14	Ranking: 18 (FP) Scored: 17	Ranking: 14 Scored: 10.23		The German Press Council deals with complaints regarding printed materials in newspaper, magazines and online news. There is a separate council for broadcast. The council is funded partially by press sponsorship and partially by a government grant.	<a href="http://www.presserat.de/presserat/aufgaben-organisation/">http://www.presserat.de/presserat/aufgaben-organisation/</a>
South Africa *Flawed Democracy	30	Ranking: 69 (NFP) Scored: 33	Ranking: 42 Scored: 23.19	Co-regulatory system for print and a co- regulatory independent tribunal for broadcast	Separate bodies for print, online and broadcast regulation	<a href="http://www.presscouncil.org.za/">http://www.presscouncil.org.za/</a>