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Press and media freedom threatened by AI?

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Preface

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A. Introduction

Imagine a world where headlines are written by algorithms, news feeds are curated by AI, and dissenting voices are filtered out with machine-like efficiency. This chilling scenario, once relegated to science fiction, is inching closer to reality as Artificial Intelligence (AI) increasingly permeates the media landscape.

A cornerstone of a functioning democracy is a media landscape that is not only free and diverse, but also fiercely independent. These institutions serve as the lifeblood of a well-informed citizenry by ensuring a free flow of information and ideas on critical issues. Independent media acts as a watchdog¹, holding those in power accountable and fostering transparency. This creates an environment where citizens can actively engage in public discourse, a vital component of a healthy democracy.² Without this freedom of expression and a media landscape that reflects a plurality of viewpoints, a society struggles to cultivate an informed and engaged population – a key ingredient for a thriving democracy and the protection of fundamental human rights.³

As the Director-General of UNESCO warned, “AI is humanity's new frontier. [...] We are faced with a crucial question: what kind of society do we want for tomorrow? The AI revolution opens up exciting new prospects, but the anthropological and social upheaval it brings in its wake warrants careful consideration.”⁴

Unlocking the full potential of AI necessitates confronting the threats it poses to a free media. We must recognize these dangers, recognize which safety mechanisms we already have and develop new, robust strategies to circumvent the dangers and ensure media freedom continues to thrive in the AI era.

Consequently, this seminar paper will discuss how AI has changed journalism and what dangers lie within that in II., in which norms the dangers of AI to the press and media freedom are regulated in in III. and finally, what must still be done to ensure that free press doesn't become a collateral damage of the AI revolution in IV.

¹ ECtHR, *Magyar Helsinki Bizottsag v. Hungary* [GC], para. 109f.

² United Nations International Covenant on Civil and Political Rights, Human Rights Committee 102nd session, Geneva, 11-29 July 2011, General comment No. 34, Article 19: Freedoms of opinion and expression, p. 3 f.

³ *Council of the European Union*, EU Human Rights Guidelines on Freedom of Expression Online and Offline, Council of the European Union, Foreign Affairs Council meeting Brussels, https://www.eeas.europa.eu/sites/default/files/eu_human_rights_guidelines_on_freedom_of_expression_online_and_offline_en.pdf, para. 1-7.

⁴ *Azoulay*, Towards an Ethics of Artificial Intelligence, <https://www.un.org/en/chronicle/article/towards-ethics-artificial-intelligence>.

In this paper the term “media freedom” denominates “the freedom, independence, and plurality of the media, including the production, publication, and dissemination of journalistic content across all mediums and platforms”.⁵

The terms "AI" and "artificial intelligence" are used as shorthand to encompass the expanding realm of autonomous, high-speed, and large-scale computational decision-making. AI should not be misconstrued as a monolithic entity; instead, it represents a constellation of processes and technologies that augment or supplant human capabilities in specific tasks, including decision-making and problem-solving.⁶

B. What are the dangers to media and press freedom?

Safeguarding media and press freedom, a linchpin of democratic societies, necessitates vigilance against emerging threats. AI presents a particularly critical and rising challenge in this regard.

I. Positive and negative theory

The concept of media freedom will be explored through the lens of one of the two overarching theories: negative rights and positive rights. Here, the focus will be on the positive theory of media freedom.

The positive theory emphasizes the essential functions and purposes that media serves within a democratic society. It posits that media may require special privileges and protections to ensure it can effectively fulfill these critical roles. Also known as the empowerment approach, this theory highlights media's role in fostering robust democratic discourse. Central to this approach is the notion that media should be empowered to perform this function, and that such empowerment may necessitate special privileges. This includes the right to not only disseminate ideas but also to freely receive them. This right to receive information is a cornerstone of international human rights law on freedom of expression, but it is not explicitly included in every rights system such as the US First Amendment for instance.⁷

⁵ As used in the: Joint declaration on media freedom and democracy, The United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information in Africa (“mandate holders”), May 2023, Scope.

⁶ As used in the: UN Special Rapporteur, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 2018, UN Doc. A/73/348.

⁷ *Tambini*, *Journal of Media Law*, 2021, 135, 143; *Lichtenberg* in Lichtenberg (ed), p. 102, 105.

While most legal systems incorporate elements of both negative and positive rights theories in practice, a clear distinction exists between the US approach and the approach favored by many member states of the EU and international human rights bodies. The US legal tradition leans towards a negative rights view, focusing primarily on limitations on government interference with media.⁸ In contrast, Europe and international human rights systems embrace a positive approach, emphasizing the state's active role in promoting media freedom, pluralism, and public service broadcasting. Examples of this positive approach include UN-HRC General Comment No. 34⁹ and the standards set by the Council of Europe.¹⁰ Both advocate for state action to create an environment that fosters media freedom.

A key tenet of the positive theory, as articulated in UN HRC General Comment No. 34, is the media's right to receive information in order to fulfill its public function. The free flow of information on public and political issues between citizens, candidates, and elected officials is considered vital for a healthy democracy. This necessitates a free press and other media outlets that can comment on public issues without censorship and effectively inform the public.¹¹ The rise of new media creates a global network for the exchange of ideas, and according to General Comment No. 34, states have an obligation to support the independence of these new media platforms and ensure that citizens have access to them.¹²

II. AI's Impact on threats to the press and media freedom

Threats by the use of AI extend in the form of AI's influence beyond how audiences consume news, but also how news are produced and disseminated. This can be seen in three key areas.

Firstly, AI offers journalists support in research and content production. Smart tools can automate tasks like data analysis and fact-checking, freeing journalists' time for in-depth investigation and creative storytelling.¹³ Secondly, AI is venturing into content production itself. While fully automated news creation isn't commonplace yet, AI can generate reports on financial data or sports statistics, allowing journalists to focus on the human angle.¹⁴ Finally, AI is

⁸ *Barendt*, InterMEDIA, 03/2021, p. 16, 16f.

⁹ *UNHRC*, CCPR/C/GC/34, General Comment No. 34, 2011.

¹⁰ *Council of Europe*, CM/Rec(2022)11, Recommendation of the Committee of Ministers to member States on principles for media and communication governance, 2022.

¹¹ ECtHR, *Thoma v Luxembourg*, App. No. 38432/97, 29/03/2001, para. 45f.

¹² *Tambini*, *Journal of Media Law*, 2021, 135, 143.

¹³ *Newman*, *Digital News Project*, p. 1, 27f.

¹⁴ *Helberger et.al*, Implications of AI-driven tools in the media for freedom of expression. Paper presented at Artificial intelligence – Intelligent politics: Challenges and opportunities for media and democracy, Council of Europe, 2019, <https://rm.coe.int/cyprus-2020-ai-and-freedom-of-expression/168097fa82>, p. 6f.

revolutionizing content distribution through data-driven recommendation systems. These algorithms personalize news feeds, ensuring readers receive content relevant to their interests.¹⁵

While these advancements can be beneficial, it's essential to distinguish between different areas of AI influence. This transparency helps clarify accountability for information and exposes potential biases in research, production, and distribution. By understanding these distinctions, journalists can maintain control over the process (curating and verifying AI-assisted work), ensuring press freedom and the accuracy of reporting.¹⁶

III. Areas of impact

This transformation of the world of journalism has a two-pronged effect: on the media organizations themselves (AI and the media) and on the way users consume and interact with news (AI and the media's users).

1. AI and media

First it will be explored how AI is revolutionizing news production within media outlets and the dangers that lay within this. The following subchapters explore the potential for AI to introduce bias in news recommendation systems, the risks of censorship and surveillance through AI-powered content moderation, and the impact of AI on the media market, particularly the growing dominance of social media platforms.

a) Biased decisions based on the lack of transparency in AI algorithm and the problem of accountability: Who is to blame?

The burgeoning application of AI in newsrooms presents a captivating opportunity for enhanced efficiency and content delivery.¹⁷ However, a critical question looms: who bears the ultimate responsibility for the design, deployment, and subsequent impact of these AI-driven tools on media freedom?

¹⁵ Bell/Owen/Brown/Hauka/Rashidian, Tow Center for Digital Journalism, 2017, 1, 61.

¹⁶ Helberger *et. al*, Implications of AI-driven tools in the media for freedom of expression. Paper presented at Artificial intelligence – Intelligent politics: Challenges and opportunities for media and democracy, Council of Europe, 2019, <https://rm.coe.int/cyprus-2020-ai-and-freedom-of-expression/168097fa82>, p. 7.

¹⁷ Helberger *et. al*, Implications of AI-driven tools in the media for freedom of expression. Paper presented at Artificial intelligence – Intelligent politics: Challenges and opportunities for media and democracy, <https://rm.coe.int/cyprus-2020-ai-and-freedom-of-expression/168097fa82>, p. 23.

Traditionally, human editors make subjective decisions regarding newsworthiness, prioritizing stories deemed relevant and impactful for the public.¹⁸ However, AI-powered news recommendation systems, designed to optimize user engagement, can introduce bias.¹⁹ These systems may prioritize sensational content or cater to specific demographics, potentially neglecting in-depth reporting or diverse perspectives. This raises concerns about the potential for algorithmic bias to erode media pluralism and the free flow of information.²⁰

The question of accountability becomes even more intricate when considering the emergence of AI-generated news content with minimal human intervention. In such scenarios, the line between editorial judgment and algorithmic decision-making blurs. Programmers who design and encode the algorithms are found to inherently embed their own biases and the business models they represent.²¹ Journalists, on the other hand, can influence the system by providing training data and editorial parameters. Therefore, ensuring responsible AI implementation necessitates a collaborative approach that acknowledges the intertwined roles of both programmers and journalists.²²

Transparency is paramount in navigating this complex landscape. News organizations must strive for utmost transparency regarding the role of AI in content creation and curation. Issues such as algorithmic decision-making processes and authorship of AI-generated content need to be clearly communicated to the public. Additionally, the potential for unforeseen consequences arising from the interaction of AI-powered news systems with social media platforms requires careful consideration. AI designed for commercial or political gains may manipulate content visibility, potentially suppressing independent journalism or amplifying disinformation campaigns.²³

The prevailing internet architecture incentivizes online intermediaries to prioritize neither content diversity nor factual accuracy. This economic reality fosters the development of biased AI systems tailored to serve commercial or political agendas. These systems manipulate user behavior to optimize profit, influence opinion, or even suppress independent journalism.²⁴

¹⁸ *Ferruci/Tandoc*, *Journal of Media Practice*, 2017, 103, 104.

¹⁹ *Carlson*, *Digital Journalism*, 2015, 416, 416.

²⁰ *OSCE*, RFoM Non-paper on the Impact of Artificial Intelligence on Freedom of Expression, <https://www.osce.org/representative-on-freedom-of-media/447829>, p. 8f.

²¹ *Klinger/Svensson*, *New Media and Society*, 2018, 4415, 4655 and 4658.

²² *Carlson*, *New Media and Society*, 2018, 1755, 1768.

²³ *Diakopoulos*, *Tow Center for Digital Journalism Publications*, 2014, 1, 10 and 27.

²⁴ *Haas*, *Freedom of the Media and Artificial Intelligence*, <https://www.osce.org/files/f/documents/4/5/472488.pdf>; *Singh*, *Rising Through the Ranks: How Algorithms Rank and Curate Content in Search Results and on News Feeds*, <https://www.newamerica.org/oti/reports/rising-through-ranks>.

As AI continues to transform journalism, fostering collaboration among all stakeholders is crucial. Journalists must be actively involved in the development and deployment of AI tools, ensuring that these technologies augment, rather than supplant, editorial judgment. Programmers, on the other hand, should gain a deeper understanding of journalistic principles and the importance of diverse news curation. Finally, media organizations must build a nuanced awareness of how AI-driven content interacts with the broader digital ecosystem, particularly social media platforms.²⁵ By fostering transparency, collaboration, and a commitment to ethical AI implementation, it is ensured that AI serves as a tool for empowering, not jeopardizing, media freedom.²⁶

b) Censorship and surveillance

While AI offers tools for content moderation and tackling harmful material, its application raises significant concerns regarding censorship, illegal surveillance, and the right to diverse information.

aa) Content moderation

AI algorithms are increasingly deployed to identify and flag hate speech, misinformation, and other content deemed detrimental to public discourse.²⁷ This automation can expedite the removal of harmful content, fostering a healthier online environment. However, current technological limitations can lead to unintended consequences. In attempting to filter content, AI systems may struggle with context, cultural nuances, and satire, potentially leading to the censorship of legitimate speech.²⁸ The presence of false negatives can also induce a chilling effect, leading media outlets to engage in self-censorship and stifle the voices of marginalized communities.²⁹ As will be described below, this runs counter Article 10 ECHR as any restriction of

²⁵ Jones/Jones/Luger, *Digital Journalism*, 2022, 1731, 1737 and 1749.

²⁶ Saheb, *Sci Eng. Ethics*, 2024, Subsection: Qualitative Analysis of Topics.

²⁷ Facebook on its “proactive detection technology” which “in some categories” detects up to 99 % of content which is to be banned, <https://transparency.fb.com/de-de/policies/improving/proactive-rate-metric/>; Marsden/Meyer, “Regulating Disinformation with Artificial Intelligence,” <https://op.europa.eu/en/publication-detail/-/publication/b8722bec-81be-11e9-9f05-01aa75ed71a1>; Singh, *Everything in Moderation: An Analysis of How Internet Platforms Are Using Artificial Intelligence to Moderate User-Generated Content*, <https://www.newamerica.org/oti/reports/everything-moderation-analysis-how-internet-platforms-are-using-artificial-intelligence-moderate-user-generated-content/>.

²⁸ Facebook on how the „proactive detection technology will take years until its effective for every type of breach”, Proaktive Erkennungsrate, <https://transparency.fb.com/de-de/policies/improving/proactive-rate-metric/>; Nagy, *Hungarian Journal of legal studies*, 2024, 236, 248; MSI-NET, *Algorithms and Human Rights: Study on the human rights dimensions of automated data processing techniques and possible regulatory implications*, <https://rm.coe.int/algorithms- and-human-rights-en-rev/16807956b5>.

²⁹ Hess, *How YouTube’s Shifting Algorithms Hurt Independent Media*, https://www.ny-times.com/2017/04/17/arts/youtube-broadcasters-algorithm-ads.html?_r=0.

the freedom of expression must correspond to a “pressing social need” and be proportionate to the legitimate aim(s) pursued.³⁰

Despite that there is an increasing use of AI for proactive content moderation. While platforms leverage AI to enforce their own terms of service and community guidelines, a growing trend involves state pressure to remove specific content, often based on vague definitions. This can inadvertently lead to the removal of newsworthy content.³¹

This approach raises several concerns. Firstly, it concentrates significant power in the hands of a limited number of powerful technology companies, blurring the lines between platform and content regulator.³² Secondly, the reliance on AI-driven content moderation raises questions regarding due process and fairness, particularly in cases of mistaken content removal.³³

bb) Surveillance

The unparalleled capacity of AI for surveillance presents a grave threat to media freedom in certain countries.³⁴ Governments may utilize AI to monitor citizens and control public communication, effectively suppressing dissent and independent journalism. This chilling effect can stifle investigative reporting and public discourse, hindering the free flow of information essential to any democracy.³⁵

c) Market dynamics

The burgeoning application of AI within the media landscape additionally presents a significant challenge to media pluralism. Social media platforms, currently the primary drivers of AI-powered media tools, possess a distinct advantage over the more traditional media platforms. Their control over cutting-edge AI technology and access to vast troves of user data, particularly

³⁰ *ECtHR*, *Ürper and others v. Turkey*, Applications nos. 14526/07, 14747/07, 15022/07, 15737/07, 36137/07, 47245/07, 50371/07, 50372/07 and 54637/07, 20/10/2009, para. 35.

³¹ *OSCE*, UN, OSCE, OAS and ACHRP mandate holders on freedom of expression and the media, 20th Anniversary Joint Declaration: Challenges to Freedom of Expression in the Next Decade, <https://www.osce.org/files/f/documents/9/c/425282.pdf>.

³² *UN Special Rapporteur*, Report on the promotion and protection of the right to freedom of opinion and expression, 2018, A/73/348, p. 11; *Bloch-Wehba*, *Cornell International Law Journal*, 2020, p. 85 ff.

³³ MSI-NET, Algorithms and Human Rights: Study on the human rights dimensions of automated data processing techniques and possible regulatory implications, <https://rm.coe.int/algorithms-and-human-rights-en-rev/16807956b5>, p. 18f; *Fernández Pérez/Tiani*, Parliamentarians Encourage Online Platforms to Censor Legal Content, <https://edri.org/our-work/parliamentarians-encourage-online-platforms-to-censor-legal-content/>.

³⁴ *Ünver*, *Cyber Governance and Digital Democracy 2018/9*, 2018, p. 7f.

³⁵ *Haas*, *Freedom of the Media and Artificial Intelligence*, <https://www.osce.org/files/f/documents/4/5/472488.pdf>, p. 2f.

crucial for AI training, fosters a situation of "digital dominance."³⁶ This dominance creates an uneven playing field, potentially marginalizing smaller media outlets with limited resources.³⁷

Beyond competition concerns, this dominance raises critical issues regarding democratic principles and fundamental human rights.³⁸ A healthy media ecosystem thrives on a plurality of voices and viewpoints.³⁹

The ECtHR demands for pluralism to be "effective" in the sense of allowing "effective access to the market so as to guarantee diversity of overall programme content, reflecting as far as possible the variety of opinions encountered in the society at which the programmes are aimed".⁴⁰

However, with a majority of users relying on social media platforms for news discovery, the power to curate and present information effectively rests within a select group of private companies which is very problematic concerning the freedom of expression.⁴¹

Furthermore, the often-opaque nature of AI algorithms employed by these platforms adds another layer of concern. The lack of transparency in their decision-making processes raises questions about potential bias towards business interests, potentially shaping public discourse in a way that does not reflect the full spectrum of societal opinions. Coupled with the market dominance of these intermediaries, this opacity creates fertile ground for censorship and potential manipulation of information by state actors.⁴²

Therefore access to AI technology and data creates a competitive advantage for larger players, potentially disadvantaging smaller, less-resourced media outlets which leads to risks concerning freedom of expression.

2. AI and the media's users

Next, the focus will be on the audience. AI is fundamentally changing how users encounter news. From personalized recommendations to potential manipulation through algorithms, the impact of AI on the way people access and understand information will be investigated.

³⁶ Moore/Tambini (eds), in: Moore/Tambini, 396, 396 ff.

³⁷ Gebicka/Heinemann, World Competition, 2014, 149, 149; Graef, Internet Policy Review, 2015.

³⁸ Baker, p. 14.

³⁹ ECtHR, *Centro Europa 7 S.r.l and Di Stefano v Italy* [GC], App. No. 38433/09, 07/06/2012, para. 129.

⁴⁰ ECtHR, *Centro Europa 7 S.r.l and Di Stefano v Italy* [GC], App. No. 38433/09, 07/06/2012, paras. 130, 134.

⁴¹ Moore/Tambini (eds), in: Moore/Tambini, 396, 397 f.

⁴² Amnesty International, Surveillance Giants: How the Business Model of Google and Facebook Threatens Human Rights, <https://www.amnesty.org/en/documents/poi30/1404/2019/en>.

a) Content manipulation and curation

AI-powered recommendation systems wield significant editorial influence by determining the order and selection of stories presented to users. This effectively positions them as digital gatekeepers, shaping public discourse and potentially influencing user cognition. Consequently, concerns regarding manipulation have risen, as AI's ability to subtly tailor information exposure creates the potential for priming users towards specific viewpoints.⁴³

A proliferation of online content has intensified competition for user attention. Internet intermediaries leverage AI to curate information streams based on predicted user preferences.⁴⁴ However, these algorithms are often driven by the platforms' desire to monetize user data through targeted advertising.⁴⁵ Consequently, AI-powered ranking systems prioritize "click-worthy" content, which may not always be newsworthy in the traditional sense.⁴⁶ This prioritization can exacerbate social polarization and radicalization by promoting confirmation bias and the dissemination of deceptive or hateful material.⁴⁷

Moreover, legacy media, or old media, increasingly reliant on online access and sharing, competes for the same limited user attention. This pressure can incentivize them to prioritize "infotainment" over content serving the public interest, further straining quality journalism.⁴⁸

Furthermore, content deemed irrelevant or unimportant by search engine algorithms is less likely to be indexed or displayed prominently, significantly restricting its reach and potential audience. Consequently, the reliance on algorithmic curation within online environments can exacerbate the fragmentation of the public sphere. This fragmentation fosters the creation of "echo chambers," insular online communities where users are primarily exposed to information and perspectives that reinforce their existing beliefs, further amplifying societal polarization.⁴⁹

⁴³ *Helberger et al*, EJLT, 2020, Title 4.2.

⁴⁴ *Jürgens/Stark*, Policy & Internet, 2017, 395, 403 f.

⁴⁵ *Bloch-Wehba*, Cornell International Law Journal, 2020, p.6.

⁴⁶ *OSCE*, RFoM Non-paper on the Impact of Artificial Intelligence on Freedom of Expression, <https://www.osce.org/representative-on-freedom-of-media/447829>, *Vosoughi et al*, Science, 2018, 1146, 1148f.

⁴⁷ *Cobbe/Singh*, EJLT, 2019.

⁴⁸ *Helberger et. al*, Implications of AI-driven tools in the media for freedom of expression. Paper presented at Artificial intelligence – Intelligent politics: Challenges and opportunities for media and democracy, <https://rm.coe.int/cyprus-2020-ai-and-freedom-of-expression/168097fa82>, p. 12f.

⁴⁹ *MSI-NET*, Algorithms and Human Rights: Study on the human rights dimensions of automated data processing techniques and possible regulatory implications, <https://rm.coe.int/algorithms-and-human-rights-en-rev/16807956b5>, p. 11.

The AI-fueled personalization of content narrows the range of content recommended to users, based on their predicted preferences and interests, including news, and further strengthens users' existing views, creating "filter bubbles" that limit exposure to diverse media.⁵⁰

The application of AI-driven tools could also lead to a situation where certain demographics or user groups with particular characteristics are systematically excluded from accessing information, or where new digital divides emerge within society.⁵¹

This distortion of reality can reinforce power imbalances, amplify societal divisions, and pose a serious threat to media pluralism.⁵²

The current internet infrastructure offers little economic incentives for platforms to prioritize content diversity or factual accuracy. Consequently, AI systems designed for commercial or political gain will inevitably exhibit bias towards specific content types. This bias serves to manipulate user behavior – either for profit maximization, persuasion towards particular viewpoints, or even the intentional suppression of independent journalism.⁵³ Furthermore, AI tools can be weaponized to silence journalists through orchestrated harassment campaigns. This tactic is particularly egregious when targeting women journalists, and AI-powered distribution systems may even amplify such attacks through mechanisms that reward virality.⁵⁴

Permanent surveillance practices executed by AI, coupled with profiling, can be dangerous for journalists. The concerns raised regarding AI's influence are particularly relevant when considering the protection of journalists' sources and whistleblowers. Other threatening concerns are the use of facial recognition to identify journalists or analyzing their digital traces. Ultimately, this, coupled with restrictive legislation, would severely impede newsgathering and investigative journalism.⁵⁵

Internet intermediaries have effectively assumed the role of information gatekeepers, wielding AI to curate media content and control information flows. Absent robust democratic safeguards, AI-powered content moderation poses a significant threat to media freedom, access to

⁵⁰ *Pariser*, p. 1f.

⁵¹ *Matz/Kosinski/Nave/Stillwell*, PNAS, 2017, 12714, 12717.

⁵² *Zuiderveen Borgesius et al*, Internet Policy Review, 2015, 1, 3ff.

⁵³ *Singh*, Rising Through the Ranks: How Algorithms Rank and Curate Content in Search Results and on News Feeds, <https://www.newamerica.org/oti/reports/rising-through-ranks>.

⁵⁴ *Haas*, Freedom of the Media and Artificial Intelligence, <https://www.osce.org/files/f/documents/4/5/472488.pdf>, p. 3f.

⁵⁵ OSCE, RFoM Non-paper on the Impact of Artificial Intelligence on Freedom of Expression, <https://www.osce.org/representative-on-freedom-of-media/447829>.

information, and free speech.⁵⁶ “In an AI-governed system, the dissemination of information and ideas is governed by opaque forces with priorities that may be at odds with an enabling environment for media diversity and independent voices.”⁵⁷

b) Impact on information quality and diversity

The increasing utilization of AI-driven recommendation systems within media landscapes presents a double-edged sword. While offering undeniable convenience in content discovery, these algorithms can inadvertently amplify the dissemination of misinformation and consequently erode public trust in journalism.⁵⁸

The specific design choices underlying these recommendation systems significantly influence user exposure. If tailored primarily to sensational content, these systems can create “echo chambers” where users are primarily exposed to inaccurate or misleading information.⁵⁹ This susceptibility is further heightened for users whose online profiles attract media outlets prioritizing click-worthy content over high-quality journalism. Furthermore, the inherent biases within these algorithms can inadvertently lead to the marginalization of diverse media perspectives, potentially hindering users' access to a well-rounded information diet.⁶⁰ Consequently, a freedom of expression analysis of AI-driven media tools must encompass both the threat of misinformation and the potential for digital marginalization, recognizing the latter as a dynamic process that can impact any user.

C. What are the existing standards set by the EU

Having examined the potential dangers AI poses to the media landscape, we now shift focus to the existing regulatory frameworks that serve as safeguards for press and media freedom in the age of AI.

AI presents a complex regulatory landscape due to its intersection with fundamental rights and social values enshrined in international documents like the UN Charter and the EU Charter of Fundamental Rights, as well as national constitutions. These documents outline core principles

⁵⁶ *MSI-NET*, Algorithms and Human Rights: Study on the human rights dimensions of automated data processing techniques and possible regulatory implications, <https://rm.coe.int/algorithms-and-human-rights-en-rev/16807956b5>, p. 22.

⁵⁷ *Kaye*, A/73/348, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

⁵⁸ *Helberger et al*, EJLT, 2020, Title. 4.2.

⁵⁹ *Del Vicario et al*, PNAS, 2016, 554, 554.

⁶⁰ *Helberger et al*, EJLT, 2020, Title 4.2.

that AI has the potential to both support and undermine. Given its broad societal influence, AI falls under the purview of various legal regimes. Data protection, consumer protection, and competition law, for example, work in synergy to ensure fair treatment for individuals. Additionally, labor law, administrative law, and tort law may require adaptation to address the unique challenges posed by AI.

Furthermore, the international landscape is rich with conventions safeguarding freedom of expression, which encompasses press and media freedom.⁶¹ Despite variations in the level of protection offered, all international norms, standards, and resources converge on the principle of safeguarding this freedom, particularly in its role of shielding press and media freedom. This paper will delve specifically into the protections presently afforded by EU law and the European Convention on Human Rights (ECHR).

I. Article 10 European Convention on Human Rights (ECHR)

Article 10 first paragraph first sentence ECHR reads:

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”

Article 10 of the ECHR establishes a stringent framework for restrictions on information online. Any measure that filters or removes content must be prescribed by law, pursue a legitimate aim outlined in Article 10.2, such as national security or the protection of reputations and stand the test of necessity. Moreover, jurisprudence of the European Court of Human Rights (ECtHR) mandates that such restrictions must satisfy a “pressing social need” and be proportionate to the aim pursued.⁶²

⁶¹ A non-exhaustive list of these international norms, standards, principles and resources related to the freedom of expression that the EU may invoke or use in contacts with third countries includes: Article 19 of the Universal Declaration of Human Rights, Article 19 of the ICCPR, UN Special Rapporteur on the promotion and the protection of the right to Freedom of Opinion and Expression, the OSCE acquis includes several provisions on freedom of expression, among them the “Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990) § 9, Budapest Document: Towards a Genuine Partnership in a New Era (Summit of Heads of State, 1994) § 36 and OSCE Permanent Council Decision No. 633, annexed to Decision 12/04 of the Twelfth Meeting of the Ministerial Council (Sofia, 2004) as well as the respective Articles in the African Charter on Human and Peoples’ Rights (Article 9), the American Convention on Human Rights (Article 13) and the ASEAN Human Rights Declaration (Article 23).

⁶² ECtHR, *Gorzelik and others v Poland*, App. no. 44158/98, 17 February 2004, para. 95ff; ECtHR, *Magyar Helsinki Bizottság v Hungary* [GC] App. no. 18030/11, 8 November 2016, para 187.

It is noteworthy that the ECtHR has expressly acknowledged the potential for certain bloggers and social media influencers to function as public watchdogs under Article 10 of the ECHR. This recognition underscores their significant role and suggests they may warrant protections similar to those afforded to the press by the Convention.⁶³

The court has further emphasized the vital role of "citizen journalism" and the importance of online platforms in both disseminating established media content and facilitating the emergence of citizen journalism itself. Notably, the ECtHR has explicitly recognized YouTube as a critical platform for exercising the right to freedom of information enshrined in Article 10 of the ECHR. It acknowledges that YouTube serves as a space where "politically significant content neglected by traditional media outlets" finds a voice, and one that actively fosters the development of citizen journalism.⁶⁴

II. Article 11 EU Charter of Fundamental Rights

Article 11 paragraph 1 of the EU Charter of Fundamental Rights reads:

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”

Article 52(3) of the Charter clarifies that the right to freedom of expression shall be interpreted identically to the ECHR's Article 10. This was expressly confirmed in 2019 by the Court of Justice of the European Union (CJEU) which held that Article 11 of the ECHR should be interpreted as having the “same meaning and the same scope” as Article 10 ECHR, “as interpreted by the case-law of the European Court of Human Rights”.⁶⁵ Consequently, any limitations on this right cannot be stricter than those allowed by Article 10(2) of the ECHR. This applies unless Community competition law imposes additional restrictions on member states regarding licensing arrangements outlined in the third sentence of Article 10(1) of the ECHR.⁶⁶

Article 11 paragraph 2 of the EU Charter of Fundamental Rights reads:

⁶³ ECtHR, *Magyar Helsinki Bizottság v Hungary* [GC] App. no. 18030/11, 8 November 2016, para 166ff.

⁶⁴ ECtHR, *Cengiz and Others v Turkey*, App. nos. 48226/10 and 14027/11, 1 December 2015, para 52; *Seipp/Ó Fathaigh/van Drunen*, *Journal of media law*, 2023, 39, 46.

⁶⁵ CJEU, Judgement of 14 February 2019, Case C–345/17, *Sergejs Buivids v Datu valsts inspekcija*, ECLI:EU:C:2019:122, para 65.

⁶⁶ OJ C 303/17, 14/12/2007, p. 21.

“The freedom and pluralism of the media shall be respected.”

Article 11(2)'s elaboration on the consequences of media freedom outlined in paragraph 1 underscores the centrality of a free and pluralistic media landscape in a democratic society.⁶⁷ The emphasis here elevates Article 11's significance to an essential role within a democratic and pluralistic framework⁶⁸. This importance transcends the individual formation of opinions, recognizing the media's function in shaping societal discourse. Furthermore, it acknowledges the unique role of mass media as a facilitator of communication and information dissemination. The protection of media plurality serves to ensure a diversity of viewpoints within the public sphere.⁶⁹

III. Article 85 General Data Protection Regulation (GDPR)

While the GDPR acknowledges the internet age by mentioning terms like "internet," "social networks," and "websites," it doesn't directly address artificial intelligence. AI, however, wasn't a prominent social issue then. Despite the lack of specific AI terminology, many GDPR provisions are still highly relevant and applicable to how AI interacts with personal data.⁷⁰

The GDPR incorporates a "journalistic exemption," which permits certain data processing requirements to be waived when the processing is undertaken for journalistic purposes.⁷¹

Article 85 paragraph 1 of the GDPR reads:

“Member States shall by law reconcile the right to the protection of personal data pursuant to this Regulation with the right to freedom of expression and information, including processing for journalistic purposes and the purposes of academic, artistic or literary expression.”

The implementation of the GDPR has reignited the longstanding tension between the fundamental rights of privacy and freedom of expression. While well-established international legal principles exist to balance these rights, some argue that the GDPR's application as executed by the member states and the EU may not guarantee equal protection for both.⁷²

⁶⁷ GA Kokott, Schlussanträge der Generalanwältin vom 16.5.2013, Rechtssache C-234/12, Sky Italia, Rn. 74.

⁶⁸ CJEU, Judgement of 22 November 2013, Case C-283/11, Sky Österreich, ECLI:EU:C:2013:28, Rn. 52.

⁶⁹ Jarass, Jarass in: GrCh EU-Grundrechte-Charta, Art. 11, Rn. 4-6.

⁷⁰ Sartor/Lagioia, The impact of the General Data Protection Regulation (GDPR) on artificial intelligence, 06/2020, 1, 35.

⁷¹ Reventlow, AJIL Unbound, 2020, 31, 32f.

⁷² Reventlow, AJIL Unbound, 2020, 31, 32f.

The GDPR aims to achieve a delicate balance within these rights. It seeks to empower individuals in the digital age by strengthening their data rights, while simultaneously striving for uniformity in data protection regulations across the EU. However, the GDPR acknowledges the diverse social, cultural, and historical contexts of member states. Consequently, it grants them some autonomy in regulating specific areas, including employment, religious associations, archiving and research, and crucially, the processing of personal data for journalistic purposes.⁷³

This flexibility within the GDPR framework presents potential challenges. National legislation enacted by member states might offer varying degrees of protection for the freedom of expression and the press. These national laws could potentially fall short of established international legal standards, creating a patchwork of protections across the EU.⁷⁴ Further complicating the landscape is the optional nature of the journalistic exemption within the GDPR. While member states have the option to implement this exemption within their national frameworks, the pace and quality of implementation have been uneven, with Slovenia being the last EU member to implement on 15th of December 2022, six years after the earliest draft had been released to the public in 2018.⁷⁵ A review reveals that while the EU states have adopted the GDPR, the quality of the journalistic exemptions varied significantly.⁷⁶

This resulting patchwork of legal landscapes across Europe poses a potential threat to freedom of expression and investigative journalism. This is particularly concerning for journalists and media outlets operating across multiple jurisdictions or online. The lack of a uniform approach creates two vulnerabilities for journalists.⁷⁷

First, individuals seeking to silence critical reporting can exploit these legal disparities. This phenomenon, known as “forum shopping”, allows them to file data protection claims in jurisdictions with the weakest protections for journalism. Second, unlike traditional libel suits that require proof of falsity and reputational harm, data protection claims present a lower bar for

⁷³ *Bitiukova*, The GDPR’s Journalistic Exemption and its Side Effects: GDPR anniversary – what does it mean for the media?, <https://verfassungsblog.de/the-gdprs-journalistic-exemption-and-its-side-effects/>.

⁷⁴ *Bitiukova*, Institute for Policy Analysis, Policy Paper Series, 2020, 1, 29.

⁷⁵ *Glanville*, London Rev. Books, 2018; *Frantar/Gajšek*, Better late than never: Slovenia last EU Member State to adopt GDPR implementing act, [https://www.schoenherr.eu/content/better-late-than-never-slovenia-last-eu-member-state-to-adopt-gdpr-implementing-act/#:~:text=On%202015%20December%202022%2C%20the,Regulation%20\(%22GDPR%22\)](https://www.schoenherr.eu/content/better-late-than-never-slovenia-last-eu-member-state-to-adopt-gdpr-implementing-act/#:~:text=On%202015%20December%202022%2C%20the,Regulation%20(%22GDPR%22)).

⁷⁶ *Bitiukova*, Institute for Policy Analysis, Policy Paper Series, 2020, 1, 29.

⁷⁷ *Bitiukova*, The GDPR’s Journalistic Exemption and its Side Effects: GDPR anniversary – what does it mean for the media?, <https://verfassungsblog.de/the-gdprs-journalistic-exemption-and-its-side-effects/>.

legal action. The absence of strict requirements creates a potentially easier tool for reputation management efforts aimed at suppressing critical reporting.⁷⁸

These vulnerabilities can be even more dangerous in the case of AI usage. AI can be harnessed to file lawsuits against journalists in jurisdictions with the weakest press protections, significantly increasing the cost and difficulty of mounting a defense. AI can target journalists working on sensitive stories. Lawsuits and harassment campaigns can be used to intimidate and derail investigations.⁷⁹ Finally, AI can be utilized to automate suppression efforts. The ability to generate and file data protection claims en masse, or to bombard journalists with complaints, creates a constant pressure cooker. This can ultimately lead to self-censorship, as journalists, overwhelmed and wary of legal repercussions, may choose to avoid controversial topics.⁸⁰

In conclusion, the GDPR's flexible approach, coupled with the uneven implementation of journalistic exemptions at the national level, risks creating a danger on freedom of expression and investigative journalism within the EU regarding technological advances specifically with the use of AI. This potential chilling effect calls for a reevaluation of the balance struck by the GDPR and a call for a more uniform approach to journalistic exemptions across member states.

IV. EU Media Freedom Act (EMFA)

As one of the most recent acts concerning AI to enter into force, the EMFA is particularly significant. The focus of the EMFA centers on media pluralism, transparency of media ownership, and safeguards against government control and surveillance of journalists.⁸¹ While AI could potentially impact these areas, it is not the main target of the legislation.⁸²

The EMFA's understanding of media freedom, as outlined in Article 2, appears to be narrower than in international human rights documents. The EMFA focuses on professional service and economic activity, potentially neglecting the core function journalism plays in a democracy. This focus on economics stems from the EMFA's legal basis in Article 114 of the Treaty on the

⁷⁸ Reventlow, *AJIL Unbound*, 2020, 31, 34.

⁷⁹ Bitiukova, *Institute for Policy Analysis, Policy Paper Series*, 2020, 1, 29.

⁸⁰ Funk/Shahbaz/Vesteinsson, *The Repressive Power of Artificial Intelligence*, <https://freedomhouse.org/report/freedom-net/2023/repressive-power-artificial-intelligence>, p. 6.

⁸¹ *European Commission*, *European Media Freedom Act*, https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/new-push-european-democracy/protecting-democracy/european-media-freedom-act_en.

⁸² AI is only specifically mentioned in Article 17 Nr. 1 (ca) of the EMFA, which provides that: *Providers of very large online platforms shall provide a functionality allowing recipients of their services to declare that they do not provide content generated by artificial intelligence systems without subjecting it to human review or editorial control.*

Functioning of the European Union (TFEU). However, this economic emphasis creates a two-fold challenge.⁸³

First, by linking media freedom to economic activity, the EMFA risks excluding non-commercial media outlets that are still vital for democratic discourse. Second, the economic focus creates a lack of clarity on who qualifies for media freedom protections.⁸⁴ This ambiguity creates uncertainty, especially concerning emerging technologies like Artificial Intelligence which could fundamentally reshape the media landscape.⁸⁵ As a result, the EMFA's definition of media freedom might not be strong enough to safeguard media freedom from potential threats posed by AI.

V. AI Act

The EU's Artificial Intelligence Act (AI Act) doesn't explicitly focus on press and media freedom. The AI Act primarily targets high-risk AI applications, aiming to ensure responsible development and use of such technologies. Its main areas of concern are safety, fairness, transparency, and accountability.⁸⁶

While AI can impact media freedom, such freedom is not the central theme of the legislation. Some organizations, like Reporters Without Borders (RSF), have called for the AI Act to include safeguards for the right to reliable news and information. They advocate for stricter regulations on AI systems designed for news production or manipulating information flows.⁸⁷

Notwithstanding such criticism, the AI Act, that entered into force in 1st of August 2024⁸⁸, could still have a limited positive downstream effect on media ecosystems. Transparency requirements for high-risk AI systems might influence media organizations' disclosure practices regarding their use of AI in content creation or editorial decision-making.⁸⁹ Increased transparency might improve trust with audiences and promote responsible AI integration within media

⁸³ Seipp/Fathaigh/van Drunen, *Journal of Media Law*, 2023, 39, 51.

⁸⁴ Barata, *Protecting Media Content on Social Media Platforms: The European Media Freedom Act's Biased Approach*, <https://verfassungsblog.de/emfa-dsa/>.

⁸⁵ Seipp/Fathaigh/van Drunen, *Journal of Media Law*, 2023, 39, 43f.

⁸⁶ *European Commission*, *Shaping Europe's digital future, AI Act*, <https://digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai>.

⁸⁷ *Reporters without Borders*, *EU's Artificial Intelligence Act must safeguard right to reliable news and information, says RSF*, <https://rsf.org/en/eu-s-artificial-intelligence-act-must-safeguard-right-reliable-news-and-information-says-rsf>.

⁸⁸ *European Commission*, *AI Act enters into force*, https://commission.europa.eu/news/ai-act-enters-force-2024-08-01_en#:~:text=On%201%20August%202024%2C%20the,and%20deployment%20in%20the%20EU..

⁸⁹ *Radsch*, *The AI Act's Extended Timeline Is Perilous for Journalism, and Democracy*, <https://www.cigionline.org/articles/the-ai-acts-extended-timeline-is-perilous-for-journalism-and-democracy/>.

workflows. Furthermore, regulations aimed at mitigating algorithmic bias could ensure AI-powered news recommendations are not discriminatory or manipulative, fostering a more balanced media landscape.⁹⁰

One of the articles which would impact media is Article 27 of the AI Act. However, the impact assessment requirement outlined in the text is likely to have a limited impact on press freedom. This obligation is restricted to a specific set of actors, primarily public bodies and those utilizing high-risk AI in finance (Annex III, point 5, b & ca).⁹¹ Additionally, the assessment itself focuses on aspects outside the scope of existing regulations (e.g., GDPR Data Protection Impact Assessments) and will be facilitated by standardized templates. Consequently, the burden placed on media organizations is anticipated to be minimal.⁹²

VI. Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law

The Council of Europe's AI Convention is poised to become the first international treaty dedicated to regulating artificial intelligence. While it currently exists as a *lex ferenda*, with only 10 signatures but no ratifications as of the 22nd of October 2024⁹³, its potential significance should not be overlooked. It requires countries to ensure that AI is used in a way that respects human rights and doesn't threaten democracy or the rule of law.⁹⁴ While it doesn't create new AI-specific laws, it can help assess existing laws like the EU's AI Act and identify regulatory gaps. However, it does not introduce new AI-specific obligations and, like the AI Act, contains some loopholes. Its primary achievement is the establishment of a regular forum for state parties, known as the "Conference of the Parties", which facilitates discussions on AI policies, monitors developments, and ensures that AI regulations align with existing international standards.⁹⁵

⁹⁰ *Porlezza*, Communications, 2023, 370, 381f.

⁹¹ *Friedl/Gasiola*, Examining the EU's Artificial Intelligence Act, <https://verfassungsblog.de/examining-the-eus-artificial-intelligence-act/>.

⁹² *Council of the European Union*, Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts - Analysis of the final compromise text with a view to agreement, 2021/0106(COD), Brussels, 26 January 2024, p. 5.

⁹³ *Council of Europe*, Chart of signatures and ratifications of Treaty 225, <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatyid=225>.

⁹⁴ *International Bar Association*, The IBA is the first association of legal practitioners to endorse the Council of Europe Framework Convention on Artificial Intelligence, <https://www.ibanet.org/The-IBA-is-the-first-association-of-legal-practitioners-to-endorse-the-Council-of-Europe-Framework-Convention-on-Artificial-Intelligence>.

⁹⁵ *Wistehube*, AI Regulation: Are Public Service Media's needs being met?, <https://www.ebu.ch/guides/open-report/ai-regulation-public-service-media-analysis>.

One of the Convention's shortcomings is its distinction between AI systems used by the public and private sectors. While member states are required to adopt strict measures for regulating AI in the public sector, including addressing risks such as disinformation, the Convention gives them broad discretion to manage AI risks in the private sector. This allows states to opt for self-regulation, enabling the AI industry to regulate itself through charters or codes of conduct. However, given that private sector companies are the pioneers in AI development and cater to private sector clients, relying on self-regulation is unlikely to adequately address the challenges posed by this rapidly evolving industry.⁹⁶

The Convention's potential impact is also limited by its reliance on states to determine the appropriate regulatory measures for AI technologies that can influence public opinion.⁹⁷ Despite the widespread use of AI by tech companies to manipulate public sentiment, the Council of Europe allows states to choose between binding laws and voluntary measures. This approach, could undermine the Convention's effectiveness in addressing the risks posed by AI.⁹⁸

VII. Conclusion

After dissecting the potential dangers of AI for press freedom and having taken a closer look at the existing regulatory frameworks it is examined how current laws, particularly those enshrined in EU law and the ECHR, address these challenges. While frameworks within EU law and the ECHR offer safeguards, their protection for press freedom is often indirect or limited to specific areas. This analysis exposes a crucial shortcoming: current regulations are inadequate to fully address the challenges posed by AI. While commendable efforts have been made through recommendations⁹⁹, declarations¹⁰⁰, and guidelines¹⁰¹, these instruments lack the binding force necessary to effectively ensure a free press in the digital age.

⁹⁶ *Reporters without Borders*, Countries signing Council of Europe's AI framework convention should not be tempted by self-regulation option, <https://rsf.org/en/countries-signing-council-europe-s-ai-framework-convention-should-not-be-tempted-self-regulation>.

⁹⁷ *Reckeweg*, EU signs AI convention, <https://www.heise.de/en/news/EU-signs-AI-convention-9858986.html>.

⁹⁸ *HeiseOnline*, Europarat will KI-Konventionen verabschieden, <https://www.heise.de/news/Europarat-verabschiedet-KI-Konventionen-9722059.html>.

⁹⁹ Eg: Recommendation of the Parliamentary Assembly of the Council of Europe about Technological convergence, artificial intelligence and human rights (Rec2102(2017)); Recommendation of the Commissioner for Human Rights: "Unboxing AI: 10 steps to protect human rights", May 2019.

¹⁰⁰ Eg: Declaration of the Committee of Ministers on the manipulative capabilities of algorithmic processes (Decl(13/02/2019)1).

¹⁰¹ Eg: Guidelines on Artificial Intelligence and Data Protection (T-PD(2019)01).

D. What is still to be achieved?

While robust regulations are undeniably necessary to safeguard press freedom in the age of AI, ethical considerations within media organizations themselves play an equally important role. Existing best practices and guidance on media responsibility require revision to explicitly address the conscientious use of AI-driven tools within newsrooms.

The subsequent section will explore critical areas where further efforts are essential to shield press and media freedom from the potential dangers of AI, propose concrete solutions to address these challenges and ensure a responsible and ethical application of AI within the media landscape.

I. Internal Newsroom Practices

The Guidelines for trustworthy AI by the High-Level Expert Group on Artificial Intelligence (AI HLEG), set up by the European Commission, are open for endorsement by organizations and stakeholders. These entities can then integrate the principles of trustworthy AI into their existing frameworks, such as corporate responsibility charters, Key Performance Indicators (KPIs), codes of conduct, or internal policy documents.¹⁰²

1. Protocols regarding interaction with AI tools

This entails establishing clear protocols for journalists and editors regarding their interaction with AI tools. These protocols should address mitigating the pressure to prioritize user metrics and ensuring that human editorial judgment remains paramount.¹⁰³

2. New Internal Procedures

Furthermore, the development of AI tools should be informed by the creation of new internal procedures that explicitly safeguard freedom of expression values. These procedures should also bridge the current communication gap between editorial staff (journalists and editors) and technical personnel (those designing recommender systems and smart news apps).¹⁰⁴

¹⁰² *AI HLEG*, European Commission, Ethics Guidelines for trustworthy AI, High-Level Expert Group on Artificial Intelligence, <https://ec.europa.eu/futurium/en/ai-alliance-consultation.1.html>, p. 22.

¹⁰³ *Helberger et. al*, Implications of AI-driven tools in the media for freedom of expression. Paper presented at Artificial intelligence – Intelligent politics: Challenges and opportunities for media and democracy, <https://rm.coe.int/cyprus-2020-ai-and-freedom-of-expression/168097fa82>, p. 22.

¹⁰⁴ *Jaakkola*, p.66.

3. Internal Checks and Balances

Mitigating potential bias and ensuring diversity within AI-driven news recommendation systems requires a multi-pronged approach. In addition to value-sensitive design principles, dependable internal oversight mechanisms are crucial for the identification and rectification of such issues. Furthermore, fostering transparency and controllability of these processes is equally paramount, alongside the clear attribution of editorial responsibility for all automated recommendations and AI-generated news products. This emphasis is warranted given that AI tools transcend the role of simple technological help-systems; they represent potentially transformative structural shifts within news organizations, impacting both internal routines and the division of labor between human and machine actors. Consequently, professional duties and ethical considerations should extend not only to journalists and editors but also to the technical staff involved in the design and implementation of AI-powered news delivery systems.¹⁰⁵

Within these parameters it is important to build a vibrant and diverse media landscape. Therefore, it is imperative that the parameters facilitate access to AI technology and training for smaller media outlets to ensure a healthy competition.¹⁰⁶

II. Editorial Oversight

The expanding use of automated journalistic processes, encompassing AI-driven recommender systems and journalism completely written by AI, requires the establishment of clear parameters for editorial oversight and the allocation of responsibility.¹⁰⁷ This entails a rigorous conceptualization of editorial control within the context of AI tools. Such a framework would serve to delineate what constitutes legitimate journalistic output and identify the actors who bear editorial accountability for its content.¹⁰⁸

¹⁰⁵ *Helberger et. al*, Implications of AI-driven tools in the media for freedom of expression. Paper presented at Artificial intelligence – Intelligent politics: Challenges and opportunities for media and democracy, <https://rm.coe.int/cyprus-2020-ai-and-freedom-of-expression/168097fa82>, p. 22.

¹⁰⁶ Recommendation of the Committee of Ministers to member States, CM/Rec(2020)1, Recommendation to member States on the human rights impacts of algorithmic systems, 08/04/2020, para. 6.3; *Furman et al.*, Unlocking digital competition: Report of the Digital Competition Expert Panel, <https://www.gov.uk/government/publications/unlocking-digital-competition-report-of-the-digital-competition-expert-panel>.

¹⁰⁷ *Council of Europe*, Guidelines on Artificial Intelligence and Data Protection, Consultative Committee of the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, <https://rm.coe.int/guidelines-on-artificial-intelligence-and-data-protection/168091f9d8>.

¹⁰⁸ *Council of Europe*, Guidelines on the responsible implementation of artificial intelligence systems in journalism, adopted by the Steering Committee on Media and Information Society (CDMSI), <https://rm.coe.int/cdmsi-2023-014-guidelines-on-the-responsible-implementation-of-artific/1680adb4c6>; *Weaver*, Why you can't replace human insight: The importance of editorial skills in the AI era, <https://writer.com/blog/editorial-skills-and-ai/>.

III. User-Centric Considerations

Respect for user privacy, the right to form independent opinions, and the principle of non-discrimination should be cornerstones of journalistic algorithmic ethics. Accordingly, news media outlets must refrain from employing AI technologies in ways that manipulate, stereotype, or otherwise diminish user agency in relation to freedom of expression.¹⁰⁹ As highlighted by the analysis of Article 10 ECHR and Article 11 Charter of Fundamental Rights transparency and clear explanations regarding the impact of AI tools on user choice are paramount. Automated sorting algorithms can significantly affect user privacy and the right to receive information. Similarly, respecting both user privacy and freedom of expression necessitates the confidentiality of user data held by media organizations. This data, encompassing details like reading choices and political preferences, can be highly sensitive depending on the specific political and economic climate within a given country.¹¹⁰

Additionally, policymakers should also, because of the great risks mentioned above, identify potentially vulnerable groups, including users who are structurally disadvantaged in receiving news, at risk of receiving a less diverse range of information, or who bear a disproportionate cost (including in terms of privacy) for accessing information, as well as those most susceptible to marginalization. The objective is to promote the equal enjoyment of freedom of expression for all. Subsequently, the development of targeted solutions fostering equitable access to information is essential.¹¹¹

IV. Societal Impact and Public Good

Journalistic algorithmic ethics must unequivocally emphasize the utilization of AI tools to bolster, not curtail, freedom of expression rights. In this context, media outlets employing AI tools should prioritize informing the public over maximizing short-term gains through clicks and likes. Furthermore, they should critically evaluate the impact of these tools on information

¹⁰⁹ Declaration by the Committee of Ministers on the manipulative capabilities of algorithmic processes, Decl. (13/02/2019)1, 13/02/2019.

¹¹⁰ *Helberger et. al.*, Implications of AI-driven tools in the media for freedom of expression. Paper presented at Artificial intelligence – Intelligent politics: Challenges and opportunities for media and democracy, <https://rm.coe.int/cyprus-2020-ai-and-freedom-of-expression/168097fa82>, p. 22.

¹¹¹ *Amnesty International et al.*, Toronto Declaration: Protecting the right to equality and non-discrimination in machine learning systems, https://www.accessnow.org/wp-content/uploads/2018/08/The-Toronto-Declaration_ENG_08-2018.pdf, p. 10f; *Helberger et. al.*, Implications of AI-driven tools in the media for freedom of expression. Paper presented at Artificial intelligence – Intelligent politics: Challenges and opportunities for media and democracy, <https://rm.coe.int/cyprus-2020-ai-and-freedom-of-expression/168097fa82>, p. 22.

diversity, social cohesion, and inclusion, as well as their ability to effectively address the specific information needs of their audiences.¹¹²

The successful cultivation of widespread basic AI literacy necessitates the prior investment in a robust and well-equipped cadre of AI ethicists. This focus on building expertise will serve as the foundation for effectively educating the public. Enhancing user agency and fostering digital literacy are crucial for mitigating the potential negative influence of AI.¹¹³

Public authorities utilizing AI must adhere to international human rights standards, guaranteeing that limitations on freedom of expression or the media are only those which are necessary and proportionate.¹¹⁴ For independent oversight of AI, national human rights institutions need the power to monitor its development and use. Regular human rights impact assessments, with publicly available results, are crucial throughout the entire AI lifecycle.¹¹⁵

V. Cooperation

To ensure that AI serves as a force for positive societal advancement and does not undermine media freedom and free expression, a collaborative effort is essential. All stakeholders, including governments, private corporations, and civil society organizations, must work together to establish effective safeguards. Furthermore, given the global nature of the challenges posed by AI, international cooperation is paramount for the development of effective solutions. This necessitates a coordinated effort to establish international frameworks that promote responsible AI development and deployment.¹¹⁶

E. Conclusion

A 2021 study across five countries indicates a significant public trust deficit in AI systems, with over a third of respondents expressing either unwillingness or ambivalence towards trusting AI

¹¹² *Council of Europe*, Recommendation of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries, 2018, CM/Rec(2018)2, para. 2.

¹¹³ *Frau-Meigs*, User empowerment through media and information literacy responses to the evolution of generative artificial intelligence (GAI), <https://unesdoc.unesco.org/ark:/48223/pf0000388547>.

¹¹⁴ Article 19/3 ICCPR; *Council of Europe*, Recommendation of the Committee of Ministers to member States on the human rights impacts of algorithmic systems, 2020, CM/Rec(2020)1, para. 4.1.

¹¹⁵ *AI Now Institute*, Algorithmic impact assessments: a practical framework for public agency accountability, <https://ainowinstitute.org/publication/algorithmic-impact-assessments-toward-accountable-automation-in-public-agencies>.

¹¹⁶ Haas, Freedom of the Media and Artificial Intelligence, <https://www.osce.org/files/f/documents/4/5/472488.pdf>, p. 4 f.

in general. A mere quarter of respondents reported a willingness to trust these systems.¹¹⁷ This lack of trust presents a major challenge for the integration of AI in journalism.

While AI offers undeniable potential to enhance journalistic processes and improve content quality, its benefits cannot be fully realized without addressing public concerns. Identifying the potential dangers of AI for press freedom is therefore crucial.

The intricate interplay between AI and press freedom necessitates a multifaceted approach. While established legal frameworks, such as the EU Charter of Fundamental Rights and the European Convention on Human Rights, provide a foundational framework, the dynamic nature of AI demands further legal development. The EMFA, the GDPR, the AI Act and the Council of Europe Framework Convention offer restricted avenues for safeguarding press freedom in the digital age. However, for effective mitigation of the identified dangers, robust internal practices within news organizations are equally critical.

The findings of this paper highlight several critical concerns regarding AI's impact on media and press freedom. Firstly, AI-driven content curation and recommendation systems pose significant risks to media pluralism and diversity, potentially creating echo chambers and filter bubbles that limit exposure to varied perspectives. Secondly, the use of AI in content moderation raises issues of censorship and unintended suppression of legitimate speech. Thirdly, the paper identifies a growing power imbalance between large tech platforms with access to advanced AI and data, and smaller media outlets, threatening market diversity. Finally, the research underscores the need for transparency in AI algorithms used in news production and distribution to ensure accountability and maintain public trust in journalism. These findings emphasize the urgent need for robust safeguards and ethical guidelines to protect media freedom in the AI era.

Consequently it has delineated key areas for improvement, including the development of protocols for interaction with AI tools, enhanced editorial oversight, user-centric considerations in news curation, and an unwavering commitment to the public good. Fostering international cooperation on responsible AI development and implementation will further strengthen these efforts, ensuring that press freedom remains a cornerstone of democratic societies.

¹¹⁷ Gillespie/Lockey/Curtis, Trust in artificial Intelligence: a five country study, https://www.researchgate.net/publication/356842206_Trust_in_artificial_Intelligence_a_five_country_study.

By taking these proactive measures, we can pave the way for a future where AI and media can work together effectively, fostering a more efficient and robust journalistic landscape.

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