

**TNO report**

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**Making User Created News Work**

**Built Environment**

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## Summary

Voor de pers bieden user generated content (UGC) en gebruikersparticipatie kansen in een tijd waarin ze 'meer met minder' moeten doen omdat zowel reclame- als abonnementsinkomsten dalen en redacties krimpen. Alle vijftien Nederlandse nieuwsaanbieders die in het kader van deze studie zijn geanalyseerd bleken dan ook lage tot middelmatige participatievormen, zoals het geven van reacties, te faciliteren. Bij ongeveer de helft van de aanbieders was het mogelijk om een artikelen en video's te uploaden en bij tien aanbieders kan men ook foto's aanleveren. De waarde die aan UGC en gebruikersparticipatie wordt toegekend, kent drie kernelementen: 1) het levert content op van nieuwsgebeurtenissen die de redactie zelf niet, of niet zo snel had kunnen produceren of verkrijgen, 2) het versterkt de band tussen de nieuwsaanbieder en de community die het bedient, en 3) het kan een aanvulling zijn op het eigen journalistieke product door aanvullingen, verbeteringen of nieuwe ideeën.

Het gebruik van UGC en het benutten van gebruikersparticipatie is echter nog geen eenduidige succes gebleken. Behalve de voordelen zijn er ook de nodige problemen waar redacties in de praktijk mee te maken hebben. Deze hebben zowel betrekking op de content als op het productieproces. Het grootste probleem komt voort uit de enorme diversiteit in kwaliteit van UGC die soms hoog is, maar ook veel vaker niet voldoet aan professionele standaarden. Omdat nieuwsaanbieders hun reputatie als kwaliteitsmedium moeten bewaken, betekent dit dat er erg veel tijd gaat zitten in het modereren van de UGC, wat weer erg kostbaar is. Daarnaast hebben nieuwsaanbieders te maken met juridische aspecten. Zo spelen er belangrijke vragen met betrekking tot de verantwoordelijkheid en aansprakelijkheid van nieuwsaanbieders voor content van gebruikers die op hun website geplaatst wordt. Dit zorgt voor lastige een afweging tussen dat wat UGC en gebruikersparticipatie op kan leveren, en wat het kost.

*Wat zijn de belangrijkste strategieën die worden ingezet om gebruik te maken van UGC en gebruikersparticipatie te benutten, en hoe zouden technologische tools deze strategieën kunnen ondersteunen om het beter te benutten?*

Nieuwsaanbieders willen over het algemeen meer doen met UGC en de participatie van gebruikers. De wijze waarop ze dat willen inrichten, verschilt echter per nieuwsaanbieder. Er zijn grofweg twee (elkaar niet uitsluitende) benaderingen te onderscheiden, elk met hun eigen strategie met betrekking tot de verzameling, selectie, verwerking en presentatie van content, die door iedere aanbieder op eigen wijze wordt ingepast in de dagelijkse activiteiten. De eerste is een redactie-georiënteerde benadering waarbij de redactie UGC als een extra bron van nieuws ziet, in aanvulling op de traditionele bronnen zoals de persbureaus. De redactie probeert UGC – zowel content die wordt hen wordt aangeboden door gebruikers als content die op externe sites en sociale netwerken zoals Twitter wordt geplaatst – zo efficiënt mogelijk te verwerken. Het doel is om de beperkte middelen van de redactie zo optimaal mogelijk in te zetten om de content te verzamelen, te selecteren, te verwerken en te presenteren. De tweede benadering is samenwerking-georiënteerd waarin de redactie relevante gebruikers probeert te activeren om in de verschillende stappen van het productieproces samen te werken om zo het nieuws te co-creëren. Beide perspectieven gaan uit van een ontwikkeling

waarbij de nieuwsaanbieder niet langer de enige producent van het nieuws is, maar (daarnaast) meer een 'regisseur' van het nieuws is. Vanuit de redactie-georiënteerde benadering heeft de regisseur echter veel meer controle over het gehele productieproces en het eindproduct. De regisseur staat nog wel 'boven' de gebruiker. In de gebruiker-georiënteerde benadering heeft de regisseur eerder een sturende, coördinerende rol en staat hij veel meer 'naast' de gebruiker.

Het is belangrijk om hier bij op te merken dat er niet één superieure strategie is om met UGC en gebruikersparticipatie om te gaan. Elke nieuwsaanbieder moet bepalen in welke mate het de participatie van gebruikers wil – en kan – implementeren. Het moet passen binnen de cultuur, het productieproces en de (technologische) infrastructuur. Het moet ook aansluiten bij de waarden en verwachtingen van de doelgroep die wordt bediend en overige stakeholders, zoals bijvoorbeeld adverteerders. Het is dus ook niet gezegd dat het voor elke nieuwsaanbieder een doel moet zijn om de participatie van gebruikers te maximaliseren als dit niet past bij het huidige product en de verwachtingen en wensen van het publiek.

### **Tools ter ondersteuning**

De behoefte aan, en mogelijkheden voor technische ondersteuning – en met name het type ondersteuning – is gekoppeld aan de wijze waarop de nieuwsaanbieder gebruik wil maken van UGC en de mate waarin zij samen met gebruikers het aanbod op de nieuwssite wensen te co-creëren, of hen meer als een nieuwsbron zien.

Beide perspectieven kennen ieder aparte uitdagingen. Bij de redactie-georiënteerde benadering zit de uitdaging voor een groot deel in het verzamelen, filteren en overzichtelijk presenteren van UGC die het meest relevant is of juist niet geschikt is voor de site. Dit wordt steeds belangrijker naarmate de hoeveelheid UGC die gebruikers zelf aanleveren, maar uiteraard ook de UGC die extern beschikbaar is, toeneemt. De uitdaging van het tweede perspectief is om de juiste (potentiële) gebruikers te laten participeren in het productieproces rond de juiste onderwerpen zodat zij de grootste meerwaarde kunnen bieden. Dit betekent dat gebruikers gestimuleerd, maar ook gefaciliteerd moeten worden om bij te dragen met hun kennis, content, opinie of bereidheid om content te delen binnen hun netwerk.

Voor de redactie-georiënteerde benadering zijn er momenteel verschillende tools beschikbaar die redacties in een deel of enkele delen van de werkzaamheden kunnen ondersteunen en ook passen in het werkproces van verzamelen en selecteren. Deze tools (veelal ontstaan in het domein van online marketing) richten zich met name op het filteren van sociale media, blogs en fora op bepaalde keywords om de juiste content boven water te halen met analyses die onder andere informatie bieden over het bereik van deze content, gebruikers en trends. Dit wil niet zeggen dat alle nieuwsaanbieders deze tools al in dezelfde mate toepassen. Dit komt gedeeltelijk omdat niet alle journalisten bekend zijn met de mogelijkheden van verschillende tools. Daarnaast is het huidige aanbod - om waardevol te kunnen zijn voor redacties - ook nog wel voor verbetering vatbaar. Men moet nu nog steeds met verschillende losse tools werken die niet geïntegreerd zijn in het eigen CMS-systeem. Ook de kwaliteit en flexibiliteit van filtering kan beter. Met name het vinden van content die in juridisch opzicht van lage kwaliteit is, blijkt lastig. Het detecteren van racistische content is mogelijk, hoewel het lastig blijft om nuances, zoals

bijvoorbeeld ironie, te herkennen. Het automatisch detecteren van de schending van privacy of smaad is voor de huidige technologie echter nog een brug te ver. Bovendien zijn deze tools volledig tekstgericht. Beeldanalyse (voor foto's en video's) wordt nog niet toegepast in tools die bruikbaar zijn in een journalistieke context.

Voor het tweede perspectief – waarin gebruikers met de nieuwsaanbieder het nieuws co-creëren – zijn er slechts beperkt tools beschikbaar voor nieuwsaanbieders. Er zijn tools die het samenwerken stimuleren maar deze tools bevinden zich extern, buiten de site van de nieuwsaanbieder. Deze kunnen de optimale integratie van proces en product daarom niet realiseren. Bovendien voorzien zij niet in de basisbehoefte om de juiste gebruikers bij de juiste onderwerpen te vinden en deze op een effectieve manier te activeren om te participeren.

Gezien de ontwikkelingen in de markt en de scope van het project is besloten om een proof-of-concept van een tool te ontwikkelen die redacties moet ondersteunen in de samenwerking-georiënteerde benadering.

### **Een tool om participatie te stimuleren**

Bij de samenwerking-georiënteerde benadering gaat het om het vinden van de juiste gebruikers (met relevante expertise of kennis) op het juiste moment met de juiste communicatie-strategie om hem of haar te verleiden om op een bepaald niveau te participeren in het productieproces. Dit kan betrekking hebben op het schrijven van een artikel, het maken van een foto of een video, maar het kan ook gaan om het aanvullen (of corrigeren) van bestaande artikelen, het reageren op artikelen, het delen van bepaalde content in het sociale netwerk van de gebruiker of simpelweg de consumptie van content.

Dit proces kan gedeeld worden in vier stappen:

1. Het filteren en analyseren van content en de gerelateerde gebruikers.
2. Het profileren van gebruikers op basis van content, historie van participatie en het sociale netwerk.
3. Het definiëren van vervolgstappen (communicatie-strategie) om (potentiële) gebruikers te activeren om te participeren.
4. Het faciliteren van participatie en co-creatie.

De kern van deze vier stappen ligt besloten in het begrip 'relevantie': wat maakt een gebruiker relevant voor een redactie in een specifieke context voor een specifiek doel? Dit begrip van relevantie is essentieel in de ontwikkeling van de 'analytical engine' die verder gaat dan het herkennen van keywords, zoals bijvoorbeeld veel huidige Twitter-tools werken. De resultaten die deze technologie opleveren zijn niet relevant genoeg voor een redactie, vooral niet als het gaat om zeer korte teksten zoals tweets. De analytical engine moet dus een juiste mix inzetten van semantische en contextuele indicatoren, zoals sociale signalen (bijvoorbeeld het aantal comments, 'duim omhoog', 'duim omlaag', likes, retweets, het aantal volgers, de frequentie waarmee geproduceerd wordt), professionele erkenning (van de redactie of andere experts), de analyse van content waar door URL's in artikelen of tweets naar verwezen wordt, cross analyses van keywords in andere relevante nieuwsbronnen, de analyse van de mate van expertise in het sociale netwerk van een gebruiker, etc.

Om dit begrip van 'relevantie' op te bouwen is nauwe samenwerking met redacties vereist in de vorm van een iteratief ontwerpproces. Hun ervaring en input is van groot belang om de bovengenoemde elementen goed in kaart te brengen. De feedback van redacteuren op de relevantie van de resultaten die een tool levert is nodig om de analytical engine te verbeteren en om de tool zelf-lerend te laten zijn.

Een tweede belangrijk element, naast de analyse van gebruikers, is de communicatie met de relevante gebruikers om hen op het juiste niveau te laten participeren. Om de vervolgstappen en communicatiestrategie te definiëren is er een beter begrip nodig van de interactie tussen de verschillende factoren die een rol spelen in de motivatie om te participeren (persoonlijk, sociaal en content-gerelateerd) en de context waarin deze samenkomen. Met behulp van dit begrip van de motivatie bij een bepaalde gebruiker en de context waarin deze zich bevindt, zou het doel om een gebruiker te activeren tot participatie vertaald moeten worden in effectieve communicatie.

Een ander zeer belangrijk element in de ontwikkeling van een nieuwe tool die redacties moet ondersteunen in het beter inzetten van UGC en gebruikersparticipatie zijn het interactie design en de visualisatie. Deze bepalen voor een groot gedeelte de algemene gebruiksvriendelijkheid. De tool moet uiteindelijk ingepast worden in de dagelijkse activiteiten op de werkvloer en tijdswinst opleveren. De resultaten die de tool genereert moeten daarom op een dussdanige manier weergegeven worden dat het een duidelijk overzicht biedt met logische vervolgstappen om deze resultaten in meer detail te onderzoeken voor het activeren van gebruikers. De principiële designkeuze die is gemaakt in dit project voor de ontwikkeling van het proof-of-concept - het tonen van gebruikers als startpunt voor vervolgstappen, zoals het activeren of het doorzoeken van de content - lijkt logisch en effectief te zijn.

### **Tools in een juridische context**

Het is belangrijk om bij de ontwikkeling van een tool die het gebruik van UGC door redacties moet ondersteunen, ook een juridisch perspectief mee te nemen. Redacties moeten bij het gebruik rekening houden met verschillende juridische issues, zoals bijvoorbeeld privacy, intellectueel eigendom en smaad of laster. Voor de twee verschillende benaderingen van het gebruik van UGC en gebruikersparticipatie spelen deze issues op verschillende wijzen een rol.

Voor de redactie-georiënteerde aanpak is het hoofddoel van een tool het filteren van UGC. Enerzijds gaat het hierbij om het vinden van de meest relevante en nieuwswaardige content en anderzijds om de content van een te lage kwaliteit om deze van de site te kunnen weren. Een van de aspecten van kwaliteit is de juridische status. Zoals hierboven al beschreven zijn de huidige tools niet goed in staat schadelijke content te herkennen.

Een van de consequenties van het gebruik van tools die content filteren – nog los van de kwaliteit – is dat het waarschijnlijk is dat nieuwsaanbieders niet langer aanspraak kunnen maken op de bescherming van de zogenaamde 'safe harbor rules' van de E-Commerce Directive, voor zover deze van toepassing zijn op nieuwsaanbieders. Daarentegen zorgt het gebruik van tools die een zekere vorm van pre-moderatie kunnen vervullen er wel voor dat de nieuwsaanbieder, in de vorm van 'verantwoordelijke journalistiek', voldoet aan ethische richtlijnen die de

sector zelf via de Raad voor de Journalistiek heeft opgesteld. Deze tegenstrijdigheid geeft aan hoe de ethische richtlijnen – waarbij pre-moderatie een vereiste is – en de E-Commerce Directive die in feite pre-moderatie ontmoedigt omdat daarmee de mogelijke bescherming wegvalt wanneer een partij zich met de inhoud van het platform bemoeit. Op dit vlak is verheldering gewenst.

De samenwerking-georiënteerde benadering heeft op een ander manier te maken met deze juridische issues. Deze benadering is niet zozeer gericht op het filteren van content, maar om de meest relevante mensen te herkennen en te activeren om te participeren. Tools die gericht zijn op deze benadering helpen de redactie niet om schadelijke content te herkennen. Deze tools dragen dan ook niet bij aan het principe van 'verantwoordelijke journalistiek', hoewel het wel mogelijk zou zijn om het profileren van gebruikers in te zetten om de makers van schadelijke content te herkennen en de content die zij aanbieden prioriteit te geven in het moderatieproces.

Doordat de nieuwsaanbieder gebruikers zelf, met behulp van de tool, gebruikers selecteert en benadert is het waarschijnlijk dat zij nog meer verantwoordelijk gehouden worden voor de content die op de site aanwezig is, ook als deze niet door de nieuwsaanbieder zelf gemaakt is. Bij deze tools speelt ook privacy een belangrijke rol, zij het op een andere manier. Omdat de tool informatie over gebruikers verzamelt, verwerkt en mogelijk combineert is het van groot belang dat zij voldoen aan de geldende privacy richtlijnen. Daarnaast moet men ook rekening te houden met de attitudes binnen de community.



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# 1 Introduction

## 1.1 Background

### 1.1.1 *More with less*

The printing press has been facing multiple challenges in recent years. A combination of both falling advertising revenues as well as the number of subscribers due to audience fragmentation over different devices and media, is forcing newspapers and magazines to economize. The number of journalists employed by news organizations is declining (Tijdelijke Commissie Innovatie en Toekomst Pers, 2009). In other words, they have to do more with less.

At the same time enhancements in (new) digital technologies have enabled users to participate considerably in the production of news. The growing availability of (wireless) broadband internet, affordable and user friendly hardware and software and (social media) publication platforms has spurred the growth of *user generated content* (UGC), see box below. (Helberger, Leurdijk, & De Munck, 2010).

#### **User Generated Content**

*User generated content (UGC), according to a definition from the OECD, is media content that has been published in a specific context that required a certain creative effort and was produced outside of the professional routines and practices (OECD, 2007), for instance posting to a blog or uploading a self-made photo to a website. It is essential that the user has had an active, creative contribution to the content. In this report we will use a broad definition of UGC; a couple of lines in a comment are considered UGC as well, although it is clear that such a short contribution requires less creative effort than writing a 1000 word essay or producing a video.*

The perception of UGC by news journalists and its status in the newsroom is ambiguous. According to a study by Pantti and Bakker (2009) some news organizations consider UGC to be an enrichment for professional journalism. It enhances and corrects the content produced by professional journalists and, importantly, it can provide content from a newsworthy event where no professional journalists were present or – when they were present – were not able to create the content themselves. This is an interesting proposition for news media, especially for those who, indeed, have to do ‘more with less’. Furthermore UGC is considered to strengthen the relationship between news organizations and their audiences. Furthermore, from an economic point of view, integrating ‘free’ UGC is viewed as beneficial (Bakker & Pantti, 2009). On the other hand, the study shows that a number of journalists considers UGC to be a threat to professional journalism. Regardless whether this is actually the case or not; it shows that not all news providers are won over (see also Chung, 2007).

It is true that the use of UGC does not only come with benefits. If users upload massive amounts of content, this could result in a lot of extra work for the newsroom to guarantee the quality of the content on their website and preserve their status as a high quality medium which, consequently, can be very expensive.

And if users create valuable content - both by uploading it to the website but even more so by posting it on other websites and social networks - how will journalists find the few golden news nuggets in a flood of UGC? Furthermore, there are legal matters that need attention especially regarding the lawfulness of user generated content, the relationship between journalists and users, and the legal responsibility of news organization for UGC on its website. UGC can, for instance, contain hate speech or infringe on the right of third parties such as copyright or privacy. Although it is in the first place the author (user) who is responsible for her contribution, news services that incorporate UGC may be held responsible for infringing material under certain circumstances. Vice versa, when integrating UGC and collaborating with users, newsrooms need to respect the rules that protect users in their relationship to the newsroom.

It is, therefore, important to note that simply increasing the use of UGC does not automatically equals 'better' use. As mentioned above, news organizations have to define a strategy to implement the participation of their users and UGC that suits the organization, the product, the production process, the community it serves and other stakeholders involved.

To utilize UGC to its full potential, (new) technological support could be (part of) a solution. Using text-mining tools and profiling technologies, for instance, it would be possible to automatically screen content to assess it on specific criteria. This kind of software can support journalists by making a first broad selection of (un)suitable or (ir)relevant content. Or it could support them to find the most relevant users that could collaborate in various stages of the production process, comment on specific content or distribute it in their (social) networks.

### The abundance of UGC

The last decade both the volume of UGC – created on platforms such as YouTube and social networks – and the number of people who created UGC has grown enormously in the Netherlands.

According to Marketingfacts (Oosterveer, 2012), Facebook is the most popular social network in the Netherlands with over 9 million users, having surpassed the dwindling native Hyves in 2011 in terms of number of unique visitors per month. Although users spend well over 4 hours per month on Facebook it is hard to assess how much content they have created, especially because in general this content is not public but only shared with friends. However, numbers indicate a steady increase in the interaction on fan-sites - for example sites from TV-programs and companies - over the last twelve months.

Numbers from Twittermania (Kok, 2011) illustrate that Twitter has shown huge growth as well in the Netherlands over the last couple of years, especially since 2009. After a surge from 2009 up to the first half of 2011 the number of users seems to be plateauing somewhat this year at roughly 1,3 million active users, although other numbers indicate that almost a fifth of the Dutch population uses Twitter (3,2 million) with over 1,5 million active users per day. The number of tweets that Dutch speaking people produce, however, still seems to be growing rapidly with an average of somewhere between 5 to 6,4 million tweets per day (depending on the source, Twittermania or Marketingfacts) – the highest number of tweets per user in the world – up from a little bit over 4 million tweets per day a year earlier. Worldwide, the number of tweets per day in 2011 had tripled since 2010 from 55 million to 155 million. It should be noted, though, that those tweets are also created by (media) companies.

Of course there are many other platforms that allow users to post UGC, such as YouTube (worldwide over 60 hours of video are uploaded every minute, although this includes many hours of professional content as well), Instagram (with worldwide 80 million users who have shared 4 billion photos by July 2012) and Pinterest (200.000 Dutch users in 2012, up from 150.000 a year earlier) to name but a few.

#### 1.1.2 *About this project: 'Making User Created News Work'*

This report is the result of the project 'Making User Created News Work', which was co-funded by the Netherlands Press Fund (Stimuleringsfonds voor de Pers).

The goal of this project was to provide an overview of strategies to use UGC currently deployed by Dutch news media, and the most relevant international and national legal principles and regulations. Furthermore, the goal was to assess (possible) technological solutions that would enable news organizations to use UGC so they could 1) benefit from its potential, 2) in a way that suits their journalistic formula, ethics and practices, 3) while guarding their reputation as a quality medium, and 4) complying with the legal and ethical order.

The main research question of this report is:

*What are possible strategies to improve the implementation and utilization of UGC in newsrooms, and how could (new) technical tools support these strategies?*

The overview of current practices, ambitions and issues is based on the analysis of the websites of fifteen Dutch news providers, six interviews with chief (online) editors and additional desk research to assess technological solutions that are already available. The legal analysis was based on both the interviews and a literature study. The results from these analyses were discussed in an expert-workshop with professionals from the Dutch news industry (see Appendix A). Based on this workshop and a consultation from the expert sounding board, a direction for a new technological solution was selected and further explored. After a second workshop the initial ideas were translated into a set of requirements for a proof of concept, which was built, tested and discussed in a pilot with hyper local news platform Dichtbij.

## 1.2 A changing news landscape

### 1.2.1 *New roles for users*

Contemporary news audiences have substantially more tools at their disposal to participate in the news production process than before. Regular citizens are equipped with smartphones and other digital devices that allow them to submit newsworthy content to newsrooms and online news platforms. Waldman (2011) describes users in this role as 'non-professional journalists' who do not just give their opinion, but also participate in the journalistic process by collecting facts, sounds and images to create a news item. They are able to cover both big, national disasters but they can also capture more personal stories from daily life. More and more, users are prompted by news media to send their photos and videos, especially regarding big news events.

The traditional roles of professional content producers and their passive audience have been upended, especially due to the access to new digital and networked technologies. The audience is no longer refrained to being *just a consumer*. Citizens can also be producers themselves. This development of the empowerment of users has inspired the coinage of terms like 'prosumer' (Toffler, 1980) or 'produser' (Bruns, 2006). However, it is important to note that the fact that users have access to a myriad of technologies and platforms to create and distribute content does not necessarily mean that they will actually actively engage with news: "It's a great leap to presume that the availability of digital networked technologies turns everyone into active participants." (Van Dijck, 2008). Users "[...] do not seem to massively embrace the possibilities offered by the web to participate to the news." (Picone, 2011).

Picone (2010) distinguishes three motivational dimensions to engage with news and to overcome the threshold to participate:

- Social: the desire to help or inform others. It refers to the anticipated effect on the audience and the impact it will have.
- Personal: the ability, knowledge and confidence of the user.
- The content of the news: the way a user relates to specific topics in the news.

The extent to which a user is willing to display a specific level of participation depends on the interplay between these three dimensions on a specific moment. The willingness (or lack thereof) to create UGC is not a fixed personal characteristic of a particular user. Although some studies divide users into specific categories depending on their level of participation - like Forresters' "creators", "critics", "collectors", "joiners, spectators" (Li & Bernoff, 2008) - it is more useful to acknowledge that consumption and production are part of the same continuum. The desire to engage with news often arises by accident, ad hoc, after the user reads or sees something online. It is only rarely that someone makes a deliberate decision to publish something online before he or she turns on the computer to visit a news website. Interestingly, most general self-publishing happens outside of the realm of news websites, but rather on social networks such as Facebook and Twitter. It is, therefore, more likely that news enters 'regular' UGC-platforms than the other way around. These insights in different kinds motivations and the ad hoc nature of user participation are relevant for news providers who want their users participate, as we will discuss in more detail in chapter four and five.

As mentioned above, there is a continuum of user engagement that ranges from consumption to production and contains different kinds of user participation. Pickard (2010) distinguishes four different roles for the 'new' user: consuming, creating, curating and communicating. *Consuming* covers traditional activities such as reading an article or watching a video. *Creating* is contributing one's own original or adapted content. *Curating* is organizing or preserving content, for instance making it easier to be found by tagging it, or by sharing it with others. *Communicating* is contributing to an online discussion and discuss with other users or producers.

Table 1 offers an overview of different activities that the four user roles encompass (Slot, Ruhe & Frissen, 2011).

Table 1: New user roles

Consume	Create	Curate	Communicate
<ul style="list-style-type: none"> <li>• <b>Watch (photo/video)</b></li> <li>• <b>Read</b></li> <li>• <b>Listen (audio)</b></li> <li>• <b>Buy</b></li> <li>• <b>Download</b></li> <li>• <b>Different: ...</b></li> </ul>	<ul style="list-style-type: none"> <li>• Personalize</li> <li>• Create a personal profile</li> <li>• Contribute original content (e.g. an article)</li> <li>• Add information</li> <li>• Contribute in a research project (wisdom of crowds)</li> <li>• Different: ...</li> </ul>	<ul style="list-style-type: none"> <li>• Vote</li> <li>• Recommend</li> <li>• Make clippings</li> <li>• Share</li> <li>• Mix content</li> <li>• Tag</li> <li>• Geo-tag</li> <li>• Different: ...</li> </ul>	<ul style="list-style-type: none"> <li>• Add comments to content</li> <li>• Participate on a discussion forum</li> <li>• Chat</li> <li>• Send a message to the producer</li> <li>• Different: ...</li> </ul>

This overview of the different user roles and their specific activities cover different levels of user participation. Jönsson and Örnebring (2011) have categorized different user activities according to three different levels of user participation: low, medium and high (see Table 2). The low level participation concerns more traditional consumer activities or activities that require no real creative effort by the user, such as a poll. Medium level participation concerns 'prosumer' activities where

users respond to or contribute to other content, such as a comment on a article. High level participation concerns activities where the user produces original content or engages in direct interaction with other users. The degree in which a user takes on certain roles other than consuming – creating, conserve, communicate – increases as the participation level gets higher.

Table 2: Levels of user participation

Low level participation	Medium level Participation	High level participation
<b>RSS Feeds</b>	Comment on an article	Forum
<b>Rating</b>	E-mail	Chat
<b>Polls</b>	Q&A	Wiki
	Comment in general ('have your say')	Blogs
		Write articles
		Create photos/videos

It is interesting to combine both the overview of Slot and Frissen, who categorized different activities according to the different user roles with the overview of Jönsson and Örnebring. This way we can have an overview of the different roles and the different participation levels of the activities within these roles, see Table 3.

Table 3: User roles and levels of participation.

• Consume	• Create	• Curate	• Communicate
• <b>No participation</b>	• <i>Medium participation</i>	• <i>Low participation</i>	• <i>Medium participation</i>
• <b>Watch (photo/video)</b>	• Personalize	• Vote	• Add a comment to content
• <b>Read</b>	• Create a personal profile	• Recommend ('like')	• Send a message to the producer
• <b>Listen (audio)</b>	• Add information	• <i>Medium participation</i>	• <i>High participation</i>
• <b>Buy</b>	• <i>Hoge participatie</i>	• Share	• Participate on a discussion forum
• <b>Download</b>	• Contribute original content (e.g. blog post, photo)	• Make clippings	• Chat
	• Contribute in a research project (wisdom of crowds)	• Tag	
		• Geotag	
		• <i>High participation</i>	
		• Mix content	

This overview of the different types of participation in the different user roles, shows that as the degree of participation increases to a medium or high level, both the creative effort required and the freedom of users in the way they can fulfill that role increases as well. The 'formats' available to the user, such as - in the case of medium participation - adding a tag to a specific piece of content, offer (and require) more creative freedom to the user than just being able to 'like' a specific piece of content. Contributing original content, such as a blog post, offers more creative freedom than being able to post a comment with a hundred words maximum. This means that as the level of participation increases – especially regarding the roles of creating and communicating – this also may increase the workload of the newsroom in terms of guarding the quality of the content on their website, as we will discuss in the next paragraph.

### 1.2.2 *New roles for newsrooms*

The new user roles, and the extent to which users actually fulfill these roles, influence the relationship between news organizations and their audience and, consequently, the role of the newsroom.

Traditionally, journalists consider themselves to be *gatekeepers* (Herman, Vergeer & Pleijter, 2010; Domingo et al., 2008). They decide what news events are relevant, which items meet their quality standards and which items do not and, by doing so, what makes it in the paper, the eight-o'clock news or on the website. This, however, is changing as well. In addition to this traditional role, news media are more and more fulfilling two 'new' roles: *gate watchers* and *gate-openers*. As gate watcher the news organization refers to or links to other relevant content on other websites or alternative news sources, a role which is generally speaking adopted less often by more traditional news organizations than non-traditional news organizations (Slot, Ruhe & Frissen, 2011). As a gate-opener, news organizations offer their users a platform to share their own content, which is important when news organizations want to collect and use UGC.

As gatekeepers or gate watchers, news organizations check the content before publication. Users may contribute by offering their content or referring to content from third parties, but this content will be screened to check the quality and factuality (Slot, Ruhe, & Frissen, 2011). Checking for the authenticity of the content is an important aspect in this regard: a lot of (audio)visual content is modified in one way or another (Pantti & Bakker, 2009) which could compromise the truthfulness of the representation of an event, which is an important ethical, journalistic principle. Often, when news organizations position themselves as gate openers, the quality of UGC is checked after publication (Slot, Ruhe & Frissen, 2011), which can be done by both the newsroom or other users who moderate the content from other users.

As mentioned above, these shifts in the relationship between news organizations and users indicate that participation of users - and UGC in particular - as a new source of content or means of distribution is not merely valuable. They also pose important questions regarding the quality of the content. Quality, of course, is an ambiguous term. There is no general, commonly shared definition of what quality content is. The notion of quality and the parameters to measure it will differ between different categories of content, contexts and the intended use and audience (Helberger, Leurdijk & De Munck 2010). Personal content, that is only meant to be enjoyed by close friends and families, thrives on personal value and the feeling of connectedness. Professional journalistic content, however, is measured in terms of truthfulness and timeliness. Furthermore, different news organizations hold different standards. Traditional news organizations, such as newspapers and broadcasters - generally seem to hold UGC to a higher standard than non-traditional news organizations (Helberger, Leurdijk & De Munck, 2010).

For news organizations, the main quality parameter is the importance and timeliness of content. It is, however, possible to distinguish three other main categories of quality-parameters that determine the value of UGC in a news context. First of all, there is an 'aesthetic' or 'topical' quality, for instance the quality of the spelling and the match between the content and the focus of the news organization (national or hyper local, on topic or not). It is also possible to discuss quality from a more technological perspective, such as the size the content or the

format that is being used and how easily it can be processed by the newsroom and the technological tools it has at its disposal. Secondly, the legal status of the content is very important as mentioned above: does the content infringe the right of others (copyright, privacy), or is the content hateful? Such content, although possibly important from a journalistic perspective, could still be harmful for the news provider. A dubious legal status, therefore, can diminish the overall quality of the content. Thirdly, as with all news content, there are professional, ethical values: is the content truthful? Is it balanced? These three elements determine the quality that could counterbalance the news value of the content.

As users become more active, the newsroom no longer holds the monopoly on content creation. And although citizens are engaging (more) actively in the journalistic process of professional news organizations, they do not have the same professional training or hold themselves to the same professional standards as journalists. So how can news organizations fully profit from UGC, but at the same time guarantee the quality of their overall product and secure their reputation as a quality medium? Furthermore, when integrating UGC news media have to take into account possible pressure from both legislators and advertisers (Helberger, Leurdijk & De Munck, 2010). On the one hand newsrooms have to find the most relevant content in a vast amount of UGC uploaded or e-mailed by users or available on other websites, social networks and public discussion platforms. Furthermore, when users are able to comment on articles and post their own articles or videos, newsrooms have to guard the quality of their own websites. Chapter three will discuss different strategies that are being deployed by news providers to deal with these issues.

### **1.3 The level of participation: UGC as a source vs co-creation?**

News organizations that want to integrate UGC have to adapt their traditional production process. The scope of these organizational changes depend on the extent to which news organizations choose to incorporate UGC and user participation, and the role UGC will play in both its product and the production process. News organizations that solely want to use UGC as a possible source for their own editorial content – and still act as traditional gatekeepers - will implement a different strategy than news organizations that present themselves as gate-openers and aspire to co-create the news with their users.

There is no clear, commonly shared definition of 'co-creation', a term that was coined by Prahalad and Ramaswamy in 2004 to describe how the interaction between a company and individual customers can create unique experiences for customers and, subsequently, value. In this report, in a journalistic context, we define co-creation as the collaboration between professionals (the newsroom) and users on an egalitarian level during the different steps in the production process of news content.

It is interesting to assess to what extent news organizations allow users to participate, but also in what phase of the production process. Domingo et al (2008) studied the openness of several news organization by looking at the participation of users in the five different steps of the journalistic production process which they

defined: access/observation, selection/filtering, processing/editing, distribution and interpretation.<sup>1</sup>

### **How UGC is being used**

*According to Slot, Ruhe and Frissen (2011) who analyzed 57 news organizations (both Dutch and foreign), newsrooms are more and more trying to integrate user participation in the production process of their services. Users are increasingly asked to comment on news articles, to share content on social networks and also to contribute original content such as articles, photos and videos. By doing so, news providers allow their users to participate on both a low level, for instance by participating in a poll, and on a high level, like posting a blog entry.*

*The publication of UGC on the websites of news organizations has become more common. Over 70 percent of the news organizations allow users to contribute UGC (news services that were offered on the iPad are not taken into account). However, there is a big difference between the level of participation and the different types of UGC. The above-mentioned 70 percent refers to websites where users can comment on articles. The percentage of news organizations that allow users to contribute with their own original content is much lower. Roughly 30 to 50 percent of the analyzed news organizations facilitate users in uploading articles or blog posts to their websites with print media leading the pack and broadcasters lagging behind. The percentage of news organizations that allow users to upload photos and videos is slightly lower: 30 to 40 percent with a negative outlier in the case of video for print media. Less than one out of five publishers offer users the possibility to contribute their videos to the website. The 'crowdsourcing' of certain activities, for instance asking users to contribute to a research projects, is only adopted by less than 10 percent of the news organizations. Another notable result is that especially the non-traditional news organizations that do not have their roots in print or broadcast media score above average regarding the adoption of UGC.*

The strategies regarding the participation of users vary between different news organizations, but there are also differences in the level of participation in the various phases in the production process. In some cases users are able create their own articles, photos and videos and share it with a news organization. In doing so, users can fulfill the first three stages in the production process – or even beyond those three. However, for some news organizations the UGC that is being offered is only part of their first stage in the production process wherein they gather information and make their own selection: they decide what content will be actually available on their website. Other news organizations have a different strategy and open up their website to users who can upload content directly, although very often there is a very strict distinction between editorial content and UGC, which will have its own dedicated page on the website. In these scenarios both professional

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<sup>1</sup> In this report we will use a slightly different description of the production process: gathering, selection, editing and presentation. The focus in this report on presentation, rather than distribution, is the result of the importance of presentation in legal terms: How is UGC presented in relation to editorial content and the website as a whole?

journalists and users create their own content and do not really work together on the same product(s).

As mentioned earlier, a news organization has to determine to what extent it wants (and will be able) to adopt co-creation that fits its own culture, production process and infrastructure (including technical tools), and matches the values and expectations of the community it caters to and other stakeholders involved. This means that there is no single solution to optimally use UGC that fits every news organization. But each and every one of them will have to define their own strategy and will have to translate this into a (new) daily routine and product. As we will see in chapter three, different news organizations have implemented the use of UGC differently and have different views and ambitions for the future.

#### **1.4 In this report**

Chapter two provides an overview of the legal context in which news providers move when using UGC or collaborating with users in the production process of the news. First, it describes the most relevant European and national standards regarding journalistic practices – and freedom of expression and journalistic freedom in particular. Second, it zooms in on the different rules and regulations in copyright law, data protection law, criminal and civil law. Third, it looks at the question of who is responsible for making sure that UGC actually complies with these requirements, and what the consequences are in terms of liability.

Chapter three provides an overview of current attitudes and practices regarding the use of UGC in Dutch news media: the value that is ascribed to UGC, the different kinds of UGC that are being used, the way it is being integrated in the production process (e.g., moderation strategies and presentation) and the issues and ambitions regarding the use of UGC.

Chapter four describes the technological foundations of tools that support the use of UGC. It also provides an overview of typical tools that offer different functionalities regarding the implementation of UGC.

Based on these three elements and two workshops, a proof of concept of a new tool was developed and tested in a pilot by news provider Dichtbij. Chapter five will provide a brief overview of the development process and the most important design choices that were made. Chapter six describes the results of the pilot and insights for future development of tools that support newsrooms in the use of UGC. Chapter seven will provide the most important overall conclusions.

## 2 Legal analysis

The goal of this legal chapter to the report is to sketch an overview of the normative context in which professional (and amateur) journalists move when producing and implementing User generated Content in the news. Laws influence the activities of journalists in several ways: they create the constitutional and legal breathing space for journalists to operate, by protecting them from censorship and interference, both from governments and, to a lesser extent, from private parties. Laws create privileges and exceptions to make the work of journalists easier. Norms guide the activities of journalists by setting benchmarks of what permissible or offensive behavior is, also and particularly in relation to those that are the subject of reporting. And finally, they lay the ground rules for the relation between journalists, and of journalists and third parties, and determine if, how and by whom, once an infringement has taken place, the aggrieved party can be set to its right.

The chapter consists of three sections. **Section one** adopts the meta-perspective. It describes the constitutional and legal context in which journalism takes place, as well as the role of the media in realizing important goals and freedoms for society. The focus of this section is on freedom of expression and journalistic freedom. It provides a brief overview and analysis of the most relevant European and national standards. The **second section** zooms in on the different rules and regulations in copyright law, data protection law, criminal and civil law. It explains in detail and with various examples what the legal requirements are for journalism in general, and citizen journalism in specific. The **third section** is dedicated to the question of who is responsible for making sure that the implementation of UGC actually complies with these requirements, and for undertaking action in situations that UGC is in conflict with the legal order and protection worthy interests of individuals or society.

Point of departure of the analysis is European and Dutch law. European law has shaped the national order, such as in the fields of fundamental rights, copyright law or data protection law. Other areas of national law have remained largely untouched by European influences, including the rules in general civil and criminal law, but also the complex body of self-regulatory measures that also guide the activities of the press. Where opportune, the analysis will bring examples from other jurisdictions, by way of comparison or to highlight certain particularities or different approaches.

### 2.1 Freedom of Expression and Journalistic Freedoms: The European and Dutch Legal Context

#### 2.1.1 Introduction

The legal space within which journalists operate is largely shaped by the complex and continuous interplay of legal and ethical standards developed at international, European and national levels. This section provides a brief overview and analysis of the most relevant European and national standards. The overview and analysis will span legally-binding standards as well as relevant policy and self-regulatory texts, which are important sources of ethical and practical guidance for journalists. The overview is initially general in scope, but it proceeds towards a sharper focus on the

use of user generated content (UGC) in the production and presentation of news. The focus will then sharpen further to deal primarily with the specificities of the print media, including/especially their online presence. The analysis has been organized around selected key themes: freedom of expression and media freedom; privacy and data protection; copyright, and liability and responsibility.

The following analysis is structured as follows: (I) European standards (Council of Europe and European Union); (II) National standards; (III) Self-regulation; (IV) Use of UGC for news purposes. Section I explains how freedom of expression and media freedom are safeguarded in European human rights standards. Section II examines national constitutional and legislative provisions concerning freedom of expression and media freedom. Section III sets out the complementary regulatory role of media self-regulation. Section IV draws on all of the preceding sections and spells out their implications for the use of UGC in the news. It focuses first on European jurisprudential developments and then turns to national legal and self-regulatory frameworks.

### 2.1.2 *European Standards*

At the European level, relevant regulation has been developed by both the Council of Europe and the European Union. The legal status of those regulatory texts varies: some are directly binding on States; others are indirectly binding and more still are not legally-binding, but politically-binding. In other words, they create political commitments for States that are not legally enforceable. Sometimes regulatory texts that are politically binding can have a greater impact in practice than other legally-binding texts. For instance, the negotiation and drafting of treaties can be very time-consuming, whereas political standards can be adopted in various shapes or forms and at various levels. Practical impact can be influenced by the nature of the text. They often have the character of declarations of existing states of affairs, or recommendations to undertake particular action.

The overview of relevant standards will pay special attention to a number of specific texts, but it is important to note at the outset that each of the texts examined is only part of a broader whole. It is the interaction between those texts that creates the overall legal and policy framework.

#### 2.1.2.1 *The Council of Europe*

The Council of Europe has adopted a number of treaties that create an enabling environment for freedom of expression, information and media freedom. The European Convention of Human Rights is the oldest and most important of those treaties. Thematically specific treaties like the Convention on Access to Official Documents and the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data are also relevant. Each of these treaties will now be discussed in turn.

#### *European Convention on Human Rights*

Article 10 of the European Convention on Human Rights (ECHR), is the centerpiece of European-level protection for the right to freedom of expression. It reads:

1. *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. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*

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

Article 10(1) sets out the right to freedom of expression as a compound right comprising the freedom to hold opinions and to receive and impart information and ideas. As such, there are three distinct components to the right, corresponding to different aspects of the communicative process, i.e., holding views, receiving and sending content. These rights are prerequisites for the functioning of media and journalism.

Article 10(1), ECHR, countenances the possibility for States to regulate the audiovisual media by means of licensing schemes. This provision was inserted as a reaction to the abuse of radio, television and cinema for Nazi propaganda during the Second World War. Article 10(2) then proceeds to trammel the core right set out in the preceding paragraph. It does so by enumerating a number of grounds, based on which the right *may* legitimately be restricted, *provided that* the restrictions are *prescribed by law* and are *necessary in a democratic society*. It justifies this approach by linking the permissibility of restrictions on the right to the existence of *duties* and *responsibilities* which govern its exercise. Whereas the right to freedom of expression is regarded as being subject to general duties and responsibilities, the European Court of Human Rights sometimes refers to the specific duties or responsibilities pertaining to specific professions, e.g. journalism, education, military service, etc.

Notwithstanding the potential offered by Article 10(2) to restrict the right to freedom of expression on certain grounds (although legitimate restrictions must be narrowly drawn and interpreted restrictively), as the European Court of Human Rights famously stated in the *Handyside* case, information and ideas which “offend, shock or disturb the State or any sector of the population” must be allowed to circulate in order to safeguard the “pluralism, tolerance and broadmindedness without which there is no ‘democratic society’”.<sup>1</sup>

Aside from the permissible grounds for restrictions set out in Article 10(2), ECHR, the right to freedom of expression may also be limited on the basis of Article 17, ECHR (‘Prohibition of abuse of rights’).<sup>2</sup> This article has been applied consistently

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<sup>2</sup> It reads: “Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention”.

by the Court to ensure that Article 10 protection is not extended to racist, xenophobic or anti-Semitic speech; statements denying, disputing, minimizing or condoning the Holocaust, or (neo-)Nazi ideas. This means that in practice, sanctions for racist speech, do not violate the right to freedom of expression of those uttering the racist speech. In other words, national criminal and/or civil law can legitimately punish racist speech.

The scope of the right to freedom of expression is not only determined by the permissible restrictions set out in Articles 10(2) and 17, ECHR. It is also determined by the interplay between the right and other Convention rights, e.g. the right to privacy, freedom of religion, etc.

The European Court of Human Rights has developed a standard test to determine whether Article 10, ECHR, has been violated. Put simply, whenever it has been established that there has been an interference with the right to freedom of expression, that interference must first of all be prescribed by law (i.e., it must be adequately accessible and reasonably foreseeable in its consequences). Second, it must pursue a legitimate aim (i.e., correspond to one of the aims set out in Article 10(2)). Third, it must be necessary in a democratic society (i.e., correspond to a "pressing social need") and be proportionate to the legitimate aim(s) pursued.

Under the margin of appreciation doctrine, which has an important influence on how the ECHR is interpreted at national level, States are given a certain amount of discretion in how they regulate expression. The extent of this discretion, which is subject to supervision by the European Court of Human Rights, varies depending on the nature of the expression in question. Whereas States only have a narrow margin of appreciation in respect of political expression, they enjoy a wider margin of appreciation in respect of public morals, decency and religion. This is usually explained by the absence of a European consensus on whether/how such matters should be regulated. When exercising its supervisory function, the European Court of Human Rights does not take the place of the national authorities, but reviews the decisions taken by the national authorities pursuant to their margin of appreciation under Article 10, ECHR. Thus, the Court looks at the expression complained of in the broader circumstances of the case and determines whether the reasons given by the national authorities for the restriction and how they implemented it are "relevant and sufficient" in the context of the interpretation of the Convention.

The particular importance of the media for democratic society has been stressed repeatedly by the Court. The media can make important contributions to public debate by (widely) disseminating information and ideas and thereby contributing to opinion-forming processes within society. As the Court consistently acknowledges, this is particularly true of the audiovisual media because of their reach and impact. The Court has traditionally regarded the audiovisual media as more pervasive than the print media and it has yet to set out a clear policy line for online media. The media can also make important contributions to public debate by serving as forums for discussion and debate. This is especially true of new media technologies which have considerable potential for high levels of individual and group participation.

Furthermore, the role of "public watchdog" is very often ascribed to the media in a democratic society. In other words, the media should monitor the activities of governmental authorities vigilantly and publicise any wrong-doing on their part. In

respect of information about governmental activities, but also more broadly in respect of matters of public interest generally, the Court has held time and again that: “Not only do the media have the task of imparting such information and ideas: the public also has a right to receive them”.<sup>ii</sup>

In light of the important democratic functions which the media and journalists can fulfil, the case-law of the Court, as well as relevant standard-setting texts adopted by the Council of Europe’s Committee of Ministers and Parliamentary Assembly, tend to acknowledge enhanced freedom for media and journalistic freedoms (as opposed to ordinary individuals). This enhanced freedom comprises legal recognition and protection of specific journalistic practices and realities: freedom to report and comment on matters of public interest; presentational and editorial freedom (including recourse to exaggeration); protection of sources; intellectual property rights. On another level, this enhanced freedom also includes protection against searches of professional workplaces and private domiciles and seizure of materials; protection against physical violence and intimidation; various rights in times of crisis and in war situations.

Together, these freedoms help to safeguard the operational autonomy necessary for the fulfillment of journalistic tasks in democratic society. The enjoyment of these freedoms is, however, coupled with the expectation of adherence to professional ethics and codes of conduct. Typically, such codes include provisions about accuracy, fairness, avoidance of stereotypes, etc. They will be discussed in greater detail, below.

The right to freedom of expression also includes editorial and presentational autonomy for media professionals because Article 10, ECHR, protects “not only the substance of ideas and information, but also the form in which they are conveyed”.<sup>iii</sup> As the European Court of Human Rights famously held in its *Jersild* judgment, it is not for the courts “to substitute their own views for those of the press as to what technique of reporting should be adopted by journalists”.<sup>iv</sup> The right to freedom of expression, as applied to the media, clearly includes protection of pre-publication procedures and processes for the gathering and selection of material, such as research and enquiry.<sup>v</sup> Indeed, interferences with those processes can pose such a serious threat to the right to freedom of expression that they demand the highest levels of scrutiny by the Court.<sup>vi</sup>

#### *Convention on Access to Official Documents*

Information is the lifeblood of the media and the Convention on Access to Official Documents is therefore of considerable importance for journalists and media professionals. The Netherlands has neither signed nor ratified this Convention (although it has been the subject of parliamentary debates), so it is not legally-binding in the Netherlands. Nevertheless, it is the first international treaty dealing with the topic and it is increasingly used as a reference point. The Convention covers “all information recorded in any form, drawn up or received and held by public authorities”. The definition of “public authorities” is:

1. Government and administration at national, regional and local level;
2. Legislative bodies and judicial authorities insofar as they perform administrative functions according to national law;
3. Natural or legal persons insofar as they exercise administrative authority.

Thus, the Convention guarantees everyone a right of access to official documents held by all of the above bodies. It does not distinguish between journalists and ordinary individuals: there is no privileged access regime for journalists, as such.

What is relevant for journalists, though, is that “an applicant for an official document shall not be obliged to give reasons for having access to the official document”. This provision seeks to reduce the risk of requests for access to official documents on politically-sensitive topics being arbitrarily blocked. The right of access to official documents can only be limited when the limitations are set out precisely in law, are necessary in a democratic society and are proportionate to the aim of protecting:

- a. national security, defense and international relations;
- b. public safety;
- c. the prevention, investigation and prosecution of criminal activities;
- d. disciplinary investigations;
- e. inspection, control and supervision by public authorities;
- f. privacy and other legitimate private interests;
- g. commercial and other economic interests;
- h. the economic, monetary and exchange rate policies of the State;
- i. the equality of parties in court proceedings and the effective administration of justice;
- j. environment; or
- k. the deliberations within or between public authorities concerning the examination of a matter.

Furthermore, States may stipulate that “the reigning Family and its Household or the Head of State shall also be included among the possible limitations”. This is a lengthy list of grounds for limiting disclosure of official documents. However, any of those limitations could be rebutted if there is an “overriding public interest in disclosure”.

*Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data*

This Convention, which has binding legal force in the Netherlands, aims to protect individuals in respect of automated processing of their personal data. It takes “personal data” to mean “any information relating to an identified or identifiable individual (‘data subject’)”. It sets out a number of basic principles for data protection, which States are obliged to uphold. For instance, it has quality and security requirements for data and offers safeguards for the data subject. According to the qualitative criteria, personal data undergoing automatic processing must be:

- a. obtained and processed fairly and lawfully;
- b. stored for specified and legitimate purposes and not used in a way incompatible with those purposes;
- c. adequate, relevant and not excessive in relation to the purposes for which they are stored; accurate and, where necessary, kept up to date;
- d. preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored.

These criteria would have to be respected in instances of automatic data processing for journalistic (e.g., information-gathering) purposes.

The Convention recognizes “special categories of data” that “may not be processed automatically unless domestic law provides appropriate safeguards”. Those special categories include: “Personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life [... and] personal data relating to criminal convictions”. Again, this would have to be

respected whenever automatic data processing is carried out to facilitate journalistic activities. The Convention does not provide for a journalistic exception or privilege in respect of automatic data processing.

### 2.1.2.2 *The European Union*

The European Union, too, has adopted an array of texts that govern media and journalistic freedom. With the envisaged accession of the European Union to the ECHR, it is likely that there will be greater alignment between Council of Europe and European Union approaches to media freedom and regulation. This subsection briefly discusses the Charter of Fundamental Rights of the European Union, before sign-posting where other relevant European Union regulations are analyzed later in the text.

#### *Charter of Fundamental Rights of the European Union*

Since the entry-into-force of the Lisbon Treaty, the Charter of Fundamental Rights of the European Union has been legally-binding on all EU Member States, thereby enhancing its status and relevance. The other key European-level provision that safeguards the right to freedom of expression is Article 11 of the Charter. It reads:

1. *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.*

2. *The freedom and pluralism of the media shall be respected.*

Article 11 of the Charter should be interpreted consistently with Article 10, ECHR, and relevant case-law of the European Court of Human Rights. The text of Article 11 of the Charter is modeled on Article 10, ECHR, but is more succinctly formulated and one of its purported aims is to provide a modern interpretation of Article 10, ECHR. Its added value – explicit mention of media freedom and pluralism – is diluted by the weak formula (“shall be respected”) adopted (See further: McGonagle 2011: p. 464).

#### *Other European Union regulation*

Various other regulatory instruments adopted by the European Union are relevant for the present discussion, but they have been integrated into the issue-specific analysis later in this report. For example, the Data Protection Directive is examined at the core of the discussion on ‘Privacy and Data Protection’ (see section 2.2.4.) and the E-Commerce Directive (see section 2.3) is central to the discussion in the section, ‘Liability and Responsibility’.

### 2.1.3 *National Standards*

Article 10, ECHR has a very strong influence on how freedom of expression is protected in the Netherlands. By virtue of Article 94 of the Dutch Constitution, all international treaties ratified by the Netherlands have binding effect at national level and, indeed, take precedence over domestic legislation.

Article 7 of the Dutch Constitution (Grondwet, GW) is the most important national provision governing freedom of expression. It reads:

1. *Niemand heeft voorafgaand verlof nodig om door de drukpers gedachten of gevoelens te openbaren, behoudens ieders verantwoordelijkheid volgens de wet.*
2. *De wet stelt regels omtrent radio en televisie. Er is geen voorafgaand toezicht op de inhoud van een radio- of televisieuitzending.*
3. *Voor het openbaren van gedachten of gevoelens door andere dan in de voorgaande leden genoemde middelen heeft niemand voorafgaand verlof nodig wegens de inhoud daarvan, behoudens ieders verantwoordelijkheid volgens de wet. De wet kan het geven van vertoningen toegankelijk voor personen jonger dan zestien jaar regelen ter bescherming van de goede zeden.*
4. *De voorgaande leden zijn niet van toepassing op het maken van handelsreclame.*

This provision emphasises the expression or rendering public ('openbaren') of ideas and feelings, whereas Article 10, ECHR, is concerned with the right to hold opinions, and receive and impart information and ideas. The right of reception is not mentioned in Article 7, GW. Moreover, Article 10, ECHR, is technology-neutral, whereas Article 7, GW, distinguishes between specific types of media. Although these textual differences have largely been compensated for by jurisprudential developments in the Netherlands (under the influence of jurisprudential developments in Strasbourg), Article 10, ECHR, can be said to offer more expansive protection to the right to freedom of expression than Article 7, GW. It should, however, be noted that while Article 7, GW, prohibits prior censorship, Article 10, ECHR, does not – when interpreting the latter article, the European Court of Human Rights has merely stated that prior censorship must be reviewed strictly and correspond to an absolute necessity.

A number of criminal and civil law provisions must be adhered to by journalists in the Netherlands (see sections 2.2.7. and 2.7.8.). They will be dealt with, as relevant, in the context of specific issues, below. The present focus will therefore be limited to those provisions dealing with defamation. The most relevant criminal law provisions are grouped together in Chapter XVI, entitled, 'Belediging' (Insult), of the Criminal Code (*Wetboek van Strafrecht*). This chapter distinguishes between different offences, such as *smaad* (Article 261), *laster* (Article 262), *eenvoudige belediging* (Article 266) and *belediging van bijzondere functionarissen* (Article 267). It is a criminal offence to deliberately insult the Queen or a Member of the Royal Family (Articles 111 and 112). The same applies to the deliberate insult of a Head or Government Member of a friendly State (Articles 118 and 119). In accordance with Articles 53 and 54, the publisher/printer is not criminally liable for the content of an insulting publication when the identity of the author of the publication is known and s/he can be prosecuted in Europe.

The above provisions are designed to protect the good name and reputational interests of individuals. Other criminal provisions seek to protect groups from insult. Thus, it is a criminal offence to publicly insult or incite hatred towards (a member of) a group on account of their race, religion or beliefs, sex or (sexual) orientation (Articles 137 c and d).

The main provision in civil law to deal with defamation and insult is the provision on unlawful acts contained in Article 6:162 of the Dutch Civil Code (*Burgerlijk Wetboek*, BW). It reads:

1. *Hij die jegens een ander een onrechtmatige daad pleegt, welke hem kan worden toegerekend, is verplicht de schade die de ander dientengevolge lijdt, te vergoeden.*
2. *Als onrechtmatige daad worden aangemerkt een inbreuk op een recht en een doen of nalaten in strijd met een wettelijke plicht of met hetgeen volgens ongeschreven recht in het maatschappelijk verkeer betaamt, een en ander behoudens de aanwezigheid van een rechtvaardigingsgrond.*
3. *Een onrechtmatige daad kan aan de dader worden toegerekend, indien zij te wijten is aan zijn schuld of aan een oorzaak welke krachtens de wet of de in het verkeer geldende opvattingen voor zijn rekening komt.*

National legislative provisions and related case-law dealing with privacy, data protection and copyright are analysed in Section 2 of this chapter.

#### 2.1.4 *Self-regulation*

The media sector has traditionally and typically been self-regulatory. From a historical perspective, press freedom was hard-won, which explains why the press has always felt the need to defend its freedom staunchly. The initial and most powerful rationale for recognizing and guaranteeing press freedom was the status of the press as the Fourth Estate, or public watchdog, to use a more modern metaphor. The checking or corrective function of the press *vis-à-vis* the other three branches of government provided justification for particular freedoms or privileges designed to facilitate the discharge of that function.

This historical inheritance is visible in Article 10, ECHR, which sets out the scope of the right to freedom of expression, including the grounds on which the right can legitimately be restricted. Crucially, it states that the exercise of the right is governed by duties and responsibilities. It is precisely because of those (unspecified) duties and responsibilities that certain limited restrictions to the right may be contemplated. The notion of “duties and responsibilities” is of particular importance to the media and journalists. The enhanced freedom they have traditionally enjoyed because of the tasks ascribed to them in democratic society, must be understood in light of the duties and responsibilities that accompany the freedom. In other words, journalists’ expanded freedom “is subject to the proviso that they are acting in good faith and on an accurate factual basis and provide “reliable and precise” information in accordance with the ethics of journalism”.<sup>vii</sup>

Adherence to self-regulatory ethical and professional codes of conduct could therefore be seen as the trade-off for enhanced journalistic freedom.

Self-regulation is routinely encouraged in European and international texts as it is perceived as providing a structural safeguard for freedom of expression of journalists. However, self-regulatory regimes are usually established at the national level, e.g., *Raad voor de Journalistiek* (the Netherlands); Press Complaints Commission (the United Kingdom).

The next sub-section includes a focus on how selected national self-regulatory mechanisms govern UGC.

## 2.1.5 *Use of UGC for news purposes*

### 2.1.5.1 *European jurisprudential developments*

Against this general background, three emergent trends in the case-law of the European Court of Human Rights appear particularly relevant for new practices of “mutualized” or hybrid journalism (Rusbridger, 2010), i.e., forms of journalism that incorporate or otherwise employ user-generated content in different ways. They are: a growing emphasis on responsible journalism; a growing recognition that journalistic freedoms applicable to non-journalistic actors; a growing engagement with specific features of online environment.

### 2.1.5.2 *Growing emphasis on responsible journalism*

In recent years, the European Court of Human Rights has been placing increasing emphasis on adherence to journalistic ethics and codes of practice (Voorhoof, 2010: pp. 194-195). It has explained its approach as follows:

*These considerations play a particularly important role nowadays, given the influence wielded by the media in contemporary society: not only do they inform, they can also suggest by the way in which they present the information how it is to be assessed. In a world in which the individual is confronted with vast quantities of information circulated via traditional and electronic media and involving an ever-growing number of players, monitoring compliance with journalistic ethics takes on added importance.*<sup>viii</sup>

However, the heavy emphasis on ethical practices has been roundly criticized for tipping an already precarious balance away from freedom of expression towards responsibility. This criticism has come from within the Court in the form of virulent dissenting opinions,<sup>ix</sup> and also from leading academic commentators.<sup>x</sup> The essence of the criticism is that the conflation of legal and ethical issues is confusing and inappropriate, not least because it can result in journalistic practices assuming greater importance than the public’s right to receive information and the media’s right to impart it.

While responsibility is clearly a legitimate trade-off for the enhanced freedom enjoyed by journalists, undue emphasis on that responsibility can have a “chilling effect” on the right to freedom of expression.<sup>xi</sup>

2.1.5.3 *Growing recognition that journalistic freedoms applicable to non-journalistic actors*  
As explained above, journalistic freedom can be seen as a corollary of right to freedom of expression because of the public watchdog role ascribed to press. Increasingly, however, that freedom is predicated on the provision of forum for public debate. The ability of the media to take on such a role is facilitated by the increasingly interactive design of online media. The primacy of robust public debate in democratic society has also led to another crucial development in the Court's case-law, viz., the realization that a broad range of actors can make viable contributions to public debate. In the past, because of their dominant position in the communications sector, the media were effectively the gate-keepers or moderators of public debate. Technological advances have reduced the erstwhile influence/control of the media and made it possible for a greater range and diversity of actors to participate meaningfully in public debate (Jakubowicz, 2009).

The changing patterns in societal communication practices have been acknowledged by the Court, for example in *Steel & Morris v. the United Kingdom*, when it held that:

*in a democratic society even small and informal campaign groups [...] must be able to carry on their activities effectively and [...] there exists a strong public interest in enabling such groups and individuals outside the mainstream to contribute to the public debate by disseminating information and ideas on matters of general public interest [...].<sup>xii</sup>*

The Court has similarly recognised the value of contributions to public debate of NGOs, expanding the notion of public watchdog to social watchdog, in the process.<sup>xiii</sup> The upshot of this trend is that there is increased and more nuanced legal recognition of the paramountcy of public debate; with renewed emphasis on the democratic societal context as opposed to the profession of the person.

In its Recommendation No. R (2000) 7 to member states on the right of journalists not to disclose their sources of information, the Committee of Ministers of the Council of Europe defined "journalist" as: "any natural or legal person who is regularly or professionally engaged in the collection and dissemination of information to the public via any means of mass communication". This definition of journalist reflects a model of journalism that dominated in the past. It clearly grates with the Committee of Ministers' current approaches to new media and evolving nature of journalism, as outlined in its Recommendation on a new notion of media (Council of Europe, 2011B). The current approach recognizes that a growing number and diversity of actors are contributing to journalism in different ways.

The European Court of Justice has also opted for an expansive definition, stating that activities may be classed as "journalistic", "if their object is the disclosure to the public of information, opinions or ideas, irrespective of the medium which is used to transmit them". Furthermore, "[t]hey are not limited to media undertakings and may be undertaken for profit-making purposes".<sup>xiv</sup> This opens up the traditionally narrow definition to include a broader and more diverse range of participants.

The Dutch *Hoge Raad*, for its part, has declined to define the concept of journalist because the advent of Internet has enabled ordinary individuals to address a wide

public (See further: Dommering 2010).<sup>xv</sup> Unlike the European Court of Human Rights, the *Hoge Raad* does not mention adherence to journalistic codes of ethics, or the other requirements listed in the Council of Europe's Committee of Ministers' Recommendation (Chavannes, 2011).

The foregoing has pointed to the diminishing relevance of definition of journalist. Leading commentators have advanced various arguments in this respect: that it only matters whether someone is a journalist when a case has institutional implications (Schuijt, 2008); that context and contribution to public debate are more important than the profession of the person disseminating the information/opinion (Voorhoof, 2008). Others endorse the sectoral stance that a legal definition is not needed and would be counterproductive (Korthals Altes, 2008; Chavannes, 2011).

#### 2.1.5.4 *Growing engagement with specific features of online environment*

To date, the Court has engaged meaningfully with Internet generally (Murphy & Cuinn, 2010; p. 636; Council of Europe, 2011A) and the specific features of the online communications environment in particular in a surprisingly limited number of cases (Voorhoof, 2010; pp. 195-196; McGonagle & De Beer, 2012). It has focused on the duty of care of internet service providers,<sup>xvi</sup> the added value of online newspaper archives for news purposes<sup>xvii</sup> and interestingly, the challenges of sifting through the informational abundance offered by the Internet.<sup>xviii</sup> How the Court dealt with the final point is instructive:

*...It is true that the Internet is an information and communication tool particularly distinct from the printed media, in particular as regards the capacity to store and transmit information. The electronic network serving billions of users worldwide is not and potentially cannot be subject to the same regulations and control. The risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms, particularly the right to respect for private life, is certainly higher than that posed by the press. Therefore, the policies governing reproduction of material from the printed media and the Internet may differ. The latter undeniably have to be adjusted according to the technology's specific features in order to secure the protection and promotion of the rights and freedoms concerned.*

*Nevertheless, having regard to the role the Internet plays in the context of professional media activities (see paragraphs 29-32 above) and its importance for the exercise of the right to freedom of expression generally (see *Times Newspapers Ltd v. United Kingdom* (nos. 1 and 2), no. 3002/03 and 23676/03, § 27, 10 March 2009), the Court considers that the absence of a sufficient legal framework at the domestic level allowing journalists to use information obtained from the Internet without fear of incurring sanctions seriously hinders the exercise of the vital function of the press as a "public watchdog" (see, *mutatis mutandis*, *Observer and Guardian v. the United Kingdom*, 26 November 1991, § 59, Series A no. 216). In the Court's view, the complete exclusion of such information from the field of application of the legislative guarantees for journalists' freedom*

*may itself give rise to an unjustified interference with press freedom under Article 10 of the Convention.*<sup>xix</sup>

The Court clearly places the onus on States authorities to develop a legal framework clarifying issues such as responsibility and liability. It is unclear, however, to what extent an equivalent self-regulatory framework would suffice. The Court has held in other case-law that self- and co-regulatory mechanisms can suffice, provided they provide effective guarantees of rights and effective remedies for violations of rights (See further: Hans-Bredow-Institut, 2006; pp. 147-152).

These developments are tentative in case-law, but more advanced in other standard-setting. While not legally-binding, such standard-setting work, notably by the Council of Europe's Committee of Ministers (Nikoltchev & McGonagle, 2011A) and Parliamentary Assembly (Nikoltchev & McGonagle, 2011B), is politically persuasive and offers a number of advantages over treaty-based approaches (McGonagle & De Beer, 2010:

- More detailed engagement than in treaties
- Coverage of issues not dealt with in case-law
- Dynamic/modern approach to relevant issues

## 2.1.6 *National legal and self-regulatory frameworks for UGC*

### 2.1.6.1 *Overview*

To date, national journalistic self-regulatory bodies have engaged with user-generated content to varying extents, but only a "minority of press councils have already incorporated guidelines concerning the handling of user-generated comments by the press into their codes" (Brody, 2011; p. 110).

Nevertheless, questions surrounding editorial responsibility for different types of content on newspaper websites are rapidly growing in terms of volume and complexity (Brody, 2011; p. 110). While European-level regulation is legally determinative in this matter (see for a detailed discussion section 2.3.),<sup>xx</sup> policy guidelines and specific decisions of national press councils are not always consistent. An important example of relevant divergence is the level of editorial intervention required to trigger editorial responsibility.

The extent of liability can be influenced by the editorial procedures/controls that are in place and are followed. Systems of editorial moderation of user-generated comments posted on websites can take a number of forms. Distinctions can, for instance, be made between pre-moderated screening, post-moderated screening and reactively moderated screening (Brody, 2011; p. 110). Pre-moderated screening takes place prior to posting; post-moderated screening takes place after the automatic posting, and reactive moderated screening is carried out in response to complaints/requests for modification or removal of user generated comments.

### 2.1.6.2 *Selected examples*

Existing national self-regulatory mechanisms cater for UGC to varying extents, as can be seen from the following examples.

In Ireland, the Code of Practice overseen by Press Ombudsman and Press Council of Ireland does not contain any provisions dealing specifically with UGC.

In Portugal, regulation of the press falls under the remit of the Regulatory Entity for the Media (ERC). Online content is covered, provided that it is considered to be an organized website/coherent whole and that it is subject to editorial management.

In the United Kingdom, the Editors' Code of Practice, enforced by the Press Complaints Commission (PCC), clearly states:

*It is the responsibility of editors and publishers to apply the Code to editorial material in both printed and online versions of publications. They should take care to ensure it is observed rigorously by all editorial staff and external contributors, including non-journalists.<sup>xxi</sup>*

For the PCC, the crucial criterion for determining whether or not UGC is deemed to be covered by its Code is (editorial) moderation. Content posted by users in chatrooms or other forums, which is unedited and unmoderated, is not ordinarily covered by the Code. However, "Comments that are pre-moderated before being published online would be considered to have gone through a process of editorial control and therefore would generally fall under the terms of the Code".<sup>xxii</sup> More concretely and more formally, "the PCC's remit should be seen as covering editorial material on newspaper and magazine titles' websites where it meets two key requirements:

1. That the editor of the newspaper or magazine is responsible for it and could reasonably have been expected to exercise editorial control over it and apply the terms of the Code.
2. That it was not pre-edited to conform to the on-line or off-line standards of another media regulatory body."<sup>xxiii</sup>

This distinction is not always made or evident. In the Netherlands, for instance, once an editor posts photographic material provided by third parties, s/he is responsible for the content of that material (*Leidraad*, s. 4.3). The editor responsible for letters to the editor and reactions to articles on website (s. 5.1), but pre-moderation is not required, in recognition of the practical difficulties involved. Post-moderation, particularly the removal of posted reactions, is envisaged (s. 5.4).

The Danish Press Council distinguishes between information acquired from public or private profiles on social networking sites, with greater protection attaching to the latter (AIPCE, 2010; p. 40).

### 2.1.7 *Conclusions*

The regulatory framework governing UGC is multi-layered (European and national) and multi-dimensional (regulation, self-regulation and policy) and as a result, complicated.

Three emergent trends in case-law that are beginning to fashion a more detailed framework for the use of UGC in news: a growing emphasis on responsible journalism; a growing recognition that journalistic freedoms applicable to non-journalistic actors (providing they contribute to public debate); a growing engagement with the specific interactive and collaborative features of the online environment.

Freedom of expression and the duties and responsibilities that govern its exercise – by media and other actors, including individuals, are becoming increasingly index-linked to technology. The European Court of Human Rights has held that “all persons, including journalists, who exercise their freedom of expression undertake ‘duties and responsibilities’ the scope of which depends on their situation and the technical means they use” (emphasis added). This statement implies that while all persons have duties and responsibilities, those of journalists may be different to those of ordinary individuals, and that the technical means used in exercising free expression are also relevant.

In conclusion, reasonable expectations of editorial control and the influence of technical means on editorial and journalistic duties and responsibilities, are important considerations for the design of any technical solution.

## **2.2 Legal Requirements**

### *2.2.1 Introduction*

Journalists have to take into account a number of legal requirements when conducting research and publishing news stories. These can be divided roughly into three categories: privacy rights, intellectual property rights and obligations under criminal and tort law. The following section will give a brief overview of these legal requirements journalists have to consider. It will, moreover, describe to what extent the rules also may apply to amateur journalists or users of news services in general, on the one hand, and, on the other hand, create specific obligations for newsrooms when co-creating with users.

### *2.2.2 Privacy and Data Protection*

European Union legislation lays much emphasis on the protection of privacy and the closely related right to data protection. To understand the difference between the two, reference can be made to the Charter of Fundamental Rights of the European Union. Article 7 holds that everyone has the right to respect for his or her private and family life, home and communications. This is usually referred to as the right to privacy. Its equivalent is article 8 of the European Convention on Human Rights, which grants a person the right to respect for his private and family life, his home and his correspondence. Article 8 Charter of Fundamental Rights of the European Union holds that everyone has the right to the protection of personal data concerning him or her, that such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law; the article also holds that everyone has the right of access to data which has been collected concerning him or her and the right to have it rectified and that compliance with these rules shall be subject to control by an independent authority. This is called the right to data protection. In Europe, this right is most prominently protected by the Data Protection Directive (Directive 95/46/EC). Both rights are related, but are nevertheless quite distinct in their applicability and approach.

### *2.2.3 Privacy*

In Europe the right to privacy is most prominently protected in the European Convention of Human Rights, article 8 (see section 1.2.1). This article holds that everyone has the right to respect for his private and family life, his home and his

correspondence, but also includes a limitation clause: there shall be no interference by a public authority with the exercise of this right except one of the listed conditions are satisfied.

The right to privacy plays a threefold role in relation to journalism. On the one hand, journalists enjoy a wider protection against the interference with communications and sources. Sometimes, to successfully and safely write a story, it may be necessary to write anonymously or under a pseudonym; sources who leak important and sensitive information may want their names concealed and their communication with the journalist kept private. In general, journalists have been granted a wider liberty in this respect. Later in this text it will be discussed to what extent also amateur journalists can invoke the privileges that are granted to professional journalists.

On the other hand, journalists have to respect the privacy of those whom they write about. In general, this is interpreted as a conflict between two fundamental rights: the right to privacy and the right to freedom of expression. The outcome of the balance between the two rights has to be analysed on a case-by-case basis in which the gravity of the privacy violation is weighed against the newsworthiness of the story. What makes a story newsworthy is dependent on such diverse factors as urgency, significance, proximity, prominence and the social and human interest.<sup>xxiv</sup>

Third, when using material that originates from citizens, also their privacy has to be taken into account, for example in situations that they have posted material on non-public social media sites such as access controlled Hyves or Facebook profiles or protected Twitter updates. The Belgium Press Council has recently determined, for example, that it is in principle not allowed to use material from blogs or social network sites that are protected against unauthorized access. Even material on public sites must be treated with care when it is obvious that the site targets a very specific audience (instead of the general public). Use of such material is only allowed if the public interest in its use outweighs (Richtlijn BE).

The Guidelines of the Netherlands Press Council (Raad voor de Journalistiek), a self-regulatory organ, also contains a specific section on the respect for privacy. The privacy of persons, it provides, may not be restricted more than is necessary. Such a restriction crosses the lines of prudent journalism when it bears no reasonable relation to the social interest of the publication. However, a special position is reserved for more or less public positions, for whom a certain amount of exposure to unwanted publicity is unavoidable, according to the guideline. Unless there is a demonstrably relation to their private lives and their public performance, their personal behaviour and that in closed and private surroundings should be protected against unwanted infringement. Pictures and broadcast images of persons in non-general accessible areas, letters and personal notes shall not be published without the permission from those involved, unless if justified by a compelling social interest and if the same goal cannot be achieved in a different manner. It is prohibited for a journalist to pester a person for prolonged periods of time, unless if justified by a compelling social interest and if the same goal cannot be achieved in a different manner (*Leidraad*, s. 2.4).

Editors, the guideline continues, will have to ensure that if the information and images are gathered in such a way or otherwise will interfere with the right to

privacy, it will not be published. This is also relevant in relation to content that originates from users (*Leidraad*, s. 5.1).

Publishing details in pictures and text as a result of which suspects and accused can be easily identified and traced by persons other than the circle of people that already know about them, is only allowed when the name forms an important part of the report, not mentioning the name because of the general reputation of the person involved does not serve any purpose, not mentioning the name could cause a mix-up with others who can be predictably harmed as a result of that, the name is mentioned within the framework of investigative reporting or the person himself seeks publicity. If the publication of details about serious offences would presumably add to the suffering of the victim and/or his family, a journalist may only proceed when they are needed to demonstrate the nature and gravity of the offence or the consequences thereof. Furthermore, journalists should act reservedly in cases of casualties, accidents, disasters, people with a distorted mental state etc.

An incident related to the latter was a reason for the Belgium Press Council to issue specific guidelines for journalists how to deal with information and pictures gathered from blogs and social media such as Facebook or Twitter. According to these guidelines, (professional) journalists have to be careful when using material that may infringe upon the privacy of others, in particular when vulnerable persons such as crime victims minors are concerned, and as rule check with the parties concerned whether the journalist is allowed to use that material. Moreover, journalists in Belgium are obliged to check the accuracy and truth of/behind the information or pictures, whether it has been placed by the victims themselves or with their authorization. In case material has been placed without authorization, publication of material from blogs and social media is only allowed if justified by the public interest in the publication (*Richtlijn BE*). In other words, journalists who use contributions from users in blogs and social media are obliged to check the material itself as well as whether the amateur journalist has obtained the necessary consent for its publication. The Dutch Press Council has been reported to announce in the beginning of 2011 that it will monitor henceforth not only the activities of professional but also of amateur journalists.

#### **Guidelines Netherlands Press Council**

There is a need to observe the balance between public interest in the publication and the privacy of people in the news.

#### **2.2.4** *Data Protection*

The Data Protection Directive has been implemented in the Netherlands in the *Wet Bescherming Persoonsgegevens* (Law on the Protection of Personal Data) (*Wbp*). Although it is more elaborate than the European Directive, most provisions are rather strict implementations of the text of the Directive.

##### **2.2.4.1** *Notion of personal data*

The Data Protection Directive lays down a number of safeguards with respect to the processing of personal data: information relating to an identified or identifiable natural person.<sup>xxv</sup> This natural person is referred to in Dutch law as the 'person concerned' (*betrokkene*) and in the Data Protection Directive as the data

subject.<sup>xxvi</sup> Personal data may concern names, pictures, an address, information about gender, health or political beliefs, but also pieces of personal content to the extent that they can identify a person, such as tweets, or combinations of personal data if the aggregated data can be used to identify a person. This aspect is important e.g. in context of so-called mash-ups, the collection of individual pieces of information from different sources in order to make a profile of a person. The data controller, or in Dutch terms the one responsible (verantwoordelijke), is he who alone or jointly with others determines the purposes and means of the processing of personal data.<sup>xxvii</sup> The data controller has a number of obligations under the directive.

#### 2.2.4.2 *Relevancy for journalism*

The provisions of data protection law are in two ways relevant for journalism. First, professional and amateur journalists who report about others by using personally identifiable data such as names, pictures, addresses, information about gender, health, political preferences, certain tweets, etc. must also take into account the provisions of data protection law that protect data subjects against the unauthorised or unlawful processing of such data. The notion of “processing” is fairly broad, covering instances of collecting, archiving, searching or publishing by automatic means. Second, when searching for suitable UGC, journalists, too, have to consider the rights of amateur journalists, or more generally, users under data protection law. As described earlier, even UGC could, under certain conditions, be considered personal data (Le Borgne-Bachschmidt et al., 2008; pp. 239-240). Filtering for, or otherwise using such material, but also the names and contact data of citizen authors, their “track-record” etc. are activities that potentially fall under data protection law and thus require in principle prior consent or other lawful grounds for the processing in order to be in compliance with data protection law. In practice, it is striking to see that news providers hardly require permission for using personal data of amateur journalists.

Newspapers have to rectify and erase faulty news stories. However, the importance of the news-archive has to be taken into account as well. For example, a court ordered that a news story by the Eindhovens Dagblad about a woman who got fired, which may have violated her privacy, could stay online referring to the importance of news archive.

#### 2.2.4.3 *Obligations under data protection law*

Collecting, publishing, storing or searching, etc. for personal data is generally permissible if either the data subject has unambiguously given his consent, or the interests served by the processing weigh higher than the interests of the data subject.<sup>xxviii</sup> The interest of the public to receive news and of journalists to exercise their right to freedom of expression can be such an interest that weighs higher than the interests of the data subject, particularly where the data subject has made personal data public voluntary. Something different can apply where journalists scrap personal sites on Facebook, Hyves but also Twitter that are not accessible to the public.

Moreover, processed personal data must be accurate and precise.<sup>xxix</sup> This obviously also creates obligations for journalists using personal data in their stories.

Moreover, personal data must be relevant and not excessive in relation to the purposes for which they are collected<sup>xxx</sup> and may be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected.<sup>xxxi</sup> Moreover, personal data may only be collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes.<sup>xxxii</sup> Finally the directive holds that the controller must implement appropriate technical and organizational measures to protect personal data against loss or unlawful processing of the data.<sup>xxxiii</sup>

Account should also be taken of the transparency principle and the rights of the data subject. The transparency principle requires that in cases of collection of data from the data subject, the controller must provide the data subject with at least his identity and the purposes of the processing for which the data are intended.<sup>xxxiv</sup> Furthermore, every data subject has the right to access, which means that it has the right to request from the controller a confirmation as to whether or not data relating to him are being processed.<sup>xxxv</sup> Moreover, the data subject has the right to request the rectification, erasure or blocking of data the processing of which does not comply with the provisions of the Data Protection Directive, in particular because of the incomplete nature of the data or because they are unnecessary for the purpose for processing.<sup>xxxvi</sup> Subsequently, he is entitled to a notification to third parties to whom the data have been disclosed of any rectification, erasure or blocking, unless this proves impossible or involves a disproportionate effort.<sup>xxxvii</sup>

#### 2.2.4.4 *Stricter requirements for so-called sensitive information*

Some kinds of personal data receive more legal protection than others. This is true for the processing of so called sensitive personal data, that is data that reveal racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, health or sex life (in fact much of the content that is being revealed on e.g. social network sites). The processing of such data is prohibited unless, among others, the data subject has given his explicit consent or the sensitive data have been manifestly made public by the data subject.<sup>xxxviii</sup> The balance of interests as a legitimate ground for processing personal data does not apply to sensitive data.

Journalists have an obligation to check facts and base their story on complete and accurate information. For example, De Pers had to rectify the headline 'Wesley, mag ik mijn horloge terug', which suggested that the footballer was involved in stealing property of others, for which it had (too) little proof.

### Data Protection Directive/Wet bescherming persoonsgegevens

- Distinction between sensitive and non-sensitive data.
- Legitimate goal for processing personal data required: e.g. balance between societal relevance of a story and the privacy of subjects in the news.
- Transparency and control for data subjects over personal data

#### 2.2.4.5 Specific exemptions for journalists

However, article 9 of the directive, regarding the processing of personal data and freedom of expression, holds that Member States shall provide for exemptions or derogations from a number of the provisions of the Directive in relation to the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression only if they are necessary to reconcile the right to privacy with the rules governing freedom of expression.<sup>3</sup> This provision thus refers to the doctrine of freedom of expression, among others protected by the European Convention on Human Rights (see section 2.2.1). The Dutch legislator has incorporated the rule in the Dutch implementation of the directive.<sup>xxxix</sup> Journalists are among others exempted from the obligation to implement technical measures to ensure the confidentiality and security of information, a requirements which is by definition in tension with the publicity of journals and newspapers. Moreover, the respect for the rights of the data subject in relation to access, correction and blocking of personal data are excluded from the obligations of the journalist. Finally, the prohibition of processing sensitive data is lifted for journalists.

### Journalist exception

There is a journalist exception for some, but not all data protection requirements.

The Dutch Data Protection Authority (College Bescherming Persoonsgegevens) has published guidelines on the publication of personal data on the internet, among others regarding journalistic purposes. These guidelines (*Richtsnoeren*) also discuss to what extent amateur journalists can invoke the exception for journalistic purposes. The authority has listed four criteria to determine whether the exemption for journalists applies in specific cases. 'Is the activity oriented towards (objective) collection and distribution of information? Is it a regular activity? Is the aim of the publication to raise a topic of social significance? Does the publication grant data subjects the right to reply or obtain rectification after publication?' (*Richtsnoeren*; p. 43<sup>l</sup>).

<sup>3</sup> A revision of the Data Protection Directive is currently discussed; among other, a right to be forgotten is discussed, which could have far reaching consequences for journalism in general and internet-based journalism specifically.

To determine whether the collection of information is objective, account should be taken not only of the publication itself, but also the nature of the responses, if it is an interactive publication. The question whether a discussion forum or a publication that provides visitors with an opportunity to respond can invoke the journalistic exemption, depends partly upon the quality of the moderation of visitors' replies. For example, it needs to be determined whether replies are screened or whether visitors can submit contributions that are clearly harmful to third parties without control.

Next, the Data Protection Authority takes into account whether journalistic output is a regular activity. This is of course of utmost importance to the question of UGC in the context of the news. The Authority stresses that payment is not an essential factor when determining the scope of the exemption for the purposes of journalism. 'Only a few people have the privilege of being able to earn money with an (independent) publication on the Internet, while the publication may very well serve a substantial public interest. An assessment is made of whether it relates to a regular activity. A weblog with a couple of outdated contributions would have more difficulty relying on the exemption for the purposes of journalism than a publication in which new contributions are published on a regular basis.' (Richtsnoeren; p. 44) The authority emphasises the social significance of publication on the internet. It mentions the example of processing personal data in relation to criminal acts and misconduct, for the protection of public safety and health and for preventing the deception of the public by actions and publications by persons or organizations. It warns however that not all type of publication serve an exclusively journalistic purpose. 'If, for example, a publication reveals incidents of misconduct by a member of parliament or by the director of a well-known or large company and the publication is based on sufficient documentation for it to be credible, the publication of course serves a general social interest. If, on the other hand, a publication exposes the private life of an unknown person, whose conduct exerts no influence upon the way in which society functions, it would be difficult to assert that the publication serves the public interest.' (Richtsnoeren; p. 44) Finally, there is the right to reply,

Journalism has been called the fourth estate of democracy. They are important when it comes to controlling the government and politicians. For example, when Philomena Bijlhout became secretary of state, RTL published photos of her posing in military uniform after the 'December moorden', though she had time and again denied such facts. Subsequently, she resigned only hours after accepting the job.

In the new media environment, amateur bloggers are increasingly becoming important news sources. They are often able to quickly spot important events and upload photos and videos, accompanied by explanatory texts, on their personal blog. In emergency situations, such as the Vuurwerkrap, they are often the main source of news. Although they do not work at a newspaper, amateur journalists may still invoke the journalistic exception when they fulfill the relevant criteria.

which is also incorporated in the Guidelines of the Netherlands Press Council. This right also incorporates a right to rectification of incorrect data. This also follows from a Recommendation of the Council of Europe (Council of Europe, 2004).

**Guidelines Dutch Data Protection Authority for journalistic exception on the internet**

- Is the activity oriented towards (objective) collection and distribution of information?
- Is it a regular activity?
- Is the aim of the publication to raise a topic of social significance?
- Does the publication grant data subjects the right to reply or obtain rectification after publication?

## 2.2.5 *Intellectual Property*

### 2.2.5.1 *Copyright*

The right to intellectual property, again, plays an important role in journalism. Most important in this relation is copyright law. Copyright law protects journalists as authors.

Journalists are seen as the creator ('author') of an intellectual work, which is protected under the Dutch Copyright Act (Auteurswet). Copyright is the exclusive right of the author of a literary, scientific or artistic work or his successors in title to communicate that work to the public and to reproduce it, subject to the limitations laid down by law.<sup>xi</sup> Copyright protection entitles journalists to protect their work from unauthorised uses by third parties (Lingen & Van Niftrik, 1983).

This is also true for amateur journalists as copyright law does not distinguish between amateur and professional authors. In other words, providing the legal standards of originality are met, amateur journalists hold the rights to the contents they created. In this context it is important to remark that not all forms of UGC are protected by copyright law. The originality of a creation is a central criterion in copyright, serving as a benchmark to indicate when a creation qualifies for protection. Some forms of UGC, such as pure factual observations, re-tweets, short expressions of ones thoughts and feelings, ratings or comments are likely to fall under the threshold of originality. Also many tweets will fall below the threshold, though not all, in which case newsrooms cannot copy them without authorization (or an exception to copyright law to apply (see below) (Reinberg, 2009). This fact needs to be reflected e.g. in the copyright policies of a news site working with UGC.

### 2.2.5.2 *Transfer of copyright in UGC*

In practice, news sites vary in their approach to the transfer of copyrights in UGC. Some require a complete transfer of the copyrights to a piece of UGC, such as RTL Nieuws (except for the rights on photo's, video's and other visual or audio material) or SBS. Others inform amateur journalists that uploading content to the site implies the granting of a license to use that content, often in form of an ever-lasting, worldwide, for all purposes, for all media, license which might even stretch to the

subsidiaries of the website (see e.g. the policies of Dichtbij; NOS, AD; NRC.next or the Volkskrant). Where the license is non-exclusive it at least leaves authors the possibility to exploit their material elsewhere, unlike in the case of the exclusive licenses required by SBS and RTL Nieuws. The latter are rather far-reaching conditions, also and in particular when considering that none of the sites examined offered any form of remuneration to amateur journalists.<sup>4</sup>

Few sites also mention moral rights, for example the right of an amateur journalist to be mentioned by name, to oppose distortions of the work or to withdraw the work from circulation. For example Telegraaf and Nu.nl reserve the right to shorten or adjust text. NOS states that it will try hard to mention the name of the maker while reproducing or making public the content. When this is for one reason or the other not possible the user will not object. RTL states that it is only obliged to name the source when the content is a photo or video, so for text, RTL excludes itself from the duty to hold into account the moral rights of the author.<sup>5</sup>

### 2.2.5.3 *Copyright and automated screening of user contributions*

Another question is the copyright status of UGC that has not been uploaded to the site. Here, no (non-exclusive) rights to use such content have been reserved. Note that automated scanning of tweets and blogs for relevant content and copy or even publishing them, e.g. for the purpose of the tool described in chapter 5 would in principle also require the authorization of the original author as these are acts of copying or making available to the public, unless they are excepted, for example because they fall under the quotation right in Art. 15a of the Dutch copyright law (see below).

### 2.2.5.4 *Co-creation and copyright*

Another question relevant for the process of co-creation is who holds the right in a piece of journalism that has been created using the contributions of amateur journalists. Chances are that such a news article would qualify as a "collaborative work", i.e. the creation of which more than one natural person has participated. In the case of a "collaborative work" with distinguishable contributions each author enjoys a separate right with respect to his own contribution, which he can exercise apart from the others. When a collaborative work is composed of different forms of expression (text/illustration, text/music and music/film), the individual contributions will generally be regarded as separable. By contrast, in the case of combined contributions, where the work is the result of such close cooperation between authors that the individual contributions cannot be separated from one another, all authors enjoy the rights on the work in joint ownership, which must be exercised with the consent of every author, including the amateur journalist(s). Collective would require, however, a shared intention to create a joint work. In the absence of such a close collaboration, e.g. if the journalists simply takes over material from an amateur journalist, the person using (copyrightable) material would still need authorization, unless one of the exemptions to copyright law applies.

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<sup>4</sup> It remains to be seen whether the pending proposal on authors contracts, which also includes a provision on due compensation, will affect the relationship between newsrooms and citizen journalists.

<sup>5</sup> This implies that the user, by uploading his content, waives his right of attribution. This is a waivable right but it doesn't comply with the sense of justice (see footnote 2).

#### 2.2.5.5 Copyright law and news exceptions

Copyright law is also relevant for (professional and amateur) journalists that use the works of third parties when writing their articles. While, as a principle, the re-use of protected material requires prior authorization by the original author, copyright law knows a number of (press-specific) exemptions. Goal of these exemptions is to make re-use of material possible without prior authorization. This is important for newsrooms that use existing material in their own articles, but also when using amateur contributions. To the extent that the activities of amateur journalists are covered by one of these exemptions, newsrooms that use these contributions do not need to face claims because of copyright infringements from the original authors.

For example, Article 15 of the Dutch Copyright Act holds that it shall not be deemed an infringement of copyright to take over news reports, miscellaneous reports or articles concerning current economic, political or religious topics that have appeared in a daily or weekly newspaper or weekly or other periodical or works of the same nature that have been broadcast in a radio or television programme, if the following requirements are satisfied:

- the taking over is effected by a daily or weekly newspaper or weekly or other periodical in a radio or television broadcast,
- the source is clearly indicated, together with the indication of the author if it appears in the source,
- copyright is not explicitly reserved and
- the rights to acknowledgement and to oppose any other alteration, distortion, mutilation or other impairment of the work that could be prejudicial to the name or reputation of the author or to his dignity as such, are respected.

#### Copyright

- Copyright on news stories gives right to control and compensation
  - Exception for journalistic efforts by others
- Using works, texts, photos etc. by others without their informed consent is prohibited.
  - Exception for journalistic efforts

This is thus an important limitation in favour of journalists, but it also facilitates the exponential growth of news-sites on the internet who do little more than copy-pasting news articles from other media. The question is to what extent the exception is also relevant in relation to a) professional journalists using content from amateur journalists and b) amateur journalists quoting from third parties. The explicit reference to a daily or weekly newspaper, a periodical or television broadcasting seem to exclude the application to amateur journalists or professional journalists who use amateur journalism. Having said that, the Dutch minister of Justice seemed to depart from a broader reading of the provision which also includes e.g. individual websites or amateur media.<sup>xli</sup> More legal certainty seems desirable, also for the sake of newsrooms who otherwise face the risk of legal charges when re-using material of amateur journalists in which amateur journalists use take over content from other media.

Of more practical relevance to content created by users is probably the quotation exception. Article 15a holds that quotations in an announcement, criticism, polemic or scientific treatise shall not be deemed an infringement of copyright where

- the work from which the quotation is taken has been published and;
- length of the quoted passages are justified by the purpose to be achieved;
- the source is clearly indicated, together with the indication of the author if it appears in the source and;
- the rights to acknowledgement and to oppose any other alteration, distortion, mutilation or other impairment of the work that could be prejudicial to the name or reputation of the author or to his dignity as such, are respected.

When GeenStijl showed a video on which rapper Lange Frans was seen performing and, after a member of the public had thrown an ice-cube at him, fighting with that person, the fact that his music was heard in the video didn't matter as it only provided the accidental background for the news item.

Note that the notion of quotation is commonly understood to be narrower than taking over entire news articles in Art. 15 of the Dutch Copyright law. A quotation concerns commonly an excerpt, and only where those are used for purposes of illustration, not if exploited in their own right. Yet an open question is to what extent the re-use of entire tweets can fall under the quotation exception (providing such tweets are original enough to be protected by copyright law). Seeing the brevity of tweets, one may argue that requiring an excerpt will leave not much left of the tweet (or a reasonable, quotable text). This would be an argument in favour of applying the quotation exception to the re-use of the entire tweet. Precondition is that the original source is indicated. The question is if the scope of the quotation exception is exceeded if not individual tweets are re-used incidentally but if a tool (as described in chapter 5) systematically scans, copies and possibly re-uses tweets.

The quotation exception also includes quotations from articles that have appeared in daily or weekly newspapers, weeklies or other periodicals in the form of press reviews.

In both cases, material is taken over according to Art. 15 and quotations according to Art. 15a of the Dutch copyright law, it is paramount that the source is clearly indicated, together with the name of original author, where possible.

When the Kijkshop used a cartoon image of prime minister Balkenende accompanied with the text 'Zonder verkoper shopt J-Peetje goedkoper' in an advertising brochure, the court ruled that this was wrongful use of his portrait.

Finally, article 16a holds that it shall not be deemed an infringement of the copyright in a literary, scientific or artistic work to make a short recording, showing or announcement thereof in public in a photographic, film, radio or television report, provided this is necessary in order to give a proper account of the current affairs

that are the subject of the report. This should not regard the core subject of the output, but only serve as background.<sup>6</sup>

### 2.2.6 *Portrait right*

The portrait right holds a special position. On the one hand, it is regulated in the Copyright Act and subject to intellectual property rights, which enables the commercial exploitation of one's portrait right. On the other hand, the portrait right is much more aligned to the protection of reputation and privacy rights than of other intellectual property rights. Journalists have to take into account the portrait right of third parties; these rules apply indiscriminately to professional and amateur journalists. Article 19 of the Copyright Act, which applies only to portraits which the author was commissioned to make by or on behalf of the persons portrayed, holds that the reproduction of a portrait by or on behalf of the person portrayed or, after his death, by or on behalf of his relatives, shall not be deemed an infringement of copyright. Furthermore, it shall not be deemed an infringement of copyright to communicate to the public a photographic portrait in a newspaper or periodical by or with the consent of the above mentioned right holders, provided the name of the author is indicated if it appears on the portrait. If the portrait is of two or more persons, reproductions thereof by or on behalf of one of the persons portrayed shall not be lawful without the consent of the other persons or, during the ten years after their death, without the consent of their relatives. Consenting to making a photograph does not equate with consenting to make it public.<sup>xliii</sup>

Article 20, which also applies only to portraits which the author was commissioned to make by or on behalf of the persons portrayed, holds that unless otherwise agreed, the owner of the copyright in a portrait shall not be entitled to communicate such a portrait to the public without the consent of the person portrayed or, during the ten years after his death, without the consent of his relatives. Again, if an image contains the portrait of two or more persons, the consent of all the persons portrayed is needed, or, during the ten years following their death, the consent of their relatives. Finally, article 21 holds that if a portrait is made without having been commissioned by or on behalf of the persons portrayed, the copyright owner shall not be allowed to communicate it to the public, in so far as the person portrayed or, after his death, his relatives have a reasonable interest in opposing its communication to the public.

This last article is especially relevant for journalistic media, since most commonly, they make photographs on their own initiative, not being commissioned by the people being portrait in the picture. It is thus a matter of balancing the public interest in relation to the publication of the picture and the private interest of the people shown in the photograph not to publish the picture. It is important to note that in the Netherlands, in contrast with the US where the 'reasonable expectation of privacy'-doctrine is much more prominent, people also have a right to respect for their privacy, reputation and related portrait right on public events and non-private places.<sup>xliiii</sup> Although public figures only have a limited right to the protection of their portrait, even the prime minister can successfully claim his right when (a parody of) his portrait is used in an advertisement.<sup>xliiv</sup>

<sup>6</sup> Currently, a UGC exemption is discussed in parliament on the basis of a report that hinted in that direction.

<<http://www.rijksoverheid.nl/bestanden/documenten-en-publicaties/rapporten/2012/08/01/flexible-copyright/flexible-copyright.pdf>>

### Portrait right

- Who has commissioned the photo?
- Who are on it?
- Have they been informed?
- Have they given their consent?
- Where was the photo taken?

#### 2.2.7 *Criminal law and tort*

Journalists have the obligation to refrain from libel, slander, defamation and other violations of the Dutch penal code. Journalists can also be held accountable for damaging or untrue news reporting via general tort law. Finally, but not further discussed here, violating copyright may be prosecuted via criminal law as well.<sup>xiv</sup>

##### 2.2.7.1 *Criminal law*

Article 261 of the Dutch Penal code holds that a person who intentionally harms the honor and reputation of a person shall be held guilty of libel. The punishment for this crime shall not exceed six months of imprisonment or a fine of third category. If the act of libel is committed through the making public of writings or images, the maximum term of imprisonment is raised to one year. If someone in good faith believed his claims to be true and the general interest required making the claims public, this shall not be called slander nor libel. Journalists thus risk a higher penalty in case of libel and slander, since they publicize facts by writing or images. To judge whether or not they are justified to publish certain facts that damage a person's reputation, account should be taken of the general interest to know these facts and the good faith in which the journalist was acting. It is important to note that the Dutch Penal Code also incorporates several forms of complicity, to which the newspaper publishing news reports by amateur journalist may be found guilty in case of, among others, libel and slander, especially in the case the newspaper knows or should know that it is facilitating crimes.<sup>xv</sup>

Of special relevance to journalism and UGC, and user participation in particular, is the practice of hacking, through which a lot of news facts are gathered and through which it may be shown that the technical infrastructure of governments and businesses is less than optimal, a news fact on its own. Hacking is illegal in the Netherlands. Article 138a holds that a person shall be found guilty of intrusion if he intentionally and unlawfully intrudes into a computerized network. This intrusion shall be found illegal in any case if access is gained through the use of a false identity, breaking into a security system or using false signals or keys. If found guilty, a hacker may be imprisoned for a period not exceeding one year or a fine of fourth category. If the hacker copies or stores any of the data he may be imprisoned for a period of four years. If a newspaper publishes, uses or cooperates with the hacker, he may be found guilty for complicity in the crime. Although this is the standard, there are some exceptions formulated in case law for journalists.

If hacking a computer network is necessary for showing or proving a certain fact that is in the general interest, the hacking is considered to be proportional and there are no other, less intrusive ways to achieve the same, this shall not be punished.<sup>xlvii</sup>

Also of importance to new forms of journalism, especially in relation to projects such as Wikileaks, is the leaking and publishing of state secrets. This is however prohibited under the Dutch Penal Code. Article 98 holds that he who leaks secret information which may affect the State or its allies which he knows or could reasonably suspect to be secretive, may be punished for a period not exceeding six years or a fine of the fifth category. Especially in relation to journalists, it is important to note that article 98a holds that if these facts are made public, the period of imprisonment may last 15 years maximum. Likewise, article 272 incorporates rules on the leaking of secrets that a person possesses by virtue of his office, profession or legal provision. It is not perfectly clear how this article relates to the freedom of speech and the special role of the press as a public watchdog, but presumably, journalists would still have the possibility to invoke the above mentioned case-law exception to commit an illegal action, only with a higher threshold.<sup>xlviii</sup>

Finally, there are some special rules in the Dutch Penal Code in relation to the press. Article 53 holds that in case crimes are committed through the use of the press, the publisher shall not be prosecuted if the printed piece includes his name and address and the identity of the offender is also disclosed at first request by the prosecutor. This can be a good reason for newsrooms to inquire about the identify of a user that they co-create with. Article 54 holds the same in relation to the printer of the piece if his name and address are included and he discloses the name of the person who ordered the piece to be printed. Finally, article 54a holds that an intermediary who offers a telecommunications service consisting of transmission or storage of data provided by others, will not be prosecuted if he, on order of the prosecutor, takes all measures which he may reasonably be expected to take in order to ensure the data becomes inaccessible. This may be relevant in case of publication of user comments on websites. So far however, article 54a has had little effect in practice.

In 2008, researchers at the University of Nijmegen hacked the OV-chipkaart and published an article about this. The company exploiting the chipkaart filed a law suit but lost, since this form of 'white hat' hacking is allowed. Important factors for this kind of hacking is the societal relevance of the hack, the goal to prevent, rather than to inflict damage, using minimal intrusive means etc.

Blekerleaks enticed legal controversy when it announced to start a Wiki-leakish platform for documents by the Dutch government regarding public policy on the protection of nature. Most lawyers held that Das & Boom, hoster of this platform, could be seen as an accomplice to leaking state secrets and the violation of the official secrecy of civil servants.

### Illegal practices

- Libel
- Hacking
- Leaking of secrets

Newspapers can be prosecuted for complicity in such practices.

#### 2.2.8 Tort

Finally, professional as well as amateur journalists may be held liable under general tort law. Article 162, book 6 of the Dutch Civil Code<sup>xlix</sup> holds that a person who commits a tortious act against another person that can be attributed to him, must repair the damage that this other person has suffered as a result thereof. A tortious act signifies a violation of someone else's right and an act or omission in violation of a duty imposed by law or of what according to unwritten law has to be regarded as proper social conduct, always as far as there was no justification for this behaviour. The law holds that a tortious act is attributable to a person if it results from his fault or from a cause for which he is accountable by virtue of law or generally accepted principles.

Furthermore, article 167 holds that when someone is liable towards another person because of an incorrect or, by its incompleteness, misleading publication of information of factual nature, the court may, upon a legal claim of this other person, order to publish a correction in a way to be set by court. Important is that the same applies if liability is absent because the publication of the information cannot be attributed to him as a tortious act for the reason that he was not aware of the incorrectness or incompleteness. In

such situation the court may order that the plaintiff who filed the legal claim must bear the costs of the proceedings and the costs of the correction, either in full or in part. For the part of the costs of proceedings and the costs of correction that each of the parties has to bear according to the court's judgment, each party may take recourse against all persons who are liable for the damage arising from the incorrect or incomplete publication. Article 168 states that

where a legal claim aims for an injunction to prohibit specific tortious behaviour, for example a journalistic publication, the court may reject it on the ground that this behaviour must be tolerated for compelling reasons of public interests. The injured party, nevertheless, remains entitled to claim damages. Newspapers can also be held liable for acts committed by a subordinate, a non-subordinate and a representative, for example a journalist employee working for them.<sup>1</sup>

When in 2005, the Parool published an article regarding a company and a town councilor who allegedly had connections to the Israeli mafia, the court ruled that taken into account the gravity of the matter, it should have taken extra precautionary measures and at least should have included the reply of the councilor and the company in its report.

**News stories can be tortious when they are:**

- Incorrect
- Incomplete
- Misleading

Rectification is the most common penalty.

### 2.2.9 *Amateur journalists and media privileges*

Media law is not only about responsibilities and liabilities, it is also about privileges. To begin with, the media benefits from a constitutional protection from censorship (see section 1). Moreover, journalists enjoy under national media laws various specific privileges with the goal to make their task easier and support the functioning of the media. Examples are rights of access to government information and the aforementioned privileges under data protection law or in criminal law procedures, such as the privileges in defence of defamation. A broadcaster-related privilege is e.g. the right to short reporting. The question of whether an amateur journalist qualifies for a media privilege can differ from country to country, from case to case and, of course, from privilege to privilege. For example, the German provisions that protect the right of journalists not to disclose their sources only apply to professional journalists.<sup>li</sup> The law of other member states might be more lenient on that question.<sup>lii</sup>

To the extent that amateur journalists perform similar functions as professional journalists, opening up traditional media privileges for amateurs seems a just and reasonable thing to do (see also the trend described in section 2.1.5.3. to acknowledge the contribution of amateur journalists). Upon a closer look, however, some caveats are in place. What are the consequences, if each of us indeed qualifies as journalist, together with millions of other amateur journalists? The result could place heavy burdens on third parties and public institutions.<sup>liii</sup> For example, while many national laws have granted journalists specific rights of access to government information, public institutions might become dysfunctional if every blogger on the Internet was permitted to spam public institutions with individual information requests, the more where the information requested is sensitive. Another example is press exemptions in national data protection laws. Member States may foresee reduced responsibilities regarding the processing of (sensitive) data, for journalistic, artistic or literary purposes.<sup>liv</sup> Extending these exemptions to all bloggers and creators of UCC in general (that is potentially the entire Internet population) could open the doors widely for massive abuses of personal data.<sup>lv</sup>

These are arguments in favour of limiting the scope of privileged parties. The difficult question, however, is where and how to draw the dividing line. Alternatives are an institutional approach (only employees of an official media company or members of a professional association qualify for privileges) or a functional approach (everyone who adheres to certain journalistic principles can be privileged).<sup>lvi</sup> A functional approach would also be in line with the case law of the European Court of Human Rights that stresses the importance of journalistic ethics in traditional and electronic media.<sup>lvii</sup> According to the European Court of Human

Rights, the safeguards of Art. 10 ECHR are not afforded automatically to the journalistic profession as such but only to those journalists that 'are acting in good faith and on an accurate factual basis and provide 'reliable and precise' information in accordance with the ethics of journalism'.<sup>lviii</sup> General principles along those lines could be elaborated under the premise that anyone who adheres to these principles should also qualify for privileges attached to journalism (see section 2.1.5.3 also pointing out that the European Court of Justice and the Dutch Hoge Raad tend to be more lenient in this respect).<sup>lix</sup>

First initiatives in this field are the Blogger's Code of Ethics and the Blogger's Code of Conduct which seek to adapt established journalistic standards for bloggers.

#### 2.2.10 *Conclusions*

There are a number of rules that apply to journalists. The most important ones can be found in data protection law and copyright law. Data protection law specifies that the personal data processed must be necessary, proportionate and based on a legitimate purpose such as the consent of the data subject or the overwhelming public interest. Copyright law specifies that the author of a text has control over his work and, among others, may ask compensation for the use of it.

There are exemptions to both rules, some specifically designed for journalists, and some more limited than others. Under copyright law, quoting from a text may be lawful even without the consent of the copyright owner if the quote is necessary for the purpose pursued and reasonable in proportion, and if the original source is indicated together with the name of the author. Under Data protection rules, journalists have a special status, exempting them, among others, from the notification requirement that obliges them to notify the data subject when his data is being processed.

Most relevant institutions do not define the concept of journalist very strictly nor do they limit the concept to professional or paid journalists. Rather, they hold that everyone can claim to be a journalist, and thus qualify for journalistic exemptions, even amateur bloggers, if they fulfill a journalistic role. Common criteria for determining whether an amateur must be considered a journalist are very few and far between, but they may refer to indicators as: Is the activity oriented towards (objective) collection and distribution of information? Is it a regular activity? Is the aim of the publication to raise a topic of social significance? Does the publication grant data subjects the right to reply or obtain rectification after publication?

## 2.3 **Legal and Ethical Responsibility of Newsrooms for the Contributions of Users**

### 2.3.1 *Introduction*

The previous section has provided an overview of the main legal requirements from data protection law, copyright law, criminal and civil law, journalistic content has to comply with, including amateur content. A question of considerable practical importance for the daily routine of newsrooms is the extent to which they can be held liable for the compliance of UGC with aforementioned rules. The following section will explore to what extent news providers can be held responsible for UGC that is in conflict with the legal order and/or ethical rules (journalistic codes of

conduct), and what the role of technological solutions can be in increasing or reducing the risk of legal liability.

The way this part will proceed is the following: after a brief explanation of how a) amateur journalists and b) professional newsrooms can be held liable for the contributions of users according to the principles of primary and secondary liability, it will explain under which conditions newsrooms can benefit from legal liability exemptions. The effect of such exemptions is that newsrooms cannot be held responsible for the contributions of amateurs. As the section will also show, however, the level playing field for newsrooms is narrow, and the more journalists and editors get involved with initiatives to safeguard the quality and lawfulness of UGC, the more likely it is that they can be held responsible for UGC that does not conform to the legal requirements. After a discussion of the general, so-called “hosting exemption” from the European E-Commerce Directive, examples of national, press-specific exemptions will be discussed. A particular focus of attention in the analysis is how the implementation of technological solutions to safeguard quality and lawfulness of UGC can impact the interpretation of the legal rules.

### 2.3.2 *Legal responsibility for UGC*

#### 2.3.2.1 *Responsibility of the original author*

Each author herself is responsible for the quality and lawfulness of a contribution. This is also true for amateur journalists, even if qualifications might be in place considering their lack of professionalism, expertise and legal knowledge.

Having said that, in practice and especially in the case of UGC, it can be impractical and or even fruitless to hold the amateur journalist responsible. In many instances, it will be already difficult for aggrieved parties to get a hold of the responsible amateur, either because they write under nicknames, or because they are located in another country. Even if it is possible to get hold of the original author, this might not always be the most opportune and effective way for the victim to be set to its rights: because of amateurs’ limited solvency and financial resources, but also their potential inability to comply with e.g. the request for rectification (the placing of which is reserved to the newspaper). Because of this, an aggrieved party might prefer to seek redress not from the individual amateur journalist but from the news provider that has published the article. This raises the questions of the legal and ethical responsibility and liability of news provider for contributions from users.

#### **Responsibility**

It is in the first place the amateur journalist who is responsible for the lawfulness and quality of UGC. Because of practical, strategic and legal reasons, however, aggrieved parts may prefer to direct claims at the news provider.

#### 2.3.2.2 *Responsibility of news providers*

News providers can be held liable for the contributions of users on the basis of various grounds:

*According to the general principles of criminal or civil responsibility*

In criminal law, if one person assists another one in committing a crime or offence, she can be held liable for the actions of the other according to the principles of secondary liability. For example, if a news provider offers users a platform to publish defamatory material, a judge can consider secondary liability of the news provider. Similarly, in civil law, liability for the actions of third parties can be construed e.g. on grounds of the failure to prevent certain violations while having a legal duty and the possibility to prevent them. One famous example of particular relevancy for UGC is the German concept of “Störerhaftung”. According to the principles of “Störerhaftung” everybody who contributed to an infringing behaviour, guiltily or not, or who has not done what was necessary and possible to avoid infringing behaviour can be required to put an end to that behaviour. The concept of Störerhaftung has been repeatedly used to order UGC platforms to remove infringing material, even if the operator of that platform did not post that material (Kartal-Aydemir & Krieg, 2012: pp. 647-652). Similar concepts exist in other countries, such as the concept of “maatschappelijke onzorgvuldigheid” in the Netherlands.<sup>ix</sup>

*According to media-specific rules*

Some national criminal and civil laws know media-specific rules that sanction e.g. the dissemination of unlawful or harmful material, even if it is material that originates from independent third parties. Section 2.2.7 already discussed Articles 53, 54 and 54a of the Dutch Penal Code. According to Art. 132 of the Dutch Wetboek van Strafrecht (Dutch Penal Code) a news provider can be held liable for the dissemination of publications that incite unlawful behaviour or resistance against the public order.<sup>ixi</sup> The Dutch Civil Code (Burgerlijk Wetboek - BW) speaks in article 6:167 of the liability of the press for misleading publications (because of their incorrectness or incompleteness), and grants aggrieved parties a right to rectification. Belgium knows the concept of “press delict” (“drukkersmisdrijf”), a concept that has been shaped primarily through case law (Mampaey & Werkers, 2010: p. 148). And also in Germany, press specific delicts exist. One example are the specific duties of editors and publishers to monitor publications and make sure that they are free from illegal content.<sup>ixii</sup> Failure to comply with this duty can even result in liability for the content that originates from others.<sup>ixiii</sup> Similar principles exist in other European member states.<sup>ixiv</sup>

*According to ethical rules*

As already explained in section 2.1.5, the press and its publications are subject not only to legal but also to ethical obligations, which are commonly laid down in self-regulatory instruments such as press codes. This also means, however, that the responsibility of the publisher can be the result of not only legal, but also of ethical rules. The Dutch Leidraad of the Raad voor de Journalistiek, for example, determines that the *redactie* is principally responsible for the content of readers' letters and reactions.<sup>ixv</sup> Similarly, the Belgium Raad voor de Journalistiek determined that the *redactie* is responsible for UGC. News in particular must be treated according to the general principles of journalistic work, notably the source check. But also with regards to opinions, the redactie can be held co-responsible.<sup>ixvi</sup>

### Accountability

News providers can be held accountable for the contributions for amateur journalists on various legal and ethical grounds.

#### 2.3.3 *Liability exemptions*

There are, however, good reasons to argue that the press cannot and should not be responsible in full for UGC, for instance economic ones. The integration of UGC can create incalculable economic and legal risks for newspapers, and thereby deter the press from further engaging with UGC. Clearly, this would be an undesirable outcome of the normative framework, and one that would forgo the potential of UGC to aid newsrooms and to improve the acceptability and popularity of the press with its audience. Then there are fundamental rights reasons. Confronting the press always and fully with the responsibility for the activities of amateur journalists can easily result in chilling effects or even private censorship. In the worst case, the press will, as it already happens, not any longer use or allow UGC on its sites, which again could be detrimental to freedom of expression, media diversity, the presentation of independent and local voices and the public discourse in general (see also section 2.1.5.2). Finally, there are practical reasons. It is simply not realistic to assume that the press is able to monitor and control all user contributions in the same way as it does with its own editorial content. Laws should not impose disproportionate or impossible obligations. In other words, in order to avoid that news providers are confronted with incalculable risks when using and publishing UGC, limitations to their responsibility and legal liability are necessary. Over the course of time, a number of such exemptions have developed.

##### 2.3.3.1 *Hosting exemption*

The first and probably most prominent limitation of liability for third party contributions stems from the E-Commerce Directive.<sup>lxvii</sup> As the European Commission observed, limiting the liability of certain services for the lawfulness of third party content is

*'indispensable to ensuring both the provision of basic services which safeguard the continued free flow of information in the network and the provision of a framework which allows the Internet and e-commerce to develop' (European Commission, 2003: p. 12-13).*

This is the reason why the E-Commerce Directive stipulates liability exemptions for three categories of activities of information society service providers: the provision of access (ISPs), caching and hosting (storage) in its Articles 12-14. Most member states have transposed the respective provisions quite literally (European Commission, 2003: p. 13). In the Netherlands, the rule has been implemented in Art. 6:196c (4) of the Dutch Civil Code (BW).

Article 6:196c (4) BW, as well as Articles 12-14 of the E-Commerce Directive are horizontal in nature, meaning that they cover different types of illegal content (content that infringes copyright laws, defamation laws, provisions on the protection

of minors, privacy laws, unfair commercial practices, etc.) as well as different kinds of liability (civil/criminal as well as direct/indirect liability) (Schellekens, 2001: p. 216). In this respect, the legal situation in Europe differs from that in the US, where different liability (exemption) regimes exist for different kinds of liability (van Hoboken, 2008: pp. 7 and 12).

The provisions do not deal with ethical responsibility, which is subject to self-regulation, e.g. in the press codes. It is important to realise that Art. 6:196c (4) BW (as well as its counter articles in the E-Commerce Directive) determines the conditions under which liability is excluded. The provision does not establish liability. This is a matter for the national rules on copyright law, data protection law, etc. that were described earlier. Provided an information service provider qualifies e.g. as host he cannot be held liable for the lawfulness of third party content until he acquires actual knowledge of illegal activities or information. Once he does so, e.g. because he has been notified by a rightsholder or aggrieved party, he must act 'expeditiously' to remove or to disable access to the infringing information (the so-called 'notice and take down procedure') in order to still benefit from the liability exemption. Otherwise, he can be held fully liable for third party contributions according to the general rules.

Regarding the applicability of the hosting exemption it is important to note that the original target of the liability exemptions were services that operate neutral with regards to the content that they transport. Hosting services in the sense of the E-Commerce Directive are services whose activities are

*'of a mere technical, automatic and passive nature, which implies that the information society service provider has neither knowledge of nor control over the information which is transmitted or stored' (recital 42 of the E-Commerce Directive).*

The reasoning behind the provision is that it would exceed the technical, personal and financial capacities of certain services to force them to monitor the activities of their users. It, moreover, would expose them to incalculable legal and financial risks that stand in no relation to their actual business model. Typically, this is the case for services with no or limited involvement with the content of third parties, such as email or web-hosting services, that is services that rent server space for certain web applications. To the contrary, the press is almost per definition concerned with the content. This triggers the question of whether there are still situations in which the press could be considered a host, and not publisher of UGC.

#### 2.3.3.2 *When does the hosting exemption apply*

The question of the conditions under which traditional or new media platforms still qualify as hosts rather than as publishers of UGC is not an easy one to answer. It can certainly not be answered in general; the decision will depend on the individual business model of a news provider and the manner in which it integrates UGC. As a general rule: the more a publisher is involved with the content that it hosts, the less likely it is to qualify as hosting service. The difficult question is to determine the turning point at which UGC platforms are not any longer mere hosts, but 'publishers' in the sense of national media laws (with the consequence that they can be held fully responsible for the content posted by users).

The literature and, to the extent they exist, court judgements are divided about this question. Probably the least problematic are situations in which a service actively monitors and selects user generated content before placing it on the site, or, according to a definition provided by a French Court, “*determines the contents made available to the public from the service it created or is in charge of*”.<sup>lxviii</sup> Such services do more than mere technical hosting, they have control over the contents stored and it is likely that courts will find that they do not qualify for the application of the hosting exemption, with the consequence that they will be treated as publishers who are in principle fully responsible for contents of third parties (but see also section 3.3.2) (Jürgens & Veigel, 2007; Jondet, 2008). This is also the case in situations where newsrooms are directly involved in the editing of content but also prioritizing content on the website. Examples are the services from NOS, RTL News, Volkskrant, NRC, Telegraaf or Trouw, who all engage professional journalists or editors to filter and select the content, or outsource these activities to specialised companies such as Novia Facts. Less clear is the case for e.g. Barneveldse Krant, Nu.nl or Dichtbij, which do not engage in pre-moderation. Arguably, their post- moderation strategy is in line with the requirements of the hosting rules, and cannot be considered editorial involvement. Having said this, the fact that e.g. Dichtbij employs special community managers’ to screen material after it has been uploaded, to remove where necessary unlawful or offensive material but also to invite users to add new material is clearly a form of editorial involvement with the content itself. Arguably, also the type of UGC can matter. While the press traditionally distances itself from the so called reader’s letters, this could be different for UGC that reports on newsworthy events and is thus much closer to the original mission of the press. Here, the press has traditionally a vested interest in guaranteeing a certain quality standard, making editorial involvement with UGC more likely.

UGC sites that present user generated content as part of their own content offer do no longer qualify for the hosting exemptions.<sup>7lxix</sup> This may explain why especially traditional media tend to separate UGC from their general news offering and the main website. Similar, in situations where UGC is presented alongside own editorial content, like for example in the case of Dichtbij.nl, UGC becomes a part of the news provider’s offer, with the consequence that the hosting exemption no longer applies. Something different is probably only the case where the news provider clearly separates UGC, for example by creating a specific website, making clear that the content posted there originates from users and has not in any way been edited.

More controversial is the question of whether already the fact that a site offers rough structures for users in which to place their contents would be an indicator of direct involvement with the content and speak against the qualification as mere storage service.<sup>lxx</sup> In other words, by providing different formats for user participation, like blogs, electronic travel journals, Q&A sessions, polls, have your say’s etc., news providers could provide courts with an argument not to apply the hosting exemption. Much will depend on the interpretation of national courts. In the French MySpace case, for example, the Court of First Instance, Paris, found that offering a specific, frame-based, structure for members to present their personal

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<sup>7</sup> In this sense e.g. OLG Hamburg, Urteil v. 26.09.2007 (Haftung für fremde Bilder-Uploads), Application No. 5 U 165/06. This may explain why, as explained earlier in this paper, especially Traditional media tend to separate UGC from the general news offering and the main website of the media companies. (Pankoke 2000)

information and adding advertisement to the individual sites was a reason to consider MySpace a publisher (instead of a hosting service).<sup>lxxi</sup> In another case, the Court of First Instance claimed the opposite, that not the structure or presence of advertisement was relevant, but whether the user or the operator of that platform were "at the origin of the dissemination".<sup>lxxii</sup>

It has been argued that UGC platforms that invite particular types of content, e.g. content with regards to a particular theme or region or events, do not qualify as hosting services (Holmes & Ganley, 2007).<sup>lxxiii</sup> In this sense, where newsrooms approach selected amateur journalists to write about particular topics, this is for courts in all likelihood a reason to argue that it cannot take recourse to the hosting exemption for UGC stored on its site. Similarly, to the extent that platforms invite specific topical contributions to post personal stories and photos about collectible cars, or to submit travel reports to, this may go beyond mere hosting.

There is some controversial discussion of the question of whether the fact that a UGC platform earns revenues with the content itself (e.g. by reselling it to third parties) rather than with the hosting of such content already excludes the application of the liability exemptions for hosting services.<sup>lxxiv</sup> This could be true for a number of UGC sites that use the platform for talent scouting and selling material to news agencies, like the (former) Dutch platform Skoeps. In the same vein, reserving rights to the UGC can be considered an indicator of editorial involvement, certainly where news providers such as NOS and SBS require a complete transfer of copyrights.

An interesting, and in the context of this project obviously relevant question is to what extent 'user executed control' (like rating, labelling, reviewing, or correcting) over the content can be attributed to the operator of the UGC platform with the effect that it disqualifies the site for the application of liability exemptions. Much will depend on how the relationship 'user-newsroom' is organized, and if the user can be said to be commissioned or otherwise instructed by the newsroom, or whether users act more or less independently.<sup>lxxv</sup> For example, in the case of the French UGC site AgoraVox, amateur moderators attain the moderator status automatically after having published more than four stories, which could be an argument against attribution. Having said this, the platform instructs the amateur moderators on the criteria to use when voting and commenting on stories, which could be made an argument in favour of attribution.

### 2.3.3.3 *Technical solutions and the hosting exception*

Another question that is of particular practical importance are the implication of technological solutions such as (voluntary) filtering or search measures for the application of the hosting exemption. This is, again, a difficult and controversial question since the application of (voluntary) filtering technologies could be a means to reduce the (risk) of liability for third party content. The application of technical measures, however, could also be a reason for not applying the hosting exemption at all.

It should be noted that any obligation for hosts of user generated content to apply filtering technologies must observe Art. 15 of the E-Commerce Directive, which prohibits the imposition of general monitoring duties. In other words, news providers that simply "host" UGC are not obliged to monitor all UGC upon its lawfulness. This does not take away that national legislators can require hosts to apply specific duties of care "which can be reasonably expected", as long as these do not amount

to a general monitoring obligation.<sup>lxxxvi</sup> And indeed, a tendency can be observed in national legislation and case law to expand the duties of care of hosting providers and ISPs. Part of that strategy is to impose filtering measures in order to prevent future infringements (injunctive relieve).<sup>lxxxvii</sup> For example, in France, a court held Daily Motion liable for damages on ground of its failure to implement technical filtering technologies.<sup>lxxxviii</sup> In Belgium, a Belgium Court ordered an ISP to apply far-reaching filtering measures.<sup>lxxxix</sup> Judgements in the Netherlands and Denmark concerned the (automatic) blocking of access to particular websites that distribute, inter alia, unlawful material.<sup>lxxx</sup> Similarly, legal initiatives in France and the UK foresee the opportunity to order the technical blocking of access to unlawful content.<sup>lxxxi</sup> In addition, the industry pressures intermediaries to apply voluntary filtering obligations. For example, according to the so called User Generated Content principles, a self-regulatory initiative between major rightholders and UGC sites,<sup>lxxxii</sup> services hosting UGC are required to “use effective content identification technology (“Identification Technology”) with the goal of eliminating from their services all infringing user-uploaded audio and video content for which Copyright Owners have provided Reference Material.”<sup>lxxxiii</sup> In exchange, and on the condition that such effective filtering technology is being used, copyright holders commit to not assert claims of copyright infringement against such UGC Service.<sup>lxxxiv</sup> Vice versa, in another case, a French court considered that GoogleVideo did everything necessary because it applied technical filtering technologies.<sup>lxxxv</sup> In other words, the application of filtering technologies could also be a way for news providers to comply with its legal duties as a “host”, reducing its risk of being held liable.

Because case law is binding in the first place only upon the parties to the case, and because court decisions can differ from court to country to country, and even from court to court, it is difficult to predict how a court will decide in another case. This further highlights the need for more legal certainty, also and especially for newsrooms. More legal certainty, for example through legally mandated rules is also desirable for another reason: The (voluntary) application of technical solutions can also “backfire” on hosts to the extent that it creates new legal risks. Apart from potential privacy, copyright and contractual concerns, the most obvious risk is that a host who applies filtering technologies might not qualify any longer for the application of the hosting exception, with the consequence that he can be held fully liable for third party content. To begin with, if a host used filtering technologies to pre-select material with the goal of facilitating editorial decisions, one may already doubt whether he then would still qualify as a host (and be considered a publisher instead with the result that he is responsible for the third party content). This is particularly so since the European Court of Justice just recently confirmed that the notion of “host” needs to be interpreted narrowly, namely in the sense that “the role played by that service provider is neutral [...] its conduct is merely technical, automatic and passive, pointing to a lack of knowledge or control of the data which it stores.”<sup>lxxxvi</sup> In this context the application of technical filtering technologies can play a role for the assessment.<sup>lxxxvii</sup>

This demonstrates a fundamental flaw with the European liability rules: they discourage the application of any voluntary measures to manage and control UGC (and third party contributions more generally) upon its quality and lawfulness. What is missing is a rule saying that the application of voluntary measures to improve the lawfulness and quality of UGC does not lead to a loss of the safe harbour protection, similar to the “Good Samaritan” provision that exists in US law. No

comparable rules exist in Europe yet. Clearly, also in Europe, more legal certainty and the creation of positive incentives to engage in quality control is needed.

#### 2.3.4 *Press-specific exemptions*

User generated content is no new phenomenon in the press and media sector. Reader's letters, commentary, announcements and users in live shows have even before the internet held their place in the professional press. Not new is hence also the dilemma that user participation forms for the press. Because such content is produced outside of the control of newsrooms, is often sent unrequested and upon initiative of the amateur, and because even traditional reader letters, etc. easily reach unmanageable proportions, there was also at the level of the member states already from early on and far before the E-Commerce Directive the need to determine the extent to which the professional press can be held accountable for amateur contributions. Accordingly, national legal systems have developed diverse ways of dealing with this problem. With the arrival of web 2.0, the question got even more pressing, and also here first initiatives to tackle the question have been developed. The following section will examine if, and if so, how the legal and ethical systems in the Netherlands, Belgium and Germany deal with old and new forms of UGC.

##### 2.3.4.1 *The Netherlands*

The Dutch Press Council did address the issue of (ethical) responsibility for UGC. Similar to the Press Council in Belgium, it determined that news editors are principally responsible for reader's letters and other reactions placed on a newspapers' website. The Council, however, also acknowledges that seeing the nature of the internet the editor cannot be expected to control all user contributions in advance.<sup>lxxxviii</sup> Still, also in the Netherlands, editors are burdened with (limited) pre- and post-moderation duties.

If the editor decides to publish a users' contribution (a decision that is up to the editor) and that contribution expresses a serious accusation or defamatory remark, the editor is obliged to check whether there are reasons to believe that the accusation is true. The person accused has to be granted a right to reply, and in case the accusation proves ungrounded, the editor is obliged to remove the contribution (sections 5.3 and 5.5. of the Leidraad). In other words, the press has a duty to check UGC before or after the publication for evidently unlawful contributions (in the Netherlands restricted to defamation and libel). If such content is being identified, the press has the obligation to verify the claims made, or otherwise remove the content. Technological solutions, provided they can be sophisticated enough, could play a role in helping editors to identify critical content for further checking. Finally, it should be noted that the Dutch Press Council distinguishes between commentary on editorial articles and other contributions. In case of the former, the editor is expected to react only upon request, whereas else the obligation exists irrespective of whether there has been a request or not.

The Press Code does not specify the legal or ethical consequences if the editor does not comply. Partly this can be explained by the lack of a legal mandate for the Council. Another part of the explanation could be that the provision is "work in progress" and clearly requires further fine-tuning. Also, unlike the Belgium Press Council, the Dutch Press Council does not give any guidelines to editors of what exactly its duties of care are, if there is a difference to be made between news and

opinions, and how editors could give form to their responsibility. What would, for example, be the legal/ethical consequences of using filters? Also the relationship between sec. 5.3 (accusations in general) and 5.5 of the Leidraad (accusations and defamatory content in response to editorial articles) is more than unclear.

It is worth noting that the Dutch Press Council recommends that the editor makes transparent the criteria for selection and publication of UGC. Publishing the selection criteria is certainly a way to inform amateur journalists and to contribute to better and more useful UGC (section 5.1 Leidraad).

#### 2.3.4.2 *Belgium*

Belgium knows a press-specific exemption from (civil as well as criminal) liability in no lesser law than its Basic Law. Goal of the provision is it to discourage private censorship of press content from publishers, printers or distributors (Mampaey & Werkers, 2010: 148; Voorhoof, 1996: 389). According to Art. 25 (2) of the Belgium Basic Law, publishers, printers or distributors (of press products) cannot be held liable for third party contributions provided that a) the author is known and b) is resident in Belgium. The rule does, of course, not apply in situations that the publisher has acted as co-author or has actively contributed to the unlawful character of the publication (Mampaey & Werkers, 2010: p. 153). The provision is horizontal in nature in that it exempts from civil as well as criminal liability, but restricted in scope to the extent that it only applies to publishers, printers and distributors and not, for example, to the editor. Also, it does not apply where the original author is unknown or not resident in Belgium and aggrieved parties will find it more difficult or even impossible to direct their claims directly at the author.

Yet unclear is to what extent the provision is also applicable to internet publications. There seems to be a growing tendency in case law as well as legal scholarship to accept the applicability of the provision to online publications (Mampaey & Werkers, 2010: p. 155).<sup>lxxxix</sup> As Mampaey and Werkers, however, also point out, the application of Art. 25 G.W. to online publications creates some practical difficulties and legal uncertainties. Online, the distinction between the roles of authors, publishers and distributors is more difficult to make. They also state in an *contrario* argument that in the event that authors operate from outside Belgium, publishers can be held responsible, and that this is a situation that is of course rather common in the 'world wide web'. This could lead to a disadvantage for Belgium providers of online press content. Finally, for authors in an online environment it is far easier to remain anonymous, making Art. 25 B.W. a less useful instrument for publishers online (Mampaey & Werkers, 2010: p. 154).

Unlike Art. 25 G.W., the guidelines of the Belgium Press Council over the use of User Generated Content<sup>xc</sup> are less forgiving. They burden not publishers but news editors with in parts rather far-reaching responsibilities for UGC. The Press Council distinguishes between news content and opinion and commentary. With regards to news content, the Council determines that editors (not: news providers) are to be held fully responsible for the publication. It is important to realise that the guidelines deal with ethical responsibility, and are in themselves not able to establish legal responsibility. The guidelines are no formal law but a piece of self-regulation. Still, they could be used by judges to assess the scope of the (legal) duties of care to be applied.

With regard to opinion and commentary, the Belgium Press Council holds that the responsibility is, first of all, with the author but that editors, too, can have a co-responsibility for the “proper management of the forum.” The Council also makes concrete suggestions of how editors could give form to this responsibility, namely through pre-monitoring (checking incoming contributions before their publication upon their suitability and permissibility at the forum), active moderation (checking and selecting suitable contributions, with only selected contributions being accepted for publication), as well as post-monitoring (removal of unacceptable content after it has been published). In this context, the Council explicitly mentions the use of electronic filtering technologies to deny access to unsuitable contents<sup>8</sup> as a means of how editors could fulfill their duties of care. In so doing, the Council anticipates a future in which such tools are indeed effective enough. However, as will be discussed in chapter four, this is not yet the case. Moreover, in the Council’s view contributions may be published only under exceptional circumstances anonymously. Editorial boards are thus obliged to collect and store identification and contact details of (amateur) authors. This could be done, for example, by way of a registration process, as already used by some newsrooms. Another question is how accurately newsrooms can and/or should be able to identify users’ identities.

#### 2.3.4.3 Germany

Germany, too, knows press-specific liability exemptions, and for similar reasons as in Belgium. In particular, duties of journalistic care may not result in inhibiting the free exchange of ideas and opinions.<sup>xci</sup> An additional argument is that it is considered unfair to reallocate the primary responsibilities of the original author to news publishers and editors (Rhode, 2004: p. 123). Moreover, it is generally acknowledged that at least the news provider cannot be expected to control the content of a newspaper. This argument is also used in the context of the hosting exemption.<sup>xcii</sup> Instead, the liability of the publisher in general depends on how well he delegated control tasks and instructed his editors accordingly (Pankoke, 2000: p. 77).<sup>xciii</sup>

An important aspect for the legal responsibility for UGC in Germany is whether the media presents the contributions of amateur journalists quasi as their own (“sich zu eigen machen”),<sup>xciv</sup> or whether they clearly identify a user contribution as such. In broadcasting, the fact that the broadcaster broadcasts user contributions can in itself not yet be interpreted as an indicator that the medium wishes to present the UGC as own content.<sup>xcv</sup> For the press, much will depend on the form of presentation.<sup>xcvi</sup> The journalist or the press must clearly act as intermediary for the publication of someone else’s contribution. For the presentation of UGC this would mean that the press must make sure to clearly identify UGC as such, and clarify that contents provided by users are not editorial content (unless, of course, it is intended to integrate UGC into the own editorial offer, in which case full liability would apply). Another aspect is whether the identity of the original author is known or can be identified with the consequence that an aggrieved party has the possibility to directly turn to the author (Pankoke, 2000: p. 81). Identification could take place by, for example, by requesting a working email address but also, as it already happens, by linking towards a user’s account at a social network, such as Twitter, Hyves or Facebook.

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<sup>8</sup> Other techniques mentioned to comply with the newspapers duties of care include registration requirements, the use of terms of use and user guidelines, report buttons, and pre-moderation and active monitoring of the discussion about sensitive issues.

Regarding contributions from users, such as reader's letters, to which UCG is arguably comparable, the press can principally be held responsible as distributor of unlawful content (Rhode, 2004: p. 122),<sup>xcvii</sup> and the press' ethical rules need in principle to be observed.<sup>xcviii</sup> The responsibility is a limited one, however, so that only reduced duties of care apply. They are limited to evident, serious conflicts with the legal order ("Evidenzkontrolle") (Rhode, 2004: p. 123).<sup>xcix</sup> The operator of the online forum is responsible for the removal of infringing content from the moment that he has knowledge of it.<sup>c</sup> In other words, unlike in situations that the hosting exception applies, the press has certain pre-moderation duties, albeit limited ones. Providing a technological solution would enable editors to effectively filter evidently unlawful contributions, arguably, using such a filter could be a means to comply with the (reduced) duties of care.<sup>9</sup> Of course the question is what "effective" is in this context.

Interesting, and unlike in Belgium where Art. 25 G.W. is widely considered to not apply to radio and broadcasting, German law knows particularly far reaching liability exemption for user generated broadcasting content in the context of e.g. talk shows. According to the BGH "Wo das Fernsehen als Veranlasser oder Verbreiter einer Äusserung zurücktritt und - etwa im Rahmen einer gar "live" ausgestrahlten Fernsehdiskussion - gewissermassen nur als "Markt" der verschiedenen Ansichten und Richtungen in Erscheinung tritt, widerspräche es dem Wesen des Mediums und seiner Funktion, es neben oder gar anstelle des eigentlichen Urhebers der Äusserung in Anspruch nehmen zu können. Eine der wichtigsten Aufgaben von Rundfunk und Fernsehen ist, der Meinungsvielfalt die Möglichkeit zur Darstellung zu geben und gerade auch Minderheiten zum Wort zu verhelfen; vornehmlich zur Gewährleistung dieser Möglichkeit ist durch Art 5 Abs 1 GG die Rundfunkfreiheit (die auch das Fernsehen schützt) verfassungsrechtlich garantiert."<sup>ci</sup>

In other words, the court acknowledges that one of the functions of broadcasting media is to serve as a forum for diverse expression. This forum or "market place of ideas" function requires that broadcasters are left with some room to make space for contributions of third parties without holding the broadcaster responsible next or instead of the author of potentially unlawful (here: defamatory) statements. The question is if these principles can also be applied to the press<sup>10</sup> or online content on e.g. an internet forum. Regarding the later, the BGH denies this possibility with the argument that unlike in the event of live-shows in broadcasting, the operator of an online forum is "Master of the Offer" in that he can remove unlawful content (post moderation) in order to prevent the perpetuation of the infringing activity.

The German Press Council has not issued so far any guidelines or opinions regarding citizen journalism and the responsibility of publishers and news editors for the journalistic quality of UGC.

<sup>9</sup> See e.g. Art. 3 (2), second sentence of het GJSM, according to which the use of technical measures can be a means to avoid legal liability according to the provisions that prohibit making harmful content for minors available. According to Art. 8 (3) MDStV the distribution of on demand services that are potentially harmful for minors is only permissible if technical blocking possibilities are employed. See also above the description of the Principles developed by the Belgium press council.

<sup>10</sup> In this sense e.g. District Court Düsseldorf, AfP 1999, 518 (519) (Musterdepot).

Table 4: International analysis of UGC related regulations.

	Press-specific exemption from legal liability	Applicable to UGC?	Press-specific exemptions from ethical responsibility	Applicable to UGC?
Belgium	Art. 25 (2) G.W.: publishers not responsible if author's name known and resident in Belgium	Probably yes, though criteria do not fit particularly the online environment well	Editorial board fully responsible for news content Opinion and commentary: duty of "proper management of the forum" Use of filters one possible way to comply with that duty	Yes
Germany	Reduced duties of care for reader's letters, announcements, etc. ("Evidenzkontrolle"), developed in case law, if knowledge: obligation to remove unlawful content Further reaching liability exemptions for broadcasting	Probably yes  Probably no	Specific provisions with regards to reader's letters  No specific provisions with regards to UGC	Unclear
The Netherlands			Defamation + fact check and right to reply Transparency of selection and publication criteria for UGC required	Yes

### 2.3.5 *Conclusions*

In practice, the question of who is responsible for the lawfulness of UGC is particularly important. It is possible and rather likely that when actively involving amateur journalists, and possibly using technical solutions in the process, newspapers that “host” UGC on their sites will lose the protection of the safe harbour rules, as they are no longer considered neutral hosts with regard to the content. The hosting provisions in the E-Commerce Directive, and the national rules implementing it, do not fit well the situation of newspaper. As a result, fitting newspapers under the hosting rules not only stretches the meaning of the original rules, it also creates strong disincentives for the press and other hosts of UGC to engage into any form of pre-moderation and quality control. Insofar regulatory action is desirable. One example is the introduction of a rule saying that any voluntary attempts to improve the quality of UGC do not turn “hosts” of UGC into speakers or publishers, or foreclose the application of the hosting exception, comparable to the “Good Samaritan” rule in the US. The problem has been signalled in the context of the review of the E-Commerce Directive.

The fact that newsrooms cannot claim the protection of the hosting exemptions, however, does not necessarily mean that they will be held fully responsible for the lawfulness and journalistic quality of UGC. Holding the press fully responsible for UGC, i.e. to the same degree that the press is responsible for its own (professional) editorial content, would not only exceed the practical possibilities of the press. It would also have a chilling effect on the integration of amateur journalism. In the worst case, it would result in private censorship and in abandoning the amateur as potentially useful, critical and independent source of news content. Courts, regulators and press councils have acknowledged this already long ago. In response, most of the national legal systems examined have known for some time now press-specific exemptions from the legal responsibility of newspapers for users’ contribution. Exemptions from legal liability vary from complete exemption (Belgium) to reduced duties of care (German) for announcements and reader’s letters.

The question is to what extent these rules and principles also apply to UGC? In other words: is UGC comparable to e.g. readers’ letters? This, of course, also depends on the form of UGC in question. Contributions on forums, blogs or dedicated UGC sections that express opinions, possibly in response to an editorial article are, one might argue, the online version of a reader’s letter. As opposed, user contributions that report news come closer to the mission of original editorial news content. Insofar, the distinction that the Belgium Press Council handles between opinion and commentary on the one hand, and news on the other, seems reasonable, as is the requirement that the press carries heavier journalistic duties with regard to “user generated news”. In many instances, this is consistent with the press’ own ambition to present quality news content, be it their own or such that is provided by amateur journalists but that contributes to the overall mission of the paper. On the other hand, it is also exactly in this area, which is one of the core functions of the press, that exaggerated duties of care would have a chilling on press freedom.

In contrast, the ethical responsibility for UGC tends to be organised more strictly, with press codes holding editors principally responsible and defining limitations of journalistic duties more narrowly. In the Netherlands, the Raad voor de Journalistiek

has specifically addressed the issue of UGC and declared editors principally responsible. Though the Council does not impose a general pre-moderation obligation, it does stipulate that editors must check UGC for libel and defamatory content. Unclear is it to what extent editors in the Netherlands are responsible for other possible conflicts with ethical or legal norms. More generally, the relevant section 5 in the Leidraad of the Dutch Press Council addresses the topic only partly, and leaves many questions open. Arguably, the Belgium concept of full liability for news content and a “duty of proper management of the forum” for opinion and commentary offers more certainty than the Dutch rules do.

Unclear is the relationship between legal and ethical exemptions from responsibility/liability. There seems to be a clear contradiction or incoherency between self-regulatory stipulations in the press codes that require a certain level of pre-moderation, and the hosting exemption in the e-commerce directive. Also, the responsibility of news editors for making sure that UGC is in compliance with the ethical rules is often more far-reaching than the responsibility to guarantee compliance with legal norms.

An important aspect in the context of this project/report is the extent to which technical solutions, providing they are effective and intelligent enough and respect the rights and freedoms of others, notably amateur journalists, could be a means for newsrooms to comply with their duties of care with regard to amateur journalism. Provided technical tools were able to identify UGC that is potentially libellous, defamatory, in breach with copyright and privacy rules, etc., these could help news editors to comply with their ethical pre-moderation duties with regards to UGC. Legal or self-regulatory guidance is desirable that clarify a) to what extent automated filtering can be a means to comply with ethical or legal duties, b) what the necessary requirements are regarding the level of technical sophistication of the tool, c) to what extent additional duties to check content manually exist after a technical tool has made a first pre-selection and d) what the effect of using the tool is for legal and ethical responsibility.



## 3 Making User generated News Work – in practice

This market overview – based on the analysis of the websites of fifteen Dutch news providers and six interviews with chief (online) editors – will focus on:

- The different types of UGC being used by news providers.
- Strategies for incorporating UGC in the production process.
- The value that news organizations ascribe to UGC.
- The issues regarding the use of UGC.
- The ambitions and future plans regarding the use of UGC.

### 3.1 Types of User Generated Content

All fifteen news providers allow their users to participate – at least – at a low or medium level, see Table 5. The table shows the different types of UGC: Q&A (when input and interaction from users is publicly available as opposed to (e-mail) or prefixed Q&A's with no actual user participation), comments, text/blog posts, tips, photos, videos, forum, chat. The table shows that some types of UGC are being facilitated on a majority on the websites, while other types of UGC are only limited available. The categorizations from chapter one illustrate how various types of participation (curation, communication, etc.) are possible. However, most forms are rather limited, which leads to the fact that 'curating' and 'communicating' on most websites is not possible for users.

Users can comment on news items on every website. Polls and Q&A's can be found on most of the websites, although only Telegraaf and Trouw actually publish the questions and response from the newsroom (or they let other users answer the questions). High level participation is more scarce. The possibility to upload blog posts, articles, photos and videos directly to the website are less frequently facilitated and some websites have combined this feature with a more traditional way of interaction between users and the newsroom: a tip. In some cases users are only able to alert the newsroom when something newsworthy happens via a short message. In other cases users can add texts, photos or videos. However, these contributions are not automatically posted on the website. They will be used as a news source – like any other news source – as will be discussed more elaborately later. There is only one website that hosts a designated forum or enables users to chat with each other. This website, typically, functions more as a social network rather than as a typical news provider.

Table 5: Different types of UGC on the websites of news providers.

UGC types / News provider	Q&A	Comments	Text/ Blog post	Tip	Photo	Video	Forum	Chat
NOS		X		X	X (tip)	X (tip)		
RTL Nieuws		X		X	X			
Hart van Nederland		X		X	X (tip)	X (tip)		
Omroep Brabant		X		X	X (tip)	X (tip)		
De Volkskrant		X						
NRC		X	X					
NRC Next		X		X				
Telegraaf	X	X	X	X	X (tip)	X (tip)		
AD		X		X				
Trouw	X	X	X	X	X			
Barneveldse Krant		X	X	X	X	X		
NU.nl		X	X	X	X	X		
GeenStijl		X		X	X	X		
Marokko.nl		X	X		X	X	X	X
Dichtbij		X	X	X	X	X		
Total	2	15	7	12	11	9	1	1

The fact that many types of UGC are facilitated and used on many websites does not mean that news providers have implemented them in the exact same way.

#### Comments

There are many differences in the way news providers allow their users to comment on news items. At the NOS, de Volkskrant and NRC, for instance, they are very selective in picking the items on which users will be able to give their opinions. It is not possible to comment on 'hard' news, but users can post their comments on opinion editorials, columns and weblogs from the editors. Telegraaf is selective as well, although there is no apparent strategy regarding the selection of the items on which users are allowed to comment. On the other websites users can post their opinions on (almost) all of the news items.

#### Articles and blog posts (text)

About half of the websites (7x) allow users to upload their article/blog post. These are mostly 'non-traditional' news organizations (who do not have their roots in print or broadcasting), such as NU.nl, Dichtbij and Marokko.nl and newspapers, such as De Barneveldse Krant, Telegraaf, Trouw and NRC. The broadcasters (NOS, RTL Nieuws, SBS Hart van Nederland en Omroep Brabant) do not offer this kind of participation, although their users can alert the newsroom with a textual message (tip). It is notable that de Volkskrant, as a newspaper, is missing in this list. From 2005 until November 2011 de Volkskrant allowed its users to write their own blog. The reason that de Volkskrant ceased this initiative was, according to editor-in-chef

Philippe Remarque, the effort that was required: "Unfortunately, we cannot give the blog the attention and technical support that is required." (Volkskrant, 2011)

#### *Photos and videos*

From the 'traditional' news organizations that have been analyzed, mainly the broadcasters focused on gathering photos and videos. The website from RTL Nieuws clearly informs its users on the homepage that they can send their photos, albeit on a designated page for UGC. On the website of the NOS, Hart van Nederland and Omroep Brabant it is possible to share photos and videos with the newsroom via the website (tip). The editors will decide if and how the content will be used.

From the newspapers Barneveldse Krant, Telegraaf and Trouw allow users to upload photos, both as an attachment to a written account and separately. On the website of Telegraaf and Barneveldse Krant it is also possible to add videos, although at Telegraaf this will be send to the newsroom and not directly to the website whereas on the website of Barneveldse Krant user can upload their content directly to the website.

The non-traditional news organizations offer the possibility to upload photos and videos to the website. Both NU.nl and GeenStijl host a designated page where the UGC is posted directly without previous interference of the editors. Dichtbij, however, incorporates the contributions from its users on the general website and does not make such a clear distinction between editorial content and UGC. Marokko.nl allows its users to upload photos and videos with comments on news items and on the forum as well.

#### *Discussion forum / chat*

From the 15 websites that were analyzed, only Marokko.nl hosts a discussion forum and offers a chat functionality. This could be explained by the nature of Marokko.nl, which is a website that also functions as a social network for the Moroccan community in the Netherlands. On other websites, direct interaction between users is only possible through the comments. However, some news organizations try to curtail this kind of interaction by discouraging users to comment on each other instead of the original news items. Some have even made this explicit in their policy or "house rules" and remove comments that are directed at other users.

#### *Social Media*

We have also looked at the activities of the news organizations on social networks<sup>11</sup>.

Table 6 shows what news providers are active on which social network and what kind of user participation they allow.<sup>12</sup> Some news providers only allow users to comment on the status updates from the news provider, while other allow users to post their own messages, including photos and videos.

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<sup>11</sup> We have focused on the two most popular social networks in the Netherlands: Facebook and Hyves.

<sup>12</sup> We have only scored news providers that mention their social network activities on their homepage.

Table 6: News providers on social media.

News provider	Facebook	Hyves
NOS	X (comments)	
RTL 4	X (comments)	X (comments, photo + video, forum subject)
Hart van Nederland	X (comments)	X (comments, photo + video, forum subject )
Omroep Brabant	X (comment, messages, photo, video )	
De Volkskrant	X (comments )	X (comments, photo + video, forum subject)
NRC	X (comments, messages, photo, video )	
NRC Next	X (comments, messages, photo, video )	
Telegraaf		
AD		
Trouw		
Barneveldse Krant		
NU.nl	X (comments )	X (comments, photo + video, forum subject)
GeenStijl		
Marokko.nl		
Dichtbij	X ( comments, messages, photo, video)	X (comments, photo + video, blogs (depending on region), photos (depending on region), agenda point (depending on region)
Total	9	5

### 3.2 The production process

We will describe the different kinds of work processes that have evolved around UGC using the different steps in the journalistic production process: 1) gathering news (and content), 2) selecting news (and content), 3) editing content and 4) the presentation and distribution of content.

#### Gathering

It is possible to distinguish two kinds of UGC, both of which are being used by news organizations: the contributions of users that they actively, consciously share with the news organization (push-content) and content that users share on social networks (like Twitter), public forums and blogs, which the news organization has to collect by itself (pull-content).

*Push-content:* the majority of the content that news organizations receive from their users is text-based with comments as the most dominant kind of UGC, followed by photos and – to a much lesser extent – video. There is a great variation in the topics of the content, although there is relatively little 'hard news'. As described earlier,

some websites allow their users to upload their content directly to the website and some websites allow users to interact in a more traditional way by sharing the content as a 'tip'.

*Pull-content:* on the one hand news organizations try to exploit their presence and networks on social media, like Twitter, to invite and inspire users (followers/friends) to share their content in general or their content about specific newsworthy topics. Furthermore, they use (mostly) Twitter, but also other social networks, blogs and forums to search for interesting content by filtering these streams by using 'keywords' that are in the news or 'keywords' that could indicate that something newsworthy is happening (for instance "fire" or "explosion"). A third way to gather pull-content is to actively maintain a social network of people and organizations that could provide the newsroom with specific information or content. The NOS, for instance, has initiated NOS Net, a network of people who can sign up and indicate their domain of expertise. When something important happens in a specific domain, NOS can consult these experts. Other news providers like Dichtbij and Barneveldse Krant also try to build, maintain and expand a network of knowledge and (potential) content to ensure themselves of quick access to a broad range of relevant content or expertise.

### **Selecting**

The analysis also looked into the selection process of UGC by news organizations. Table 7 provides an overview of the different strategies that newsrooms employ to select the content that users actively share with them. The table distinguishes different kinds of content and three different strategies (which are not necessarily mutual exclusive): the newsroom applies pre-moderation, the newsroom applies post-moderation and users are being involved in the moderation process.

The selection or moderation of content contributed by the users must filter – before publishing – or remove – after publication – all the content that is unsuited for the website. The criteria that apply to UGC are described in the so called 'house rules' or policy. They function as a list of requirements that constitute the qualitative threshold regarding the content. On the other hand, the selection is important to identify the most valuable, relevant and newsworthy content that can be processed as part of the editorial content or that will feature on a more prominent position on the website.

Table 7 shows that 10 out of the 15 news organizations moderate all or part of the UGC before publication – this list includes organizations such as the NOS, SBS Hart van Nederland and Omroep Brabant who do not allow their users to directly upload content to the website. Three organizations (RTL Nieuws, SBS Hart van Nederland and Omroep Brabant) use a combination of both pre- and post-moderation in which the post-moderation is applied to comments. Six organizations only moderate after publication.

The moderation, in most cases, is executed by the editors themselves, although a majority of the news organizations involve users in this process as well. In some cases the editors have incorporated the moderation in their daily routine, in addition to their existing workload. In some news organizations a small number of editors has been assigned to moderation activities for a specific number of hours per week. A third strategy to integrate moderation in the production process – applied by Nuijij.nl, for instance – is to acknowledge that the moderation of content is a different

kind of job than being a journalist. This means that Nuij.nl has created special moderation-jobs performed by people who had a specific moderating-training. Some news organizations have outsourced (part of) their moderation activities to specialized companies such as Novia Facts.

Technical tools – such as CMS – are being used for moderation to organize the content that users e-mail or upload to the website of the news organization. However, they are not being used to filter content that is (ir)relevant or (un)desirable. The technology fails to detect small nuances, such as sarcasm and irony and differentiate them from genuine insults or discriminatory remarks. As mentioned earlier, filtering-tools are being used to find 'pull-content' in social networks (mostly Twitter), blogs and forums – as will be discussed in more detail in chapter four.

Table 7: Moderation strategies.

News provider	Pre-moderation	Moderation	Co-moderation with users
NOS	X (reaction, photo, video)		
RTL 4	X (photo)	X (reaction)	
Hart van Nederland	X (text, photo, video)	X (reaction)	
Omroep Brabant	X (text, photo, video)	X (reaction)	
De Volkskrant	X (reaction)		X (reaction)
NRC	X (reaction, text)		
NRC Next	X (reaction, text)		
Telegraaf	X (reaction, photo, video, text)	X (reaction)	
AD	X (reaction)	X (reaction)	
Trouw	X (reaction)	X (text, photo, video)	X (reaction)
Barneveldse Krant		X (reaction, photo, video, text)	
NU.nl		X (reaction, photo, video, text)	X (reaction)
GeenStijl		X (reaction)	X (reaction)
Marokko.nl		X (reaction)	X (reaction)
Dichtbij		X (reaction, photo, video, text)	X (reaction)
Total	10	9	9

Besides moderation, identification is being used – albeit more indirectly – to improve the quality of the content that users contribute. See Table 8 for different strategies that are being deployed.

Table 8: Identification strategies.

News provider	Name author	E-mail address	Account	Account linked to social media	No identification
NOS	X (reaction, photo, video)	X (reaction)			
RTL Nieuws			X (photo)	X (reaction)	
Hart van Nederland		X (photo, video)		X (reaction)	
Omroep Brabant	X (text, photo, video)		X (reaction)		
De Volkskrant			X (reaction)		
NRC	X (reaction, blog)	X (reaction, blog)	X (reaction)		
NRC Next	X (reaction)	X (reaction)			
Telegraaf	X (reaction)	X (reaction)	X (text, photo, video)	X (text, photo, video)	
AD			X (reaction)		
Trouw			X (reaction, text, photo, blog)		
NU.nl			X (reaction, video)		X (photo)
GeenStijl	X (photo, video)	X (photo, video)	X (reaction)		
Berneveldse Krant	X (reaction, text, photo, video)	X (reaction, text, photo, video)			
Marokko.nl			X (reaction, photo, video, forum, chat)		
Dichtbij			X (reaction, text, photo, video)	X (reaction, text, photo, video)	
Total	6	7	10	4	1

On some websites users have to register by linking their accounts to their Facebook or Twitter profiles before they can post anything on the website. This strategy resulted in a decrease in the total number of comments but, according to the respective organizations, the quality of the comments and online discussions increased. The input from users was more relevant, more on topic. Especially in the comments the portion of hateful, discriminatory or offending contributions decreased.

### Editing

Moderation is the most time-consuming activity related to UGC, but some news organizations also spend time editing the contributions from their users. It is possible to distinguish roughly three different strategies. In the first strategy the editors scan the content thoroughly using professional criteria. If the content is deemed relevant and/or newsworthy enough it will be used like any other news source: the content will be checked, edited and presented as editorial content. The

content will no longer be recognizable as UGC. This strategy is mainly applied by news organizations who do not let users upload their content directly to the website, but let them send it to the newsroom first, as a tip.

A second strategy to deal with UGC is to present it – recognizable as such – on the website, but to edit the content if needed. In this strategy editors are generally focusing their efforts on the most popular or newsworthy content that will be available – or is expected to be placed – on a prominent position on the website, for instance on the top lists of “most read” or “best rated”. In such cases – when the content will be more visible – the quality and correctness of the content becomes more important. If needed, the editors will adapt the content themselves, or they will request the original author to make some alterations, or they will ask other users to produce additional information or to correct mistakes.

In the third strategy to cope with UGC, the content from users is not edited at all: either it complies with the house rules and will be approved, or it does not comply with the house rules and will be removed (in case of post-moderation) or will not be allowed on the site in the first place (in case of pre-moderation). This third strategy is mostly used applied to deal with comments, but more in general in situations in which the editors do not have enough time to process all content properly.

### **Presentation**

As with the editing process of UGC, it is possible to distinguish three different strategies that news organizations apply regarding the presentation of UGC and its integration on the website. Some news organizations process the UGC in such fashion that it is no longer recognizable as a contribution from one of their users, as described earlier. It is not possible for users to upload the content directly to the website. They have to send the content, as a tip, to the editors. In the second strategy, however, there is a very strict distinction between editorial content and UGC. The news organization has created a specific page on the website where users can upload their content. Although a link to the 'UGC-page' can be found on the general homepage, the actual webpage is presented as a separate part of the website. There is also a very clear distinction between editorial content and user comments. In the third strategy there is no principal distinction between editorial content and UGC, like – for instance – the way Dichtbij works, a news organization that has adopted this strategy and is very much dependent on the contributions from its users. Everything that users upload – if deemed appropriate according to the house rules – is presented on the website (including the name of the author) next to articles from the editors.

## **3.3 Value and issues**

The interviews not only gained insights in the production process, but also the experienced or expected value of UGC and issues regarding its use. The results from the interviews were discussed in an expert workshop in which four different news scenarios were used to paint a broad picture of the different ways in which UGC could be used.

### 3.3.1 *The value of UGC*

The value that news organizations ascribe to UGC can be divided into three broad categories: news, bonding and an addition to and improvement of the product.

#### **News:**

- UGC provides news that newsrooms cannot produce themselves.
- UGC can (sometimes) deliver news faster than formal news channels such as press agencies.
- UGC allows newsrooms to bring (footage of) news first or even exclusively.

#### **Bonding:**

- UGC can strengthen the ties between news organization and its users.
- UGC offers a better insight into the sentiment of the audience.
  
- UGC offers users the possibility to express themselves on the website of the news organization.

#### **Addition to and improvement of the product:**

- UGC can improve the product based on input/feedback from users.
- UGC offers editors clues to create new items and produce more relevant and valuable content.
- UGC enables news organizations to offer a broader range of content and information.

### 3.3.2 *Issues*

The issues that news organizations encounter in dealing with UGC can be divided into 1) issues with the content and 2) issues in the working process – which, of course – are related to the first type of issues.

#### **Issues with the content:**

- The content can be racist or discriminatory.
- The content can violate the copyright of a third party.
- The content could violate the privacy of a third party.
- The truthfulness and correctitude of the content is not always clear.
- The format in which the content is presented is sometimes difficult to use.

#### **Issues in the production process**

- It is sometimes difficult to assess the truthfulness and correctitude of UGC .
- It can be difficult to discover the authenticity of the producer's identity.
- It is difficult to verify whether UGC violates the copyright of a third party.
- It takes time to wait for permission from the producer of the UGC to use it.
- It takes time to build, maintain and expand a network of expertise and knowledge.

On the one hand, editors are dealing with content that users offer to them directly (push-content). In principle, editors would like to moderate every piece of UGC to make sure it complies with their (minimal) quality standards. However, this is a very time consuming activity, even more so because it is not always clear what content is suitable to post on the website, and what content is not. For instance, it is not always clear when people are discriminating or are just being ironic. Furthermore, it takes time to not only filter out content that is not suited, it also takes time to find

contributions that are actually newsworthy and valuable. Due to limited resources, news organizations often do not have enough time to moderate thoroughly. Consequently, this does not only result in moderation that does not cover all the content, but also means that when editors do moderate the moderation is sub-optimal.

Besides the content that users actively share with news organizations, the UGC that is being shared on social networks, blogs and forums are a source of potential news (pull-content). Many news organizations want to collect and – if relevant – edit and incorporate it in their own content. But finding relevant, newsworthy content takes time as well, especially if news organizations want to ask and wait for permission from the producer. Some news organizations try to create and maintain a large as possible network of people and organizations with specific kind of knowledge or access to relevant content. This in itself, however, is time consuming as well and it can be hard to find the right people, especially when they do not participate in online discussions; they have to be found and enticed to actually participate; to create and share.

### **3.4 Ambitions regarding UGC and technological solutions**

In general, news providers have the ambition to do more with UGC and user participation. However, ideas on how this should be realized – and *what* exactly should be realized – differ. One of the goals of this project is to look for ways in which technological solutions could support news organizations in making better use of UGC. The demand for technical solutions – and the variations of technical solutions – are related to the way in which news organizations want to use UGC and the extent to which they see UGC and user participation solely as an extra source or whether they actually want to engage users in the co-creation of the journalistic product. It is possible to distinguish two different approaches (which are certainly not mutually exclusive).

#### **3.4.1 *Newsroom oriented: efficiency and filtering***

On the one hand, news organizations want to optimize their efficiency regarding the use of UGC: they want to stretch their limited resources as far as they can go to optimally collect, select, edit and present the content that users share via their websites or via social networks such as Twitter, blogs and forums. The user creates content – for instance a comment or an article – and the editors will decide if and how this should be processed and presented on the website. The time the editors spend on these kinds of activities must be limited in order to spend as much time as possible to create their own, editorial content which is still their main task. Although news organizations want to extract more news from UGC, this attitude is still newsroom oriented.

#### **3.4.2 *Collaboration oriented: community leveraging***

Apart from the desire to use more UGC (both push and pull) as efficiently as possible, some news organizations want to engage more actively with their users and are looking for ways to leverage and expand the community and to even let them co-create the news. These news organizations feel that the traditional hierarchical relation between ('all knowing') journalists and their ('passive') audience is shifting. These news organizations not only want to collect UGC – as a source for

editorial content or as items on the website. They want to let users participate in the whole journalistic process. The idea is that by doing so, the knowledge from this vast number of users, their access to news, their networks and the content they can deliver, can be used more effectively. From this perspective news organizations want to strengthen and expand the cooperation with their users by stimulating and supporting them to partake actively in the different steps of the production process. This attitude is collaboration oriented.

### 3.4.3 *Matching ambitions and technological solutions*

As mentioned in chapter one, it is important for a news organization to define its own strategy regarding the use of UGC and the level of user participation. More user participation – without shared goals between editors and the community, the proper organization, processes, know-how and tools – is not necessarily better. Different news organizations will apply different strategies that, ideally, match the maturity in user participation from both the news organization and its target audience, and expectations from other stakeholders involved such as advertisers.

The choice for a specific kind of technological support should follow from, and suit, that strategy. This means that the two different kinds of approaches (newsroom oriented and collaboration oriented) could require a different – although possibly supplementary or even overlapping – technological infrastructure and tools.

In the next chapter (chapter four) we will provide a brief technological overview of tools that support (elements of) these two different strategies.



## 4 Technological overview

### 4.1 Introduction

The still ever increasing force of the Internet, including new, faster, and richer communication protocols, both from a user perspective (e.g., Facebook and Twitter) and from a technological perspective (e.g., Voice over IP), enables users to create UGC when and wherever they want. People have at their disposal a soapbox of unprecedented reach and power by which to share their information and opinions, positive and negative, regarding any (news) event, object, organization or person. Moreover, the consumption of digital news is more and more becoming a social experience as people contribute to the news production process with their thoughts and comments, and share the news with one mouse-click or a tap of the finger (Pew Internet, 2010).

Newspapers can respond to UGC - generated via social media monitoring or as sent to the newsroom directly - analyze it, and, where appropriate, either modify their news, enrich their news, or initiate, for example, a discussion on a specific news topic (Zabin & Jefferies, 2008). However, how these processes can be facilitated in order to fully leverage user participation remains complex. That is what this project is about.

As discussed in the previous chapter, there are different strategies regarding the exploitation of UGC. On the one hand news organizations want to use UGC as an additional news source that they can tap into, by filtering the stream of content that users contribute to their websites or share on social networks and public forums. The idea is to find and filter the most relevant or damaging content - for instance content that is racist or discriminatory, violates rights from a third party or is not truthful - as easily and frictionless as possible. Additionally, some news media want to leverage and enlarge their community and engage users (to a certain extent) in co-creation of the journalistic product.

In the next sections, we will briefly sketch what could be denoted as the technical foundation needed for the use of UGC. Furthermore – based on different functionalities that enable better use of UGC by news organizations – we will provide an overview of relevant types of products and services already on the market.

### 4.2 The technological foundation

Creating systems that process UGC requires overcoming a number of challenges. At least the following issues need to be tackled.

1. When connected with general search engines such as Google and Yahoo! or a Twitter stream, the application needs to determine whether the content is on topic: is it (related to) news or does it match a specific query?
2. The application needs to verify whether or not new material actually concerns (authentic) UGC or not.

3. After a selection is made among the available UGC, both the most relevant content and unsuitable content (e.g., content that violates copyright) must be filtered. Both a general sentiment can be determined and extreme opinions can be identified. The application can ultimately summarize the UGC or, alternatively, present it in a convenient way (e.g. using high lighting, clustering related UGC, and determine quality) to aid further manual processing.
4. Moreover, such information can support the analyses of users and identify those who are (potentially) willing to provide relevant UGC or expertise, leverage their social graph or contribute in another way.
5. The graphical user interface (GUI) of the application is of vital importance. Its intuitive working and convenient information representation can help journalists and editors significantly in handling the UGC gathered in an efficient and effective manner.

The ever increasing computing power and scientific progress are currently providing sufficient momentum to bring semi-automated management of UGC within reach. Two main advances have enabled this. Firstly, the work conducted on machine learning applied on the domain of media mining - in particular in Natural Language Processing, information retrieval, and image and video retrieval - are now ready to be released on ever changing open data sets (as opposed to closed, stable data sets). Secondly, data sets are readily available or can be generated relatively conveniently to develop the machine learning applications mentioned above. This second issue is evidently satisfied with the ever growing amount of UGC available on websites and, in parallel, the growing number of databases that manage this UGC. This leaves us with the first advancement, which can be roughly denoted as media mining. The next section will discuss this field of research from the perspective of UGC.

#### 4.2.1 *Media mining*

For UGC, the following media are most often used: text, image (e.g., photo's) and video. Therefore, we will focus on these three types of media and refrain from discussing audio and specific issues on advanced multimedia processing. Furthermore, we will briefly describe 'user profiling', which can be based on a combination of different kinds of mining technologies.

##### 4.2.1.1 *Text mining*

Text mining heavily relies on term extraction. A term is a sequence of one or more words. A special instance of terms are keywords. With keywords it is aimed to provide a compact representation of a text. Ideally, keywords represent in condensed form the essential content of a document. This notion has become noticeably more important with the rise of Information Retrieval and the broad use of search engines (e.g., Google and Yahoo). However, despite their utility for (sentiment) analysis, indexing, and retrieval, most texts do not have keywords explicitly assigned to it. Consequently, manual indexation of texts such as UGC is still common practice.

Research has, therefore, focused on methods to automatically extract key terms from texts to facilitate automatic indexing and classification of texts. Early approaches to automatically extract terms include the work of Karen Spärck Jones

(1972) and Salton, Wong, and Yang (1975). In practice, these two early works still serve as the foundation for term extraction strategies, as these select discriminating words as keywords for individual documents.

Term extraction can be applied both on databases (or corpora or sets of texts) and on single texts (or documents). Within the field of UGC, both applications are of interest. Either one piece of UGC can be analyzed using term extraction or a set of pieces of UGC can be analyzed together (e.g., as obtained via a web crawler). Analyzing a set of UGC is limited in its measurement of statistically discriminating words since single words are often used in multiple and different contexts, which cannot be untangled easily. However, a quick manual scan of a user can relieve this problem.

#### 4.2.1.2 *Image and Video mining*

Most image and video mining techniques make use of text mining, in which images and videos are analyzed based on their labels, descriptions, and/or surrounding text. Although text-based image/video mining is fast and reliable, it fully depends on the textual annotations that accompany them. Consequently, it requires every image/video in a database or on the web to be well annotated or labeled. Moreover, this implies that text-based image/video mining faces two problems:

1. It has no added value to text mining, as it fully relies on text mining.
2. When no adequate textual descriptions are available, text-based image/video mining simply is not possible.

To alleviate these two problems, 20 years ago, Kato (1992) introduced the term Content-Based Image Retrieval (CBIR) to describe his experiments on automatic retrieval of images (and video) from a database (or the web) by color and shape features. Hence, he proposed to apply image mining, without text mining, relying on the content of the images itself.

CBIR can be considered as the application of computer vision to the image mining problem; i.e., the problem of disclosing images in large image databases. CBIR is at the end of its early years and is certainly not the answer to all problems due to its own limitations, even though, for instance, face recognition techniques that are being used by Facebook and Picasa. A quartet of arguments can be identified, which sustain the latter claim. These arguments were already laid out by Smeulders et al in 2000, but still hold true today as the elements of the 'semantic gap' (Israel et al., 2010):

1. CBIR techniques still yield unacceptable retrieval results;
2. CBIR is restricted in the specific domain that is covered;
3. The generation of suitable user-interfaces is complex; and
4. CBIR is mainly technology-driven and, subsequently, require the use of domain knowledge to fulfill their information need (Rui et al., 1999; Schomaker et al., 1999).

The web and large professional databases (to a lower extent) suffer from a computational burden, due to the large amount of (high quality) image material. Generally, no such problems are present with private image collections. Although private image collections can be too large for manual searching, they are small compared to most professional databases. In principle, it is envisioned that CBIR systems can provide a substantial contribution in managing private image and video

collections. However, in such a vast and diverse domain as news is, CBIR will be – for the moment – of little use.

#### 4.2.2 *Profiling*

Profiling is used in many contexts in many domains. In the media domain, profiles are mainly used to offer recommendations for media (e.g. news) available to users. These recommendation systems (RS) apply user-models which are generated in a process also known as profiling, which enables them to become adaptive and, hence, personalized. Such a system also applies the earlier described mining technologies to analyze the relation between the content and the user. “In their simplest form, personalized recommendations are offered as ranked lists of items. In performing this ranking, RS try to predict what the most suitable products or services are, based on the user’s preferences and constraints. In order to complete such a computational task, RS collect users’ preferences, which are either explicitly expressed, e.g., as ratings for products, or are inferred by interpreting user actions.” (Ricci et al., 2011: 2).<sup>13</sup>

As mentioned above, in the media domain RS are often used to recommend content that could be of interest to the consumer: video’s to watch, articles to read or books to buy. This way news providers hope to better serve its users and to increase page views and revenues. However, these recommendations do not have to be limited to recommending content to consumers. As mentioned earlier, based on a profile, editors can find users who could contribute to the production process because of their interests and/or expertise. Furthermore, the profile could be based on a combination of different kinds of data, both from the content a user has interacted with, but also the interaction with other users, etc.

Although RS are applied in various domains (e.g., music, TV programs, images, movies, documents, books, and shopping); the application of RS in the context of stimulating UGC thus far seems limited (Park et al., 2012). One of the reasons for the absence of RSs in this domain could be that UGC often requires a collaborative effort; hence, involving multiple users and multiple stakeholders. Then, the question emerges whether there should be one overarching RS or multiple RS that should be framed and cooperate within a certain context.

A dimension of key importance to RS, which is not always embraced, is time. Content, context, business models of content providers, and interests of users all change over time, which makes the world model the RS have to navigate in highly dynamic. Consequently, in practice, most RS are static and assume the world to be static. However, more and more, dynamic RSs are brought from theory to practice (e.g., Janssen et al., 2012); for a review of the state of the art, see Park et al. (2012).

Taken together, RS are promising and it is expected that in time, they will become common practice amongst newsrooms to use UGC. However, some general

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<sup>13</sup> In 2000, Herlocker et al. defined eleven tasks that a RS can assist in, namely: 1) find some good items, 2) find all good items, 3) annotation of context, 4) recommend a sequence, 5) recommend a bundle, 6) just browsing, 7) find credible recommender, 8) improve the profile, 9) express self, 10) help others, and 11) influence others. Many of these tasks, in particular tasks 1-5, 8, 9, and 11, can be of use in facilitating the use of UGC within the news domain.

challenges have to be tackled, amongst which the semantic gap. Moreover, specific design issues need to be solved for RSSs in the context of UGC.

### 4.3 Tools for leveraging UGC

Tools that enable news organizations to make use of UGC can offer one or more of the different functionalities that we will describe below. The selection of these functionalities were based on interviews and an expert workshop. As it is currently not possible to automatically detect legal issues such as libelous content or the violation of privacy, we will focus, regarding the legal issues, on the detection of discriminatory or racist content and copyright infringement.

First, functionalities for the newsroom oriented approach will be discussed and subsequently some additional functionalities for the collaboration oriented approach. Although the newsroom oriented approach and the user centered approach differ, the underlying technological functionalities partly overlap.

#### 4.3.1 *Background information collection (RSS-based)*

A basic functionality is the collection of background information (which can be news) by using RSS. RSS is an abbreviation of Real Simple Syndication. RSS is a format for delivering regularly changing Internet content. An RSS file consists of both static information about the feed as well as dynamic items. Generally, these items are news items or blog entries; however, in principle they can be about any web-accessible content. Various tools and tutorials are available to process RSS feeds.

RSS formatted files are specified using XML (similarly as many other web formats such as HTML or SVG). XML is an abbreviation of Extensible Markup Language, which is a markup language for documents containing structured information. This information is structured as elements, attributes, values, and others. RSS' XML foundation makes it very suitable to process and analyze. Simple feed readers and feed visualizers can be generated conveniently. However, with media files, one should keep in mind that the way in which to access media files (or any other element) can differ from feed to feed.

The Background news collection supports editors to define important search queries for UGC themselves. Or it enables them to create a database that can be analyzed to automatically initiate queries by defining relevant and 'hot' key words, see Hit List. This way it can combine both automatic and manual input and prevent the danger of static news collection and analysis as it allows flexibility in search queries.

#### 4.3.2 *Hit list*

A tool could work with a fixed (though adaptable) list of keywords and scheduled queries using, for example, search engines such as Bing and Google or platforms such as Twitter or a local database to find matching content. Examples of such technology already on the market are Google Alert, IfThisThanThat – which allows users to set specific parameters for search queries, and Twitter clients such as Tweetdeck and Hootsuite, as we will describe in more detail below.

Although this approach is rather straightforward, it can be expected to aid the basic needs as it offers an overview of the most relevant UGC on a specific topic.

Different metrics can be used to evaluate the quality of a hit list. For example, the ratio of yield of actives in the hit list relative to the yield of actives in the database (also denoted as enrichment). Alternatively, the percentage of known actives in the hit list, also known as yield, can be determined. Yet another metric is coverage, which identifies the percentage of known active compounds retrieved from the database. We've explored this concept for Twitter content in more detail in paragraph 4.3.5.

The analysis of the hit list and a Back Ground News Monitor could also be used to automatically suggest or initiate new queries on 'hot topics'.

#### 4.3.3 *Dirt detection*

'Dirt detection' can be considered a specific type of sentiment analysis that can be applied to identify specific kinds of content that are discriminatory, racist or hateful, violating the law or specific house rules from the news provider. As described in previous chapters, this is a very important issue for news organizations as this kind of content compromises the overall quality and reputation of the website and the news organization in general, and could have legal consequences as well.

For a review on sentiment mining and opinion analysis, see Pang and Lee (2008). Various commercial packages on sentiment mining, that surpass basic 'blocking-functions' for specific keywords in social networks, exist. For instance SAS Textminer, SPSS Text Analysys, STATISTICA Text Minder, Wordstat and Rapidminer. However, these statistical advanced tools also seem to require more advanced knowledge of statistics and suit elaborate market research rather than journalistic practices.

#### 4.3.4 *Plagiarism*

As described in chapter two, one of the possible issues with the use of UGC, is that it could violate copyright of a third party. News organizations want to make sure that the UGC they offer will not put them at risk by possible copyright infringement. For plagiarism detection, a wide range of tools is already available. Table 9 presents a handful of representative tools.

Table 9: Tools to detect plagiarism

Name	URL	Description
<b>The plagiarism checker</b>	<a href="http://www.dustball.com/cs/plagiarism.checker">www.dustball.com/cs/plagiarism.checker</a>	Online; Text + Word docs
<b>Plagiarism checker.com</b>	<a href="http://www.plagiarismchecker.com">www.plagiarismchecker.com</a>	Online; Text
<b>Viper</b>	<a href="http://www.scanmyessay.com">www.scanmyessay.com</a>	Offline; various formats
<b>WriteCheck by Turnitin</b>	<a href="http://www.writecheck.com">www.writecheck.com</a>	Offline; various formats

However, in the news industry such tools are mostly used by content creators to check whether other parties are plagiarizing their own content. In order to support the use of UGC by news organizations, the tool will have to be use in a different

way: it should to detect whether UGC is violating copyright from a third party. This practice is common in the educational context where plagiarism detection is being used to check whether students copy-and-paste their assignments and papers.

4.3.5 *Twitter monitor*

Twitter has proven to be a very important tool for news organizations, not in the least as a source for valuable UGC. To actually find this UGC the Twitter firehose needs to be collected and filtered.

With the rise of Twitter as a social medium, a wide range of applications provide services to support its usage. For example, Twitter offers [www.tweetdeck.com](http://www.tweetdeck.com), which helps to manage and process Tweets, for instance with specific queries or by grouping other Twitter users. Similar services are Hootsuite and SocialBro. Another example is [www.tweetreach.com](http://www.tweetreach.com), which reaches metrics, statistics, and analysis for marketing and PR professionals. TNO co-developed [www.twitcident.com](http://www.twitcident.com). Twitcident aims to improve the information supply to emergency services during big incidents. It presents the most relevant tweets that fulfill their information needs. The tool for example can search for crime-related words and automatically notify emergency services.

In appendix B, an broader overview of Twitter and its affiliated tools will be presented.

4.3.6 *Integral solutions*

As denoted in the previous section, the five functionalities described above can be found in isolation. However, there are some products that combine several of these functionalities. These social media monitoring tools apply real-time analytics to find relevant content on specific topics and present the results in a dashboard. Table 10 shows three of such integral (commercial) solutions.

Table 10: Integral data filtering tools

Name	URL	Features
<b>Tracebuzz</b>	<a href="http://www.tracebuzz.nl/">http://www.tracebuzz.nl/</a>	Twitter, blogs, forums, Hyves, Facebook, etc. integration. It can be for desktops, tablets and smartphones. It supports sentiment analysis as well as trending.
<b>ChartBeat</b>	<a href="http://chartbeat.com/publishing/">http://chartbeat.com/publishing/</a>	Trending, both internal data streams (editorial content and UGC) and external data streams such as Twitter. Includes social media and hit lists. An API is available.
<b>Radian 6</b>	<a href="http://www.radian6.com/">http://www.radian6.com/</a>	Includes Twitter, blogs, and forums. Supports trending, sentiment analysis, and filtering.

These and many other dashboard are included in the exhaustive overview of integral solutions, which can be found in appendix B.

#### 4.3.7 *Tools for the collaboration oriented Approach*

In addition to the ambition to use more UGC (both push and pull) as efficiently as possible, some news organizations want to increase the engagement with and involvement from of their community. These news organizations not only want to collect UGC as a source for editorial content or as items on the website. They want to strengthen and expand the cooperation with their users by stimulating and supporting them to partake actively in the different steps of the production process.

As mentioned above, the functionalities in tools that support the user centered approach and the newsroom oriented approach overlap to some extent. One of the key elements of the collaboration oriented approach is knowing *what* (possible) users are actively involved with what kind of topics and on what participatory level: does the user only consume content about specific topics or from specific authors? Or does he or she also comment, or even produce articles or videos on those topics? This kind of profiling has to be based on an analysis of the content itself that still needs to be filtered to find the most relevant and newsworthy UGC and their authors or distributors (those who share the content, e.g. via e-mail or social media). The next step would be the activation of users to participate and, finally, facilitating them in doing so. This last step involves a user-friendly online environment that allows participation rather than a specific tool. The functionalities of stimulating co-creation are as follows:

1. Filtering and analyzing content and affiliated users (author, commenter, sharer).
2. Profiling based on content and level of participation and network.
3. Define next steps to activate (potential) users.
4. Facilitate participation and co-creation.

No tools were found that support news organizations in this whole process of co-creation stimulation. The difficulty with co-creation is that it encompasses the whole production process of the journalistic product and not just content selection, as described in chapter three. Furthermore, co-creation alters the traditional linear production process in a non-linear one where data collection, selection, processing and presentation or not necessarily sequential steps in that specific order. The product itself, ideally, becomes dynamic and fluid rather than static. A user or a journalist could post an article on the site, rather as an initial, basic version than a final product. Others (users or editors) could edit and enrich this basic article. Simultaneously, the news organization could search in its community (or beyond) for people with relevant expertise or knowledge who could contribute to the article or correct possible mistakes, and it could ask users who have shared articles on similar topics with their friends if they are interested in sharing this piece as well.

The 'basic' article could also initiate the production of related articles in which certain aspects are discussed in more depth. In this kind of co-creation, *process* and *product* are becoming more intertwined with each other: articles are available online, where they could also be edited and enriched in a shared environment for collaboration. This means that a tool that would support such a collaboration oriented approach has to be implemented as an integral part of the whole production process.

There are tools that support some aspects of co-creation. Some examples are Google Docs, Basecamp, Zoho, Yammer and Campfire. These tools support online collaboration, for instance working (simultaneously) on documents, online

communication and project planning. However, these tools exist as services on their own individual websites and cannot be integrated into the website of the news organization. Furthermore, there needs to be some sort of system that enables editors or users to check whether the content is true and relevant and the author truly knowledgeable and trustworthy. Although there are no tools that offer such analyses for third parties, some websites have created and integrated their own control mechanisms. Wikipedia, for instance, offers for every article a record of what users have contributed in what way and discussions about the alterations that were made. Another interesting example is the Dutch technology news site Tweakers.net. Tweakers maps the interests and the status (“karma”) of their users based, amongst other parameters, on their participation. Users have a public profile that shows their history of participatory activities.

#### 4.4 Conclusions

##### *Tools for the newsroom oriented approach*

There are a myriad of tools that enable news organizations to filter content on social media, public forums and blogs, most of which originated in the field of social media marketing. These tools can detect trends, use keywords in order to search for specific topics that are in the news, topics that could indicate that something newsworthy has happened or are otherwise relevant (for instance content about the news organization itself), or could harm the overall quality and status of the website. Besides their ability to filter relevant content, some tools are capable of analyzing *what* is being said about specific topics, but also generate information about the people who are talking about a specific website or article (and the most important ‘influencers’), how many people were reached with this content and the popularity if specific topics during a specific period. The vast majority of these tools process ‘external’ content (pull) and do not facilitate the integration of the editorial content or the UGC that users upload via the website of the news organization or send by email (‘push-content’). This push-content cannot be filtered and analyzed by these tools. Consequently, when using most of these tools, newsrooms still have to work with two separate information streams: one internally and one externally.

This also illustrates the limitations of the tools that are currently on the market. Although there are some products that combine different functionalities, there is no tool that combines all of these different functionalities, let alone for both push and pull UGC. Besides, all of these tools are text-based; they do not process photo or video. This means that editors still have to work with different systems for different kinds of content.

The quality of the tools is another issue. Although many of the tools offer filtering and sentiment analysis functionalities, the quality of the filtering varies greatly and, generally, is not very high. It is, for instance, very difficult for software to detect subtleties, irony and humor in content and every newsroom will have its own standards and practices. This means that the current tools do not really offer a real solution for the newsroom because even when the filtering detects 90% of all the dirt, it still requires manual quality control to find the remaining 10% that could compromise the house rules and quality norms of the website. The quality of these tools could be a relevant aspect that should be taken into account in future legal

discussion as described in chapter two, regarding the liability of news providers that incorporate UGC.

Furthermore, although the filtering tools are able to detect trends – keywords – by analyzing UGC, they are not able to find the most newsworthy and valuable pieces of content in these large piles of data.

Finally, the fact that these tools exist, does not mean that all journalists are actually using them. Many journalists are not aware of the wide range of products. And even when they do know them this does not automatically mean that they have adopted them. Because these products are 'yet another tool' that is not integrated with their own system and content, it makes them less appealing.

#### *Tools for the collaboration oriented approach*

No tools were found that support the four different aspects of stimulating co-creation:

1. Filtering and analyzing content and affiliated users (author, commenter, sharer).
2. Profiling based on content and level of participation and network.
3. Define next steps to activate (potential) users.
4. Facilitate participation and co-creation.

Filtering tools are able to analyze content and detect, for a specific article, photo or video, what users interacted with this content on social media. There are also tools that enable online collaboration, although they cannot be fully integrated in the working process of news organizations. But no tools were found that combine the four different steps; tools that could be used to profile users and their participation in order to define next steps to activate them. A possible explanation for this could be that most of these tools were developed for marketing purposes and to measure effectiveness and impact of content, rather than finding ways to stimulate co-creation, which – in business terms – still has to prove itself to be valuable for many news providers.

## 5 A New Tool

### 5.1 A new tool to support the use of UGC

One of the goals of this project is to use the findings of the overview of current practices, ambitions, issues, tools and the legal analysis to develop a proof of concept of a software tool that could support news organizations to make better use of UGC. As described in previous chapters, there are two different approaches to use UGC, although they are certainly not mutually exclusive. The first approach is newsroom oriented, in which UGC is regarded as a source and the main goal is to find and filter the most (ir)relevant UGC to optimize the quality of the website. In addition to the ambition to use more UGC (both push and pull) as efficiently and effective as possible, some news organizations want to increase the engagement with and involvement from of their community. These news organizations not only want to collect UGC as a source for editorial content or as items on the website. They want to strengthen and expand the cooperation with their users by stimulating and supporting them to partake actively in the other steps of the production process as well.

In order to develop a new software tool, it is important to take the current offer of software products into account. The technological overview in chapter four demonstrated that there are many tools that enable newsrooms to filter content from social networks, public forums and blogs. The last couple of years new products have entered the market on a frequent basis and it is expected that more will follow. As mentioned earlier, there is still room for innovation in terms of the quality of the filtering technology, integration (of different functionalities and different content streams), and especially by including image and video analysis as the current tools only process text. A new tool could focus on one or more of these aspects. However, driven by both marketing and content industries the quality of these tools is likely to improve as computational powers increase and, over time, the versatility of these tools in terms of functionalities is expected to expand. The inclusion of image and video content analysis could be very interesting, but is - considering the maturity of the technology - too complex for the scope of this project.

For the collaboration oriented approach there is more room for innovation. Although there are tools that facilitate online collaboration, this is just one of the four functionalities in the process of co-creation stimulation that have been described earlier. Furthermore, these tools cannot be (easily) integrated into the product and production process of the news provider.

For this project we will focus on a tool that supports the collaboration oriented approach of UGC.

### 5.2 Towards a pilot

The tool that will be developed for this project will be tested during a pilot. The partner in this project that will use and test the tool is the hyper-local news provider Dichtbij. As described in chapter three, Dichtbij is highly focused on engaging and

interacting with their users (see Table 5). Users can upload their own content directly to their website. Furthermore, Dichtbij calls their editorial employers 'community managers', rather than editors. Their goal is twofold: 1) to make sure that the website offers relevant content for their community and 2) to expand and leverage the community to ensure this, which means that although they often write their own content, they also try to activate their users to participate as much as possible.

Prior to defining the requirements for the tool, a workshop was organized with the community-managers from one of the several local divisions of Dichtbij. The goal of this workshop was to determine how a tool, focused on the above described collaboration oriented approach, could support them. During this workshop the so called 'customer journey map' approach was applied. The customer journey map is a visual representation of the journey of a user that characterizes his interaction with the service. In this approach, the starting point of the design process is the daily routine of the user of the tool, in this case the newsroom.

The main insight gained from the workshop was that Dichtbij's most important challenges were 1) to find the most relevant users to approach for input, (e.g. additional information, audio or visual content, expertise and/or opinions) or distribution (retweets or 'likes' on Facebook etc.), and 2) to kick-start new, lively and sustainable hyper local communities (products) in new regions. This means that the focus of Dichtbij regarding the four functionalities that enable co-creation is profiling and – additionally – to define next steps to activate (potential) users.

Although Dichtbij, within these functionalities, is particularly interested in high level participation from users (articles, photos or videos), a tool could support the activation of users on different levels (sharing, commenting) that is based on their record of participation in combination with specific topics. The general principle is that when something newsworthy (for the target group) happens, a newsroom can leverage their (potential) community in an efficient way by matching the right users with the right topics and translating this in an effective, activating communication strategy.

The goal of the tool is:

*To support community managers to identify relevant users for a specific topic in a specific region and activate these users – the community – to participate.*

### **5.3 A tool for the collaboration oriented approach**

Chapter four described how a tool that could support newsrooms to better leverage their community and involve them in the journalistic process, was based on four main functionalities.

The analysis of content still is a basic functionality that will be part of the tool. It is necessary to analyze both news in general, push content from users who share their contributions directly with the newsroom or website, and pull content from social networks, public forums or blogs. Although the focus of the tool is limited to topical filtering and sentiment analysis, it could still be a valuable asset to have a supplementary filtering functionality that can indicate both quality content and

damaging content or detects trends early that could indicate that something newsworthy is happening, in order to take further action.

The next step in the process of leveraging user participation is to profile (potential) users, based on their history of interests and level of participation (and ideally their level of expertise) on specific topics for both push and pull content. It is important to know what users interact with what kind of content or with which other users, and in what way. Furthermore, it would be interesting to detect patterns that indicate the specific motivation of users to interact (or not) with specific topics or other users.

This analysis is important for the next step, to (automatically) define actions to activate the community, for instance by asking some users to contribute with their own content about a specific topic, and others to share an article that could be of their (or their friends') interest. The tool should support news organizations to connect topics and (potential) users in such a way that the communication from the news organization matches their interests and level of participation.

The final step is to actually facilitate participation and co-creation. This means that users should not only be able to consume content. They should also be enabled to share or comment on content or even collaborate online with both editors and other users to create new content, improve and enrich the existing product and guard the overall quality (depending on the maturity in terms of co-creation from both the news organization and its community).

Due to the limited scope of this project a tool has been developed that only encompasses just (parts of) the first two functionalities of collaboration oriented UGC tools:

1. Analyzing and filtering content and affiliated users.
2. Profiling based on content (keywords), level of participation and sentiment.

Furthermore, as the interface (visualization and user interaction) is an essential aspect of an efficient tool – as discussed in chapter four – not only the back end (content analysis and profiling) but also the front end (visualization and interaction design) has been an important element of the development of the tool. Figure 1 and Figure 2 are initial sketches from experiments with different visualization techniques and strategies.

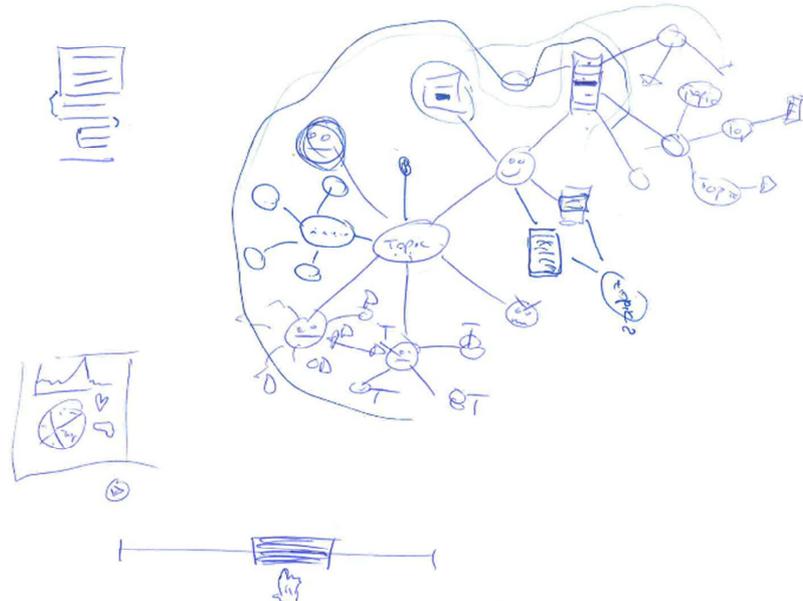


Figure 1: Experiments with visualization techniques (A).

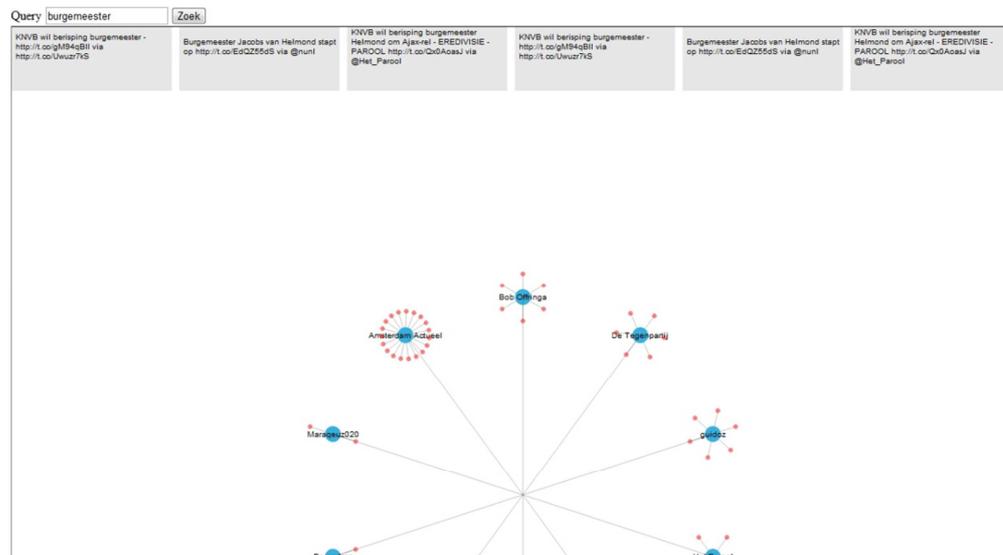


Figure 2: Experiments with visualization techniques (B).

We have chosen to build a web-based tool. This allows the tool to be versatile, light, it requires no installation and it is easier to be updated (both in terms of data and functionalities). Furthermore, it allows journalists to work with the tool both behind their desk and on the road on a mobile device – which suits the diversity in working contexts of journalistic activities.

## 5.4 What the tool does and does not do

### 5.4.1 What the tool does

The web based software tool has the following functionalities:

1. Content analysis of both Twitter (Tweets from followers from a specific Dichtbij region) and the Dichtbij content database. Using Wikipedia for reference, the tool determines the most important topics in a specific text. Furthermore, based on sentiment analysis, the tool can define (up to about 75% accuracy) the sentiment of a specific text.

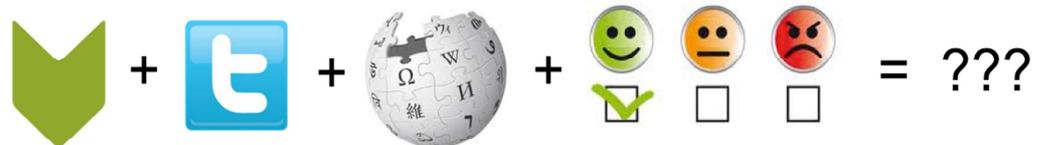


Figure 3: Analytical process of the tool.

2. Based on the content analysis the tool profiles the members of the Dichtbij community (both Twitter followers and Dichtbij contributors) according to their history of participation in combination with specific topics.
3. Based on the content analysis and profiling, the tool allows the Dichtbij community managers to search for the most relevant users in a specific region for a specific topics.

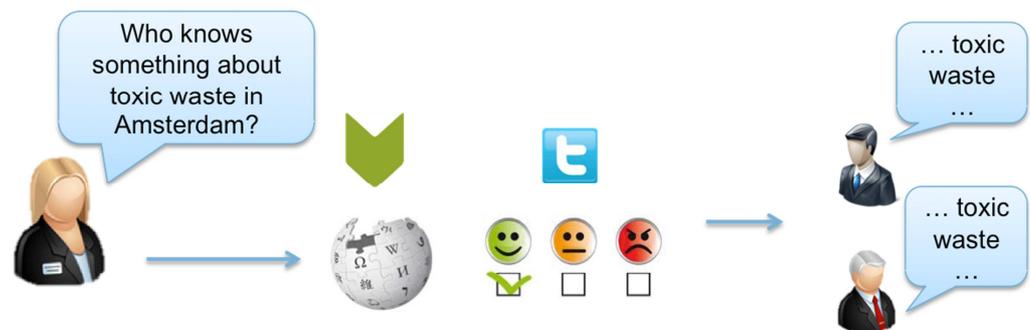


Figure 4: How the tool should work.

4. The tool, by default, shows the most relevant users (based on the analyses) for a specific topic – representing the most relevant users by showing their names bigger than less relevant users – and an overview of the actual content they have created if you click on a user, including the sentiment of each piece of content by using color codes. The tool also shows other relevant topics that have been used in combination with the originals search query, and other relevant topics for each piece of content.
5. The tool allows Dichtbij to manage the search results by deleting users from view, expanding the number of users that are being shown, specify search queries (topics) and clear search results. When search results from several

users are being shown, it is possible to highlight the content from a single user by moving with the mouse over that specific user.

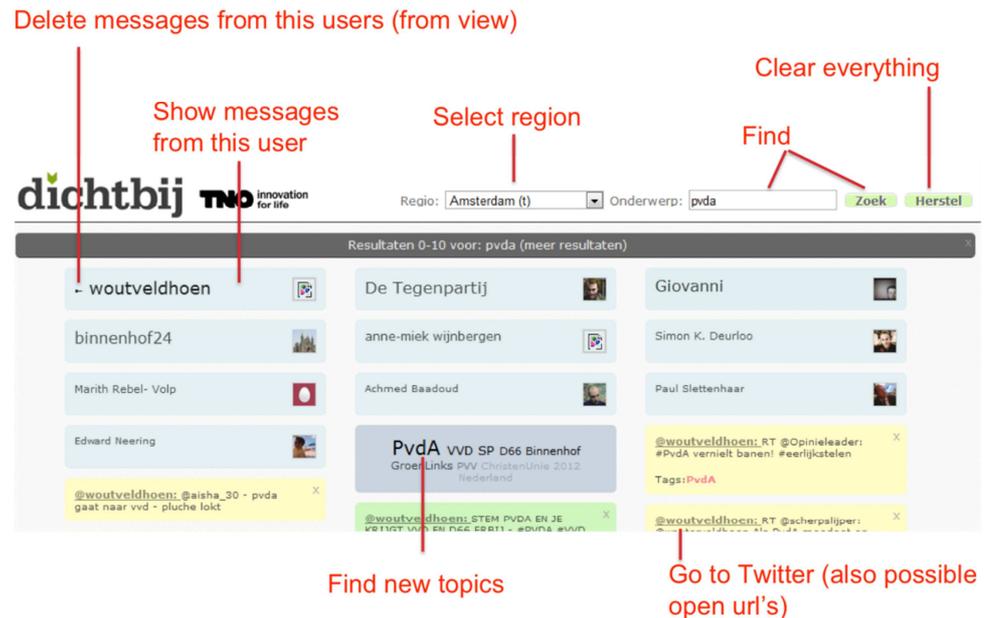


Figure 5: A screenshot of the tool explained.

#### 5.4.2 What the tool does not do

Regarding functionality 1 and 2 of co-creation:

1. Analyzing and filtering content.
2. Profiling based on content (keywords), level of participation.

The tool currently is not flexible, nor self-learning regarding the expansion of the community (for instance when someone is retweeted or directed - “@user” - who is not yet part of the database) or the relevancy and level of expertise of a specific user regarding a specific topic. For instance, the tool could adapt the level of expertise of a user when he or she is retweeted or appointed as such by the Dichtbij community manager. Furthermore, the tool does not use other information sources other than the Dichtbij database and Twitter, it does not describe the interaction and social graph of users regarding specific topics, it does not automatically generate queries based on ‘hot topics’.

The tool has not incorporated functionalities 3 and 4 of co-creation:

3. Define next steps to activate (potential) users.
4. Facilitate participation and co-creation.

In chapter six we will discuss in more detail in what way future developments of the tool could look like.

## 6 The results from the pilot

During a 7-week pilot three regional newsrooms from hyper local news platform Dichtbij had the chance to try out the tool. The evaluation of the tool focused on 1) the experience with the tool in terms of functionalities and its interaction design, and 2) ideas for further development.

As such, this chapter is an evaluation of the tool, but it also provides a brief overview of possible future development of these kinds of technological tools that aspire to support news media in their collaboration oriented approach regarding UGC and user participation.

### 6.1 The experience of the tool

#### 6.1.1 *Motivation to use the tool*

Specific occasions to use the tool in the daily routine were the need to find – and subsequently activate – relevant members of the regional Dichtbij community regarding a specific topic that the newsroom wanted to explore further. The goal was to find users who could create content or would be interested to respond to, or comment on content that was already being created. Currently, Dichtbij does not know the vast majority (about 80%) of its contributors; it does not know their (topics of) interests, expertise or participatory history. Therefore Dichtbij is not able to optimally leverage its community.

#### 6.1.2 *The functionality of the tool*

In general, the tool did not yield relevant results for the above-mentioned purposes, which made it, as is, unfit to be used in the daily activities of Dichtbij.

The results from the Twitter data were not specific and therefore not relevant enough. Because the tool focuses on keywords it is, despite the current analytical engine that is being used, not able to distinguish generic observations with low information-density from content that has high information-density and is, therefore, more valuable. This especially is especially the case with the analysis of Twitter data because Tweets are limited to 140 characters, which makes the content analysis more difficult. The list of the most relevant users is based on the quantity of content produced that contains a specific topic. This also includes irrelevant content which the tool ranks as just as valuable as more relevant content. This has a negative influence on the results of the tool, as it yields a list of users who have used a specific keyword most often, rather than a list of users who are the most knowledgeable. Another consequence of the current analytical engine is that the results often include companies or organizations that create content about the topics that are related to their specific service or product, rather than individual users.

The consequence of the aptitude of the analytical engine is that the Dichtbij community manager – who wants to find the most relevant users – still has to browse the content that the users from the list have produced to see whether someone is truly relevant or not, which costs a lot of time which defies the purpose of the tool. Currently, Dichtbij does not have the time or the tools to assess their

online contributors and Twitter-followers to determine someone's possible field of expertise. Dichtbij would like to be able to automatically generate an overview of their most influential users, possibly for specific topics.

It should be noted that it is difficult to determine 'relevancy'. For Twitter it could be based a combination of an analysis of the Bio (a short personal description), the number of followers, the number of retweets, the frequency with which someone tweets and content analysis of both the tweets and possibly, if a tweet contains a link, the content of the page the tweet links to. It would also be possible to combine different sources to find people who are active on similar news platforms, or websites that are dedicated to a specific topic.

As described in the previous chapter, the tool focuses primarily on the first two steps of co-creation: content analysis and, consequently, user profiling based on their participatory history. However, it also offered a first glimpse of possibilities of user activation. In the overview of content that the tool offers, the username in Dichtbij-content and the Twitter-handle offer links that enables Dichtbij to contact them, respectively by e-mail or via Twitter. However, Dichtbij community managers had not used this functionality, as the tool did not provide relevant users.

### 6.1.3 *Interaction design and visualization*

As mentioned in chapter four, the interaction design of the tool is very important as it determines to a great extent the usability. The tool needs to be implemented in daily routines, save time and support the activities of the newsroom rather than frustrate them. Therefore, the results of the tool need to be represented in such fashion that it offers a clear overview and it should provide logical next steps.

Although the results from the tool were not relevant enough, the usability of the tool and the underlying design principles were deemed user friendly and practical. However, because the results that were being represented were often not relevant or relevant enough, it was sometimes difficult to properly assess the design choices on their own merit – separately from the results they showed.

One of the main choices that were made in the development of the tool was to focus primarily on the users (based on their online activities related to specific topics) and only secondly on the content they produced – although the lists of users that the tool yields are based on content analysis. The idea is that a journalist wants to activate relevant users to participate in the production process. A query for a specific topic results in a list of the ten most relevant users. By clicking on the name of a user it is possible to see the content that that specific users has produced: Tweets or content published on the Dichtbij website.

This choice was received positively by Dichtbij. It matches the daily Dichtbij practices in which the newsroom collaborates with its community and tries to find users who are willing to create and share their own, original content, to provide additional information for, or comment on, content from others or to help to distribute the content within their social networks. They already use tools, like Tweetdeck, that help them to find content regarding specific keywords that indicate newsworthy events. However, this serves a different purpose.

The interaction design of the core search-functionality - the selection of a specific Dichtbij community (region) and the search box – was clear.

The concept of the visualization of the search results was clear and it seems to be supportive to the main purpose of the tool. However, this was difficult to assess properly because the results that the tool yielded were not relevant, as mentioned above. The most relevant users – according to the tool – are being displayed bigger than less relevant users. However, because the tool did not get this right, this undermined the concept of the visualization. This also applied to the number of users that the tool displays by default (10). As these were often not the most relevant users, a longer list with a higher chance of displaying relevant users, would have been more helpful. Would the results have been relevant, the current default would suffice for a first overview.

The tool separates the content from Dichtbij's own database from the external Twitter stream, rather than combining all the available data in one single stream. Although it is possible to offer different and flexible ways to explore these and other datasets (as we will discuss further in paragraph 6.2, Dichtbij found it to be important to be able to clearly distinguish push-content from pull-content.

When one clicks on one of the results (a user), the content from that specific user will be displayed. It is possible to 'open' different users at the same time. By hovering over one of the selected users, the color of his or her content will change to blue, distinguishing it from the content from other users. Although this functionality was not instinctively clear, it was deemed useful, especially for the Twitter content. Queries for tweets, due to their limited number of characters, yield many, short pieces of content, as opposed to Dichtbij articles which tend to be much longer. Using color to highlight content from a specific user improves the usability of the search results.

This was also the case with the possibility to delete search results (both users or content, a selection of users or content or all users or content). As with the blue highlighting of content, this was not automatically understood, but still deemed valuable to explore and use the results.

The sentiment analysis of the tool, represented by colors of the content (green for positive, yellow for neutral, red for negative), was not instinctively clear. The inconsistency of the quality of the sentiment analysis did not help, as the colors did not always match the sentiment. Furthermore, sentiment analysis proved to be difficult to apply to longer articles because an article can maintain different points of view from different people (quotes or opinions) which makes it difficult to assess the overall sentiment.

The tool also extracted and represented 'tag words' from individual pieces of content and, for all the results from the search query, a 'tag cloud' that represents the most important tag words that were being used in combination with the original query. The idea behind this functionality was that it would be easier to explore related content, supporting the research process and stimulating the initiation of new ideas and links.

## 6.2 Future Development

As mentioned above, despite the underwhelming results that the tool yields, Dichtbij was very positive about the general direction of the tool and how it could support its newsrooms in their daily routines, and in realizing its ambitions to better leverage its communities. The tool could support them in activating users to participate in the process of content creation, but also with the distribution of the content and, subsequently, with increasing the overall audience. Also the principle design choices, which are very important in terms of the overall usability and the likelihood that the tool will be used, were received positively. Furthermore, the experiences and feedback from Dichtbij are very insightful to identify and explore further development of this specific tool, but - more important - also tools in general that strive to support the collaboration oriented approach.

The actual analytical engine of the tool is a very important domain that would need further development. It is vital that the tool is able to distinguish information-heavy content from irrelevant content. One aspect would be the incorporation of different sources, including user participation on websites from other news providers, to combine topics with related keywords in the news, the analyses of possible links in tweets and personal information from the user. Furthermore, it would be valuable if the tool is able to distinguish individual users from commercial companies or organizations.

The tool should also be able to learn, and to develop itself as it is being used. On the one hand it should be able to improve results by recognizing and incorporating social cues like retweets and other forms of crowd sourcing, such as 'thumbs up' or 'thumbs down', or the number of reactions a comment from a user inspires. These are all endorsements (or the opposite) and tell us something about the value of content and, subsequently, the creator. Furthermore, the newsroom should be able to provide input as well by allotting a level of expertise to a user on a specific topic. The element 'time' can be an important aspect as well, because the relevancy of a user can change over the course of a specific period. On the other hand the tool should be able to learn more about (and increase) the (potential) community that it includes in its analyses, both automatic (incorporating the concept of retweets, for instance, and content analysis and profiling techniques) or manually by Dichtbij community managers.

Another interesting aspect would be the option to classify users in various ways – possibly both automatic and manually, which would make further exploration of a group of users and their content easier and more effective. One alternative way of profiling would be the analysis of the interaction between different users and the different networks within a community. Such an analysis could provide a better grasp of the possible impact of different kinds of user participation, and the effect of the communication between the newsroom and (a subset of) its users.

As described in chapter five, this tool is mainly focused on content analysis and user participation for user profiling purposes. However, for future development it would be valuable to also include functionalities that support the activation of users. The idea is to use the analyses of content and user participation (and possibly user networks) to address the right user with the right message that suits their interests and their willingness to participate on a certain level. This means that different users

will be targeted in different ways, based on automatic suggestions from the tool, in order to better leverage the community. As described in chapter one, although there are users who contribute and create on a regular basis, many users who decide to participate do so as the result of a coincidental, ad hoc combination of personal, social and content-related motivational factors that suit a specific context and the input that is required to participate. Ideally, the tool can collect and analyze relevant data to provide a better understanding of this complex interplay between context and motivational factors, and translate this in more effective next steps to motivate its community.

However, it is important to consider 1) the legal requirements and ramifications and 2) how such communication would be perceived by the community. Regarding the legal requirements it is important to observe the rights to data protection and privacy as well as the copyrights of amateur journalists, as well as the persons amateur journalists report about. Tweets and contributions on blogs can, under certain circumstances be considered personal data (see section 2.2.4.1.). In such a situation, the automated collection and re-publication of tweets through the tool is only lawful when either the user has given her consent or if the interest of the public to read the contribution weights more heavily, respectively the news exemption applies (see more extensively in section 2.2.4.5.).<sup>14</sup> Re-using material from tweets and blogs, moreover, would need to take into account the privacy of the user as well as those he or she reports about. Particular critical (and hence not advisable) in this respect is using material from profiles that are protected against unauthorized access or that are clearly targeted at a very specific group of addressees. If the blog or tweet reports about others the journalist would, moreover, need to check carefully compliance with privacy and data protection law before re-publishing the material. To the extent that tweets, blogs and other forms of UGC are sufficiently original to qualify for protection under copyright law (as to when this is the case see section 2.2.5.1.), the re-use of such content would moreover need to observe the copyrights of the user. In other words, the (automated) copying or republishing of such material can require the prior authorization of the user. The re-use of tweets will in many cases be covered by the quotation exception (providing the original source is indicated, together with the name of the author) (see in more detail section 2.2.5.5.).

Furthermore, one has to deal with values and attitudes in the community. The news provider has to make sure that it averts the possible perception of 'Big Brother' who is watching and tracking everything a user does on the website of the news provider, and possibly on other platforms as well, such as Twitter or other news providers. It has to tread a fine line in which it knows how it can approach different kinds of users in what kind of context. It is expected that the most active users will be less bothered by direct communication from the news provider than casual contributors or people who have only infrequently shared content within their social network.

Based on the analysis of different news sources, content analysis of Dichtbij data, Twitter data and possible other sources, it could also be interesting to create an overview of 'hot topics' which would help a community manager to start the day with

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<sup>14</sup> One may wonder, however, whether the latter already justifies collecting and republishing tweets without authorization because the public could read e.g. the tweet also on twitter.

an overview of what is happening in the community regarding the most important items in the news.

### 6.3 Challenges

In conclusion, future development of a tool that supports a collaboration oriented approach in leveraging UGC and user participation will have to address the following challenges.

#### **Collaboration...and time**

Future developments of these kinds of technological tools require a close collaboration with newsrooms, and sufficient time to allow for an iterative design process.

First, the development of an effective analytical engine that can perform more in-depth analyses on different kinds of datasets requires the involvement of journalists. They can provide input by evaluating what kinds of results are the most relevant and improve indicators of relevancy. Furthermore, combined with the deployment of some degree of artificial intelligence, feedback from journalists will allow the tool to be self-learning and improve the results as it is being used.

Second, the success of these kinds of tools will depend on the ease with which they can be integrated in the daily practices of the newsroom: its routines, culture and technical systems that are already in place. As mentioned above, the interaction design and visualization techniques are very important to ensure that the results from the analytical engine are presented in a logical and efficient way that suits the journalistic production process. In order to create such a graphical user interface, collaboration is needed as well.

#### **Analytics**

Ultimately, and obviously, the tool needs to yield relevant results that will provide newsrooms with the most relevant users within their own community, or even beyond their existing network. The analytical engine will need to be improved, incorporating additional analytical methods that offer (and improve) semantic intelligence that transcends mere keyword spotting. It could include a broader analysis that deploys cross-analyses with keywords in the news from other sources or the content to which links in articles or tweets refer, social cues (such as the number of replies or comments, 'thumbs up' or 'thumbs down', likes, retweets, followers), or it could include the expertise within the social graph of individual users. It will also, as mentioned above, have to include various self-learning principles to improve the analytics – and the results – as the tool is being used.

#### **User motivations**

As described in chapter one, user participation often originates by accident: an ad hoc combination of motivational factors in the right context.

In order to better understand the habits of users, it would be valuable to be able to collect more information about them and the content they produce, share or consume. This could be rather basic data, such as location, time and the device that is being used, but also data that is more challenging to attain in both

technological and legal terms such as information about a persons emotional state, or whether someone is working, travelling, et cetera.

A better understanding of user behavior (and the context in which this behavior occurs) could improve the way content would be presented to individual users and also the communication between the newsroom and its users regarding their possible participation. In order to address users in such a way that they will be enticed or persuaded to participate by creating content, commenting on articles or distributing content in their own social network, it would be helpful if the tool could detect patterns in user behavior – both automatic and based on their manual input – that would indicate the most important motivations of individual users to participate, or not. This requires more research, but also a lot more data and the right analytical tools to process the data.

### **Availability and quality of the data**

In order to perform these different kinds of analyses, the tool needs to be fed with data. The current tool used Twitter data from the followers of a specific Dichtbij region and the data from the Dichtbij database. This database was limited to the content of the last 8 months which was not updated and did not include information about the consumption of users (e.g., what articles they have read) and their activities regarding distribution (what content they have shared within their social network). Currently, the user accounts from Dichtbij are not linked to a user's social media accounts like Twitter. Such information, especially the latter as it often concerns publicly available content, could be very valuable because it provides a better, more complete profile of the user. It enables the tool to combine both internal and external data from its users. A more complete dataset that includes both data about consumption, comments, articles and also other external sources - and is able to tell them apart - could yield far more relevant results. Ideally all these different datasets are operationalized in such way that the analytical engine only has to deal with a single unified format so they can be processed – and combined – more easily.



## 7 Conclusions

For the printing press, user generated content (UGC) and user participation seem to be two of the few upshots in the digital era as many newsrooms are struggling to do more with less. The value ascribed to UGC and user participation can be divided into three broad categories: 1) it enables newsrooms to offer content from news events they could not produce themselves, or at least not as fast, 2) it allows newsrooms to strengthen the ties with the community they serve and 3) it can be an addition to and an improvement of their journalistic product.

However, the perception of UGC by journalists is still ambiguous, not in the least because the use of UGC is complicated by a couple of significant issues. These issues are related to both the content itself and, subsequently, the production process. News providers have to guard their reputation as a quality medium. The problem with UGC is that the quality of the content that users contribute often does not live up to professional standards. The moderation of UGC to maintain the quality of the website can be very time consuming, and therefore costly. Furthermore, news providers have to act within a legal context that poses important questions regarding their responsibilities in dealing with content that violates the rights of others, and their liability when such content is published on their website.

*What are possible strategies to improve the implementation and utilization of UGC in newsrooms, and how could (new) technical tools support these strategies?*

First of all, it is important to note that there is no single best strategy to deal with UGC and user participation. A news organization has to determine to what extent it wants (and will be able) to adopt the participation of its users – and consequently their content – that fits its own culture, production process and infrastructure (including technical tools), and matches the values and expectations of the community it caters to and other stakeholders involved.

### **Filtering and collaboration**

In general, news providers have the ambition to do more with UGC and user participation. However, ideas on how this should be realized – and *what* exactly should be realized – differ. Roughly two different approaches and accompanying strategies regarding UGC and user participation can be distinguished, although they are not mutually exclusive. The first is a newsroom oriented approach in which the newsroom considers UGC to be an extra source for news, in addition to their traditional sources such as press agencies. The newsroom wants to optimize its efficiency in using UGC (both push and pull), stretching its limited resources as far as they can go to optimally collect, select, edit and present the content that users send directly to the newsroom or share via social networks such as Twitter, blogs and forums. The second approach is a collaboration oriented approach in which the newsroom wants to co-create the news with the users by working together in the various stages of the production process, and not just on the input and output side. Both perspectives are based on the idea that the newsroom is no longer the only creator of news content and that the job of journalists is – to some extent – shifting from creator to ‘director’ of the news. However, in the newsroom oriented approach the director has much more control over the production process and the final

product than in the collaboration oriented approach. There is still a clear hierarchical relation between the editors and the users. In the collaboration oriented approach, however, the 'director' is less directive and the editors have a more coordinating role, working on a more egalitarian level with the users.

For the newsroom oriented approach many technological tools exist, most of which have originated in the field of online marketing. These tools offer one or more of the various functionalities that support editors in finding the most relevant content or in filtering content from users that is unsuited to be published on the website because of the low journalistic or technical quality. Apart from (imperfect) keyword-analysis that can find racist or hateful content, current tools do not seem to be able to detect content of low quality in legal terms (e.g., content that violates privacy or is libelous).

Still, the fact that these tools exist does not mean that all journalists who are dealing with UGC are using them. Firstly, not all newsrooms are aware of them. Secondly, most of these tools are not easily integrated in the technological infrastructure already in place, nor in existing practices in the newsroom, as they do not solve all the UGC-related issues. Consequently, the newsroom will have to work with different tools, each solving one piece of the UGC-puzzle. Furthermore, the quality of the tools varies and they are generally limited to text. Although mining technologies that also process audiovisual content are improving rapidly, commercial tools that do include photos or videos still rely for the most part on the analysis of surrounding texts and metadata, as the technology is not mature enough to be used properly in a journalistic context.

The number of tools that support the collaboration oriented approach is limited. One explanation could be that co-creation requires more than just a tool; it requires both a new way of working for the newsroom and – especially for extensive forms of co-creation – a more elaborate online environment for collaboration that entails a far more complex integration in the existing technological infrastructure of the newsroom. On top of that, it requires a better understanding of user motivations and how they can be best activated for different kinds of participation, and what communication strategies should be deployed.

As the primary focus of the news industry – and also the marketing industry where many of these commercial tools originate – regarding UGC seem to be on finding and filtering content ("UGC as a news source") rather than on the collaboration with users, it is expected that resources will be initially directed at innovation in the field of the newsroom oriented approach. Therefore, in this project a proof of concept was developed for a software tool that focused on the collaboration oriented approach. Based on the pilot of the tool, the market overview and the legal analysis, the following conclusions can be drawn regarding the future development and use of these kinds of tools.

### **Tools for the collaboration oriented approach**

The collaboration oriented approach is about finding the right people (with relevant expertise, knowledge or interests) at the right time with the right communication strategy in order to seduce or persuade them to participate at a specific level in the journalistic production process. This could be the actual creation of articles, photos

or videos, but it could also concern adding new information (or correcting false information), commenting on articles, sharing it within a social graph or just the consumption of the content. This process consists of four steps:

1. Filtering and analyzing content and affiliated users.
2. Profiling users based on content and level of participation and network.
3. Defining next steps to activate relevant (potential) users.
4. Facilitating participation and co-creation.

At the core of these four steps lies the comprehension of 'relevancy': what makes a user relevant to the newsroom in a specific context for a specific purpose? This insight is vital to make sure that the analytical engine not simply includes keyword recognition – which yields limited results, especially in short pieces of content like tweets – but incorporates the right mix of a broader array of semantic and contextual indicators, such as social recognition (e.g., the number of comments, 'thumbs up' or 'thumbs down', likes, retweets, followers and frequency of publishing), professional recognition (from the editors or other experts), analysis of the content to which URLs in articles or tweets link, cross analyses of keywords in other relevant (news) sources, the analysis of (expertise in) a user's social graph, et cetera.

In order to gain and improve this understanding of relevancy a close collaboration with newsrooms in an iterative design process is required. Their experience and input is vital to tackle the analytical challenges described above. The feedback from editors regarding the relevancy of the results that the tool yields is necessary to improve the analytical engine and it could enable the tool to be self-learning.

And second important element, besides the analytics, is the communication with a specific user to persuade him or her to participate at the desired level in the production process. In order to define next steps to activate users and to formulate communication strategies, a better understanding of the interplay between motivational dimensions of users - personal, social and content related - and the context in which they occur are necessary; both in terms of recognizing these motivational factors and contexts, and translating the goals of the newsroom into effective communication. One of the challenges is to make sure that users will not perceive the news provider as 'Big Brother'.

A different but equally important aspect of the development of new tools that support the use of UGC and user participation is the graphical user interface of the tool. The interaction design and visualization techniques determine to a great extent its overall usability. The tool needs to be implemented in daily routines, save time and support the activities of the newsroom rather than frustrate them. The results of the tool need to be represented in such fashion that it offers a clear overview and it should provide logical next steps. The principle interaction design choice to present the most relevant users as a starting point for further steps, such as the possible activation of users or content-related research, appears to be logical and effective.

### **Tools in a legal context**

It is important to include a legal perspective in the development of a tool that supports the use of UGC. As described in chapter two, newsrooms have to take several legal requirements into account when dealing with UGC (privacy rights,

intellectual property rights and obligations under criminal and tort law). The two different approaches in dealing with UGC relate differently to these legal issues.

In the newsroom oriented approach the main goal of a tool is to filter content that, on the one hand, is the most relevant and valuable, or, on the other hand, unsuited because of its low quality. One of the aspects of the quality is its legal status. Tools that are currently available can – to some extent – filter content that is discriminatory or racist, although this is still very difficult and the technology is definitely not infallible. However, detecting legal issues such as privacy or libelous or defamatory content seems yet to be out of reach of current technology.

One of the consequences of using tools that filter content is that news providers are expected to lose the (already questionable) appeal for protection of the 'safe harbor rules' from the E-Commerce Directive. However, the use of tools that would perform some form of pre-moderation would make them more compliant with ethical rules. This illustrates how there seems to be a clear contradiction or incoherency between self-regulatory stipulations in the press codes that require a certain level of pre-moderation, and the hosting exemption in the E-Commerce Directive. If news editors follow the codes of conduct, for instance by using a filtering tool, most likely the hosting exemption will no longer apply. Also, the responsibility of news editors for making sure that UGC is in compliance with the ethical rules is often more far-reaching than the responsibility to guarantee compliance with legal norms. This needs further legal clarification.

The collaboration oriented approach comes with its own legal issues. A tool that supports this approach is not so much focused on filtering content, but rather on finding the most relevant users regarding a specific topic and subsequently activating them to participate at a specific level. Such tools will not support newsrooms with detecting content that could harm them due to its legal status. Consequently, the tool will not contribute to the concept of 'responsible journalism' (although it would be possible to profile users who have a history of creating 'damaging' content. The content submitted by such users could be flagged as high priority in the moderation process). It is more likely that the news organization will be held even more responsible for UGC as it is proactively selecting and activating users to participate. Furthermore, privacy is an important issue for these tools, even more so than for the newsroom oriented approach – and also on a different level. As the tool collects, stores and possibly combines different kinds of data about users it will need to adhere to current privacy law and regulations. But also the attitudes in the community the news provider serves should be taken into account.

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## **APPENDIX A – LIST OF PARTICIPANTS OF EXPERT WORKSHOP, INTERVIEWS AND ADVISORY GROUP**

### **WORKSHOP PARTICIPANTS**

Beukers, Jorien (De Nieuwe Pers)  
Brouwers, Bart (Dichtbij)  
Dasselaar, Arjan (Author of Handboek Crossmediale Journalistiek en Redactie)  
Faas, Marko (RTV Utrecht),  
Heij, Jan Jaap (De Nieuwe Pers)  
Rasenberg, Patrick (ANP)  
Rooijens, Gijs (De Nieuwe Pers)  
Taihuttu-Ludwig, Nine (Hyves)  
Van der Laan, Claudia (Novia Facts)  
Van der Laan, Marco (De Telegraaf)

### **INTERVIEWS**

Bleuel, Daan (BDU)  
Brouwers, Bart (Dichtbij)  
Engel, Stephanie (Trouw)  
Gelauff, Marcel (NOS)  
Linneman, Matthijs (NOS)  
Peters, Roy (SBS Hart van Nederland)  
Schipper, Nienke (Trouw)  
Vos, Mark (NU)

### **ADVISORY GROUP**

Bleuel, Daan (BDU)  
Derks, Mireille (RTL Nieuws)  
Fuller, Mark (NVJ en Financieel Dagblad)  
Schönbach, Klaus (UvA)



## APPENDIX B – SOCIAL MEDIA MONITORING TOOLS

A selection of Social Media Monitoring Tools. The descriptions are from the services themselves. The services marked with a \$ are not free, but many of them offer free demos (Source: <http://www.pamorama.net/2010/10/12/100-social-media-monitoring-tools>).

Name service	Description
<b>Addictomatic</b>	Addictomatic searches the best live sites on the Web for the latest news, blog posts, videos and images. It's the perfect tool to keep up with the hottest topics, perform ego searches and feed your addiction for what's up, what's now or what other people are feeding on.
<b>Alterian</b>	Alterian's social media engagement solutions make it easy to listen to the conversations taking place about your company and brand on the Internet. \$
<b>Analytic.ly</b>	Analyticly is a data mining, DIY analytics, and brand engagement service provider for enterprise brand managers, advertising agencies, social media strategists, and hedge fund managers. \$
<b>ASOMO</b>	ASOMO helps interpret and understand spontaneous opinion. Discover which topics and sub-topics are being discussed, the volume of comments, themes, and the relationships between them. \$
<b>Attentio</b>	Right now, millions of people all around the world are discussing a multitude of topics, including brands and products that matter in their lives. By continuously monitoring what is written in blogs, discussion forums and other social media, Attentio provides organizations with the ability to listen, analyze and react to what is happening in the "weboisphere". \$
<b>Awareness Networks</b>	The Awareness Social Marketing Hub provides marketers with the information they need to measure success and direct future marketing investment. Track the effectiveness and reach of published content across social media channels with one simple view of activity across your social marketing campaigns and drill down to see the details of how a particular piece of content is being consumed, shared, commented on, and favorited. \$
<b>Backtype</b>	Backtype is an analytics platform that helps companies understand their social impact and make sense of social media so they can make better marketing decisions.
<b>Bantam Live</b>	Bantam Live is an online service for business teams to collaborate in a workspace and build relationships across the Web. With integrated applications for microblogging, CRM, and project management, Bantam Live is centered around a real-time stream, where people, applications, and data come together. \$
<b>Beevolve</b>	Track consumer-generated media, understand sentiment, identify emerging trends and use the resulting insights to improve products, marketing, sales and service. \$
<b>Blog Grader</b>	Blog Grader measure the marketing mojo of your blog and makes suggestions to help you improve it.

<b>Blogpulse</b>	BlogPulse is an automated trend discovery system for blogs. It applies machine-learning and natural-language processing techniques to discover trends in the highly dynamic world of blogs.
<b>BoardReader</b>	BoardReader was developed to address the shortcomings of current search engine technology to accurately find and display information contained on the Web's forums and message boards. It uses proprietary software that allows users to search multiple message boards simultaneously, allowing users to share information in a truly global sense.
<b>BoardTracker</b>	BoardTracker is an innovative forum search engine, message tracking and instant alerts system designed to provide relevant information quickly and efficiently while ensuring you never miss an important forum thread no matter where or when it is posted.
<b>Brandchats</b>	Brandchats picks up the chat about your brand. You tell it what to look for and it will find it, whether it's in Facebook, Twitter, a blog, or any other source. Slicing and dicing your data, Brandchats will instantaneously visualize the results. Powerful unique analysis and graphics capabilities support you to make sense of the "chattering". Is it good news or bad news? Does it come from blogs or Facebook? Is it increasing or rather decreasing? \$
<b>BrandsEye</b>	BrandsEye protects your brand from attacks, allows you to tap into key insights which are integral to making the right decisions and harnessing positive word-of-mouth. \$
<b>Buzz Manager</b>	Buzz Manager constantly searches the Internet for information about your organization or specific individual subjects. It measures and analyzes the "Buzz," and then accurately presents the results in time saving, easy-to-use reports. \$
<b>Buzzcapture</b>	Buzzcapture monitors places where opinions are exchanged to provide insight into how often companies and their brands, products, and competitors are discussed, what the sentiments are, and where discussions are taking place. \$
<b>BuzzGain</b>	BuzzGain is an online service for discovering and engaging with the people who will help your business thrive in today's social economy — where attention is a precious commodity. \$
<b>Buzzient</b>	Buzzient provides a next-generation solution for social media analytics and integration of this valuable content with enterprise applications. \$
<b>BuzzPerception</b>	BuzzPerception provides comprehensive blog monitoring and analysis to help clients better understand and manage their brand perception online. \$
<b>BuzzStream</b>	How do you build credibility online? You do it by cultivating quality relationships with influencers across the Web. Until now that process was time-consuming and resource-intensive. BuzzStream simplifies this process, allowing you to efficiently cultivate and manage these relationships. \$
<b>Chartbeat</b>	Chartbeat is a revolutionary real-time analytics service that enables people to understand emergent behaviour in real-time and exploit or mitigate it. \$
<b>Cogito Monitor</b>	What is being said online about my company? Why do people like my competitor's product better? How is our new marketing campaign going? My reputation has been

	damaged: why? These are a few of the questions that Cogito Monitor can answer. \$
<b>Collecta</b>	Collecta is a real-time search engine bringing content to you as it's posted.
<b>Collective Intellect</b>	Collective Intellect's Social CRM Insight platform automates your ability to identify emerging consumer considerations and preferences, and to track your ability to change them. \$
<b>ContextVoice</b>	Tracking millions of daily micro-conversations from the real-time social Web, ContextVoice helps you get business intelligence and real-time insights and analytics about consumers. \$
<b>Conversation</b>	eCairn Conversation is a SaaS application that provides a cost-effective solution for marketing professionals who want to leverage communities and influencers. \$
<b>CoTweet</b>	CoTweet is a comprehensive Web-based social media engagement, management, and reporting solution that helps companies of all sizes engage, track, and analyze conversations about their brands across the most popular and influential social communities today: Twitter and Facebook. \$
<b>Crimson Hexagon</b>	By leveraging the Crimson Hexagon ForSight platform, customers can easily uncover consumer opinions and insights about their company, products, industry, competitors and more. They can then use that information to make meaningful business decisions. \$
<b>Dialogix</b>	Dialogix is a social media monitoring tool that shows you exactly what is being said about your brand, industry, and competitors on Twitter, Facebook, YouTube, Flickr, news Web sites, forums, MySpace, and more. \$
<b>Direct Message Lab</b>	Direct Message Lab provides one central platform for companies to effectively build, manage, and analyze their social presence everywhere across social media, social networks like Facebook and Twitter, plus other popular user channels including mobile applications, widgets, desktop applications, and video sharing sites. \$
<b>dna MediaVantage</b>	dna13's MediaVantage solution provides real-time access to TV, print, online and social media content, providing communicators the insight they need to plan marketing strategies, securely align corporate teams, synchronize the delivery of corporate messages, and engage with key stakeholders. \$
<b>eWatch</b>	eWatch is the fast, easy, and cost-effective way to track what the media, investors, consumers, and the competition are saying about your organization. It scans hundreds of thousands of traditional print and Web-based articles and postings each day and delivers its findings back to you in an easy to read report. \$
<b>Facebook Grader</b>	Facebook Grader is a free tool that measures the power of a Facebook business page.
<b>FollowThing</b>	FollowThing is a powerful, Web-based professional networking and media monitoring tool that informs inbound and outbound marketing decisions.
<b>Gnip</b>	Gnip is a social media API aggregation tool that streams social data from Twitter, Facebook, and dozens more sources — all in one API. \$
<b>Google Blog Search</b>	Blog Search is Google search technology focused on blogs. It enables you to find out what people are saying on any

	subject of your choice.
<b>GraphEdge</b>	GraphEdge measures changes in your network. Your first report is sent in 2-3 days. \$
<b>HowSociable</b>	HowSociable provides a simple way for you to begin measuring your brand's visibility on the social Web.
<b>IceRocket</b>	IceRocket is a real-time blog search engine.
<b>iMooty</b>	iMooty is a next generation media monitoring tool that helps companies, PR professionals, and marketers gain real-time insights on the latest news and trends that matter to them and who the important opinion makers are.
<b>ImpactWatch</b>	ImpactWatch is an easy-to-use online dashboard that gives you the power to monitor and measure all of your media coverage in real time. \$
<b>JitterJam</b>	JitterJam helps your consumer-facing brand or business capture relevant conversations on the real-time Web and turn them into lasting and trusted customer relationships. \$
<b>Klout</b>	Klout tracks the impact of your opinions, links and recommendations across your social graph. It collects data about the content you create, how people interact with that content, and the size and composition of your network. It analyzes the data to find indicators of influence and provides you with tools to interact with and interpret the data. \$
<b>Looxii</b>	Looxii is a social media analytics platform. It enables you to search for keywords on Twitter, Facebook, blogs, YouTube, Flickr, and more. It stores the search results and you receive easy to interpret, top-level insights into what's being said about your keywords throughout social media. \$
<b>Maestro</b>	The Cymfony Maestro platform gives you real-time access to a comprehensive, custom-built archive of traditional and social media, filtered and classified to be relevant to your company, brand and business goals. \$
<b>MambalQ</b>	MambalQ tells you where people are talking about you, compared to your competitors, and segmented by all the relevant concepts (themes, type of media, sentiment, characteristics, reputation of the sites, and even universes (groups of sites) defined by you. \$
<b>Market Sentinel</b>	Market Sentinel has the technology to monitor, analyse and measure online commentary to inform your marketing strategy and help you make better business decisions. It trawls the Internet to find discussions on blogs, forums, in chat rooms, and on mainstream media which mention your brand, and then accurately calculates the sentiment, which provides you with a profile of your brand as it is perceived online. \$
<b>Marketo B2B Social Marketing</b>	By integrating with social media solutions, Marketo can help companies extend their marketing initiatives to include B2B social media and incorporate the conversations that happen on social sites. As a result, customer conversations that influence word-of-mouth opinion are responded to in real-time and relationships are developed across a variety of channels. \$
<b>Meltwater Buzz</b>	Meltwater Buzz is an innovative social media monitoring tool that enables comprehensive tracking and analysis of user-generated content on the Web. It enables users to

	monitor more than 200 million blogs, micro-blogs, social networks, forums, video and photo Web sites, product reviews, and other social media sites to gain a better understanding about end-user sentiment on hot topics, new products, companies, and the competition. \$
<b>Monitor</b>	Monitor is a social media monitoring platform with support for 150 million blogs and thousands of news sources including Twitter, Youtube, Digg, Flickr, and Technorati. It is the only media tracking tool for monitoring brands and topics, that connects social media activities with financial metrics. \$
<b>Monitter</b>	Monitter is a Twitter monitor — it lets you “monitter” the Twitter world for a set of keywords and watch what people are saying.
<b>Newsdesk</b>	Newsdesk is an easy-to-use business intelligence SaaS application for intuitive mining, finding, and sharing of real-time relevant information from a vast collection of world-wide daily news, social media, and industry publications. \$
<b>PositivePress</b>	Now, more than ever, it’s essential to track what people are saying about your brand online. PositivePress makes it easy for you to track and measure online coverage. It creates a complete historical archive so you can make better decisions over the long run. \$
<b>PostRank</b>	PostRank is the largest aggregator of social engagement data in the industry. Its platform tracks where and how users engage, and what they pay attention to — in real time. PostRank social engagement data measures actual user activity, the most accurate indicator of the relevance and influence of a site, story, or author. PostRank offers both free and \$ plans.
<b>Radian6</b>	The Radian6 dashboard is a complete social media monitoring, engagement, and workflow management platform created to help you aggregate and analyze the comments people are making about your brand and products on the Web. View trends and dig deeper into specific posts to get a pulse on how your company is faring online. \$
<b>Raven</b>	Raven is an online software system that helps customers quickly research, manage, monitor, and report on SEO, email, social media and other Internet marketing campaigns. \$
<b>RepuTrace</b>	RepuTrace enables you to keep up on developments that affect your company and your industry. It monitors, analyzes, and measures intelligence from Web sites, blogs, chat rooms, social networks, and other media sources. \$
<b>RESONATE</b>	RESONATE’s social media monitoring technology helps your business keep up with social media conversations. It analyzes content from over 200 million online sources in real time, enabling you to better understand and respond to customers, threats, and opportunities as they happen. \$
<b>Revinat</b>	The first enterprise-grade social media solution for hotels, Revinat brings order to the chaos of guest reviews, online reputation, and social media marketing. Hotels can now harness online reviews and social media as the ultimate measures of guest satisfaction and drivers of demand. \$
<b>RightNow Social Experience</b>	RightNow Social Experience allows you to monitor conversations on Twitter, YouTube, RSS feeds, your

	Facebook fan page, and other social channels, and then helps you respond quickly and appropriately. \$
<b>Samepoint</b>	Samepoint is a conversation search engine that lets you see what people are talking about.
<b>SAS Social Media Analytics</b>	SAS Social Media Analytics integrates, analyzes, and enables organizations to act on intelligence gleaned from online conversations occurring across professional and consumer-generated media sites. It enables organizations to attribute online conversations to specific parts of their business, allowing an accelerated response to shifts in the marketplace. \$
<b>Scanbuzz</b>	Scanbuzz™ is the leading service for life science companies to track mentions of their brands across social media. With increasing numbers of physicians and patients sharing their experiences online, Scanbuzz™ allows you to discover, listen, manage feedback and develop relations with social network users. \$
<b>ScoutLabs</b>	Scout Labs provides cutting-edge technology and a collaborative platform for listening to customers and engaging with them across the Internet. The Web-based application tracks social media and finds signals in the noise to help your team build better products and stronger customer relationships. \$
<b>Silverbakk Briefing Room</b>	Silverbakk Briefing Room monitors and analyzes social mediabased on relevance, activity, and engagement. \$
<b>SM2</b>	Alterian SM2 is a business intelligence product that provides visibility into social media and lets you tap into a new kind of data resource; your customers' direct thoughts and opinions. It allows you to easily capture and analyze data from social media channels to monitor your brands, identify key communities and influencers, address customer service issues, and generate new sales leads. \$
<b>Social Mention</b>	Social Mention is like Google Alerts but for social media. Sign up to receive free daily e-mail alerts of your brand, company, CEO, marketing campaign, or on a developing news story, a competitor, or the latest on any topic you choose.
<b>Social Radar</b>	Social Radar allows you to track, measure, analyze, and understand chatter from all over the Web in an easy-to-use Web-based control panel. \$
<b>SocialToo</b>	SocialToo helps automate the management of your Twitter and Facebook accounts and unclutters your stream and social graph so you can focus on building relationships. \$
<b>Socialscape</b>	There have never been so many ways for so many people to say so much about your company, your products, and your competition. Socialscape tracks and analyzes all of that talk and turns it into actionable information that can improve your brand, your business, and your customer relationships. \$
<b>SocialSense</b>	SocialSense leverages social media conversation to fuel insights that drive smart marketing decisions. \$
<b>SocialTALK</b>	SocialTALK helps you better manage and measure your social media presence and impact. It is an innovative tool that allows brands to more effectively create, publish, and measure their content strategy and posting schedule. \$
<b>Spredfast</b>	Spredfast is an enterprise-class solution that empowers your company or organization to communicate across all of

	your social media channels, measure the effectiveness of each conversation, and prove the value of social media. \$
<b>StartPR</b>	StartPR helps you find, manage, and respond to mentions of your company, your brand, your products, your service, and your people online. \$
<b>StatsMix</b>	StatsMix allows companies to easily build and share custom dashboards for displaying and analyzing all the metrics they generate. It provides an overview of all your metrics and what drives them.
<b>StepRep Reputation Intelligence</b>	StepRep Reputation Intelligence pokes an ear into every corner of the Web to find out what your customers are saying about your brand right now. These results are analyzed to reveal trends and stats that you can use to improve your marketing and customer service. \$
<b>SWIX Social Marketer</b>	SWIX offers social media analytics applications that monitor all of your social media properties (Facebook, Twitter, YouTube, +20 others). Each day, SWIX gathers visitor and usage data for your sites, graphs it all over time and puts everything in one convenient place for you. \$
<b>Tealium Social Media</b>	Tealium Social Media lets social media marketers and PR professionals measure the true ROI of their activities. You can measure the impact of your social media and online PR using tangible numbers that make sense to your organization. \$
<b>The Search Monitor</b>	The Search Monitor closely watches your paid and organic search keywords and trademarks on search engines, Web sites, news sites, and blogs. It logs competitor activity, affiliate activity, trademark use, and who's talking about you. \$
<b>ThoughtBuzz</b>	ThoughtBuzz is a real-time platform for tracking, managing, and engaging in conversations online, helping companies make informed decisions to protect their brand. \$
<b>Topsy</b>	Topsy is a new kind of search engine that sees the Internet as a stream of conversations. Topsy results are the things people link to when they're talking about your search terms. Topsy ranks results based on how well they match your search terms, and the influence of the people talking about them.
<b>TraceBuzz</b>	TraceBuzz shows you what people say on the Web right now about your name, brand, product, company or competitor. \$
<b>Trackur</b>	Trackur is an online reputation and social media monitoring tool designed to assist you in tracking what is said about you on the Internet. It scans hundreds of millions of Web pages — including news, blogs, video, images, and forums — and lets you know if it discovers anything that matches the keywords that interest you. \$
<b>Trendrr</b>	Trendrr is a business intelligence Web service for digital and social media. It allows you to listen, measure, and respond to the conversation about a product, service, or brand in real time. \$
<b>TRIBE Monitor</b>	TRIBE MONITOR is a social statistics aggregator that helps you find out where your fans are and where conversations about your brand are taking place by tracking your online presence once every hour.
<b>Twazzup</b>	Twazzup operates a leading real-time news platform that enables users to filter the news out of live Internet content.

<b>TweetBeep</b>	TweetBeep helps you keep track of conversations that mention you, your products, your company, anything, with hourly updates. You can also track who's tweeting your Web site or blog, even if they use a shortened URL (like bit.ly or tinyurl.com). It offers both free and \$ plans.
<b>TweetFeel</b>	Tweetfeel monitors positive and negative feelings in Twitter conversations about many things, including popular brands, and displays the results in a clear and simple way.
<b>Twendz</b>	The twendz Twitter-mining Web application from Waggener Edstrom uses the power of Twitter Search, highlighting conversation themes and sentiment of the tweets that talk about topics you are interested in. As the conversation changes, so does the twendz application by evaluating up to 70 tweets at a time. When new tweets are posted, they are dynamically updated, minute by minute.
<b>Twitalyzer</b>	Twitalyzer is the social media industry's most popular, most widely used analytics application. It offers both free and \$ options.
<b>twitt(url)y</b>	twitt(url)y tracks and ranks the URLs people are talking about on Twitter.
<b>Twitter Grader</b>	Twitter Grader is a free tool that allows you to check the power of your twitter profile compared to millions of other users that have been graded.
<b>Twitter Search</b>	There is an undeniable need to search, filter, and otherwise interact with the volumes of news and information being transmitted to Twitter every second. Twitter Search helps you filter all the real-time information coursing through the service.
<b>uberVU</b>	uberVU is the complete social media platform that helps your team collaborate on listening, reporting and engaging in social media. Perfect for agencies or teams inside businesses that want to deliver social media excellence. \$
<b>Viralheat</b>	Viralheat is a social measurement platform designed with simplicity and ease of use in mind. Built from the ground up to be timely and efficient, Viralheat allows users to easily comprehend social media. \$
<b>Vitruue Social Media Index</b>	The Vitruue Social Media Index is an easy-to-use tool designed to provide you a snapshot in time to help you measure your brand's online conversations.
<b>Vocus</b>	Vocus social media software enables you to listen to customers and prospects, find influencers, and monitor conversations, mentions and trends. \$
<b>WaveMetrix</b>	WaveMetrix tracks online buzz for major global brands around the world, using a unique methodology based on human analysts reading each post. \$
<b>WebDig</b>	WebDig is a next-generation business intelligence and analysis engine that finds, aggregates, and interprets digital word-of-mouth (WOM) content. Every study is reviewed, analyzed, and reported on by assigned industry expert analysts. \$
<b>Webtrends</b>	Webtrends Social Measurement offers a self-service platform for identifying and participating in conversations related to your products and brands wherever and whenever they occur on the social Web. \$
<b>White Noise</b>	White Noise is a DIY tool that lets you monitor the Web and understand what is going on without the need for hiring outside companies to do the work for you. \$

<b>Woopra</b>	Woopra is a desktop Web analytics tool designed as a client + server application. It creates a one-stop service for monitoring all your blogs and Web sites. \$
<b>Workstreamer</b>	Workstreamer is a business listening platform that delivers a competitive advantage to professionals by providing real-time social updates on competitors, customers, prospects, partners and more.
<b>Xinu Returns</b>	Find out how well your site is doing in popular search engines, social bookmarking and other site statistics. Check PageRank, backlinks, indexed pages, rankings, and more.
<b>YackTrack</b>	As a content producer, you can search YackTrack for comments on your content from various sources or other blogs that talk about your content. Another site feature, Chatter, gives you a keyword search for the social media sites — this allows you to see “chatter” on various sites that talk about a specific keyword.



## Endnotes

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- i *Handyside v. the United Kingdom*, ECtHRs Judgment of 7 December 1976, para. 49.
- ii *Sunday Times v. the United Kingdom*, ECtHRs Judgment of 26 April 1979, para. 65.
- iii *Oberschlick v. Austria*, ECtHRs Judgment of 23 May 1991, para. 57.
- iv *Jersild v. Denmark*, ECtHRs Judgment of 23 September 1994, para. 31.
- v *Dammann v. Switzerland*, ECtHRs Judgment of 25 April 2006, para. 52.
- vi *Ibid.*
- vii *Fressoz & Roire v. France*, ECtHRs Judgment of 21 January 1999, para. 54; *Stoll v. Switzerland*, ECtHRs (Grand Chamber) Judgment of 10 December 2007, para. 103.
- viii *Stoll v. Switzerland*, *op. cit.*, para. 104.
- ix *Stoll v. Switzerland*, *op. cit.*, *Guja v. Moldova*, ECtHRs Judgment of 12 February 2008, *Flux (No. 6) v. Moldova*, ECtHRs Judgment of 29 July 2008.
- x See generally (and in particular the papers by D. Voorhoof, M. Oetheimer and G. Millar): *The European Protection of Freedom of Expression: Reflections on Some Recent Restrictive Trends*, Seminar at the European Court of Human Rights, Strasbourg, 10 October 2008; website: [http://www-ircm.u-strasbg.fr/seminaire\\_oct2008/index.htm](http://www-ircm.u-strasbg.fr/seminaire_oct2008/index.htm).
- xi *Barthold v. Germany*, ECtHRs Judgment of 25 March 1985; *Goodwin v. the United Kingdom*, ECtHRs Judgment of 27 March 1996.
- xii *Steel & Morris v. the United Kingdom*, ECtHRs Judgment of 15 February 2005, para. 89.
- xiii *Vides Aizsardzības Klubs v. Latvia*, ECtHRs Judgment of 27 May 2004; *Társaság a Szabadságjogokért v. Hungary*, ECtHRs Judgment of 14 April 2009; *Kenedi v. Hungary*, ECtHRs Judgment of 26 May 2009.
- xiv Case C-73/07, *Tietosuoja-valtuutettu t. Satakunnan Markkinapörssi Oy en Satamedia Oy*, Judgment of 16 December 2008, para. 61.
- xv *Van Gasteren v. Hemelrijk*, Hoge Raad, 18 January 2008 (LJN: BB3210).
- xvi *K.U. v. Finland*, ECtHRs Judgment of 2 December 2008, para. 49.
- xvii *Times Newspapers Ltd. (nos. 1 & 2)/the United Kingdom*, ECtHRs Judgment of 10 March 2009, para. 45.
- xviii *Editorial Board of Pravoye Delo & Shtetel/Ukraine*, ECtHRs Judgment of 5 May 2011.
- xix *Ibid.*, para. 63.
- xx *Kaschke v Gray & Anor* [2010] EWHC 690 (QB) (29 March 2010).
- xxi Editors' Code of Practice (Preamble); Amendments to the Code in 2004 and 2007, documented on the PCC website under 'Code of Practice >> Evolving of the Code'.
- xxii PCC website under 'Frequently Asked Questions': 'The Code of Practice', Questions (and Answers) 13-16.
- xxiii Guidance Note on the extension of the PCC's remit to include editorial audiovisual material on newspaper and magazine websites, 2006.
- xxiv See for example:  
<<http://www.mediacollege.com/journalism/news/newsworthy.html>>.
- xxv Article 1 sub a Wbp.
- xxvi Article 1 sub f Wbp.

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- xxvii Article 1 sub d Wbp.
- xxviii Article 8 Wbp.
- xxix Article 11 sub 2 Wbp.
- xxx Article 11 sub 1 Wbp.
- xxxi Article 10 Wbp.
- xxxii Article 9 Wbp.
- xxxiii Article 13 Wbp.
- xxxiv Article 33 & 34 Wbp.
- xxxv Article 35 Wbp.
- xxxvi Article 36 Wbp.
- xxxvii Article 38 Wbp.
- xxxviii Articles 17-24 Wbp.
- xxxix Article 3 Wbp.
- xl Article 1 Copyright Act. Translations are taken from:  
<<http://www.ivir.nl/legislation/nl/copyrightact.html>>.
- xli Nota n.a.v. het verslag bij w.v. 28.482, nr. 5, p. 27.
- xlii HR 2 mei 1997, NJ 1997, 661 m.nt. D.W.F. Verkade; ook AMI 1997-7, p. 143.145 m.nt. G.A.I. Schuijt (Discodanser M.).
- xliii LJN: BA2473, Rechtbank Amsterdam , H96.0266, 10-07-1996.
- xliv LJN: AS4748, Rechtbank Amsterdam , 293749 / H 04.2246, 02-02-2005.
- xlvi Articles 31-32 Copyright Act. See also: Articles 337, 47 and 48 of the penal code.
- xlvi Articles 47 & 48 Dutch Penal Code.
- xlvii JN BK4065, Rechtbank 's-Gravenhage, 09/754002-09, 23-11-2009. LJN BK4047, Rechtbank 's-Gravenhage, 09/754109-09, 23-11-2009.
- xlviii See also: LJN: BK0003, Gerechtshof Amsterdam , 200.039.611/01 SKG, 13-10-2009. LJN AZ9644, Hoger beroep, 2200754605, 01-03-2007. LJN BG7232, Cassatie, 07/10741, 07-07-2009. LJN BI9646, Hoger beroep, 22-005821-07, 24-06-2009.
- xliv Translation is taken from:  
<<http://www.dutchcivillaw.com/legislation/dcctitle6611bb.htm>>.
- I Articles 170-172.
- li For example, the German Art. 53 (1) No. 5 of the StPO (Strafprozessordnung – code of criminal procedure), which protects the right of journalists not to disclose their sources, applies only to professional journalists and others involved in the preparation, production and distribution of broadcasting, press products, and other information and communication services. Amateur creators, such as citizen journalists are excluded from the scope of the privilege, see Löffler & Ricker, 1986: 163.
- lii See e.g. for a discussion of the situation in the UK, A. Flanagan, “The blogger as journalist under UK law”, 10 *Communications Law* 2005, p. 125 subsq. In Belgium, the Belgian constitutional court found in a judgment of 7 June 2006 that limiting the protection of journalistic sources to professional journalists constituted an infringement of free speech provisions in the Belgian Constitution and the European Convention on Human Rights, discussed in E. Werkers, E. Lievens & P. Valcke, “Bronnengeheim voor bloggers”, 147 *Nieuw Juridisch Weekblad* 2006, p. 147, 630-636. For a more general discussion, see R.D. Eliason, “Leakers, Bloggers, and Fourth Estate Inmates: The misguided pursuit of a reporter’s privilege”, 24 *Cardozo Arts & Entertainment Law Journal* 2006, p. 385, 433 subsq.

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- liii See also the discussion in Eliason 2006, p. 434 subsq.
- liv Conform with Art. 9 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, p. 31–50, see also section 5.2 of this study. Article 9 of Directive 95/46 reads: “Member States shall provide for exemptions or derogations from the provisions of this Chapter, Chapter IV and Chapter VI for the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression only if they are necessary to reconcile the right to privacy with the rules governing freedom of expression.” See for a concise case study of the Netherlands, T. Schiphof, “De onduidelijke journalistieke exceptie in de Wet bescherming persoonsgegevens”, 5 *Mediaforum* 2008, p. 208 subsq.
- lv For a critical analysis see also also E. Dommering, “Noot bij van Gasteren/Hemelrijk, Dutch Hoge Raad”, 18 January 2008, *NJ Nederlandse Jurisprudentie* 2008, p. 274; Eliason 2006, p. 434 subsq.
- lvi For an overview of the discussion and the different arguments see Flanagan 2005, p. 126; Eliason 2006, p. 429 subsq. .
- lvii In this sense e.g. D. Voorhoof, “Krijgen jouranlisten een streepje voor in Straatsburg?”, 5 *Mediaforum* 2008, p. 197, 200 subsq.
- lviii European Court of Human Rights, *Case of Stoll v. Switzerland*, 10 December 2007, Application No. 69698/01, paragraphs 103 and 104.
- lix See e.g. the ongoing project on O’Reilly, “Call for a Blogger’s Code of Conduct”, online available at <http://radar.oreilly.com/archives/2007/03/call-for-a-bloggers-code-of-co.html> . G. Schuijt, “De juridische relevantie van de begrippen ‘journalist’ en ‘journalistieke werkzaamheden”, 5 *Mediaforum* 2008, p. 191 subsq. (discussing under which conditions citizen journalists should be regarded as journalists). See also B. Alexander, “Looking Out for the Watchdogs: A Legislative Proposal Limiting the Newsgathering Privilege to Journalists in the Greatest Need of Protection for Sources and Information”, 20 *Yale Law and Policy Review* 2002, p. 124, p. 130 subsq. (with concrete suggestions for a Journalist’s Privilege Statute); L.L. Berger, “Shielding the Unmedia: Using the Process of Journalism to Protect the Journalist’s Privilege in an Infinite Universe of Publication”, 39 *Houston Law Review* 2003, p. 1371, 1406 subsq., with more suggestions for a functional definition.
- lx LJN: AX7579, Gerechtshof Amsterdam , 1157/04 (Zoek MP3). See also: LJN: AU4019, Hoge Raad , C04/234HR (Lycos).
- lxi Comparable rules exist e.g. Germany: Arts. 131 (dissemination of publications that depict violence) and 184 (dissemination of pornographic material) StGB (Germany Penal Code) or the concept of “drukkersmisdrijven that has developed in Belgium case law, about this see S. Dupont, *Profesionele aansprakelijkheid van de uitgever, jura falconis, 1996-1887-33(4)*, p. 581-648, section IV A. Netherlands: Art. 132 Wetboek van Strafrecht (Dutch Penal Code) (dissemination of publications that incite to unlawful behavior or resistance against the public order).
- lxii See § 20 (2) German Landes Presse Gesetz (State Press Law): „Strafrechtliche Verantwortung (1) Die Verantwortlichkeit für Straftaten, die mittels eines Druckwerks begangen werden, bestimmt sich nach den allgemeinen Strafgesetzen.
- lxiii See e.g. 19 (2) Landes Presse Gesetz.

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- lxiv For France, see Art. 93-2 subseq. of loi du 29 juillet 1982 sur la communication audiovisuelle.
- lxv Section 5.1 of the Leidraad.
- lxvi [http://www.rvdj.be/sites/default/files/pdf/aanbeveling\\_gebruikersinhoud.pdf](http://www.rvdj.be/sites/default/files/pdf/aanbeveling_gebruikersinhoud.pdf)
- lxvii Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('E-Commerce Directive') OJ L 178/1 (17.07.2000).
- lxviii Tribunal de Grande Instance de Paris, 5 June 2007 (Lafesse v MySpace), online available at <http://www.legalis.net>
- lxix In this sense e.g. OLG Hamburg, Urteil v. 26.09.2007 (Haftung für fremde Bilder-Uploads), Application No. 5 U 165/06.
- lxx For example, Regional Appeal Court Köln, 28 May 2002, No. 15U221/01 (Steffi Graf). MultiMedia und Recht 2002, pp. 548; Tribunal de Grande Instance de Paris, 5 June 2007 (Lafesse v MySpace), *ibid*: "elle ne se limite pas à cette fonction technique; qu'en effet, imposant une structure de présentation par cadres, quelle met manifestement à la disposition des hébergés"; Court d'appel de Paris, 7 June 2006, (Tiscali Media vs. Dargaud Lombard), *ibid*. Different: Tribunal de Grande Instance de Paris, 15 April 2008 (Lafesse et. al. vs Dailymotion), *ibid*, arguing that merely providing a structural context does not amount to editorial choice of the contents placed into that structure, this choice would remain with the user.
- lxxi Tribunal de Grande Instance de Paris, 5 June 2007 (Lafesse v MySpace), *ibid*.
- lxxii Tribunal de Grande Instance de Paris, 13 July 2007 (Nord-Ouest Production v Dailymotion), *ibid*. In this sense also Tribunal de Grande Instance de Paris, 19 October 2007 (Zadig Productions v Google). Online available at <http://www.legalis.net>
- lxxiii Tribunal de Grande Instance de Paris, 13 July 2007 (Nord-Ouest Production v Dailymotion). Online available at <http://www.legalis.net>.
- lxxiv In this sense Tribunal de Grande Instance de Paris, 5 June 2007 (Lafesse v MySpace). Online available at <http://www.legalis.net>. Court d'appel de Paris, 7 June 2006, (Tiscali Media vs. Dargaud Lombard). Online available at <http://www.legalis.net>. Different: Tribunal de Grande Instance de Paris, 15 April 2008 (Lafesse et. al. vs Dailymotion). Online available at <http://www.legalis.net>, arguing that the law itself does not prohibit hosting services to earn revenues, e.g. through advertising. See also Tribunal de Grande Instance de Paris, 13 Juli 2007 (Nord-Ouest Production vs. Dailymotion), *ibid*, pointing out that the distinguishing factor is not whether or not the operators of that service is personally "at the origin of the transmission" ("est personnellement à l'origine de la diffusion, raison pour laquelle il engage sa responsabilité).
- lxxv See e.g. the example of the decision of the district court Hamburg saying that the operator of a hotel review site 'publishes' user generated reviews if he takes the decision about the "if" of the publication, and if users depend upon the site operator for the placing and publication of the review, District Court Hamburg, 327 O 607/10, 1 September 2011, ZUM 2011-12, p. 936-941, 939. The opposite example could be one as cited in Jürgens & Veigel (2007): a situation in which no legally relevant link between site operator and user exists, a site that grants users "automatically" the status of a moderator after

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- a certain duration of membership or amount of content contributed. For the Netherlands, see Rb. Amsterdam, 420336/KG ZA 09-379 P/PvV (Stichting Martijn), where the judge ruled that the use of amateur moderators would not rule out liability of the host.
- lxxvi Recitals 47 and 48 of the E-Commerce Directive.
- lxxvii TPI Bruxelles, 26 novembre 2004, SABAM c/ Tiscali, beschikbaar <http://www.juriscom.net/documents/tpibruxelles20041126.pdf> , but see also HvJ EU, 24 November 2011, zaak C-70/10, Scarlet/Sabam.
- lxxviii Tribunal de Grande Instance de Paris, 13 Juli 2007 (Nord-Ouest Production vs. Dailymotion), *ibid*, The decision was overturned in a higher instance because of the lack of notification about infringing content. But see Google, Tribunal de Grande Instance de Paris, 19 October 2007 (Zadig Productions v Google), online available at <http://www.legalis.net> and Tribunal de Commerce de Paris, 20 February 2008 (Flach Film et autres v Google France), online available at <http://www.legalis.net>
- lxxix The case has made its way to the European Court of Justice in Luxemburg, on which occasion the Luxemburg court ruled that the said filtering obligation was disproportional and in conflict with the fundamental rights of users and ISPs as well as the prohibition of the imposition of general monitoring obligations for certain intermediaries according to Art. 15 of the E-Commerce Directive, HvJ EU, 24 November 2011, zaak C-70/10, Scarlet/Sabam.
- lxxx Netherlands: LJN: BV0549, Rechtbank 's-Gravenhage , 374634 / HA ZA 10-3184, 11 januari 2012; Denmark: Supreme Court's decision of 27 May 2010 in case 153/2009 (Telenor v IFPI Denmark)
- lxxxi France: Loi favorisant la diffusion et la protection de la création sur Internet - Loi n° 2009-669 du 12 juin 2009 parue au JO n° 135 du 13 juin 2009 (Hadopi), UK: Section 14 of the UK Digital Economy Act.
- lxxxii <http://www.ugcprinciples.com/>
- lxxxiii UGC principles, no. 3.
- lxxxiv UGC principles, no. 14.
- lxxxv T.G.I. Paris, 13 March 2009, temps Noir et autres c. YouTube et autres; TGI Paris, 24 June 2009, Jean-Yves Lafesse et autres c. Google et autres.
- lxxxvi European Court of Justice, Case C-236/08 (Google France/Louis Vuitton, 23 March 2010, recital 114. See also Art. 14 and recital 42 of the E-Commerce Directive.
- lxxxvii Compare European Court of Justice, Google France/Louis Vuitton, *ibid*, recital 115.
- lxxxviii Leidraad, Section 5.4
- lxxxix Rb Brussel 23 January 2007, A&M 2008-1, p. 75.
- xc [http://www.rvdj.be/sites/default/files/pdf/aanbeveling\\_gebruikersinhoud.pdf](http://www.rvdj.be/sites/default/files/pdf/aanbeveling_gebruikersinhoud.pdf)
- xcI BVerfG, decision from 26. 8. 2003 - 1 BvR 2243/02.
- xcii BGZ 3, 270 (Constanze 1).
- xciii BGH, NJW 1957, 1149 (1150) (Konkursfalschmeldung).
- xciv According to the BGH, contributions of third parties are presented as one's own if they are included in one's own argument in a way that they appear to be those of the journalist, BGH, decision from 17. 11. 2009 - VI ZR 226/08.
- xcv BGHZ 66, 182 (Panorama), 4.6.1976.
- xcvi BVerfG, decision from 30. 9. 2003 - 1 BvR 865/00 (suggesting that a content is not presented as one's own, if the journalist clearly indicates that the third party's contribution is a citation that can be accredited to a third party).

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- xcvii BGH, NJW 1986, 2503 (2505).
- xcviii Section 2.6 of the German Code for the Press (Presskodex): “Bei der Veröffentlichung von Leserbriefen sind die Publizistischen Grundsätze zu beachten.” [http://www.presserat.info/uploads/media/Pressekodex\\_01.pdf](http://www.presserat.info/uploads/media/Pressekodex_01.pdf)
- xcix BGH, GRUR 1986, 683 (Ostkontakte).
- c BGH, decision from 27. 3. 2007 - VI ZR 101/06; OLG Düsseldorf
- ci BGHZ 66, 182 (188f).