

## ***The Contested Ethics of Mainstream Reporting of Terrorism in the Social Media Age***

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### **I INTRODUCTION**

The Islamic State of Iraq and the Levant (ISIL) is a movement that has continued to rattle news media in recent times. Since this article's first draft was completed in July 2015, ISIL has claimed responsibility for more large scale, high profile terrorist attacks, such as those in Paris, Beirut, Tunis and Brussels. Each time, chilling headlines and even more chilling photographs of ISIL's brutality appeared on the front pages of newspapers and their online counterparts.

These recent terrorist attacks were preceded by a phase in which ISIL frequently released videos on the internet documenting its hostage executions. In September 2014, ISIL released a YouTube video displaying James Foley, an American freelance journalist, in an orange jumpsuit being beheaded with a knife (the Foley video).<sup>1</sup> In three hours, the video was disseminated by over 2,000 ISIL militants using the Twitter hashtag “#NewMessageFromISIStoUS”.<sup>2</sup> In February 2015, an ISIL video showed ISIL militants burning Jordanian fighter pilot Muadh al-Kasasbeh alive in a locked cage. He, too, wore an orange jumpsuit, only this time petrol-soaked. This extremely graphic YouTube video was also widely viewed and shared.<sup>3</sup> This article studies the ethical dilemma that the news media faced in reporting on these videos.<sup>4</sup>

In each case, it was and had to be news that ISIL had beheaded a hostage. Yet the hostages were pawns in a terrorist visual propaganda game.<sup>5</sup> Unlike its jihadist predecessors, particularly al-Qaeda, ISIL exploits social media with its graphic videos to not

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1 Brian Stelter “James Foley beheading video: Would you watch it?” (21 August 2014) CNN <edition.cnn.com>; Jonathan Mann “Reporting on a murdered reporter” (video, 20 August 2014) CNN <edition.cnn.com>; and Rukmini Callimachi “Militant Group Says It Killed American Journalist in Syria” *The New York Times* (online ed, New York, 19 August 2014).

2 Callimachi, above n 1.

3 Nicky Woolf “Fox News site embeds unedited Isis video showing brutal murder of Jordanian pilot” *The Guardian* (online ed, London, 4 February 2015).

4 This same dilemma plagues journalists in their reporting of any terrorist attack or “crime scene” images more generally. Thus the arguments in this paper are ongoing.

5 See generally Babak Dehghanpisheh and others “The Ethics of Media Reporting on Terror” (Podcast, 18 February 2015) Carnegie Middle East Center <www.carnegie-mec.org>.

only spread its propaganda, but also attract journalists seeking a crowd-grabbing story. It utilises the currency of modern day virtual communication, including view counts, Facebook likes and shares, and “retweets”.

How should news media cover such a video and murder without inadvertently aiding the circulation of the very message behind it? The primary aim of this article is to discuss whether the media should have shown the full content of ISIL’s propagandist videos when reporting them. In doing so, the article concludes that the transformations in the information landscape brought on by technological advancements and social media have brought journalistic ethics and credibility to the forefront of the news media’s contemporary role. The mainstream media today faces novel challenges. Social media has solidified its dominance in the mediascape as a rapid information-sharing vehicle. The ability of every internet user to share information with an indeterminable audience has diminished journalistic authority over that information and raises concerns about voyeuristic dissemination at the expense of ethics and human decency. The use of videos, particularly terrorist-made videos, in the reportage of terrorism in the internet age necessarily carries the risk of inadvertently aiding the circulation of the very message being condemned as vile propaganda.

In light of these transformations, the article’s secondary aim is to compare news delivered via print and broadcast media with online news in terms of public perception and ethical responsibilities. The article suggests that although the mainstream news media has lost its gatekeeping function, online news media should apply the same ethical standards as traditional media. A principled approach to journalism is the media’s best option in order to stay relevant in an increasingly complex information landscape.

Part II of this article discusses the principles and traditional theories underpinning the media. Part III then assesses the compatibility of these traditional concepts against the current information landscape by examining three major transformations in the mediascape. Against that background, Part IV balances the policy and ethical considerations that may or may not lead to self-censorship of the reportage of the Foley video in traditional broadcast media. Part V explores whether this same balance would apply in the case of online news articles containing links to ISIL videos, given the differences between traditional and online media. In particular, this Part examines the video showing the burning of Muadh al-Kasasbeh. Commentators have called for the need to establish editorial guidelines for reporting on ISIL. However, attempts so far have been

few and largely restatements of the existing codes of ethics without any synthesis of issues specific to ISIL.<sup>6</sup> Part VI attempts to bridge this gap and suggest some global ethical guidelines for future reporting on ISIL.

## II PRINCIPLES

The literature is abundant with normative concepts coined to capture the essence of the media and its constitutional importance.<sup>7</sup> In practice, ethical forces drive journalistic and editorial decision-making. This Part examines traditional perspectives on the media's role and responsibility and then outlines the codified ethical principles of journalism. Finally, it responds to common criticisms and concludes that the media should take a principled approach to ethical standards.

### **Traditional Role of the Media**

The media's role is to promptly publish accurate and relevant information as the public's "chronicler of the truth".<sup>8</sup> In a democratic society, the media aims to maintain an open forum "to facilitate deliberation over social and political issues on the public agenda of the time, in order to assess and clarify societal values".<sup>9</sup> The corollary of this messenger role is the promotion of other rights, such as the public's access to information. This then enables an informed public to participate actively in civil society.<sup>10</sup>

Closely related is the conceptualisation of the media as the gatekeeper of public information because it decides what the public should know when selecting what, or what not, to publish. Notions of objectivity and independence give legitimacy to editorial discretion and are at the heart of journalism. These notions enable judgements to

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6 Haider Al-Safi "Are we helping ISIS by running its videos on the news?" (27 June 2014) BBC <[www.bbc.co.uk](http://www.bbc.co.uk)>; and Dehghanpisheh and others, above n 5.

7 The discussion about news media in this article refers collectively to journalists, editors and other decision makers of news networks in general. Although their technical roles may be different, their ethical responsibilities are materially similar: Denis McQuail *Media Accountability and Freedom of Publication* (Oxford University Press, Oxford, 2003) at 124.

8 McQuail, above n 7, at 126; and Clay Calvert and Mirelis Torres "Staring Death in the Face During Times of War: When Ethics, Law, and Self-Censorship in the News Media Hide the Morbidity of Authenticity" (2011) 25 *Notre Dame JL Ethics & Pub Pol'y* 87 at 89.

9 Tamar Liebes and Zohar Kampf "Performance Journalism: The Case of Media's Coverage of War and Terror" (2009) 12 *The Communication Review* 239 at 241; Susan Balter-Reitz "In Search of Truthiness" (2007) 2 *FIU Law Review* 7 at 13; and Jens Elo Rytter "Which Freedom of the Press? The Press Concealed as an 'Open Forum' or a 'Privileged Watchdog'" (2010) 55 *Scandinavian Stud L* 181 at 185–190.

10 Eric Barendt *Freedom of Speech* (2nd ed, Oxford University Press, Oxford, 2007) at 418.

be made about what is important and what people need to know, not just what they might wish to know.<sup>11</sup>

Some contend that the media has a right of editorial judgement, which is an exercise of the broader right to free speech in the mass media context.<sup>12</sup> For example, the print media has a right to determine what photographs and text will comprise articles in the absence of positive legal restrictions.<sup>13</sup> The United States Supreme Court has held that this right stems from the personal right to free speech, rather than being a special journalistic right.<sup>14</sup> The First Amendment precludes the government from exercising prior restraint on speech and shields the press from retaliation over what gets published.<sup>15</sup> Unlike the individual right to free speech, the media's freedom is ethically limited by the obligation to serve the public. Publications must, therefore, be linked to seeking truth, or constitute an opinion or criticism related to this goal.

Another perspective is that the media functions as a public watchdog. This view is popularly endorsed by English and European jurisprudence.<sup>16</sup> The media investigates and reports any abuses of power or other information of public concern.<sup>17</sup> To ensure that it can be an effective check on powers, the media has various privileges and immunities conditional on it fearlessly speaking the truth and vigilantly disseminating information of public interest.<sup>18</sup>

These assertions regarding the media's functionality — as either a facilitator of the public's right to knowledge or a watchdog — provide fundamental moral justifications for its editorial decisions. Because independence is at the heart of the definition of journalism, self-regulation of reporting conduct and ethics is justified. It is thus unsurprising that, for journalists and news organisations in most parts of the world, the favoured response to controversial affairs — like terrorist acts — is voluntary self-restraint, rather than external censorship and regulation.<sup>19</sup>

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11 Randall P Bezanson and Gilbert Cranberg "Taking Stock of Newspapers and Their Future" (2007) 2 FIU Law Review 23 at 23.

12 Barendt, above n 10, at 418.

13 See Barendt, above n 10, at 444.

14 *Branzburg v Hayes* 408 US 665 (1972) at 704; and see generally *New York Times Co v Sullivan* 376 US 254 (1964) at 269–270.

15 Gene Policinski "A Free Press? It's Not That Simple" (2012) 12 Insights on Law & Society 4 at 5.

16 *The Observer and the Guardian v United Kingdom* (1991) 14 EHRR 153 (ECHR) at [59]; and Rytter, above n 9, at 191–195.

17 *Attorney-General v Observer Ltd* [1990] 1 AC 109 (CA) [*Spycatcher*] at 183.

18 Barendt, above n 10, at 420–422.

19 Paul Wilkinson *Terrorism versus Democracy: The Liberal State Response* (2nd ed, Routledge, London, 2006) at 157; and Blake D Morant "The Endemic Reality of Media Ethics and Self-Restraint" (2005) 19 Notre Dame JL Ethics & Pub Pol'y 595 at 599.

## **Ethical Principles**

Rooted in these traditional understandings are codified ethical principles for journalists. They are a tangible product of media self-regulation. These principles aim to foster journalistic responsibility while protecting freedom of the press.<sup>20</sup> The core principles are truthfulness and accuracy, impartiality, minimisation of harm, and independence and accountability.

This article focuses on the Society of Professional Journalists (SPJ) Code of Ethics (last revised in September 2014) and the American Society of News Editors (ASNE) Statement of Principles 1975. These particular codes are comprehensive and neither context-specific nor organisation-specific. In saying that, media ethics tend to be fairly universal throughout the industry.

### *1 Truth and Accuracy*

A truth-seeking principle guides the media to produce fair, accurate and honest news content in good faith with the audience.<sup>21</sup> This principle recommends that journalists should:<sup>22</sup>

- Take responsibility for the accuracy of their work. Verify information ... . Use original sources whenever possible.  
...
- Provide context. ...  
...
- Identify sources clearly. The public is entitled to as much information as possible to judge the reliability and motivations of sources.  
...
- Support the open and civil exchange of views, even views they find repugnant.  
...
- Boldly tell the story of the diversity and magnitude of the human experience. Seek sources whose voices we seldom hear.  
...
- Never deliberately distort facts or context, including visual information.

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20 Morant, above n 19 at 597; and American Society of News Editors *Statement of Principles* (1975), arts I and II.

21 Article IV.

22 Society of Professional Journalists *Code of Ethics* (1996).

Under the latter obligation, photographs and videos must not be altered or manipulated, save for standard minor adjustments necessary for clear and accurate reproduction.

## 2 *Impartiality*

An interesting question is whether the media should strive to be a neutral commentator or, alternatively, an advocate that takes sides in conflicts and campaigns for causes. According to the ASNE Statement of Principles, while journalists do not have to be “unquestioning”, they must maintain “a clear distinction for the reader between news reports and opinion”.<sup>23</sup> The rationale seems to be that the media should be able to express critical opinions, rather than simply report the facts.<sup>24</sup> The media’s interpretation of, and conclusions drawn from, information are inevitably affected by the values and attitudes of those delivering news. The ASNE seems to have accepted that the media can take sides for moral and practical reasons and accordingly provided for this.<sup>25</sup>

## 3 *Minimising Harm and Showing Respect*

The SPJ Code asserts that the public’s need for information should be balanced against potential harm. Journalists should:

- Balance the public’s need for information against potential harm or discomfort. ...
- Show compassion for those who may be affected by news coverage. Use heightened sensitivity when dealing with juveniles, victims of sex crimes, and sources or subjects who are inexperienced or unable to give consent. ...
- Recognize that legal access to information differs from an ethical justification to publish or broadcast.
- Realize that private people have a greater right to control information about themselves than public figures and others who seek power, influence or attention. Weigh the consequences of publishing or broadcasting personal information.
- Avoid pandering to lurid curiosity, even if others do.
- ...
- Consider the long-term implications of the extended reach and permanence of publication. Provide updated and more complete information as appropriate.

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23 McQuail, above n 7, at 125.

24 See Barendt, above n 10, at 418.

25 Liebes and Kampf, above n 9, at 241.

While production codes for broadcast media place more emphasis on avoiding causing offence to the public by controlling matters like violence, swearing, sexual representations and offence to taste,<sup>26</sup> this principle seeks to protect something more personal, such as individual dignity. It offsets the Code's adherence to maximising free speech. "Harm" is undefined, but, reading the principle as a whole, it is likely to encompass consequences ranging from unwarranted intrusiveness to exposing viewers to shocking and explicit material.

#### *4 Accountability and Independence*

Accountability and independence are the remaining key principles. Regarding accountability, other than correcting mistakes, the SPJ Code says journalists should "[e]xplain ethical choices and processes to audiences [and] [e]ncourage a civil dialogue with the public about journalistic practices, coverage and news content."<sup>27</sup> Independence, as mentioned above, is at the heart of the definition of journalism. It involves avoiding conflicts of interest that could compromise integrity or credibility.<sup>28</sup>

### **Criticisms**

Journalistic codes of ethics function as self-regulatory mechanisms both internally (for the individual journalist) and externally (for the profession as a whole in the public eye). They are not, however, without their share of criticism.

#### *1 Content*

Commentators have suggested the vague drafting of the codes obstructs consistent interpretation of the norms they contain.<sup>29</sup> Some argue that these norms are primarily designed to protect the status and integrity of the journalistic profession, while any guarantees to the public are secondary goals.<sup>30</sup> Moral principles arguably occupy a separate sphere from commercial reality and do not take into account the influence of business needs and external pressures on the media. This may damage the overall effectiveness of the principles for media corporations, which increasingly behave like businesses.<sup>31</sup>

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26 McQuail, above n 7, at 128.

27 Society of Professional Journalists, above n 22.

28 Society of Professional Journalists, above n 22.

29 Morant, above n 19, at 613.

30 McQuail, above n 7, at 128.

31 Bezanson and Cranberg, above n 11, at 33.

## 2 *Functionality*

The codes do not provide bright-line rules or processes to apply when ethical values clash.<sup>32</sup> Any balancing of values occurs on a case-by-case basis. There are two main value dimensions: first, “doing no harm” versus accuracy regardless of other considerations; and, secondly, absolute independence from all other influences versus socially responsible journalism.<sup>33</sup> Each value dimension presents a continuum on which journalists must decide where they sit in different situations. Critics anticipate inconsistent decision-making as a result.<sup>34</sup>

## 3 *Enforcement*

The codes are voluntarily adopted. They are therefore not binding and lack legal authority. The rules are not judicially enforceable nor does an overarching authoritative body in the industry enforce them.

## **Principled Approach**

The problem with these criticisms is that they are largely rooted in a positivist perspective that tries to read the codes as if they are law. Although these criticisms raise some issues regarding the enforceability of non-binding moral codes, they fail to consider that ethical guidelines significantly influence the behaviour and attitudes of the relevant actors.

Blake Morant’s arguments are more convincing in this regard. Morant contends that, despite lacking legal enforceability, the ethical codes and the media’s promotions of self-restraint are effective norms and “cognitive guide-posts” amid commercial realities.<sup>35</sup> Ethical codes function *like* legal rules, guiding conduct. Ethical codes are also designed to be minimally obstructive for the business.<sup>36</sup> Therefore, it is sensible to preserve sufficient flexibility in their wording to allow appropriate case-by-case application, especially where it is unclear how the principles should interact or how journalists should strike a balance in a difficult value dimension.

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32 Morant, above n 19, at 613.

33 Esther Thorson and Michael R Fancher “The Public and Journalists: They Disagree on Core Values” (16 September 2009) Nieman Reports <[niemanreports.org](http://niemanreports.org)>.

34 Morant, above n 19, at 613.

35 Morant, above n 19, at 599.

36 At 618.



### III TRANSFORMATIONS OF THE MEDIA LANDSCAPE

The proliferation of technology and social networking has driven the latest transformations in the information industry away from the “old definition of news media built around bricks-and-mortar newspaper offices”.<sup>37</sup> This Part examines whether traditional understandings of the media’s role require re-evaluation in light of the new information landscape.

The genesis of the transformations is the rise of “new media”, which has become the central stage for journalists.<sup>38</sup> “New media” refers to the mass expansion of media — specifically the internet and mobile communication platforms.<sup>39</sup> New media is more decentralised than “old media”, which describes traditional mass media — namely television, radio and newspapers. Unlike the linear storytelling of print and televised news, new media enables interactivity within the audience and between the audience and journalists.

#### News Consumption as a Social Experience

Smartphones and tablet devices enable internet connection to be readily available at the user’s fingertips and, in doing so, catalyse the digitisation of news content and consumption.<sup>40</sup> Such consumption is increasingly social,<sup>41</sup> with social media becoming its primary avenue.<sup>42</sup>

The way modern news is consumed cultivates interactivity. Social media, such as Twitter, Facebook and YouTube, is instrumental in this development because it allows interconnected users to discuss, post and share articles widely across a shared platform.<sup>43</sup> Ever-updating news feeds expose users to articles posted by others.

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37 Policinski, above n 15, at 6.

38 Liebes and Kampf, above n 9, at 245.

39 Gillian Youngs “Media and mediation in the ‘war on terror’: issues and challenges” (2009) 2 *Critical Studies on Terrorism* 95 at 100.

40 Cornelia Wolf and Anna Schnauber “News Consumption in the Mobile Era” (2015) 3 *Digital Journalism* 759 at 761–762.

41 “If searching for news was the most important development of the last decade, sharing news may be among the most important of the next”: Kenny Olmstead, Amy Mitchell and Tom Rosenstiel “Navigating News Online: Where People Go, How They Get There and What Lures Them Away” (9 May 2011) Pew Research Center’s Project for Excellence in Journalism <[www.journalism.org](http://www.journalism.org)> at 10 as cited in Alfred Hermida and others “Share, Like, Recommend” (2012) 13 *Journalism Studies* 815 at 815.

42 Hongjin Shim and others “Why do people access news with mobile devices? Exploring the role of suitability perception and motives on mobile news use” (2015) 32 *Telematics and Informatics* 108 at 109; and Alice Ju, Sun Ho Jeong and Hsiang Iris Chyi “Will Social Media Save Newspapers?” (2014) 8 *Journalism Practice* 1 at 12.

43 Itai Himelboim and Steve McCreery “New technology, old practices: Examining news websites from a professional perspective” (2012) 18 *Convergence* 427 at 429.

Other features also facilitate interactions, such as the ability to comment and the hosting of audio-visual media to supplement news.<sup>44</sup>

Currently, these social networking services provide the most opportunity for dialogical interactivity. The digital news directly produced by mainstream news outlets, by comparison, is still “geared towards content distribution rather than facilitating conversation about issues”.<sup>45</sup> The trend towards interaction, customisation and participation in news consumption demonstrates that the public is no longer a dependent recipient of media-fed information.<sup>46</sup>

### **Diminishing News Monopoly and Journalistic Authority**

The technological evolution of new media and social media has diminished the media’s monopoly and journalistic authority over information and the public audience. This development is two-fold. First, digitisation has flooded people with information. Secondly, the news business is changing to resemble a community of information-sharers where no single author or entity, in principle, has more sway over the public flow of information.

Today’s information landscape provides for a deluge of information over which the mainstream media has little to no control.<sup>47</sup> Alongside mainstream organisations’ own online outlets, there is a multitude of online platforms in which users can share information. Popular alternative news sources and digital start-ups, such as Vice, Huffington Post, Vox Media and BuzzFeed, are growing their global presence. These alternatives can garner unprecedentedly large audiences because people directly and indirectly share information on social media. The proliferation of information has forced the press to compete with other voices for public attention in the online space.<sup>48</sup>

The other aspect of the diminution of journalistic authority lies in the fact that anyone on the internet can publish or share information without being a professional journalist or affiliated with a media organisation. The rise of laypersons contributing user-generated news content allows the audience to choose between filtered, professionally packaged news; non-professional publications; and eyewitness accounts.<sup>49</sup> Importantly, this horizontal distribution of information gives no single author particular priority. Social networking and

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44 For a discussion on the features of popular social networking sites, see Benjamin F Jackson “Censorship and Freedom of Expression in the Age of Facebook” (2014) 44 *NM L Rev* 121.

45 François Nel and Oscar Westlund “The 4C’s of Mobile News” (2012) 6 *Journalism Practice* 744 at 751.

46 Lili Levi “Social Media and the Press” (2012) 90 *NC L Rev* 1531 at 1550

47 Jonathan Zittrain “The Internet and Press Freedom” (2010) 45 *Harv CR-CL L Rev* 563 at 567.

48 Zittrain, above n 47, at 567.

49 Liebes and Kampf, above n 9, at 246.

blogging are prime examples of this. Social media's ability to propagate information rapidly and widely amplifies the potential impact of individual voices. These horizontal communications contribute to the transformation of vertical communications on old media.<sup>50</sup>

As a result, the authority of the press as an institution is fading. News dissemination should be recast as a community of exchange in which the journalist is only a member.<sup>51</sup> The information deluge empowers the public, who are less dependent on mainstream media, to lead the daily information agenda. Today's audience is content with choosing its own content via the diverse information sources available. Audience members increasingly function as their own gatekeepers.<sup>52</sup> Accordingly, editorial judgement is shared across the community and journalists must ask themselves how they can add value to the communal exchange. Indeed, public engagement with news and editorial judgement, like a resourced jury, could sometimes be more influential to news organisations than internal peer review.<sup>53</sup>

### **Changing Interpretations of “Newsworthiness” and News Content**

The deinstitutionalisation of news has affected the mainstream interpretation of “newsworthiness” and, consequently, the news content produced.<sup>54</sup> The conventional definition of a “newsworthy” story is one that is unique, timely, has entertainment value and directly affects the lives of the audience.<sup>55</sup> Newsworthiness is a comparative measure and, by nature, often has a fluid definition.<sup>56</sup> The current trend reveals that stories that are more shareable on social media or likelier to go viral will be considered high value, with less emphasis on content. To satisfy this competition-based interpretation of newsworthiness, journalists pursue stories with more human interest and news is increasingly homogenous.

In an effort to stay current, journalists tend to follow the news agenda tacitly set by social media or aim for their stories to “trend” on social media. The danger of social media's heavy influence on the selection of news content is that journalists must judge what types of stories are likely to be popular on social media, and these stories are

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50 Youngs, above n 39, at 101.

51 Levi, above n 46, at 1549; and Oscar Westlund and Mathias A Färdigh “Accessing the news in an age of mobile media: Tracing displacing and complementary effects of mobile news on newspapers and online news” (2015) 3 *Mobile Media & Communication* 53 at 69.

52 See also Bezanson and Cranberg, above n 11, at 25.

53 Zittrain, above n 47, at 569.

54 Levi, above n 46, at 1551.

55 See also Raphael Cohen-Almagor *The Scope of Tolerance: Studies on the costs of free expression and freedom of the press* (Routledge, London, 2006) at 187.

56 Levi, above n 46, at 679.

usually “superheated”, involving sensationalism or shock.<sup>57</sup> It reflects how news content is heavily influenced by commercial perceptions about what sells.<sup>58</sup> In this way, news content tends to be shaped bottom-up by social media communities without adequate assessment of a story’s relative importance.

With these new priorities, reporting and popularity of soft news have increased. It is generally accepted that soft news contains a human element, as opposed to hard news, which reports the hard facts.<sup>59</sup> Soft news is associated with entertainment news or human achievement stories, but has expanded to include news of a political and social nature. News outlets have noted the public preference for soft news, perceiving themselves in “the emotion delivery business rather than the truth delivery business”.<sup>60</sup> All this makes soft news more shareable and popular than hard news.

Since public taste does not widely vary nor fixate on one story for too long, news produced across different organisations is increasingly homogenous. Some condemn this trend as “news cannibalism”, a term that encapsulates the ease with which journalists can copy articles published by other journalists online.<sup>61</sup> This trend demonstrates that the media is driven predominantly by short-term gains, such as increasing traffic to its websites, rather than long-term interests like establishing individuality as a news outlet and fostering an overall healthy public information flow with various interpretations of the same information.

### **The Link between Credibility and Sustaining Relevance**

These three transformations bring into serious question the enduring relevance of traditional perspectives on the media. First, the changes have inevitably reduced the media’s unique role as the public watchdog and main source of public enlightenment. Some hypothesise that the public’s exposure to multiple layers of sources may drown out the authoritative voice of the media.<sup>62</sup> Secondly, the media’s gatekeeping role is much less significant. Under the traditional paradigm, the media had the prerogative to decide what information should be published as news. This paradigm seems incompatible with

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57 At 1565–1566.

58 Calvert and Torres, above n 8, at 97.

59 See Pablo J Boczkowski “Rethinking Hard and Soft News Production: From Common Ground to Divergent Paths” (2009) 59 *Journal of Communication* 98 at 99–112.

60 Deborah Hill Cone “Journalism more than just a commodity” *The New Zealand Herald* (online ed, Auckland, 13 April 2015).

61 Angela Phillips “Transparency and the New Ethics of Journalism” (2010) 4 *Journalism Practice* 373 at 375–376.

62 Shim and others, above n 42, at 109.

today's mediascape. Thirdly, the drive to publish shareable news influences a series of decisions regarding newsworthiness: which stories will make news; which will be allocated the dominant headline space; and how content will be presented.

Nevertheless, the traditional interpretations of press responsibility and journalistic ethics remain highly relevant. The news media's role should be re-evaluated to place credibility and self-restraint at the forefront of the media's priorities to ensure mainstream media stays relevant. News organisations need to demonstrate to the public that their "institutional coherence and ethical legitimacy" are intact and of primary importance in their decision-making.<sup>63</sup> One argument why journalists should uphold a higher standard of responsibility than other individual online voices lies in their professional training in journalism and ethics.<sup>64</sup> The uniqueness of the journalist's role comes from identifying the news value amongst all available information. Whether information is newsworthy should be a separate journalistic judgement based on a balance of ethical principles and policy factors against commercial interests.

#### **IV THE DECAPITATION OF JAMES FOLEY**

The Foley video placed the mainstream media in a complex ethical dilemma. The story of an American frontline journalist allegedly decapitated by a militant in a propaganda video would have been newsworthy under both traditional gatekeeping norms and the modified definition that a news story should spread on social media. The media could leap into the field by publishing the video as news or, as it happened, resist the temptation to publish a crowd-grabbing story. The extent of censorship was a separate question — how much of the video should be shown, if at all? This Part analyses and balances the competing policy and ethical considerations that may or may not lead to self-censorship of the Foley video by a news organisation on traditional print and broadcast media, while evaluating the actual general response of the mainstream media.<sup>65</sup> On balance, the most ethical response was self-censorship, which, in fact, was how most news organisations reacted.

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63 Levi, above n 46, at 1554.

64 Rytter, above n 9, at 208; and see also Lee Wilkins and Renita Coleman "Ethical Journalism Is Not an Oxymoron" (15 June 2005) Nieman Reports <niemanreports.org>

65 This Part mainly focuses on the news coverage by American news organisations with the exception of *The Guardian*. Examples drawn from the *Al-Jazeera* network are limited to *Al-Jazeera USA*.

## Free Speech and the Public Interest

The media's freedom of expression to inform the public on matters of public interest is the fundamental starting point. As discussed in Part II, freedom of the press has two traditional interpretations: either as an "open forum" — in which people express and exchange ideas and information — or as a "watchdog". Under both interpretations the common goal is to seek truth. On a literal application of the principle that journalists should seek the truth, partly or fully airing the Foley video without editing could be justifiable.

Such a literal approach is inherently problematic, however, as it assumes an overly simplified view of the theories at hand. The problem is that the "open forum" theory assumes that free and open discussion necessarily leads to a discoverable truth.<sup>66</sup> Moreover, the "watchdog" interpretation is only true in this case if the media actually serves the public by scrutinising and reporting about ISIL. The media's purpose as an ISIL watchdog is limited, however, when its reports consist only of what ISIL has already released to the public via social media. Even if the subject matter may be of public interest, the media arguably must do more than merely report on the facts if the only source it relies on is social media — an information exchange operating without the need for journalistic input.

## Propaganda and Playing into ISIL's Script

The most significant policy objection to showing any part of the Foley video is that the media coverage inadvertently furthers ISIL's propaganda. ISIL adeptly utilises social media platforms to distribute its messages and journalists are on the receiving end, having to respond to ISIL's narrative.<sup>67</sup>

The line between reporting terrorism because it is newsworthy and publicising terrorist propaganda tends to be unclear and controversial, especially when terrorists circulate their own audio-visual material. For instance, following 9/11, a series of tape recordings emerged in which Osama bin Laden spoke directly to America.<sup>68</sup> The first tape was treated as newsworthy because it was the first occasion in which the public heard from the alleged ringleader behind the attacks and most news outlets either played the

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66 See the summary of criticisms in Anthony L. Fargo "The Concerto Without the Sheet Music: Revisiting the Debate over First Amendment Protection for Information Gathering" (2006) 29 UALR L Rev 43 at 55.

67 Yigal Carmon and Steven Stalinsky "Terrorist Use of U.S. Social Media Is A National Security Threat" (30 January 2015) Forbes <www.forbes.com>.

68 Ralph J. Begleiter "Whose Media Are We? Notions of Media and Nationality Challenged by the 'War on Terrorism'" (2002) 8 Brown J World Aff 17 at 20–21.

tape in full or published extensive excerpts.<sup>69</sup> That decision angered the public who considered it almost treasonous to play the terrorists' messages. By the time the third tape was released, the media conceded to the controversy. Some organisations refused to air what they deemed propaganda, while others — like CNN — were pressured by the public and government into broadcasting only a limited excerpt of the tape.<sup>70</sup>

Two points follow. First, the media is extremely cautious about being accused of distributing terrorist propaganda. Today, this consideration is likely to have greater weight than other factors in the decision-making process. The post-9/11 media will generally deem it better to be safe than sorry. Secondly, news organisations do not have formal criteria against which information is assessed for propaganda value. Even if they did, the processes and reasons for their decisions might not be sufficiently disclosed to the public. This challenges the value of journalistic impartiality and accountability.

The literature commonly describes the relationship between mass media and terrorism as symbiotic.<sup>71</sup> Terrorist messages of threat and intimidation gain publicity through the mass media, creating a discomfiting situation in which the media unwittingly serves terrorists' desires.<sup>72</sup> The prospect of sensational coverage, such as making front-page headlines or leading prime-time news, renders the media integral to terrorist schemes.<sup>73</sup> Some claim that the post-9/11 American media capitalised on terrorism like “bestseller crime” by following a “death is news” mentality.<sup>74</sup> The media rhetoric appealed to sentiments of patriotism and the vulnerability of the West.<sup>75</sup>

Others argue that the relationship is not symbiotic; rather, it is largely the case that the relationship is exploited by terrorists who play on the media's need to attract audiences.<sup>76</sup> Terrorist acts are high profile and unusual events that, by definition, are newsworthy. Accordingly, such acts are expected, by both their perpetrators and the wider public, to receive substantial media exposure. There is only an illusion of choice for the media, which in reality is compelled to report on terrorist acts. The Foley video was highly newsworthy given the

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69 Begleiter, above n 68, at 20.

70 Begleiter, above n 68, at 21.

71 Wilkinson, above n 19, at 149.

72 Wilkinson, above n 19, at 146; Kevin Crews “New Media, New Policies: Media Restrictions Needed to Reduce the Risk of Terrorism” (2013) 7 *Phoenix Law Review* 79 at 82; and Cohen-Almagor, above n 55, at 184–188.

73 See generally Michelle Ward Ghetti “The Terrorist Is A Star!: Regulating Media Coverage of Publicity-Seeking Crimes” (2008) 60 *Fed Comm LJ* 481.

74 Crews, above n 72, at 82.

75 Jaeho Cho and others “Media, Terrorism, and Emotionality: Emotional Differences in Media Content and Public Reactions to the September 11th Terrorist Attacks” (2003) 47 *J Broad & Elec Media* 309 at 323.

76 Begleiter, above n 68, at 23.

nature of the content: a real person beheaded in a real war. The media could not just ignore what had happened. It was compelled to report on the execution and had only an illusion of choice. It seems that the relationship between ISIL and the news media was symbiotic because the media profited from heated stories of high news value under the pretext of moralism, but this only applies in the short term.

There are two additional factors that suggest ISIL has the upper hand in setting the Western news agenda.<sup>77</sup> First, the Foley video's narrative trapped the media into reporting the story in predetermined categories of good and evil, with ISIL playing up the "us" and "the enemy" dichotomy.<sup>78</sup> There is a clear protagonist (the victim) and a clear antagonist (the executioner). The Foley video fit squarely into the American media's need to identify a clear moral compass.<sup>79</sup> Secondly, ISIL made one of its hostages — who was otherwise a private individual and a non-combatant — a high-value public figure through a filmed decapitation. This demonstrates that terrorism is propaganda by deed.<sup>80</sup>

The video employed various techniques to be provocative. Its message may be ISIL's raw power and revenge. The narrative is simple: the captive praises ISIL while condemning the West's actions minutes before he is beheaded, directly linking the "accompanying violent act to his indictment" and correspondingly making the Western military-media complex appear powerless.<sup>81</sup> There is a calculated shock element when Foley is quickly beheaded, which contrasts with his composure before his imminent death. The video does not show the beheading, but ends showing Foley's decapitated head next to his body, carefully and professionally edited.<sup>82</sup> The story also satisfied the public's preference for soft news. Foley's story is, from start to finish, a "human interest" story that allows readers to identify with its hero and his travails, and to be repulsed and intimidated by its villain.<sup>83</sup>

Since the video has high propaganda value (based on the above analysis), there is a real risk that media reporting could heighten interest in the video and further ISIL's aims. This risk is perhaps more costly in the context of terrorism than in other contexts.

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77 Dehghanpisheh and others, above n 5.

78 The Listening Post "James Foley: Journalism or propaganda?" (video, 30 August 2014) Al Jazeera English <[www.aljazeera.com](http://www.aljazeera.com)>.

79 The Listening Post, above n 78.

80 Abigail Edge "ISIS: Lessons for coverage from CNN, Al Jazeera, France 24" (17 November 2014) Journalism.co.uk <[www.journalism.co.uk](http://www.journalism.co.uk)>.

81 Nancy Snow "Isis beheading videos: the scariest part is how well their propaganda is working" *The Guardian* (online ed, London, 3 September 2014).

82 Shiv Malik and others "Isis in duel with Twitter and YouTube to spread extremist propaganda" *The Guardian* (online ed, London, 24 September 2014).

83 Deborah Orr "We can refuse to view James Foley's murder, but Isis has still infected our minds" *The Guardian* (online ed, London, 22 August 2014).



With these considerations in mind, the question is how the media then reported on Foley's execution. One option was to abstain from showing the video altogether; but this did not address the video's underlying narrative. For example, Al-Jazeera America announced it did not want to be associated with the video's propaganda and that it could report the facts without showing the video.<sup>84</sup> The outlet did not explain why the video was propaganda, potentially leaving viewers with questions. By contrast, CNN's televised segment demonstrated more accountability because it explained both the organisation's decision not to broadcast the video and the counter-interest to honour the victim.<sup>85</sup>

It was highly unlikely that media organisations would show the beheading on televised news, given the post-9/11 climate of caution. When word of Foley's death began to circulate, the hashtag "#ISISmediaBlackout" quickly gained traction and featured in more than 9,000 tweets in a few days.<sup>86</sup> This represents a growing awareness of the issues surrounding terrorist propaganda, particularly on the internet, and a drive to amputate the video's reach.

### **The Victim's Dignity and Family**

As a matter of principle, journalists should minimise the harm that news coverage may invite and respect the rights and interests of those affected when hostages are killed. There are three supporting factors. First, hostages are usually private individuals (who have become of public interest by virtue of being thrust into the limelight). The SPJ Code attributes a greater right of control over personal information to private people than public figures. A hostage's death remains personal information and intimate to the deceased's dignity, even if it has already been diffused on the internet and given public attention. Secondly, the victims died in highly unusual circumstances — extreme violence in the case of ISIL hostages — which should warrant greater protection against media sensationalism. Thirdly, the deaths were of the sort that would gain international media attention. These last two factors require elaboration.

The New York Court of Appeals examined the idea that public interest in discovering the truth should give way to family interests in certain circumstances. A *New York Times* reporter brought proceedings against the New York City Fire Department for an order

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84 Brian Steinberg "TV-News Outlets Grapple With How To Report On Grisly ISIS Videos" *Variety* (online ed, Los Angeles, 3 September 2014).

85 Stelter, above n 1.

86 Bill Chappell "Beheading Video Sets Off Debate Over How — Or Whether — To Portray It" (20 August 2014) National Public Radio <[www.npr.org](http://www.npr.org)>.

for the disclosure of the tapes and transcripts of emergency dispatch calls made during and shortly after 9/11.<sup>87</sup>

The majority of the Court prioritised human dignity and the families' wishes to respect the dignity of their deceased loved ones rather than seeing them become "object[s] of idle curiosity or a source of titillation".<sup>88</sup> The majority stated that the 9/11 callers were victims of an event that received, and would continue to receive, huge public attention. It could therefore be anticipated that the media would exploit the tapes and transcripts for sensational replays if disclosed.<sup>89</sup> The majority recognised that the privacy interests of families who opposed disclosure outweighed the public interest in disclosure. Attempting to strike a balance, the majority ordered disclosure of the operators' words but not those of the callers.

Rosenblatt J, dissenting, attributed more weight to public interest and believed that the majority's partial order compromised the value of the disclosure.<sup>90</sup> He considered that the tapes could reveal lessons about the effectiveness of the City's disaster response which could be adopted into future response plans.<sup>91</sup> Disclosure would serve a greater purpose for the public than it would harm the families, provided it excluded any dying wishes or utterances that could identify the caller.

The Foley video's lack of any lessons that could benefit public welfare severely undermines the finding of a compelling public interest in its dissemination, distinguishing Rosenblatt J's approach. On the other hand, the merit of the majority's position is that it recognised the uniqueness of the 9/11 context and the long-term consequences of publication. It aligns with the journalistic principle that the publication's long-term implications, permanence and reach of influence should be considered.<sup>92</sup>

Foley's beheading required similar consideration. It could be anticipated that it would be highly publicised by the media internationally due to the intensity of the violence and its significance as a threat to international peace and security. The video's sting boosts the probability that its images will accompany every future occasion on which the media reports on ISIL's brutality. It is also likely to become an object of curiosity and voyeurism. The video is susceptible to repeated, potentially excessive publication and media sensationalism.

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87 *The New York Times Co v City of New York Fire Department* 829 NE 2d 266 (NY Ct App 2005).

88 At 485.

89 At 485–486.

90 At 492.

91 At 492.

92 At 493.

Some families of the victims of terrorist kidnappings publicly appealed against the dissemination of the Foley video and its stills. This demonstrates that there is in fact resistance amongst families to the video's further dissemination despite its availability on the internet. In a Twitter post, one of Foley's relatives asked people not to watch or share the video.<sup>93</sup> The brother of a British hostage executed by al-Qaeda released a media statement pleading with journalists to stop using Foley's execution images out of respect for Foley and his family and because no public interest is served by their repetition.<sup>94</sup> He stated that families of hostages felt they were unable to escape the images of Foley's murder as the media continuously used them.

Some media organisations, like CNN and *The New York Times*, abstained from using the video stills and instead used images of Foley working as a journalist before he was captured.<sup>95</sup> This coverage became commemorative of the victim. Decisions not to repeat images of Foley's beheading strongly reflect a conscious media clearly prioritising human dignity over the objective to show everything that happened.

### **The Unique Value of Visual Accounts**

Sharing the disturbing visual content of the video could be justifiable if it had informative value. Often, raw and unsanitised images taken on the scene and published by the media become icons of significant events. Ethical principles direct the media to publish all information that adds value to the truth-seeking process, including fearlessly identifying and using original sources (where possible) without distortion. The right images can show in detail what really happened, something which words alone cannot truly convey.<sup>96</sup> In particular, a first-hand visual account can communicate the impact of something, which is not always imaginable via words.

Graphic and violent images have informative value when the violence in itself has meaning and is directly connected to the truth sought by the media. American commentator Clay Calvert argues that it is not voyeuristic to publish violent images of death, war and terrorism if they are accurate snapshots of the truth and have potential

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93 Hannah Jane Parkinson "James Foley: How social media is fighting back against Isis propaganda" *The Guardian* (online ed, London, 20 August 2014).

94 Phil Bigley "An open letter to journalists: no more images of James Foley's murder" *The Guardian* (online ed, London, 27 August 2014).

95 Stelter, above n 1; and Jon Lee Anderson "The Men Who Killed James Foley" *The New Yorker* (online ed, New York, 20 August 2014).

96 See Rory O'Connor "Media insulate us from the truth" (12 April 2004) [MediaChannel.org](http://www.mediachannel.org) <[www.mediachannel.org](http://www.mediachannel.org)> at 2.

to mobilise public opinion on matters such as war.<sup>97</sup> Graphic visuals can have a powerful influence on public opinion by increasing concern and interest in the issue under review. An empirical study demonstrated that the public perceives graphic imagery as adding a new perspective on the atrocities of war and helping those removed from the conflict to understand the nature of war.<sup>98</sup> If a news organisation appears unafraid to tell a hard-hitting story by publishing images of death and violence in its coverage of conflict, its credibility in the public's eye may increase.<sup>99</sup>

The validity of this argument relies on the visuals adding informative value to the truth-seeking process. On this front, there are arguments in favour of showing the Foley video. Airing the video would increase public awareness of ISIL's hostages and their ordeals because people can see the violence and it would bring home the danger of conflict zones. Elizabeth Anker contends that censoring the video is a misplaced moralism because it essentially tries to censor the news of Foley's beheading itself.<sup>100</sup> The video is integral to the story. Foley's story would not have received the attention that it did if the visual evidence did not accompany the story.

### Gratuitous Violence

Assessing the newsworthiness of the Foley video ultimately raises the question of whether publishing the video or stills amounts to no more than pandering to curiosity or whether it can be justified on the basis that the violence has a message. The tension is between the media's caution towards showing images of gratuitous violence and its commitment to visually documenting as much information as necessary to ensure the story is accurately communicated. In contrast to the arguments mentioned above, the dissemination of the video's explicit content could instead promote gratuitous violence and "death porn" in the guise of news, without adding any informative value.<sup>101</sup>

While the fact that ISIL released a video of a hostage being killed is highly newsworthy, the violent content of the video is less so

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97 Calvert argues that the suppression of the images of Nick Berg's beheading — even if it was out of respect for Berg and his family — deprived the marketplace of ideas because it suppressed the truth about what happened to an American civilian injected into an armed conflict: Clay Calvert "Voyeur War? The First Amendment, Privacy & Images From the War on Terrorism" (2004) 15 *Fordham Intell Prop Media & Ent LJ* 147 at 160 and 167.

98 Shahira Fahmy and Thomas J Johnson "Show the Truth and Let the Audience Decide: A Web-Based Survey Showing Support among Viewers of Al-Jazeera for Use of Graphic Imagery" (2007) 51 *Journal of Broadcasting & Electronic Media* 245 at 258.

99 Calvert and Torres, above n 8, at 97.

100 The Listening Post, above n 79.

101 Sydney Smith "How Media Covered James Foley beheading: NYPost's front page like death porn" (20 August 2014) *iMediaEthics* <[www.imediaethics.org](http://www.imediaethics.org)>.

and does not justify why the video must be watched. The story can be told without the video, as the violent images did not add any new facts to the public's understanding of the reality of the conflict. The facts of the video (Foley dressed as a prisoner and reciting lines with an ISIL militant standing behind him) and the visual evidence it contains can be collapsed into a meaningfully written story. Since readers know the identity of the victim and the circumstances of his capture and death, running a violent image from the video is simply gratifying voyeurism and might actually weaken journalistic credibility to the public.

Two graphic visuals were available to the media in 2004, namely photographs of the harassed and tortured Iraqi prisoners at Abu Ghraib prison and images of Nick Berg's beheading by al-Qaeda. The way each was treated can be contrasted. The media showed the photographs from Abu Ghraib prison but it considered the video and photographs of Berg's beheading to be too graphic to air even though the public could easily access the video online.<sup>102</sup> The media was accused of hypocrisy for deciding that some content showing the horrors of war must be seen, while other content should not be shared.<sup>103</sup>

The decision to publish the Abu Ghraib photographs could be justified on the grounds that they contained a newsworthy message and were able to effectively illustrate the horrific events.<sup>104</sup> The explicit photographs revealed to the world the bare truth of the barbarities occurring at the hands of a government body, so the media was acting as a political watchdog. In another sense, sharing the images helped make the reportage more interactive for the distant audience.

The Foley video is more analogous to the Berg images. The Berg video portrayed the scripted performance of a hostage's decapitation to invoke fear and publicise terrorist propaganda. This meant the violent content lacked valuable informative meaning. Many internet users complained that the "main" story was sidestepped since old media did not show the vital gory details of Berg's decapitation, such as the knife, the throat, and the victim's screams and struggle.<sup>105</sup> Instead, the mainstream media opted to show "about-to-die" stills from the Berg video as an ill-judged compromise between showing images to tell the story and withholding images of gratuitous

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102 Barbie Zelizer *About to Die: How News Images Move the Public* (Oxford University Press, New York, 2010) at 288; and Dexter Filkins "Iraq Videotape Shows the Decapitation of an American" *The New York Times* (online ed, New York, 12 May 2004).

103 Zelizer, above n 102, at 293.

104 See also Noel Whitty "Soldier Photography of Detainee Abuse in Iraq" (2010) 10 HRLR 689 at 706–707; and Lauren C Williams "The Ethics of Banning A Brutal Beheading Video" (21 August 2014) ThinkProgress <thinkprogress.org>.

105 Zelizer, above n 102, at 293.

violence.<sup>106</sup> The media used the visual evidence only to suggest violence, deliberately framing the situation as one of impending death.<sup>107</sup>

Barbie Zelizer argues that by using about-to-die images, most news organisations ended up being less visually straightforward about the certainty of Berg's death. The about-to-die stills conflated a broader series of events and background information into a single depiction of imminent death that slanted the audience's perspective of the events and, in the case of the Berg video, played to the video's suggestibility of violence. These images were also gratuitously splashed around by the media in its self-assurance that they were acceptable, even where their relevance to the story was less clear.

The lesson is that there is little utility in using provocative, about-to-die stills or clips from a terrorist-made beheading video because what is shown is still suggestive of violence. It is not always possible to divide violence cleanly. Accordingly, the media cannot control the violence by taking a piecemeal approach, especially in this context. Partial censorship does not circumvent the troubling issue of whether the media is pandering to gratuitous violence and voyeurism or actually trying to deliver a necessary message.

The media appeared to draw on these precedents in its approach to the Foley video. Most media organisations shied away from using disturbing parts of the Foley video, suggesting that the media perceived the Berg video as a better analogy than the Abu Ghraib incident. CBS, ABS and NBC showed seconds-long clips from the video on their evening news segments,<sup>108</sup> while CNN aired a short audio extract of the executioner's voice. If they wished to use stills, most organisations restricted themselves to using non-provocative images of the masked militant standing over the kneeling Foley, most not showing the knife and avoiding crossing the line to an about-to-die image. The exception was the *New York Post*, which published a large, about-to-die still of the moment the militant grabbed Foley's jaw and held a knife at Foley's throat on its front page with the headline "SAVAGES".<sup>109</sup> The action was heavily criticised by media ethics organisations.<sup>110</sup> The *Post* was largely an outlier against the conservative approach that most mainstream media outlets took but it

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106 Zelizer, above n 102, at 288.

107 Zelizer, above n 102, at 287.

108 Steinberg, above n 84.

109 Stelter, above n 1; and Smith, above n 101.

110 Katherine Fung "Some News Outlets Defend Showing Images of James Foley's Beheading" (21 August 2014) [The Huffington Post <www.huffingtonpost.com>](http://www.huffingtonpost.com); and Gabrielle Levy "New York Post defies #ISISMediablockout with graphic James Foley cover" (20 August 2014) [UPI <www.upi.com>](http://www.upi.com).

did bring home the severity of the potential harm of sensational coverage of a violent event.

### **A Harmful Side-Effect: Insulating the Public**

The final issue is whether choosing not to publish the video or its disturbing images would have the effect of unreasonably insulating the public from the real horrors of the world, or whether insulation is a justifiable trade-off given the benefits of censorship.<sup>111</sup>

Although the ethical codes examined in Part II do not expressly discourage the protection of viewers, they firmly adhere to the importance of truth discovery and public enlightenment. Within this principle arguably lies a warning to avoid withholding information from the audience for reasons other than minimising harm. Journalists should boldly report news of the diversity and magnitude of the human experience, including the seldom-heard voices of society. Although the media is no longer a gatekeeper, insulation is still possible in today's information landscape because the mainstream media still has a material part to play in the information flow on social networks. The Foley video was available on the internet, but it needed coverage by mainstream media to help it reach an even wider audience.

It is the news media's role to know when to start difficult and uncomfortable conversations. Particularly when covering violent events, this can involve showing unsanitised versions and details of current affairs.<sup>112</sup> CBS recently justified its decision to show segments of raw and distressing videos of the victims of a gas attack in Damascus captured by eyewitnesses on their mobile phones. CBS reporter Scott Pelley said: "What would've happened during the Holocaust if all the Jews had cellphones? Certainly the world would've found out much sooner what was happening."<sup>113</sup> Some discomfort is desirable in a civil society that wishes to maintain an open forum for the deliberation of political issues. Such a society must not shield its members from dissenting views or uncomfortable truths.

An alternative perspective is that protection could unintentionally add stigma to the videos and possibly generate more curiosity.<sup>114</sup> The likelihood of stigma may be increased by the fact that social media cut access to the videos, with YouTube and Twitter

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111 See James Ball "James Foley and the daily horrors of the internet: think hard before clicking" *The Guardian* (online ed, London, 20 August 2014).

112 The Listening Post, above n 79.

113 CBS News "Behind 60 Minutes' Decision to Show Disturbing Video" (17 April 2015) <[www.cbsnews.com](http://www.cbsnews.com)>.

114 Jay Rosen "News Judgment Old and News Judgment New: American Nicholas Berg Beheaded" (16 May 2004) PressThink <[archive.pressthink.org](http://archive.pressthink.org)>.

releasing prohibitions despite the videos and images still being discoverable with a simple online search.

### **Striking a Credible Balance**

The main quandary for a news outlet is whether ethical principles can support the otherwise unethical use of violent images of a man's beheading. The balance is achieved by providing the public with enough information about the violence to enable understanding of the reality of what happened to Foley, but also limiting disclosure of that information to prevent it from being gratuitous and without reciting from ISIL's script. For this reason, self-censorship was ultimately the most ethical media response to the Foley video.

The public's need to be informed about the Abu Ghraib photographs and the mobile phone footage of the victims of the Damascus gas attack was compelling. The visual evidence of the acts that the perpetrators were accused of substantially enhanced public understanding of each conflict.

ISIL's video sits in contrast. The public's interest in the information was important because Foley's murder had high news value. The visual evidence was nevertheless unnecessary in further enlightening the public about the perpetrators' crime. The video does not deepen any understanding of Foley's death nor the conflict in Iraq and Syria. Showing the video arguably supports the facticity of the news. But news organisations can accurately describe what is depicted in the video without sharing the visual evidence. The decision to censor is not undue insulation of news consumers. The meaning the violence held was limited to the meaning that the creators of the video bestowed upon it and planned to impose on its viewers.

The public's need to know and see exactly what is on the video must be balanced against the potential harm of publication so as to avoid being exploitative or pandering to lurid curiosity. It is difficult to identify a clear and compelling public interest in sharing the Foley video. The video's availability on multiple media platforms does not undercut the value of the interests of those directly affected by the reportage. Whatever the video could reveal about ISIL's tactics was still insufficient to outweigh the harm of dissemination. Accordingly, the balance weighs well in favour of a blackout.

Consistency is vital when regulating speech. The media drew analogies from the Berg video precedent, which largely resembled the Foley incident. The more sensitive the speech, the greater the need to go back to the principles behind the media's role and the guarantee of free speech — which comes down to public enlightenment. Therefore,



although the question of whether particular violent material will be too gruesome for news is a discretionary one for the individual news organisation, some consistency can be imported by asking: does this violent material have meaning that adds to public enlightenment?

The media blackout is an approach where ends justify means — withholding information for the perceived common good. Faced with the Foley video, the media overlooked the potential for dialogue between journalists and audience. Instead, the media saw itself facing a troubling ultimatum: it could condemn the video for its atrocity and censor it; or it could show the video and be accused of supporting ISIL. In this sense, the media was misguided. It needs to find a middle ground between complete lockdown and full disclosure.

## V IS ONLINE MEDIA AN ANOMALY?

This Part considers whether the foregoing conclusion in favour of self-censorship remains valid in the context of online news covering ISIL. It takes as a case study Fox News' controversial decision to embed on its website the full and unedited video showing Muadh al-Kasasbeh burning to death (the al-Kasasbeh video).<sup>115</sup> This Part questions whether the balance between full censorship and full disclosure should change when the full video is hyperlinked by online media and concludes that Fox's decision was ethically indefensible.

### **In Defence of Embedding the al-Kasasbeh Video**

Freedom of expression, the right of editorial judgement and the public's need for information arguably justify Fox's decision to embed the al-Kasasbeh video, alongside Fox's defence that viewers should not be insulated when they have the ability to choose whether or not to watch the video. Fox's decision comes from the standpoint that viewers should not be denied or protected from information and should instead have the autonomy to choose.<sup>116</sup>

The recognised benefits of hyperlinks in online journalism are enhancing interactivity, credibility and transparency.<sup>117</sup> Interactivity

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115 Erik Wemple "Fox News stands by decision to post heinous ISIS burning video online" *The Washington Post* (online ed, Washington DC, 4 February 2015); Lauren Barbato "Fox News Shows Full Video Of Moaz al-Kasasbeh Burning To Death And Isn't All That Sorry" (6 February 2015) [Bustle <www.bustle.com>](http://www.bustle.com); and Lizzie Dearden "Fox News shows uncut Isis video footage of the Jordanian pilot Muath al-Kasasbeh being burned alive" *The Independent* (online ed, London, 4 February 2015).

116 Woolf, above n 3.

117 See the literature review in Juliette De Maeyer "The Journalistic Hyperlink" (2012) 6 *Journalism Practice* 692 at 693–695.

stems from providing an option to viewers. Unlike the linearity of news portrayal on traditional media, “hyperlinking lets people ... consume media at their own pace — on their own terms”.<sup>118</sup>

Online viewers of Fox News are active participants in news consumption. They decide the course of the information flow they will receive by accessing links of interest to them. Exercising choice involves a physical act of clicking the play button. This is fundamentally different to the linear, predetermined course of televised and print news. Fox provided one warning before viewers would decide whether to watch the video: “WARNING: EXTREMELY GRAPHIC VIDEO”. With that, the viewers presumably make an informed decision on whether to play the video.

There are other benefits to embedding videos, such as improved credibility and transparency. Linking the video can add to the story’s credibility because it provides the viewer with direct access to the original source. It supports the story’s facticity and can aid understandings of the truth. The outcomes of increasing credibility and accuracy are attractive goals for online journalism, given that the medium is highly competitive and online news stories are increasingly homogenous. It is also a matter of transparency. Since newsworthy material is increasingly available online, and it is easier for anyone to access sources, it is increasingly difficult to justify why audiences should not have access to the same sources that journalists use to compose their stories.<sup>119</sup>

## Opposing View

There are two main objections to Fox’s decision to embed the al-Kasasbeh video. First, if the argument in favour of giving the audience the option to see the video was correctly balanced against the potential harm, Fox’s decision could not be justified. Secondly, the option was inadequately explained to the audience. This undercut the audience members’ abilities to make informed decisions.

The anticipated harm of embedding the al-Kasasbeh video in the article was two-fold: potential exploitation of gratuitous violence and the long-term implications of sharing the video. Fox simply frames the situation as though people have a moral obligation to watch it, rather than explaining how it is intrinsically connected to public enlightenment. The decision was also inconsistent with its

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118 Eric Picard “Hyperlinking and Advertising Strategy” in Joseph Turow and Lokman Tsui (eds) *The Hyperlinked Society* (University of Michigan Press, Ann Arbor, 2008) at 159 as cited in De Maeyer, above n 117, at 693.

119 De Maeyer, above n 117, at 693.

conservative treatment of the Foley video.<sup>120</sup> There was little ethical justification for embedding the full al-Kasasbeh video from the perspective of human dignity. The video seemed to function more to diversify the story's presentation than to increase its facticity. It is difficult to evade the conclusion that the video was exploited. Fox's coverage therefore leans closer to making the death an object of lurid curiosity and voyeurism.

By providing a link to the full video, Fox facilitated circulation of and increased access to the al-Kasasbeh video. These consequences revealed Fox's lack of appreciation of the long-term implications of its decision. Critically, Fox's article was published online, connecting it to a widespread global information exchange via social media and mobile devices. The locus of people that the video could reach expanded beyond domestic audiences. For example, ISIL's supporters shared the link to Fox's article on their personal social media accounts.<sup>121</sup> ISIL designed the al-Kasasbeh video to work like "clickbait," to draw in traffic and ultimately increase exposure to the group's propaganda.<sup>122</sup>

Providing the option to play the full video with a basic warning about its extremely graphic nature was an insufficient defence. The option and its warning offered a choice without enough context or explanation about the video's harmful implications. These failed to address the widely shared concerns surrounding the video, particularly its propagandist nature. By embedding the video Fox not only handed over editorial judgement to the individual viewer but, worse, left potential harm at the viewer's fingertips.

### **Does Tolerance Allow Online Journalism to be Anomalous?**

An alternative consideration is whether the level of tolerance towards freedom of speech on the internet is different to that of old media and, in turn, warrants different ethical treatment.

The complicating factor is that the internet, in general, is an unregulated venue for information sharing and communication. The "[w]eb user's hunger to know, see, publicize and discuss" competes against the idea of gatekeeping and has changed the information landscape to one of quantity over quality.<sup>123</sup> This has made the

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120 Joe Concha "Fox Decision to Publish Jordanian Pilot's Death Video Lacks Consistency" (4 February 2015) Mediaite <[www.mediaite.com](http://www.mediaite.com)>.

121 Woolf, above n 3.

122 Nesrine Malik "If you watch Isis's videos you are complicit in its terrorism" *The Guardian* (online ed, London, 4 February 2015).

123 Zelizer, above n 102, at 288.

internet an optimal medium for sharing controversial material.<sup>124</sup> Arguably, the public has greater tolerance of controversial material on new media than on old media, regardless of whether that is morally good. The development of a tolerant, or even complicit, audience could be for a host of different reasons, such as the audience's appreciation of the internet as an unregulated hub, anonymity, gratis services and, importantly, equality between users that enables professionally qualified and unqualified users alike to impart information. This last factor adds to the perceived credibility gap, which emphasises individual responsibility. The greater tolerance for controversial material published online suggests a perception that the value of "internet freedom" is higher than free speech in other contexts.

Online journalism strongly reflects the impact of non-regulation on information flow, evident in three factors: the form of news articles, their editorial quality and the dynamic between the media and news consumers. There is no overarching ethical code for online journalism. The demand for fast delivery of compact information in digital news has led to the prevalence of shorter articles and the inclusion of supporting visuals.<sup>125</sup> There is competition for journalists to pack content into a *sliver* and make it pass through the viewer's tight screen, the new "epistemological template".<sup>126</sup> Journalists must also compete with trending amateur video journalism and mobile visual communication, spurred by the widespread popularity of YouTube and Instagram.<sup>127</sup> Furthermore, online news is "constantly in a state of correction, editing, and revision" and its focus is more about information than about context or explanation.<sup>128</sup> This sheds light on whether and why there may be more tolerance for factual slips and disclosure of controversial material via online news.

Accordingly, it has been argued that news outlets do not need separate ethical standards to govern how to act on the digital platform.<sup>129</sup> The journalist's role as a filtering layer between the audience and the online story is no different than that in the context of broadcast and print news. This is because, despite being an unregulated space, most mainstream online news sources are largely

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124 For discussion of concerns about overprotecting Internet freedom at the expense of harm brought by lack of self-regulation of content and harmful material, see Aidan White "Visions of Terror: Can Journalism and Self-Regulation Help Save the Web?" (27 August 2014) EJN <ethicaljournalismnetwork.org>.

125 Levi, above n 46, at 1551–1552.

126 Bezanson and Cranberg, above n 11, at 26.

127 See generally Mary Angela Bock "Showing versus telling: Comparing online video from newspaper and television websites" (2015) 17 *Journalism* 493.

128 Levi, above n 46, at 1551–1552.

129 Whit Richardson "Online journalism poses challenges, but doesn't require new ethical guidelines" (April 2013) Society of American Business Editors and Writers <sabew.org>.

the digital copy of their old media version so online articles are still grounded in the work of professional journalists and reporters.<sup>130</sup> This reasoning applies to all online news sources, whether or not they have an old news counterpart; if an organisation takes on the responsibility of reporting current affairs, it should be subject to the same professional journalistic standards. Moreover, the media has to add value to the communal information exchange with the public. Hyperlinking a video, even if it shifts the power to the audience, does not circumvent the question of what value the journalist adds.

The more indispensable the internet becomes, the more the public is unsatisfied to leave it completely unregulated and unaccountable. There have been calls for the public's "collective responsibility" to close the perceived credibility gap.<sup>131</sup> The backlash against Fox suggests that it is collectively considered to be ethically abhorrent to show or link to a full ISIL murder video on a news website. Despite the difference in the forms of news across old and new media, information nevertheless enters into the same public space. If some information should be kept out of one medium, it should be kept out of the other. This approach fosters consistent reporting and better protects the ethical values relevant to a story.

The balance struck between full disclosure and a complete blackout, discussed in Part IV, accordingly remains unchanged. The potential harm of the video and its spread greatly outweighs the need to provide a direct link to view the original full video, which does not add value to the information flow. Any increased tolerance online is insufficient to support having relaxed ethical standards for online journalism.

## **VI GUIDELINES FOR REPORTING ON IMAGES OF TERRORISM**

Although there are advantages to keeping journalistic ethics general, flexible and of universal application, the similarity of the mainstream media outlets' responses to ISIL videos indicates that there are at least some fundamental perspectives on ethical reporting of ISIL that are implicitly shared across the organisations. This final Part attempts to compile the ethical principles that have priority in the context of covering ISIL and recommends a set of guidelines based on the experiences of news reportage of the ISIL videos to date.

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130 Levi, above n 46, at 1567.

131 White, above n 124.

The most important contribution that journalists can make in respect of the ISIL videos is to contextualise them and explain what ISIL wants to achieve with the videos.<sup>132</sup> This was amiss in the reportage of most news organisations. The relationship between the choice of images and the story should be relevant and clear, as well as clearly explained. Providing context to potentially inflammatory information can prevent stigmatising the information and deflate the power of the information.<sup>133</sup>

The following is a possible set of guidelines. The news media should:

- (1) Acknowledge the existence of the video. This can be done without showing the video or its explicit footage.
- (2) Provide context and interpretation for the video, especially when including images from the video in news coverage.
- (3) Accurately report the facts and independently verify the purported facts, rather than relying on other news outlets to publish a protocol story, even if that may involve personally watching the video.
- (4) Use a bare minimum of images from the video but be aware of inadvertently making a particular image iconic of the incident or unnecessarily repeating it in subsequent reportage, thereby diminishing its relevance. Carefully balance the informative value of the images against the fact that they are easily accessible online.
- (5) Show respect and compassion for victims and their families, particularly given the gruesome nature of the violence exhibited in the video. Pay tribute to the victims by using images of them before they were in captivity.
- (6) Be wary of assisting ISIL in the dissemination of propaganda. Censorship on this basis needs an explanation to the public regarding why the video's underlying motive is a concern that outweighs the option of showing the original source, rather than simply labelling the video as propaganda. This does not compromise impartiality as long as the distinction between fact and opinion is clear.
- (7) Be aware of the increasingly blurred distinction between news and voyeurism.
- (8) Consider the publication's long-term implications, permanence and reach of influence, which should be given more

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<sup>132</sup> Roy Greenslade "Reporting is different to journalism, and it's the latter we need to protect" *The Guardian* (online ed, London, 10 December 2009); *The Listening Post*, above n 79; and Calvert, above n 97, at 160.

<sup>133</sup> *The Listening Post*, above n 79.

importance in the digital age where information remains easily accessible on the internet.

- (9) Explain ethical choices and processes to audiences. Journalists should demonstrate what they assessed as the exact news value in the video or, if choosing to censor it, at what point the video became unacceptable for publication.

## VII CONCLUSION

The online news media should apply the same ethical principles as traditional news media when reporting on ISIL. The information landscape underwent a major technological evolution with the advent of mobile technology and social media. Communications now resemble a global community of information exchange in which new media has allowed horizontal communications to be equal and no single user has particular authority over information.

Journalists are not an exception. Mainstream media must add value to this exchange in order to stay relevant in an age where information is more readily accessible. The traditional perspective of media as gatekeeper of information no longer reflects the reality where users frequently exercise their own judgement on whether to access certain information. News itself must aspire to be interactive and popular on social media and, importantly, has to sell. These imperatives lead media organisations to emphasise the sharing of news. To complicate matters, international terrorist movements are also utilising social media networks to increase their publicity locus and their global links with supporters.

Despite these transformations, the media remains uniquely founded on codified ethics. A principled approach to journalism is therefore the media's best option in an increasingly complex information landscape. Ethical principles constitute an industry yardstick against which credible journalism can be assessed.

ISIL's campaigns present new questions about the ethics of reporting on terrorism in the social media age. This article examined the appropriate balance of competing values for the media showing the video of James Foley's beheading on traditional print and televised news. This balance was compared with the unique medium of the internet and online journalism, evaluating Fox News' decision to embed on its website the full video of a hostage burning. The article suggested that the public tolerance for harmful material on online media did not render online journalism an exception to traditional

journalistic ethics. Rather, online news increases the importance of existing ethical principles, such as considering the long-term implications of the reach and permanence of publication in the online context.

The mainstream media's response to ISIL's videos has generally been conservative and demonstrated self-censorship. This article attempted to compile guidelines for the future reportage of ISIL videos. The guidelines highlight that credibility is about showing enough, not simply censoring.

The future of credible journalism rests on striking the optimal balance amongst ethical guidelines to maintain the news media's underlying and foundational principles — the professional commitments to truth-telling, public service and accountability — while giving journalists and news organisations the flexibility to remain relevant in rapidly and radically changing circumstances.