

## RESEARCH OUTPUTS / RÉSULTATS DE RECHERCHE

### Final report

Poullet, Yves

*Published in:*

Ethics and human rights in the information society

*Publication date:*

2008

*Document Version*

Publisher's PDF, also known as Version of record

### [Link to publication](#)

*Citation for published version (HARVARD):*

Poullet, Y 2008, Final report. in *Ethics and human rights in the information society: Proceedings, synthesis and recommendations*. Conseil de l'Europe, Strasbourg, pp. 7-18.

### General rights

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal ?

### Take down policy

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

# Final report

**Yves Poulet**

*Professor, Director of the Computing and Law Centre,  
Notre Dame de la Paix University (Belgium)*

This conference, by virtue of the variety of subjects treated and the richness of the contributions, represented a real “fireworks display”. The author of this report, seduced by a million shooting stars, admits that at times he did not know which ones to pursue for fear of neglecting others.

At the moment of writing this synthesis report, he is convinced of his incapacity to recall all the richness and excellence of the debates; he fears that the following few words will somewhat minimise the diversity of the participants contributions and asks all the enthusiasts of these intense working days for their indulgence for any lack of attention on his part.

## *Why are global ethical principles necessary?*

2. Peter Fleischer of Google once more affirmed: “Since the infrastructure is global, we need a global Internet regulation, even if it means self-regulation”. This official announcement justified Google’s declaration for the necessity to have a global charter on personal data protection.

This declaration overlooks, underlined Catherine Trautmann, the reality of communications which the infrastructure upholds, a universal place where each person expresses his specific expectations, convictions and values, at the risk of the latter clashing, or, worse, not being heard. Within borders such confrontations were rare. They will become tomorrow, more than today, a reality and some, disappointed at not being respected or heard, could withdraw from this place of dialogue. It was easier in 1950 to proclaim the universality of human rights and in particular freedom of expression than today when we receive within the precincts of our private homes and lives, these different visions of the world.

3. The withdrawal movement from Internet already exists. I recently read that the phenomenon to discontinue Internet subscriptions is increasing in California, one of the important birthplaces of information and communication technologies. As regards nations, the example of China, which, in the name of its sovereignty, is re-establishing borders, technical this time as concerns the circulation of messages, information and communications, could well be followed by other countries.
4. It is hardly enough therefore to proclaim the unity and universality of the infrastructure to avoid the risk of its being torn apart. Our conviction is that Internet wants to remain, according to the WSIS' (World Summit on the Information Society) assertion at Geneva in 2003, a world public resource that will be possible only through dialogue and, more precisely, by the discovery and implementation, including by legislation, of common ethical principles respecting the fundamental otherness of one's neighbours.

*What ethical principles?*

5. The current debates and studies have without a doubt shown the overwhelming interest there is in recognising two essential ethical principles: the first lies in man's dignity and the primordially of his autonomy, that is to say his capacity for personal development; the second consists in "a moral, even legal, obligation for solidarity and social justice".
6. Dignity, according to Kant's thinking, the assertion that man is an end in himself and can never be a means to an end, be it economic or security: this is the ethical principle which is the foundation of UNESCO's Constitution, as expressed in the preamble and, curiously enough was, from 1998, claimed as one of the first values of the CECUA (Confederation of European Computer User Association). Can we speak of dignity when, in the world of the Internet of things, the value or rather the status of the person in the networks, the functioning of which he cannot control, sees himself reduced to that of things surrounding him and with which he interacts? Can we speak of respect for persons when the systems function in a non-transparent way on data, or metadata bases, which are remote

from the individual "ipse" as underlined by Paul de Hert and Mary Rundle?

The same question arises with regard to applications such as those known as "one to one marketing" which are based on a person's autistic vision which is confined by his preliminary choices, as noted by Jean-Gabriel Ganascia. Finally, how can we avoid mentioning the addiction which certain games engender and the perpetual control practised, in particular but not only, by the video surveillance systems which inhibit each and everyone and prevent people from expressing themselves freely? Autonomy education that implies the knowledge of the way Internet works, its actors and the purposes of the processings is without doubt an essential condition, as mentioned by Penny Duquenoy, for the consents expressed on the web to be truly informed and free consents.

This claim for an Internet, at the service of autonomy, is to be understood, it would appear to us, not only on an individual basis but equally for entire nations. That Internet allows each community to express itself, to enrich and extend its own culture is to recognise the right of each language to be present on the map...and for each nation to have at its disposal the means for its very own forms of expression. Is this not the sense we should give to UNESCO's Convention on the protection and promotion of the diversity of cultural expressions?

If the recognition of each person's autonomy and the respect for his uniqueness is, without doubt, the supreme ethical principle, as shown in the example of the child in the library, recalled by Claudia Lux, we can easily conceive that the "right to privacy, to which this ethical principle is devoted, be recognised as "a two-fold basic right" because it sanctifies a fundamental principle, a subject's capacity for autonomy and because this conditions the exercise of all the other rights and fundamental liberties, be they concerned with the freedom of expression, of associations, of religions, etc.

We will come back to the urgency of global recognition of this basic right to privacy later on in our reflections.

8. Solidarity and social justice are two other principles closely linked on which many speakers gave their opinions. Solidarity implies, according to them, our concern to include our neighbours in all our actions, be they individual, collective or entrepreneurial. The comment by Karol Jakubowicz, inviting us to express ourselves on the Internet as though we were speaking to Mother, recalls the importance of courtesy and our concern for others, even those who are unknown or invisible to us in our communications. Our consideration for handicapped people who cannot find any satisfaction in the existing video games because they are not represented in any programmes is a case in point given by Françoise Massit-Follea. What we have to do, as recalled the WSIS, is to take care to include each and everyone in the information society, as recalled those in charge of the virtual library concerning “homeless people”.

The assertion of these principles can be found in the movements of “open Source and open Document”, welcome extensions which should be encouraged. Furthermore, this same assertion enables us to fight argumentations of exclusion inherent in the functioning of some computer programmes.

9. Lastly, we find here the need to proclaim the principle, if not the right (that is to say the possibility to validate before ad hoc authorities, the implementation of this principle) of universal access which implies not only access to the infrastructure but, moreover, access to a certain content judged essential and access to the usage capacity of new technologies.

### *SOME PRELIMINARY RECOMMENDATIONS*

1° Recommendation : the creation of an observatory on ethics in the information society

10. It is not enough to speak of fundamental ethical principles. It is necessary to measure their concrete significance, to pinpoint good practices on the subject and to measure the harm to principles provoked specifically by information and communication technologies and their use. In this respect, we would like to cite two remarks made by the speakers: it is certain that the Net surfer finds in cyberspace a zone of freedom which provides him with shelter from all constraints, even the

norms imposed on him by social, professional and family contexts, in which he was forced to behave reasonably at the risk of going astray. Without doubt, in order to avoid such things, would it not be better to put around a table psychologists, ethologists, psychiatrists, sociologists etc., until now poignantly absent from our debates?

The second reflection concerns the usefulness of this observatory to collect information about existing good practices at different levels as different as those of examining the functioning and historical background of certain groups preaching the user generated contents or the regulatory measures, such as the one taken by Al Gore in 1998 of a 0,5% tax (the well-known e-rate), a way to subsidise initiatives allowing disadvantaged groups to be present on the Internet, the interest of which was reminded by Divina Frau-Meigs.

2° Recommendation : Multiply the codes of ethics

11. The codes of ethics have, according to some people (notably Henrik Kaspersen) around the table, a bad press. In their eyes, they represent only vague declarations and serve as an alibi to refuse all real engagement. The expose of Penny Duquenoy convinced me of the interest of precise codes of ethics elaborated within well-defined sectors or groups of actors or negotiated between different types of actors. On condition that their editing follows certain procedural rules and that they are really the translation of the pragmatic and concise ethical principles which we have just pinned down, they represent, it seems to me, an important plus to allow for the implementation of these fundamental ethical principles. In that respect the participants have mostly considered that UNESCO draft code of ethics intending to cover the whole aspects of the information society remains too general and its provisions too timid to face the challenges. They considered that there was a need to identify within this global framework the priority issues and possible appropriate and specific actions for each of them to be addressed.

12. The debates which followed support this point of view. It is interesting to note the diversity of places where the codes of ethics should be adopted. In this connection, I noted:

That it is at the outset of the development of a technology, i.e. in the research laboratory, that the ethical concern, the reflection on the social impacts of these technologies should be elaborated;

That the actors concerned by these codes and who should be thankful for them are varied. The debates singled out: professionals themselves of these technologies who, via these codes or this deontology, should be able to encourage enterprises to give thought to the values to adopt in implementing these technologies; the users and communities of users who, in discussion forums, on-line games, should with these codes make themselves aware of the vulnerability of others; the on-line trainers, the librarians for whom the duty of neutrality would appear dependable; servers of on-line games or gambling should also obtain rules of conduct in such a way as to prevent addiction and protect youngsters.

Beyond that, the deontology of on-line journalism was raised, even that of robots inspired by a code adopted in South Korea and in turn inspired by the famous novel by Igor Asimov;

That some actors should be particularly involved in the definition of codes of ethics and this because of their roles as “gatekeepers”, that is controllers of the “public space” which the cyberspace constitutes. Thomas Schneider, Dirk Voorhorf and Penny Duquenoy pointed in particular to the importance of ensuring via codes of ethics the transparency of the rationales behind the workings of search engines and access providers, speaking on their behalf of the necessity of “a policy discussion” as to the interests at stake therein, a discussion which should be open to all.

13. This last reflection leads us to point out some characteristics of the procedure to be followed when elaborating the codes of ethics and their drafting.

In order to have some legitimacy, it is useful that the drafting does not take place in closed groups but be based on dialogue with those interested in creating these codes. In all probability, the people interested will vary according to the object and domain of the code of ethics. Thus, the codes of ethics appropriate for on-line trading require a debate with the

consumers. Undoubtedly, legitimacy also implies a publicity code; each person must be able to know the rules of the game used by those who have adopted these codes.

The contents should really enhance the rules of law already existing. A code of ethics, as all self-regulation, should not only conform to the rules of law, it is important that it constitutes “a plus” dictated by concern for the respect of fundamental principles which inspire it; respect for dignity and autonomy, solidarity and social justice.

This enhanced value of the content should be carried out with the aim to improve the effectiveness of the codes of ethics. The debates on this subject mentioned a number of labelling systems, of voluntary or non-voluntary certification which allow for monitoring of these codes and afford some guarantee of respect. It was also said that the law should probe into these codes, these “standards” to determine and judge whether the members of a profession conformed to the obligations of their profession.

14. The discussion of these codes of ethics takes place at all levels and in many places. This “multi-governance” at the service of fundamental ethical principles seems not to weaken them but to strengthen their roots and to concretely transform them into global principles. “Think globally – Act locally”.

### *ROLES OF THE ACTORS*

15. These two days of discussions enabled the forging of some advice as to the roles of the various actors. Without doubt, I shall be wanting on this point and the precious advice given to the librarians merited more than a simple reference to the exposes of Divina Frau-Meigs and Claudia Lux. I shall content myself by mentioning some reflections on the role of producers and designers of technological systems.

Secondly, I would like to raise questions about the responsibility and the role of end users of these technologies. The importance of the world of education will be the object of my third point before risking some suggestions as to the role of the State and, last but not least, making some proposals as to the future work

of UNESCO and the Council of Europe within the framework of the programme initiated by the WSIS in Geneva and Tunis.

○ *The designers and producers of information and communication technologies (ICT)*

16. Ethics about the environment or consumers gave rise to principles which could be mentioned in this connection: “Whoever creates the risk should accept responsibility in part for the damage<sup>5</sup> involved”.

This first principle should induce the industrial world of information and communication technologies to define the standards and develop systems and products in conformity with the rules of law which translate the ethical principles. This pleads for an opening of the standardization bodies to evaluate the technologies thus normalised, to dialogue with the users, to develop “privacy enhancing technologies” and, more broadly, to develop “value sensitive design” (a concept taking ethical values into consideration) of the latter. Beyond this, the principle calls for essential information about the risks created and transparency about the rationale which guides the functioning of these technologies and their use.

7. Apart from this, many participants were concerned about the absence of representatives of economic actors around the table. I should like to invite them to participate in the dialogue, to play the discussion game. The “confidence” of the users is at stake.

○ *End-users*

18. Serge Proulx expressed his concern about the overly-passive role which end-users of technologies played (devotees rather than public). Internet had become a place of consumption for imposed technologies and not a place of invention as a result of appropriate technologies. Soenke Zehle made a plea on this score for appropriate technologies thanks to technologies called “Internet Content Generated” technologies today, “Internet Democracy Generated” technologies tomorrow and for the development of original citizen platforms, capable of discussing

<sup>5</sup> We underline that the notion of « damage » cannot in any way be reduced to financial or material damage alone but should include moral or psychological damage.

models of information circulation, creation and development that makes up “alternative modalities of Governance”.

The model known as “Creative Commons” is a first example. We can imagine others, thus the spontaneous creation of platforms which will enable citizens to practice a monitoring technology, to control the functioning of operators and to denounce any misuse of ethical and legal rules.

○ *The world of education*

19. It is not surprising that a session was devoted to the role of media education and we understand that many speakers pointed to the role of the educational world, not only for all to be trained in the use of technologies, but especially in the appropriation by citizens of an ethical and participative use of the latter. The idea to create a “highway code” was suggested, not as a preliminary and obligatory examination for media use but as a reference by which each user can situate himself. If educational establishments should take part in this media education, the providers of goods and services should extend also their efforts to inform and educate.

○ *The State*

20. Doubtless, it is not up to the State to regulate everything. It is clear, as noted Stefano Rodota, that State intervention should be subsidiary, that is to say:

1. To proclaim and translate into legal language Internet’s ethical principles;
2. To monitor and oversee their effective implementation;
3. And, if necessary, if misuse is observed, or if the economic actors should fail to uphold the values by appropriate self-regulation, they should themselves adopt public regulation using transparent and open methods.

Beyond that, it is up to the State to be vigilant – would this be the co-regulation dear to Isabelle Falque-Pierrotin and Stefano Rodota? – and invite all stakeholders around a table, taking care

that they are all present and really independent representatives.<sup>6</sup> “Participative” democracy cannot complete “deliberative” democracy of constitutionally qualified assemblies except under such conditions.

21. That the State itself should be a model in the ethical use of information systems and seek to promote applications and products corresponding to these principles is important to highlight.

Finally, that the State should also intervene in the most appropriate way to be the provider of electronic, public information services. Such services should make it possible for everyone to receive information on matters about health, security, rules of law etc. which are essential for a citizen to be able to master his environment (Jean-Gabriel Ganascia).

o *UNESCO and the Council of Europe*

22. In organising the regional conference of the “Europe-North America” group here in Strasbourg, the French Commission for UNESCO and UNESCO wanted, through this collaboration with the Council of Europe, to underline the link between, on the one hand, an “ethic” of the information society being built and, on the other, Human Rights and the supremacy of the State of Law.

That ethics should lead us to an awareness of principles which must govern the information society is evident, but these principles should find a continuation in the affirmation of the rights which they uphold.

From this point of view, the first recommendation to be addressed to the two organisations is simple. Each one has, during the last years, built a foundation of principles and “rights”, for which the assertion and amplification should contribute to the creation of a more ethical information society.

23. Thus UNESCO, as I underlined in connection with bioethics, declared, without hesitation in 2005, the principles around

<sup>6</sup> Which can imply State financial support to organise the representation of certain interests (example : consumer representatives from standardization bodies).

which a world consensus was established. Why not reaffirm these same principles for the information society and elaborate their concrete significance when it concerns applying them to the information society?

The same year UNESCO has, by a virtually unanimous vote of all States, proposed that nations worldwide should adhere to the Convention on cultural diversity. This Convention should be applied in the digital world. Each country’s cultural expression assumes respect for the identity of its language on the Net, domain names in all languages and basic software accessible in the various languages. It supposes that the cultures, currently absent from the Internet because of lack of means, can, with due respect for their identity, find their place there tomorrow.

Universal access to the information society justifies, as suggested by Dirk Voorhof, that we seek other means to compensate the authors for which appropriation of their work, often wild and abusive, has provoked problems by the conjunction of intellectual and technological property rights. The concern for education, freedom of expression, and scientific research should also lead UNESCO to encourage the effective maintenance of exceptions foreseen by the rights of authors and the balance between these legitimate rights of authors and other right-holders and the interest of the users to have access to information and works.

24. Doubtless, concerning the preconditions for freedom of expression, UNESCO will find much support in the work of the Council of Europe.

Moreover, the Council of Europe could try to elaborate, as Jean-Philippe Walter recalled, the significance of the provisions of Convention 108 on personal data protection, and of Article 8 of the European Convention on Human Rights in a world where information technologies and the treatments which they multiply put in peril, in a fundamental way, a person’s dignity and personal self-determination.

How can we avoid requesting also, on this topic of privacy, that the Council of Europe seeks, with the same earnestness and, we hope, success as that obtained with the Convention on

Cybercrime in 2001, to obtain the signature and ratification by third countries (United States, Japan, etc) of Convention 108 and, in this way, the recommendations which extend it.

25. Concretely, this supposes that open working groups will be set up by the authorities to elaborate the sense and implications of already-existing instruments. Apart from the code of ethics presented by the African and South American regional conferences, we should be more ambitious and, in the name of ethical principles, liberty and solidarity which you have spoken about, not hesitate to insist on the rights that you yourselves have proclaimed. It is not a question of imposing but of proposing, with conviction, this “Bill of Rights” and to enter, as suggested Paul de Hert, into a convincing discussion so that together we can reply to the question: “what society – and not what infrastructure – do we want to share?”

Thank you for your help in trying to define it during these two days.