

GARANTE PER LA PROTEZIONE DEI DATI PERSONALI

# Freedom of the Press and Data Protection: The Italian Case

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## A Difficult Balance

Freedom of the press and privacy protection: continuous confrontation, sometimes a conflict

Right to know, freedom of communication, transparency requirements

Need for privacy, right to unrestrained development of one's personality, to have one's dignity respected

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## "Media privilege"

The 1995 European data protection directive (Article 9) allows setting out derogations and exemptions from most of the basic data protection principles

Most countries introduced either no or minor provisions concerning freedom of the press

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## The Italian Anomaly



> Things went differently in Italy. An anomaly in the European context

> Basically, data protection principles also apply to journalistic activities in our country

The Garante plays a "leading role" in Italy in the complex confrontation between freedom of the press and personal rights

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## The Basic Tools Used by the Garante

Data Protection Legislation, including its basic principles and, in particular, the rule on "materiality of the information as related to facts of public interest"

Code of Conduct applying to journalistic activities

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## What Is the Code of Conduct?

> An example of the co-regulation policy set out in our data protection legislation

> Adopted in 1998 by the Board of Journalists in cooperation with the Garante

> Allowed applying general data protection principles to journalism – balancing personal rights and freedom of the press

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**How to Be a Good Journalist in 13 Articles**

The Code consists of 13 short articles (*English text available at [www.garanteprivacy.it](http://www.garanteprivacy.it)*)

End-point of an analysis carried out by the most enlightened representatives of the journalistic profession

A valuable answer to the increased awareness of the public opinion

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**Scope of Application**

All journalists, photographers, camera operators and any person publishing articles, essays or other intellectual works whether on a regular basis or not

Unlike conventional codes of practice, the Code also applies to non professional journalist

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**Contents**  
- *Limitations in General* -

**Basic concept:**  
“**Materiality of the information**”

Journalists are required to **evaluate** whether dissemination of a personal data contained in news is material by having regard to the public interest

**Additional limitation:**  
A person’s right not to be discriminated against on account of his/her race, religion, political opinions, sex, and personal, bodily or mental conditions

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**Contents**  
- *Specific Safeguards* -

**1. Sensitive data**  
The concept of “materiality of the information” is especially important in this case. Any reference to relatives and/or other individuals that are not involved in a story will have to be avoided

**2. Protection of Private Domicile**  
A journalist may not enter someone’s house or film the inmates of a hospital or prison without the data subjects’ consent

**3. Public Figures**  
Are entitled to less stringent privacy safeguards if news concerning their private lives are directly related to their public role

**4. Persons Involved in a News Story**  
A practice that is all too common in Italy leads to publishing photographs of individuals under arrest or criminal “mug shots” without the persons’ consent for no “proven judicial and/or police purposes”

**5. Diseased Persons**  
Blocking the processing of information, in connection with publication of data concerning a person affected by Creutzfeldt-Jakob disease

Disease affecting a Minister running for the European Parliament elections → **right to privacy and electors’ right to know**

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**6. Sex Life**  
Individuals have the right to keep confidential their sex preferences and orientation

**7. Children**  
Media claim that it is necessary to protect our children, however they pounce on any case involving a child

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## Fighting Gossip and Beyond

Protection of privacy in connection with journalistic activities goes well beyond the mere fight against gossip

The Garante has chosen to play its game in earnest acting much more in the interest of the public at large than as the watchdog of VIPs

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## The Garante's Case Law

- > The Garante's autonomy (members elected by Parliament) resulted into specific "case law"
- > The balanced approach in the Garante's decisions is recognised both by journalists and by citizens
- > Main decisions collected in a book:

**"Privacy and Journalism. Freedom of Expression and Citizens' Rights"**



## Technological Innovations

- > Technological development (Internet): Opportunities and new problems
- > Example: News on the Internet know no boundaries in time or space. End of the **right to oblivion**, meaning the right to rest assured that (true or false) news concerning ourselves will be forgotten
- > Denials and rectifications poorly effective

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## Arrivederci

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