Criteria and Procedures for Developing Codes of Ethics or of Conduct

On behalf of IFIP-SIG9.2.2:

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REFERENCES FOR THE EXECUTIVE SUMMARY

The Executive Summary is available at :
http://www.info.fundp.ac.be/~jbl/IFIP/Criteria_and_procedures.pdf
This document is not an extended document of the Executive Summary. It gathers the reflections and the material that have allowed to produce the Executive Summary.

0. Context

- ICT Ubiquity: link to societal way of life, i.e. need of democratic procedures and control;
- IFIP Codes go back, for most of them, before the Internet era: clauses must be updated;
- *Background*
  - Role of territorial State declining?
  - Heterogeneity of actors: juridical, cultural, social, economic, political,…
  - Short-lived content, its volatility / evanescence,
  - Self-regulation has many ideological "arguments" behind its promoters.
- Globalization: in search of cross-border regulation instruments;
- Internet Governance has become a real battlefield: see "World Summit on the Information Society", Geneva, December 10-12, 2003: http://www.itu.int/wsis
  - Declaration of Principles, WSIS-03/GENEVA/DOC/0004
  - Plan of Action, WSIS-03/GENEVA/DOC/0005
  - Shaping Information Societies for Human Needs, Civil Society Declaration to the World Summit on the Information Society, Unanimously Adopted by the WSIS Civil Society Plenary on 8 December 2003 (version with corrections 12.12.2003)
- Ideas of multiregulation (Lessig[1] – Reidenberg[2] – Trudel[3]):

[1] Lawrence Lessig, *Code and other Laws of Cyberspace*, Basic Books, New York 1999

[2] Joel R. Reidenberg, Governing Networks and Rule-Making in Cyberspace, in : 45 EMORY L. J. 911 (1996) reprinted in *Borders in Cyberspace*, Brian Kahin and Charles Nesson, eds. (MIT Press: 1997)

[3] Pierre Trudel, France Abran, Karim Benyekhlef et Hein Sophie, *Droit du Cyberespace*, Thémis 1997.See also, same author, "Les effets juridiques de l'autoréglementation", *Revue de droit de l'université de Sherbrooke*, 1989, vol. 19, n° 2.

Lawrence Lessig (Harvard/Stanford) Joël Reidenberg (Fordham University)	Pierre Trudel (University of Montréal) **A continuum**
- Technical, code, infrastructure, - Market, Commerce, Business, Self-regulatory**,** - Legal	- The common law, - the ruling of the States, - the contractual techniques, - the self-regulation, - the soft law, - the standardisation, and - the technical normalisation.

- Meaning of self-regulation may differ according to national, social and legal situation. See, for instance, three levels in UK:

Categories	**Actors**	**Control/Enforcement**
"Devolved" regulation	Managed by professional bodies established by statutes or under Royal Charter.	Government has an 'overseeing role and a mechanism for intervention if self-regulation appears to be failing.'
Self-regulatory schemes	Developed as genuine alternatives to state regulation, but under control of the Government.	Government monitors the operation and retains a credible mechanism for intervening if problems arise.
Simple codes of practice or charters	Firms and organisations. Often pure marketing schemes.	Realistically Government may wish not to intervene.

SIG9.2.2 questions

- Meaning of Codes of Conduct/Ethics in this context?
- Minimum requirements for being really regulating?
- How to rate and assess them? From a formal point of view, from the content point of view, from the sanctions point of view, from a democratic point of view,...?
- Is it any democratic participation in the process of writing them?
- What is the process of their evaluation?
- Etc.

1. SIG9.2.2 Previous Work

IFIP Codes Analysis

Ethics of Computing: Codes, Spaces for Discussion and Law, Jacques BERLEUR & Klaus BRUNNSTEIN, Eds., A Handbook prepared by the IFIP Ethics Task Group, London: Chapman & Hall, 1996, 336 p., ISBN 0-412-72620-3. (now available at Kluwer Academic Publishers, Boston)

Five main issues

1. *Respectful general attitude* (/30): respect for the interests or rights of the people involved (15), respect for the prestige of the profession (11), respect for the interests or rights of the public (10), and respect for the welfare, health of the public and for the quality of life (10).

2. *Personal (/institutional) qualities, such as conscientiousness, honesty and positive attitude, competence and efficiency* (/30)

   Conscientiousness and honesty: acceptance of responsibility (19) and integrity (26); respect for requirements or contracts or agreements (14) and to conscientious work (11).

   Competence and efficiency: professional development and training (19), or limitation of work to the field of competence (18); general competence (13) and effectiveness or work quality (12).
3. *Promotion of information privacy and data integrity* (/31)

   Confidentiality (22); Privacy in general (14) and respect for property rights (12).
4. *Production and flow of information* (/31)

   Flow of information to involved parties or people (23); information to the public (16); comprehensive information (14).
5. Attitude towards regulations (/30)

   Not a major theme: respect for the code (13), respect for the law (13), and respect for it and professional standards (12).

Comments on IFIP Codes

- Statements remain fuzzy,
- Not specific to the ICT profession as such,
- Do not take into account the issues raised by the Internet.

Recommendations by IFIP Ethics Task Force & IFIP-GA

- Develop more computer-related issues, and explore the most sensitive ones,
- Take into account the technical developments,
- Meet the challenges as mentioned by experts,
- Anticipate threats and dangers in specialised fields,
- Include the suggestions of international organisations (Council of EUROPE, OECD),...

Publications

- Jacques BERLEUR and Diane WHITEHOUSE, Eds., *An Ethical Global Information Society: Culture and Democracy Revisited*, Proceedings of the IFIP-WG9.2/9.5 Corfu International Conference, May 8-10, 1997, Chapman & Hall, 1997 (now available at Kluwer Academic Publishers, Boston)
- Jacques BERLEUR, Penny DUQUENOY and Diane WHITEHOUSE, Eds., *Ethics and the Governance of the Internet*, IFIP-SIG9.2.2, September 1999, IFIP Press, Laxenburg - Austria, ISBN 3-901882-03-0, 56 p. This monograph may also be found on the SIG9.2.2 website: http://www.info.fundp.ac.be/~jbl/IFIP/Ethics_and_Internet_Governance.pdf
- Jacques BERLEUR and Marie d'UDEKEM-GEVERS, Codes of Ethics/Conduct for Computer Societies : The Experience of IFIP, in: GOUJON Philippe, HERIARD DUBREUIL Bertrand, eds. *Technology and Ethics, A European Quest for Responsible Engineering*, European Ethics Network, Peeters, Leuven, 2001, pp. 327-350. http://www.info.fundp.ac.be/~jbl/IFIP/Berleur-d'Udekem.pdf
- Jacques BERLEUR, Ethics and the Governance of the Internet, Recommendations of IFIP-SIG9.2.2, in: Leif Bloch RASMUSSEN, Colin BEARDON and Silvio MUNARI, Eds., *Computers and Networks in the Age of Globalization*, Proceedings of the 5th IFIP-HCC International Conference, Kluwer Academic Publishers, 2000, pp. 141-154.
- Penny DUQUENOY and Diane WHITEHOUSE, The process of Ethics, in: Leif Bloch RASMUSSEN, Colin BEARDON and Silvio MUNARI, Eds., *Computers and Networks in the*

Age of Globalization, Proceedings of the 5th IFIP-HCC International Conference, Kluwer Academic Publishers, 2000, pp. 361-379.

- Jacques BERLEUR, Marie d'UDEKEM-GEVERS and Laetitia ROLIN, Ethics and means of regulating the Internet, in: *InfoEthics'98, Final Report and Proceedings*, Paris, UNESCO, 2000, pp. 287-303. http://www.unesco.org/webworld/infoethics_2/eng/papers/paper_24.htm

2. SIG9.2.2 New Analyses of Self-regulation Documents

- Jacques BERLEUR, Penny DUQUENOY, Marie d'UDEKEM-GEVERS, Tanguy EWBANK de WEZSPIN, Matt JONES and Diane WHITEHOUSE, *Self-Regulation Instruments – Classification – A Preliminary Inventory*, (HCC-5, Geneva 1998; SIG9.2.2 January 2000; SIG9.2.2 June 2000; IFIP-WCC-SEC2000), © IFIP-SIG9.2.2 http://www.info.fundp.ac.be/~jbl/IFIP/sig922/selfreg.html
- Jacques BERLEUR and Tanguy EWBANK de WESPIN, Self-regulation: Content, Legitimacy and Efficiency - Governance and Ethics, in *Human Choice and Computers, Issues of Choice and Quality of Life in the Information Society*, Klaus BRUNNSTEIN & Jacques BERLEUR, Eds., Proceedings of the IFIP-HCC6 Conference, 17th World Computer Congress, Montréal, August 2002, Kluwer Academic Publ., 2002, pp. 89-108. http://www.info.fundp.ac.be/~jbl/IFIP/Berleur-Ewbank.pdf

Analysis of the Inventory of Self-regulation Documents: A Grid of Analysis

'Ratione personae'/Actors	People enacting (or 'authors') People concerned	
'Ratione loci'/Place		
'Ratione materiae' (Topics and themes)		
Enforcement	Sanctions Procedures	
Alia /Miscellaneous		

Main Publications

- Jacques BERLEUR, Who rules the Internet ? - Governance and Self-regulation of the Internet: Which Place for the State and for Ethics? In: *Information Property, Intellectual Property, and New Technology*, Kl. BRUNNSTEIN and P. P. SINT, Eds., Proceedings of the 'Knowright 2000/InfoEthics Europe' Conference, September 27-29, 2000, Vienna, Österreichcische Computer Gesellschaft, pp. 131-152.
- *Gouvernance de la Société de l'Information : Loi - Autoréglementation - Ethique*, Jacques BERLEUR, Christophe LAZARO et Robert QUECK, Eds., Actes du Séminaire des 15-16 juin 2001, Cahiers du CRID n° 22, Bruylant – Presses Universitaires de Namur, 2002, 206 pages, ISBN 2-8027-1688-3.
- Governance of the Information Society: Ethics – Self-regulation – Law (Key questions of a Workshop held in Namur, June 15-16, 2001)
- Jacques BERLEUR, HE Vigdis FINNBOGADOTTIR, Minister Björn BJARNASON, and Klaus BRUNNSTEIN, Commission 8: Social and Ethical Aspects of the Information Society, in

WITFOR 2003 Whitebook, Dipak KHAKHAR Ed. Vilnius, Lithuania, 27-29 August 2003, IFIP Press, 2003, pp. 259-339.

- Jacques BERLEUR, Ethics and the Regulations of the Internet, in: *Risks & Challenges of the Network Society*, Penny DUQUENOY, Simone FISCHER-HÜBNER, Jan HOLVAST, and Albin ZUCCATO, Eds., Proceedings of the IFIP WG9.2, 9.7/11.7 Karlstad International Summer School, Karlstad Universities Studies, 2004:35, ISBN 91-85335-03-07.
- Penny DUQUENOY (2003) Models for Internet Ethics, presented at the IFIP Summer School, Karlstad, Sweden, in: *Risks & Challenges of the Network Society*, Penny DUQUENOY, Simone FISCHER-HÜBNER, Jan HOLVAST, and Albin ZUCCATO, Eds., Proceedings of the IFIP WG9.2, 9.7/11.7 Karlstad International Summer School, Karlstad Universities Studies, 2004:35, ISBN 91-85335-03-07.
- Jacques BERLEUR, Professional Deontology, Self-regulation and Ethics in the Information Society, in: *Education and the Knowledge Society, Information Technology Supporting Human Development*, Tom. J. VAN WEERT, Ed., Proceedings of the Forum "Engineering the Knowledge Society" (EKS) (World Federation of Engineering Organisations, IFIP, SATW, SVI-FSI) - Information technology supporting human development", Geneva, December 10-12, 2003 – World Summit on the Information Society, Sommet mondial sur la société de l'information, http://www.itu.int/wsis, Kluwer Acad. Publ. 2004

Other Publications

- Jacques BERLEUR and Jean-Marc DINANT, Will Self-Regulation Improve the Internet Security? In: *IFIP/SEC2000: Information Security. Information Security for Global Information Infrastructures*, Sihan QING & Jan H.P. ELOFF, Eds., Proceedings of the IFIP- 16th World Computer Congress, SEC2000 Conference, Beijing, August 21-25, 2000, International Academic Publishers, Beijing 2000, pp. 306-309.
- Jacques BERLEUR, Risk and Vulnerabilities of Democracy in Information Societies, in: Report of the COMEST Sub-Commission on 'The Ethics of the Information Society", UNESCO, September 2001, pp. 40-54 Address on July 2004: http://portal.unesco.org/shs/en/ev.php-URL_ID=1957&URL_DO=DO_TOPIC&URL_SECTION=201.html
- Jacques BERLEUR, Key issues in IFIP-SIG9.2.2 Approaches to Ethics of Computing, in: *Informatics and the Digital Society - Social, Ethical and Cognitive Issues*, Proceedings of the SECIII IFIP-GI-Conference on Social, Ethical and Cognitive Issues of Informatics and ICT, Tom J. VAN WEERT and Robert K. MUNO, eds., July 22-26, 2002, Kluwer Academic Publ., 2003, pp. 1-16.
- Jacques BERLEUR, Éthique et Gouvernance de la Société de l'Information : Quelles Régulations ?, in: *Les 2èmes Rencontres de l'IST, Technologies de l'information, Société du savoir, Un nouvel âge des Lumières*, sous la direction de Massimo MALVETTI, Prosper SCHRÖDER et Roland SIMON-SCHAEFER, (Luxembourg, 21 juin 2002), Luxembourg, Editions Promoculture 2003, pp. 95-137.
- Jacques BERLEUR, Poklicna deontologija, samourejanje in etika v informacijski druzbi, in : Organizacija Znanja (OZ), letnik 8, zvezek 4, 2003, pp. 166-174. ISSN 158=0-979X, http://home.izum.si/cobiss/oz/

3. Other Sources

1. IFIP Harmonization of Professional Standards

HPS, Draft October 1998. http://www.info.fundp.ac.be/~jbl/IFIP/HPS.pdf

2. "Recipes" on "How to Draft a Good Code of Conduct?"

The voluntary Codes: A Guide for their Development and Use (Canada), A joint initiative of the Office of Consumer Affairs, Industry Canada, and the Regulatory Affairs Division, Treasury Board Secretariat, March 1998, http://strategis.ic.gc.ca/epic/internet/inoca-bc.nsf/vwGeneratedInterE/ca00863e.html
(§ 3 gives indication for "developing and implementing voluntary codes", and § 4 is a "Summary of Key points.")

An Eight-step Model for Developing Codes'

- Gather Information
  - Address and articulate problem clearly
  - Agree on objectives
  - Identify all stakeholders
  - Identify range of solutions, potential costs and benefits
- Preliminary Discussions with Major Stakeholders
  - Test preliminary findings and options with major stakeholders
- Create a Working Group
  - Select working group members, decide how group is to function
- Preliminary Draft of the Code
  - Identify specific implementation functions, roles and responsibilities
  - Contact appropriate government authorities, including the Competition
  - Bureau, to ensure conformity with relevant laws
- Consultations on Preliminary Draft
  - Consult those most likely to be directly affected and already aware of initiative
  - Disseminate information to groups and members of the public with whom no previous contact was made
- Publication and Dissemination of the Code
  - Develop communication plan to ensure all parties are aware and receive code
- Implementation
  - Ensure effective code compliance by involving all code participants and stakeholders
- Review
  - Build code review into initial conception and delivery
  - The NSS includes standards development organizations, certification and testing organizations, and registration organizations.

Summary of Key Points (We quote, and consider that these points are very important)

1. Codes may be initiated for a variety of reasons but should *not delay needed laws*. Research suggests that codes are typically developed in response to consumer and competitive pressures, the threat of a law or regulation, or an opportunity for social improvement. While voluntary codes can be useful supplements and forerunners to statutes and regulations, and may have significant legal implications, they should not delay needed laws.
2. Look before leaping. Before initiating or participating in a code initiative, all parties should thoroughly *investigate the advantages and disadvantages of involvement*. They should explore, at a minimum, the likelihood of the code's success, financial and other benefits, costs, the time and energy required to make the code work, and the potential

results if the code fails.

3. *Be clear about objectives and roles from the outset*. To prevent problems arising later, proponents should articulate as early in the code development process as possible a clear statement of the code's objectives and the roles, rights and responsibilities of all parties.
4. *Involve all affected interests*. Early, regular consultation with all potentially affected parties and the meaningful involvement of key stakeholders can increase the likelihood of a code's success. The credibility and legitimacy of a code may be enhanced by the meaningful participation of non-governmental organizations (NGOs) in the development, implementation and review stages. Proponents should be prepared for the possibility of having to pay NGOs for their expertise and time. Government agencies should also be consulted as early as possible, since codes frequently have regulatory implications (for example, in the areas of consumer, competition and corporate law, workplace health and safety, and the environment).
5. Be sure the code addresses *all aspects necessary to ensure compliance*. The code should address monitoring and reporting requirements, dispute-resolution mechanisms, incentives for code compliance and sanctions for non-compliance, and review and amendment procedures.
6. Emphasize *fair, consistent and transparent implementation*. A code must be implemented in a fair, consistent, transparent manner to achieve maximum buy-in from all parties, deliver maximum benefits and protect the reputations of everyone concerned. Each code adherent should designate officials within its ranks to be responsible for compliance, and train and educate field-level employees so that they can carry out their responsibilities. Industry associations, NGOs, affected parties, the general public and government agencies can all play important roles.
7. Be patient and *flexible*. Rigorous terms, 100 percent buy-in and full compliance may not be feasible at the outset. Rather, an incremental approach may be necessary, which involves leading by example, transition periods and phased-in commitments over time.

3. Bertelsmann Foundation Self-Regulation of Internet Content Project, 'Toward a Model Code of Conduct on the Internet'

The Bertelsmann Foundation, Self-Regulation of Internet Content Project, 'Toward a Model Code of Conduct on the Internet', prepared by PRICE, M. E., and VERHULST, St. G., http://www.bertelsmann-stiftung.de/internetcontent/english/content/c4000.htm (access no more available, but reference at http://www.bertelsmann-stiftung.de/de/3931.jsp). Available here: http://www.info.fundp.ac.be/~jbl/IFIP/Bertelsmann.pdf

A Model Code must do at least the following:

1. Indicate who is concerned by the Code or within the Code's network of applicability;
2. Provide a place where Internet users can get clarification about the scope and use of the Code as well as provide a place where recommendations and complaints can be addressed;
3. Articulate norms;
4. Indicate other (statutory) provisions that may affect the applicability or validity of the Code;
5. Articulate how complaints can be filed concerning the possible abridgment of norms;
6. Include enforcement mechanisms available for abridgment of norms;
7. Contain policies concerning references to law enforcement;

8. Explain the responsibilities of members to educate the public in use of filters, in applicability of the Code; and
9. Emphasize rules of interpretation that recognize the importance of freedom of speech and an individual's right to receive and impart information.

4. Programme in Comparative Media Law and Policy

Wolfson College, Oxford University, 'Internet Selfregulation: An Overview', http://selfregulation.info/iapcoda/030329-selfreg-global-report.htm

5. People for Internet Responsibility Issues

PFIR - People For Internet Responsibility
ISSUES
Version of January 10, 2004
http://www.pfir.org/issues

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