INTERNATIONAL PSYCHOANALYTICAL ASSOCIATION

Report of the IPA Confidentiality Committee

1st November 2018

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1 INTRODUCTION

The Confidentiality Committee has been mandated by the IPA Board to review "the ways in which confidentiality pertains to and impacts on the work of IPA psychoanalysts", to draft documents on best practices for the IPA Board to review and approve, and to advise the Board on related issues for the 2019 Congress (see Appendix A). The members of the Committee are: Dr. Andrew Brook (IPA Treasurer, Chair), Psic. Nahir Bonifacino (Uruguayan Psychoanalytical Association), Mr. John Churcher (British Psychoanalytical Society), Dr. Allannah Furlong (Canadian Psychoanalytic Society), Dr. Altamirando Matos de Andrade (Chair of the IPA Ethics Committee, Ex-Officio), Dr. Sergio Eduardo Nick (IPA Vice-President, Ex-Officio), Mr. Paul Crake (IPA Executive Director, Ex-Officio). Administrative and technical support was provided by Mr. Steven Thierman.

Although from its beginnings the IPA has had a major interest in confidentiality, an immediate impetus for establishing the Committee was a situation that arose in which confidential information about a patient was revealed during discussion of a clinical presentation at an IPA congress. Because the information was revealed in the response to a question by a member of the audience following the presentation, it could not have been prevented in advance by any review process. Subsequently the patient learned of what had been said and was outraged. The patient sued and the IPA ended up paying a substantial sum in settlement. The primary issue was not the money, or who was responsible for what, but how to prevent such ethical violations in the future.

The Committee met on 20 occasions prior to producing a draft report in April 2018. The draft report was presented to the IPA Board at its meeting in June 2018, in London, following which it was sent to Presidents of component Societies and made available to all IPA members and candidates via the July IPA Newsletter, with an invitation to comment by 28th September. A further 3 meetings were held to discuss the feedback before producing the final report.

In approaching our task we have kept in mind a number of general principles which are detailed below. We then discuss separately five areas of focal concern: protection of the patient in the use of clinical material for teaching, oral presentations, publications, and research; confidentiality when using telecommunications, including for remote analysis and supervision; third-party requests for a breach of confidentiality; colleagues against whom a complaint has been made to the Ethics Committee, while an investigation is ongoing; and patients' access to files, including process notes. The first two of these are discussed in some detail as areas of current preoccupation for the IPA.

We have had the benefit of reading unpublished legal advice about confidentiality and informed consent prepared for the IPA by an English barrister (Proops, 2017). We have also had sight of draft versions of recent documents prepared by a working party on confidentiality of the British Psychoanalytical Society, and by a working group of the German

Psychoanalytical Association (DPV) on the use of digital media in psychotherapy and psychoanalysis. The approach taken in these drafts is broadly convergent with our own and we are grateful to the Chair of the British working party, Mr David Riley, and to the President of the DPV, Dipl. Psych. Maria Johne, for allowing us to see these in confidence.

Our report ends with some general conclusions and a set of specific recommendations. The recommendations are intended to foster and strengthen a culture of confidentiality in the IPA and among its members.

The feedback we have received concerning the draft report broadly shows a strongly positive appreciation of it. Where the comments have been critical they have been made from a wide range of positions. Rather than trying to modify the body of the draft report to take account of all the points raised, and the different positions from which they have been made, we have opted to restrict changes to the text to a necessary minimum, and to provide separately a synopsis and discussion of the remainder of them (see section 10).

It has been suggested that the IPA should delay publication of this report to allow time for further discussion of some contentious issues. The Committee believes, however, that the best way of ensuring the widest possible discussion of all the issues raised in the report is not to delay its publication but instead for the IPA to use the report itself as a basis and focus for discussion.

2 GENERAL PRINCIPLES

2.1 Psychoanalytic & non-psychoanalytic approaches to confidentiality

As a profession, we have responsibilities to our patients, to each other, and to a wider public. We therefore have to engage with both psychoanalytic and non-psychoanalytic ways of understanding confidentiality. We need to assert and defend the requirements of a specifically psychoanalytic conception of confidentiality, while remaining aware of a wider, non-psychoanalytic discourse, and distinguishing between these where necessary.

For psychoanalysts, confidentiality is not merely a requirement for the safe or ethical conduct of work that might otherwise be carried out unsafely or unethically. It is fundamental to the psychoanalytic method in a more radical sense: without the expectation of confidentiality, psychoanalysis would be impossible because both free association by the analysand and free listening by the analyst would be vitiated. Confidentiality acts as a container and as a boundary separating analytic space from a wider social space. The IPA states explicitly in the *Ethics Code* that confidentiality is "one of the foundations of psychoanalytic practice". (IPA, 2015, Part III, paragraph 3a).

2.2 The analyst's responsibility for the frame/setting

The role of the psychoanalyst gives rise to profound responsibilities because of the ways in which the psychoanalytic framework both stimulates and frustrates regression, unfulfilled longings, and unconscious phantasy. The analyst's responsibility encompasses an awareness of the seductive power inherent in the psychoanalytic setting. Although unconscious impulses and emotions are stirred up in both partners to the analytic encounter, there remains an important ethical asymmetry: the analyst has to respect the autonomy and separateness of the patient, whether or not this attitude is reciprocated by the patient. The full impact of the person of the analyst, and of the setting, on the treatment and on the patient's reaction to it, may never be fully known to the analyst, and yet the analyst must try to assess it. For this reason, while a patient's consent to a breach in confidentiality may render it permissible from a non-psychoanalytic viewpoint, such a breach may remain ethically compromising in the eyes of many analysts, who would feel that the patient cannot always know at the time how the transference has affected his giving consent.

2.3 The patient's trust that the analyst will protect confidentiality

For a psychoanalysis to be possible the analysand must be able to *trust* that the analyst will protect the confidentiality of their communication. It is not necessary that the analysand trust the analyst in every respect, and it may even be clinically undesirable, but without trust in the analyst's willingness and ability to protect confidentiality it will not be possible for what they jointly undertake to be a psychoanalysis, because it will not be possible for the patient to attempt to associate freely, nor for the analyst to listen freely.

2.4 The possibility of unresolvable conflict between competing needs or views

We can conceptualise confidentiality as pertaining to our professional relationships in at least two different ways. If we think of confidentiality exclusively in terms of the relationship between analyst and analysand, the need for the analysand to be able to trust the analyst to protect confidentiality is liable to come into conflict with the analyst's ethical and scientific need to share anonymised material with colleagues in supervision, teaching, and publication. On the other hand, if we think of confidentiality in terms of a relationship whose quality and integrity requires from the beginning the inclusion of psychoanalytic colleagues as third parties with whom the analyst communicates clinical material 'in confidence', the analysand may not share this view, in which case there may be a conflict between the analyst's and the analysand's conceptions of confidentiality. Either way, a conflict between the analyst's and the analysand's views may be unresolvable.

2.5 Confidentiality as an ethical & technical foundation of psychoanalysis

The principle that confidentiality is one of the foundations of psychoanalysis is a matter not only of ethics but also of psychoanalytic technique, and the ethical and technical aspects are inseparable. Protecting patients' confidentiality thus involves the IPA in an ethical regulation of psychoanalytic practice. The challenge for analysts is that the object of our study, the unconscious, is as much a part of our being as it is in our patients, and as likely to emerge in unexpected ways. Our wish to protect our patients may be undermined by unconscious strivings in ourselves. It is for this reason that in this report regular recourse to non-judgmental listening by colleagues *before* the presentation or publication of clinical material is viewed as indispensable to detecting unconscious excitement stirred up by the process. Yet even this is not without its own pitfalls and limitations.

2.6 Confidentiality & privacy

The words *confidentiality* and *privacy* are used in a variety of complex ways in everyday contexts, which often overlap and are sometimes confused. For the purpose of this discussion it will be helpful to distinguish them by thinking of confidentiality as arising always in the context of a relationship, within which private information, experiences, and feelings, are shared within strict limits. From a legal point of view, confidentiality is an ethical obligation, whereas privacy is an individual right.[1]

Maintaining the privacy of what is communicated between analyst and patient is clearly a necessary condition of confidentiality in an analysis . This is the case regardless of whether confidentiality as an ethical requirement is understood to be unconditional or as subject to certain limitations or exceptions on clinical and/or legal grounds. Unless the privacy of their conversation can be assured, a psychoanalyst is not in a position to give or imply a

[1] See e.g. http://criminal.findlaw.com/criminal-rights/is-there-a-difference-between-confidentiality-and-privacy.html

guarantee of confidentiality to a patient. Any circumstances which breach or fail to protect the privacy of communication therefore undermine the possibility of undertaking a psychoanalysis.

In the *Ethics Code*, privacy is protected in two different and complementary ways, which correspond to the psychoanalytic and non-psychoanalytic approaches to confidentiality mentioned above. Part III, paragraph 3a, of the *Code*, which protects the confidentiality of patients' information and documents, implicitly protects the privacy which is a necessary condition of this confidentiality.[2] Part III, paragraph 1, prohibits psychoanalysts from participating in or facilitating the violation of basic human rights, which include a right to privacy[3].

2.7 Institutional & individual responsibilities

Protecting confidentiality may have implications for individual psychoanalysts which differ from those for the IPA as an organisation. Whereas an individual IPA member may decide to put ethical considerations before legal ones, the IPA as an organisation may not always be in a position to do this. The risks of litigation may also differ significantly between the IPA as a corporate body and its individual members.

Part III of the *Ethics Code* provides guidelines for ethical practice, but these are necessarily general in nature and individual psychoanalysts have to decide how to apply them in particular situations. Each alternative at the analyst's disposal may be fraught with limitations and risks, and if a patient feels betrayed or manipulated the consequences can be serious: considerable anguish for the patient, negative impact on an ongoing treatment, or retroactive harm to a completed treatment. Often, the individual analyst is faced with making the best of an essentially undecidable situation, clinically and ethically.

The situation is further complicated by the vigorous presence of different clinical and theoretical orientations in the psychoanalytic community, and there may be no agreement as to what is ethically appropriate or technically correct in a given situation.

2.8 Ethical versus legal considerations

The ethical requirement of confidentiality in the psychoanalytic sense of the term arises primarily from within psychoanalytic practice, not from laws or ethical codes external to psychoanalysis. Although the rule of law is a hallmark of modern democratic societies, it is not fixed or infallible but subject to political, institutional, economic, and community

[2] "Confidentiality is one of the foundations of psychoanalytic practice. A psychoanalyst must protect the confidentiality of patients' information and documents." IPA (2015) III.3a

[3] "A psychoanalyst must not participate in or facilitate the violation of any individual's basic human rights, as defined by the UN Declaration of Human Rights and the IPA's own Policy on Non-Discrimination." IPA (2015) III.1. Article 12 of the *UN Declaration of Human Rights* makes explicit that everyone has a right to privacy, and to legal protection against interference with or attacks on privacy.

pressures as well as changing social and ethical norms. Laws can be, and have been, directed to ends that are incompatible with psychoanalytic ethics. Individual analysts and their patients will generally be better protected if ethical guidelines avoid asserting the precedence of the law. It was for this reason that in 2000, the IPA Executive Council altered the statement about confidentiality by deleting the clause "within the contours of applicable legal and professional standards."[4] The aim was to defend the autonomy of professional ethics and ensure that the *Ethics Code* creates a space which allows individual members who have doubts about breaching confidentiality to feel safe in explaining their ethical stance to the relevant authorities.

2.9 Psychoanalysis and the wider community

Among the institutions of civil society, psychoanalysis makes a unique contribution to the extension and elucidation of human mental life, particularly its unconscious layers. There is an ongoing "work of culture" (Freud, 1933, p. 80) occurring in psychoanalytic therapeutic spaces around the world, the benefits of which are not only in one direction. The health and integrity of psychoanalysis is also dependent upon the values and goals fostered in the surrounding society. We do not practice in a vacuum; we both influence and are influenced by adjacent disciplines and contemporary cultural movements. This is why psychoanalysis, as an institution, must continue to take its place in the various forums of public life : listening, learning and engaging in dialogue with other community entities in an ongoing paradoxical labour of resistance to, and extension of, human collective experience.

[4] Executive Council Minutes, 28 July 2000.

3 PROTECTION OF PATIENTS IN THE USE OF CLINICAL MATERIAL FOR TEACHING, ORAL PRESENTATIONS, PUBLICATIONS, & RESEARCH[5]

3.1 Preliminary remarks and the problem of 'informed consent'

Given the complexity of the unconscious transference and countertransference dynamics in any analytic treatment and the variety of theoretical schools represented within the IPA, each with its own understanding of this complexity, with its own techniques and associated ethics, there is no universal, fail-safe procedure which can be recommended as the best way to protect the analysand when sharing clinical material with colleagues. The problem can be illustrated by considering some imaginary examples of statements that analysts might make if they were required to justify their positions when presenting clinical material in scientific presentations or publishing clinical material:

- Example 1: "I believe that what transpires in the psychoanalytic consulting room is a product of the conscious and unconscious activities of both patient and analyst. I consider it appropriate and proper to ask my patients' permission whenever I use clinical material from our work together. The patients whose material is referred to in this paper have vetted it and given their written permission."
- Example 2: "There is no doubt that any clinical event is properly speaking a unique product of the interaction between a given patient and a given analyst. Any description of it by the analyst is naturally therefore subject to that analyst's point of view, in ways not necessarily fully comprehended, including his or her theoretical bias and unconscious personal equation, at a given moment of time. However, it is my conviction that asking a patient's permission to use clinical material in a scientific presentation is a significant intrusion into his or her psychoanalysis or psychoanalytic therapy and thereby to be avoided if at all possible without harm to the patient. I have chosen to disguise the personal histories referred to in this article so that other persons would not recognize them. As for the patients who might recognize themselves, I hope that they will feel that I have tried to respectfully render our work together as a particular contribution to society."
- Example 3: "I do not believe it is right to involve patients in discussing publications of mine which make reference to their work with me. The inevitable and ethical asymmetry of the therapeutic relationship makes informed consent both problematic and unavoidably troubling to the patient. With a view to protecting the confidentiality of my patients and to correcting for my own unconscious blind spots,

[5] As will be evident from the Further Reading listed at the end of this report, the Committee has been able to draw upon a substantial literature examining the conflict between the ideal of absolute confidentiality in relation to patients and the equally absolute need to consult with colleagues in order to maintain our capacity to work as psychoanalysts. For ease of reading, we have chosen to keep references in the text to this literature to a minimum, citing only when we think the point being made might otherwise be viewed as controversial.

I have asked three colleagues to carefully read over and approve the material with this in mind."

- Example 4: "In order to protect the confidentiality of my patients, I have relied on amalgams of several patients, mine and those of my supervisees, in the clinical illustrations used in this paper. To avoid introducing an extraneous factor into their analyses, I have not asked any of these patients for permission."
- Example 5: "I feel that the analyst's transparency about his or her motives and possible conflicts of interest are essential in an authentic psychoanalytic relationship. Therefore, I always discuss with my patients the possibility of my writing about them and my wish to enrich the literature with what I have learned from our work together. Each patient referenced here has read and approved the material included herein."

Although in the views imagined above there are differing attitudes towards the notion of 'informed consent', we may suppose that all psychoanalysts would acknowledge its complexity. Whereas in most other professions the ethical requirement of informed consent is relatively straightforward, in psychoanalysis it is anything but. Freud's discovery of unconscious resistance, the fact that patients are unconsciously opposed to treatment and to getting better, and his realisation that resistance needed to be identified, understood, and worked through rather than admonished, entailed a paradigm shift in his therapeutic model. The object of analytic inquiry, the unconscious, complicates any notion of informed consent within the transferential field. Neither the analysand nor the analyst can be immediately aware of all the unconscious motives that impel permission for the sharing of clinical material and neither of them can predict the future *après-coup* impacts of such a decision. There is therefore an inherent ethical uncertainty about informed consent in psychoanalysis, given the always-only-partial knowability of transference and countertransference. We know that patients can give consent to share clinical material and still feel that the analyst has breached their trust, with potentially serious consequences for their treatment.

As mentioned above (see 2.7), apart from the option of not sharing clinical material at all, every alternative at the analyst's disposal has its limitations and risks. It is not reasonable to expect that an analyst will always detect or correctly predict a patient's reactions when information is shared (Anonymous, 2013; Aron, 2000; Brendel, 2003; "Carter", 2003; Kantrowitz, 2004, 2005a, 2005b, 2006; Halpern, 2003; Robertson, 2016; Roth, 1974; Stoller, 1988). Some analysts believe that the interactive engagement triggered around the request for consent is on the contrary the ethical action to take with therapeutic benefits and enhanced scientific accuracy accruing from adding the patient's point of view. These analysts (Aron, 2000; Clulow, Wallwork & Sehon, 2015; Crastnopol, 1999, LaFarge, 2000; Pizer, 1992; Scharff, 2000; Stoller, 1988) are less reluctant to disturb the treatment with a request for permission. Given the multitude of complex clinical situations that occur in different phases of psychoanalytic therapy, and the differing ethical positions regarding

each of them that can be taken by analysts of separate theoretical persuasions, it is not feasible for the IPA to devise a standard procedure for presenting and publishing clinical material that would be ethically sound and generalizable to all analysands.

Our ethical responsibility to protect our patients and their treatment goes beyond strict legal liabilities. Even when patients' anonymity is respected so that they are not recognizable to others, their self-recognition may have distressful repercussions on their views of their analysts, of themselves, and of the treatments, whether ongoing or concluded.

Because of these limitations in our capacity to be confident about our particular ethical choices, in addition to our ethical responsibility as individual practitioners we are proposing a community-of-concern approach (Glaser, 2002) in which safeguards are introduced at several points in the development and presentation of clinical material, and responsibility for their effectiveness is held by all involved. The aim is to foster a culture of confidentiality in which protection of the patient´s privacy and dignity becomes a paramount concern at every point in the development, sharing, and presentation of clinical material.

3.2 Reducing potential and experienced harm to patients induced by the profession's scientific, technical, and ethical needs to share clinical experience

The presence of unconscious mental life in every human being, and its intense mobilization during treatment in both analyst and patient in a mutually activating and intertwined spiral, makes it impossible to pretend that any clinical presentation is either exhaustive or exempt from unknown unconscious strivings on the part of the author. Moreover, the clinical material selected as the subject of a presentation is always to some extent a construction created by the analyst. This observation makes the sharing of clinical material with peers or supervisors both a professional necessity and a constant call to scientific modesty. We simply cannot know everything that we may be unconsciously communicating when we write about or orally present our analysands to others. And we cannot reliably predict what the impact on them will be, either immediately or long afterwards, of discovering that their analyst has written about them, whether their permission has been obtained or not. So we are forced to conclude that our ethical responsibility is a paradoxical one: we are responsible for the impact on our patients of our sharing their clinical material with others, despite the fact that we cannot fully predict or control this impact, or even know what aspects of it may have eluded our perception.

The tension between confidentiality and the analyst's need to share is captured in legal advice commissioned by the IPA from the UK barrister, Anya Proops QC. On the one hand, she concludes that "In general, it is difficult to see how the disclosure of effectively anonymised data would amount to a misuse of private information at common law". On the other hand, this advice is subject to the following caveat: "if in practice, patients are given to understand that no aspect of what they say of their treatment will be divulged to any third

party .. . then inevitably psychoanalysts may be exposing themselves to viable breach of confidence claims if they do disclose any information generated in the course of the treatment process, even on an anonymised basis" (Proops, 2017, pp. 15-16).

One practical suggestion relating to confidentiality of clinical presentations would be to encourage authors presenting clinical material in scientific presentations or publishing clinical material to make a statement of the kind illustrated by the imaginary examples above (see 3.1). This might be thought of as analogous to the disclosure of conflicts of interest that has become mandatory in medical reporting. The purpose would be twofold: on the one hand, such statements might motivate their authors to make a more thorough assessment of the balance between confidentiality and scientific sharing, and, on the other hand, they might provide patients who find out that their confidentiality has been breached with an explanation of the reason and a possible occasion for further analytic work. Since internet search by author's name is the easiest and most common access patients and others have to publications which may contain private information, one way to protect confidentiality is to publish or present anonymously or with a pseudonym.

An example of the community-of-concern approach would be to encourage consultation with one or more colleagues before including any material in a presentation.

3.3 At the institutional level: teaching

Not all institutes currently include in-depth discussions of confidentiality issues in training. The importance of confidentiality in psychoanalytic treatment requires that candidates be made aware of this issue early in their training, by identifying it as a key point in our practice. The following proposals could help to place confidentiality as a central aspect in psychoanalysis from the first steps of the training:

- Include a seminar about confidentiality as part of the training which would have the following goals: (a) to make candidates aware of this issue early in their training; (b) to keep the issue alive in our minds whenever we talk about analysands; (c) to promote the presentation and discussion of clinical material in which the protection of confidentiality would be challenging; (d) to facilitate discussion of the advantages and disadvantages of different ways in which confidentiality might be protected in the sharing of clinical material (disguise, informed consent from a psychoanalytic point of view, amalgamated case material, multiple or anonymous authorship, etc.); (e) to facilitate discussion of the local legal and professional regulatory environment with scenarios about how to proceed when there is or could be a conflict with psychoanalytic confidentiality.
- Make the protection of confidentiality an issue of regular and collective concern each time members or candidates present clinical material in society meetings, seminars, working groups, supervisions, etc. Analysts’ personal analyses will remain

confidential places where free association is encouraged. In all other contexts, clinical material should be anonymised.

- Encourage each society to find a way to make thinking about the challenges of protecting confidentiality into a continuous learning project. This might, for example, take the form of the occasional workshop about the issue. The IPA could publish regular bulletins with case discussions from the different regions problematizing this issue, starting with examples drawn from the literature.

3.4 Presentations of clinical material in congresses & other scientific events

Analysts need to be aware that clinical material, whether written or oral, once presented has a potentially unlimited audience. Although the risks of recognition may be judged to be low, any such risk raises the crucial issue that it is not only the reality of a consequent breach that is of concern, but also any perception that there has been or could be a breach. The following guidelines represent the Committee's view of 'best practice' when presenting clinical material in congresses and other scientific events:[6]

- Prepare a statement about confidentiality in calls for papers. Presenting analysts should be alerted to some of the documented negative consequences of poorly controlled confidentiality on patients and analysts. Since research has shown (Kantrowitz, 2004, 2006) that analysts may not always be sensitive to the negative impact of their scientific activities on their patients, they could also be advised to consult their peers early on about their wish to share clinical material in the congress setting. One way of reducing the risk of leaking sensitive clinical material in group presentations would be to avoid circulating this material in written or digital form, either before or after the scientific event.
- Review submitted papers carefully. The scientific committee should vet particularly carefully each submission containing clinical material and – when in doubt – ask for feedback from a select team of advisors about the protection of confidentiality. Since these members may not know the author and his or her milieu, consultation at the local level may be an alternative form of protection. When clinical material cannot be changed, as in the narration of a dream, disguise, anonymization, or a carefully considered asking for permission might be used to protect the patient.
- Include a statement on confidentiality in the printed programme if there is one. Some examples of such statements are given in Appendix B.
- Have chairs read a statement aloud before every panel or workshop. Chairs of events in which clinical material will be shared could be asked to read aloud a statement such as the one that was proposed for the 2017 IPA Congress (see Appendix B).
- Announce that some details of the material have been omitted and/or changed to preserve patient confidentiality.

[6] A preliminary version of some of the guidelines in 3.4 was accepted by the Officers on behalf of the Board in June and July 2017 before the Buenos Aires congress.

- In large groups and any other groups in which not everyone knows everyone else, ensure that special precautions have been taken to protect confidentiality.
- Although informed consent is always complicated by transferential implications, in some jurisdictions, the presentation of clinical material may be *legally* safe only with the written consent of the patient. Legal safety might not, however, fully discharge our ethical responsibility towards the patient and the treatment. When informed consent is proposed as an option, the presenting analyst should consider, if possible in consultation with colleagues, the possible impact of such consent upon an ongoing or completed treatment.
- Minimize the biographical details of the patient, revealing only what is necessary to illustrate the ideas of the author. In smaller gatherings where everyone knows everyone, this by itself may be adequate, and is certainly advisable. There should be an evaluation, preferably with colleagues, in cases in which the aspects of interest could even conceivably identify the patient.
- Disguise clinical material. This should be done so thoroughly in all clinical presentations that the likelihood of the patient being identified is remote.
- Ask each presenting analyst for a brief statement justifying the strategy chosen for protecting confidentiality within his or her ethical framework (see 3.2, penultimate paragraph).
- Have chairs announce that non-authorized audio or audio-visual recording of presentations containing clinical material is not allowed.
- Candidates are especially vulnerable when their personal analyses are spoken or written about by their analysts, given the risk of recognition by the candidate or by someone in the candidate's professional and social circles. Possible consequences include undermining a candidate's identification with psychoanalysis as a future career and even adversely affecting a candidate's opportunity to pursue analysis as a career if, for example, those hearing the material take it to indicate a serious problem with the treatment. Presenting clinical material about a candidate could thus border on becoming a reporting analysis by another name. Similar considerations apply to the analysis of professional colleagues.

3.5 Publications in psychoanalytic journals and e-journals

A number of psychoanalytic journals already have editorial policies in place for protecting confidentiality. It would be valuable to survey these systematically and to formulate proposals for enhancing their effectiveness, but we have not yet done this.

The presence of clinical material on psychoanalytic e-journal sites and publications is a particular cause for concern. Increasingly, e-versions of articles become available at the same time as the print edition or may be republished electronically at a later date. Protection and control of this material is often seriously inadequate, while its readership is

global and unlimited. The ethical commitment of e-journal administrators to the protection of patients needs to be heightened and monitored.

Some examples of current notices for authors which attempt to deal with this problem are given in Appendix B.

3.6 Psychoanalytic research

Research involving human subjects, as it is called in the social science and humanities research community, gives rise to a need for protection of confidentiality. Like other research funding bodies, the IPA has procedures in place for protecting the confidentiality of research subjects.

The IPA's Research Committee, the body within the IPA that provides research funding, requires that every applicant for a research grant involving human subjects (normally, analysands) have obtained ethical approval for the proposed research before receiving any funding from the IPA. The approval must be obtained from what the Research Committee calls an Institutional Review Board (IRB), also known (e.g. in North America) as an Ethics Committee or Research Ethics Committee. Every agency that funds research using human subjects, including every research university in the industrialized world, requires approval by an IRB or has an equivalent requirement in place. As a further safeguard, the IPA requires also that all grant-holders work through a research institution.

Approval by an IRB invariably requires that no subjects be identified by name or other identifying feature in the research, but only by an arbitrary number. The list connecting numbers to names and contact information is then held under tight restrictions, and usually only the principal investigator or research administrator has access to it. IRBs also require that data be reported only in aggregated form whenever possible.

Psychoanalytic research on human subjects takes broadly two forms: multi-subject research, in which individual results are aggregated and no individual information is presented; and studies of either a single case or a small number of cases involving the presentation of information about individuals. For multi-subject research, approval by a reputable IRB is widely considered to be an appropriate form of research ethics clearance and for such research, the requirement of IRB clearance is, in our view, sufficient. For studies of individual cases or a small number of cases involving presentation of information about individuals, in our view there should be a further requirement. Such research proposals should further be required to have in place the protections of confidentiality in the use of clinical material identified in sub-sections 3.2 to 3.5, above.

We recommend that the Research Committee be asked to add to their application process a requirement that applicants have demonstrated that these protections will be in place.

4 CONFIDENTIALITY WHEN USING TELECOMMUNICATIONS, INCLUDING FOR REMOTE ANALYSIS & SUPERVISION

4.1 Introduction

Modern telecommunications, including voice telephony, video telephony or videoconferencing (*e.g.* Skype)[7], and email, are being increasingly used by psychoanalysts for communication with patients and with colleagues. Communications with patients include both occasional and regular consultations by telephone or Skype (or similar), and communications with colleagues include telephone consultations about patients, clinical supervision and seminars conducted by telephone, and the exchange by email of process notes and other clinical material. Psychoanalysts are currently exposed to increasing economic and cultural pressures to normalise these new forms of communication and to use them ever more widely in their clinical work.

Conducting psychoanalysis by means of telecommunications (referred to variously as 'remote analysis', 'teleanalysis', 'distance analysis', and 'Skype analysis') is currently a subject of much debate among psychoanalysts. Many colleagues hold strong views either for and against this practice, with ethical and technical arguments being put forward on both sides. The depth of polarisation in the debate is evident in some of the feedback received by the Committee concerning the draft version of this report (see section 10, below). It is important to note that the scope of the debate about remote analysis is much wider than confidentiality, whereas this report is concerned with remote analysis only insofar as it relates to confidentiality.

The inherent insecurity of telecommunications means that remote analysis, like all of the practices mentioned above, involves risks to patient confidentiality. The IPA has already issued guidance which emphasises that psychoanalysis is conducted "in the room - in person" and that other forms of analysis should be pursued only in exceptional circumstances (IPA, 2017). It points out that there are "issues regarding security, privacy protection and confidentiality over all form of telecommunications", and it states that "Analysts must satisfy themselves that the technology they are using is secure and protects the patient's confidentiality" (IPA, 2014-17, paragraph 7). We explore below the risks to confidentiality inherent in the use of telecommunications for psychoanalytic consultation, and the implications for the IPA and its members.

4.2 Privacy in the classical setting

In the classical setting of the psychoanalytic consulting room or office, when social and political conditions have been favourable, our relative physical control of the offices or

[7] Also *e.g.*: FaceTime, WhatsApp, GoToMeeting, VSee, WebEx, Zoom, etc. The following independent website provides detailed comparisons between about 60 alternative platforms: https://www.telementalhealthcomparisons.com/private-practice

consulting rooms in which we work, together with our reasonable assumptions and our tacit knowledge (Polanyi, 1967) about their acoustic properties, historically enabled us to maintain the privacy of consultations, and thereby to protect their confidentiality.

This protection has never been absolute, and in cases where there is targeted surveillance by the state of individuals who are suspected of terrorism or other serious crimes, it can be broken without our knowledge or consent. Nevertheless, in countries where covert local surveillance by means of microphones or cameras planted in buildings is not considered normal, psychoanalysts and their patients have been able to rely on tacit knowledge, everyday experience and common sense to assure themselves that their in-person conversations are private.

In countries where covert local surveillance *is* a fact of everyday life, privacy has always been more difficult to achieve. For psychoanalysis to be possible at all, however, it must be the case that psychoanalysts and patients are able to find local ways of avoiding surveillance and creating private spaces in which to work.

4.3 Loss of privacy in telecommunicative settings

Modern telecommunications are inherently vulnerable to electronic interception and eavesdropping without the need for separate local access to premises, access being provided by the telecommunications device itself (i.e. the telephone or computer). From information made public by Edward Snowden in 2013, we know that telecommunications are subject to routine surveillance on a massive scale and that the contents of many private conversations are stored for potential use in protecting national security, fighting terrorism, etc.[8] In addition to routine surveillance by the state, telecommunications are increasingly vulnerable to various kinds of criminal interception for financial, political, or personal motives, including by individuals who are known to the person who is being targeted.

Privacy in telecommunications can be protected to some extent by careful use of encryption, although it is unclear whether any of the currently available methods of encryption are completely secure.[9] Many software packages and hardware devices offering encrypted communication are also either known or suspected to have 'backdoors' which allow access to decrypted contents by the suppliers, or by police or security services, and which are potentially vulnerable to others.

A particularly intractable problem, and one that is widely overlooked, is 'endpoint security': the need to ensure that communications are not being intercepted before they are

[8] Greenwald, G., MacAskill, E., Poitras, L. (2013). See also: MacAskill, E., Dance, G. (2013); WikiPedia (2018a); University of Oslo Library (2013-17); Snowden Surveillance Archive (2018); The Internet Archive (2015).

[9] There is continual conflict between government agencies seeking potential access to any communication, and those who, for commercial, political, or ethical reasons, seek to preserve privacy by means of encryption (see Abelson et al., 2015). The FBI-Apple encryption dispute of 2016 was an example of this conflict breaking out in public (see Wikipedia, 2018b).

encrypted, or after they are decrypted. If a telephone or computer used by either a psychoanalyst or a patient has been compromised, unencrypted data may be being copied to a third party by malware that has been installed without the user's knowledge. Thus, even if 'end-to-end' encryption across the network is good enough, the security of the communication system as a whole can be vitiated by inadequate endpoint security at either end. A chain is only as strong as its weakest link.

It is unclear whether it would be possible for anyone to make a telecommunications system that could *absolutely* guarantee privacy. In a corporate, military or governmental organisation, with strict regulation of hardware and software, it is possible to provide a *relatively* high degree of privacy. For example, clinicians who work in hospital environments or for large healthcare organisations, and who use only devices supplied and controlled by the organisation, are sometimes able to benefit from this. The fact that breaches occur regularly even in such organisations, however, demonstrates that the privacy achieved is still limited. Clinicians who work in relative isolation, for example in private practice, might in principle be able to achieve comparable results, but they would need sufficient technological resources, both they and their patients would need to maintain a rigid discipline in using their devices, and they would need to acquire a high level of specialist technical knowledge of computer security, which would need to be constantly updated.

Psychoanalysts do not generally possess, and are typically reluctant to acquire, the technical knowledge they would need to establish or maintain such systems. Nor are our professional culture and practice compatible with the kind of social regulation that would be required to use them. Even if we could acquire and maintain such a system, it would involve a substantial financial outlay, and we would be obliged to subject both our patients and ourselves to extremes of discipline and control in using it. Patients would be required to set up, and presumably pay for, expensive specialist equipment, and to learn how to use it effectively. Perhaps the most serious difficulty for many psychoanalysts is that the discipline and control required would hardly be compatible with a psychoanalytic setting.

Whenever and wherever modern telecommunications form part of the means of communication, the assurance of privacy historically afforded by the classical setting is therefore no longer available.

4.4 Loss of privacy in the classical setting

Much of the above discussion implicitly assumes that the classical setting today is continuing to offer *relative* privacy in comparison with telecommunicative settings, but the extent and severity of the risk of eavesdropping even in the contemporary classical setting is uncertain. When analyst and analysand are physically co-present in the consulting room or office, and if one or both parties has a phone or other device in the room, or nearby, there is still a degree of risk. If a phone has been compromised by malware, for example because its owner has unknowingly responded to a 'phishing' message, it may be being remotely

accessed without the owner's knowledge. There is some uncertainty about whether in some circumstances a cellphone can be covertly activated from a power-off state (Scharr, 2014). How extensively cellphones can be compromised, how widely distributed are the means and expertise for doing this, and whether it is economically feasible to do this on a mass scale or only for a limited number of selected 'targets', are all matters of current research (see e.g. Marczac et al., 2018, on the recent use of *Pegasus* spyware).

As well as being vulnerable to surveillance by government agencies, mobile phones are increasingly targeted by so-called 'stalkerware' or 'spouseware' deployed by partners, family members, and others (for a series of reviews, see Motherboard, 2018), as well as by commercial organisations, employers, and generally by any users of suitable 'crimeware'.

4.5 Long-term consequences

Once information has been acquired by surveillance we should assume that it will be stored by whoever has acquired it for as long as possible. The extent and duration of this storage will be limited only by technological and budgetary constraints. Recent developments in techniques such as automatic speech recognition, steady growth in the processing power and storage capacity of computers, and falling costs of storage, strongly suggest that verbatim content of at least some telecommunications may now be being preserved indefinitely. Being preserved indefinitely, it also remains vulnerable indefinitely to further theft and distribution. There is therefore a real risk that a recording of a psychoanalytic session will one day be posted on YouTube or elsewhere, and that it could subsequently 'go viral'.

Even in a country where privacy of communication is afforded some degree of legal protection, there remains a real possibility that at some point in the future an authoritarian and undemocratic regime will achieve power. Such a regime would probably inherit information gained from past surveillance and be able to use it for arbitrary and repressive measures against individuals and groups. Stored information obtained by surveillance is also vulnerable, through leaks and/or hacking, to acquisition by anyone with an interest in turning it to some purpose, which could include journalists, actuaries, criminal organisations, malicious pranksters, terrorists, and foreign governments.

Regardless of any legal or other safeguards currently in place, mass surveillance of telecommunication thus creates risks to confidentiality which potentially extend far into the future, over the entire lifetimes of patients and those of their families, friends, and associates. Different psychoanalysts will make different estimates of the magnitude of the risk, but the fact that the risk exists is not in doubt.

4.6 Implications for the IPA and its members

The IPA therefore faces a dilemma. On the one hand it is seeking to expand the profession, including into new geographic areas, whilst maintaining high professional standards, a task

that is being actively pursued by the International New Groups Committee. In this process, increasing numbers of individual IPA members are finding themselves drawn towards engaging in some form of remote working. On the other hand, IPA members are committed by the IPA *Ethics Code* to protecting patient confidentiality.[10]

For the IPA as an organisation there are risks in not addressing this problem. If a recording of a psychoanalytic session, or information derived from such a recording, were to be published on the Internet the consequences could be severe. The confidence of large numbers of patients in their analysts' capacity to maintain confidentiality could be undermined, and the reputational damage to the IPA and its component institutes could be massive, sudden, and enduring. The IPA can wait until this happens, hoping that it might never happen, or it can anticipate the eventuality by advising its members accordingly. The latter course of action would offer some protection to IPA members by informing them of a risk that they might otherwise overlook. It would also mean that if an aggrieved patient were to seek redress through litigation, the IPA as a professional body would not have been negligent through failure to issue appropriate advice to its members.

The IPA recently obtained detailed legal advice regarding the question of informed consent (Proops, 2017). This advice includes consideration of "the use of VOIP[11] technologies to share information relating to patients (e.g. clinical sessions which take place over Skype) ('the VOIP Issue')" (pp. 26-29, paragraphs 59-63). Although in places equivocal concerning the risks, this advice is broadly consistent with the analysis presented here. However, in some respects Proops makes some dubious assumptions, including that: "…it seems likely that 'the big players' in this area (e.g. Skype) would have in place extremely high levels of anti-hack security" (p. 28). This particular assumption has been undermined by numerous reports in recent years.[12] At the same time, she prudently refrains from advising whether the security offered by individual VoIP providers would be sufficient to enable psychoanalysts to meet "their own obligations to process data consistent with the seventh data protection principle" (i.e. securely[13]) (pp. 27-28, paragraph 63).

For individual IPA members there will be no simple solutions that will suit everyone. Some will choose not to engage in remote working, or will abandon it if already begun. Others,

[10] In connection with the protection of privacy as a human right by paragraph 1 of the *Ethical Code*, it is relevant to note that in recent years the Office of the High Commissioner for Human Rights (OHCHR), which is the principal UN body mandated to promote and protect human rights, has been actively concerned about mass surveillance and in 2014 produced a major report on 'The right to privacy in the digital age' (OHCHR, 2014).

[11] VOIP (or VoIP), Voice over Internet Protocol, refers to all forms of telephony mediated by the Internet.

[12] For examples see: Symantec, 2009; National Security Agency, 2012; Sergina et al., 2013; Risen & Wingfield, 2013; Spiegel Staff, 2014; see also Lombard, 2011-2016.

[13] 'Seventh data protection principle' is a reference to the United Kingdom's Data Protection Act (1998), which states: "Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data."

wishing to continue to work remotely or to begin doing so, will seek ways to mitigate the risks, and this will mean becoming as fully aware as possible of the nature and extent of the risks.

Hitherto, IPA members have been advised only to "satisfy themselves that the technology they are using is secure and protects the patient's confidentiality."[14] For the reasons given above this advice can no longer be considered sufficient. Members need to be aware that they cannot offer, either explicitly or implicitly, an unlimited guarantee of confidentiality in relation to work conducted using telecommunication. If they wish to undertake such work they will therefore need to consider carefully how this affects the nature of the analytic contract that they enter into with each patient, and how it affects the treatment. One possibility might be to warn the patient at the outset about the risks to privacy and for both analyst and patient to accept any disturbance this may cause to their work, including any interference with the patient's willingness to say whatever comes to mind, or with the analyst's freedom to interpret.

Currently, most psychoanalysts lack the necessary technical knowledge to enable them to evaluate their own capacity to protect the privacy of their telecommunications.[15] In future, IPA members who wish to make informed decisions about remote working will need to satisfy themselves that they have educated themselves sufficiently about the nature of technology they are using or plan to use.

On the most pessimistic view identified in 4.4 above, if personal electronic devices are regarded as now being no less vulnerable to eavesdropping in the classical setting than they are in the telecommunicative setting, even those IPA members who do not work remotely may need to review their practices regarding their allowing such devices to be in or near the consulting room. For example, isolating a mobile phone electromagnetically and acoustically may remove or substantially reduce this vulnerability, but this may depend on how and where it is done.[16] A shielding device also inevitably introduces a parameter into the situation whose full impact is unknowable.

[14] IPA (2017)

[15] Anecdotal evidence suggests that security precautions adopted by psychoanalysts to protect information in their computers, phones, and other devices, are often weak or non-existent. Unencrypted email, documents with weak or non-existent password protection, out-of-date protection against malware, weak anonymisation of patients, all endanger confidentiality.

[16] Electromagnetic shielding devices based on the principle of the Faraday Cage are widely and cheaply available, but their effectiveness varies between different models and depends on other factors. See: Katz (2010). A more sophisticated device, intended for use by journalists, activists and rights workers, is currently under development by Huang and Snowden (2017), who give a detailed account of this work. Note that acoustic isolation would also be required in order to prevent offline recording which could be transmitted at a later time.

4.7 Measures which only appear to address the problem

One measure that is sometimes suggested as a way of addressing the problem of insecure telecommunication is the obtaining of 'informed consent' from patients at the beginning of treatment. Unfortunately, the difficulties concerning this notion, which exist for psychoanalysis generally due to the transference (see 3.1, above), are particularly acute in the case of telecommunicative settings because neither party is generally well-informed about the technology. If the shared ignorance and uncertainty continues, obtaining explicit consent could have the effect of introducing a permanent parameter which is inaccessible to psychoanalytic work.[17] In practical terms, in the context of a psychoanalytic relationship, psychoanalysts cannot make patients responsible for ensuring that their own hardware and software are safe and that the privacy of consultation is protected by their own equipment or by the network. Nor are psychoanalysts usually in a position to take this responsibility upon themselves.

Another measure that is often cited, particularly in the USA, is HIPAA[18] compliance. The Security Rule[19] of HIPAA defines administrative, physical, and technical security standards for Electronic Protected Health Information (e-PHI). A number of providers of telehealth systems advertise their products as "HIPAA-compliant", and some psychotherapists and psychoanalysts advertise that they use such products. However, it is clear from the detailed provisions of the Security Rule that *genuine compliance would require far more than simply using equipment which carries the label*, and few if any psychoanalysts would be able to comply in full for the same reasons as we have discussed above regarding endpoint security. Also, the definition of e-PHI excludes some forms of live oral communication such as video teleconferencing (and, by implication, telephone conversations) where "…the information being exchanged did not exist in electronic form before the transmission". [20]

Promises by specialist suppliers of conferencing systems to 'erase' data should be viewed with caution. With the development of large-scale 'data mining' and the aggregation of large datasets, for at least some suppliers the potential commercial advantages of

[17] See Eissler (1953), p. 113: "Thus a fourth proposition must be introduced in order to delineate the conditions which a parameter must fulfill if the technique is to remain within the scope of psychoanalysis: The effect of the parameter on the transference relationship must never be such that it cannot be abolished by interpretation."

[18] Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191, U.S. Congress). https://www.hhs.gov/hipaa/for-professionals/index.html

[19] https://www.hhs.gov/hipaa/for-professionals/security/laws-regulations/index.html

[20] https://www.hhs.gov/hipaa/for-professionals/faq/2010/does-the-security-rule-apply-to-written-and-oral-communications/index.html This appears to be a 'grey area' in the standards, but inspection of advertising material for 'HIPAA-compliant' systems aimed at healthcare professionals suggests that such questions of endpoint security are rarely mentioned, still less discussed.

indiscriminate retention may outweigh the reputational advantages of keeping a promise.[21] Even if it were kept, any defects in the supplier's own security would mean that a third party could gain access to the data before it was erased, and could copy it to another location.

4.8 Ethical implications & some possible partial protections

Because the IPA *Ethics Code* recognises confidentiality as one of the foundations of psychoanalytic practice, and because it requires psychoanalysts to protect patients' confidentiality, analysts who practice 'remote analysis' will need to consider whether they are able to protect confidentiality sufficiently.

It is realistic to suppose that by taking adequate precautions, confidentiality can be given *partial* protection against *some* possible intrusions upon privacy. Examples of such precautions would include:

- use of dedicated devices for clinical work (that is, devices that are not shared with family members or colleagues, who may inadvertently download compromising software);
- use of strong passwords wherever possible;
- avoidance of public WiFi hotspots;
- use of Virtual Private Networks (VPN) for all communications which are not otherwise encrypted;
- end-to-end encryption for audio and video communication;
- use of encrypted email;
- regular security auditing, with active testing of potential vulnerabilities;[22]
- seeking expert advice about establishing and maintaining an adequate system.

For many analysts such measures will not be sufficient because they will feel that incomplete protection, combined with their own inadequate understanding of the nature and extent of its incompleteness, would undermine their capacity to provide and maintain a psychoanalytic setting. These analysts can therefore be expected to avoid remote working, or to abandon the practice if already begun.

For others, partial protection may be sufficient, provided the risks are properly appreciated and mitigated. This group will include analysts for whom the acknowledged risks to confidentiality are outweighed by their commitment to meet the demand for professional

[21] In a recent series of legal cases, FaceBook has been successfully challenged on these grounds. See: http://www.europe-v-facebook.org/sh2/ES.pdf At the time of writing (early April 2018), information about a massive breach of privacy by FaceBook and the data analytics firm Cambridge Analytica is still in the process of being documented by journalists: https://www.theguardian.com/news/2018/mar/26/the-cambridge-analytica-files-the-story-so-far ; https://epic.org/privacy/intl/schrems/

[22] This is a complex area involving specialist expertise in a range of techniques such as: vulnerability assessment; penetration testing; advanced persistent threat (APT) analysis. For explanations of the meanings of these and other terms current in computer security, see the glossary provided by the US Dept. of Commerce, National Institute of Standards and Technology (NIST, 2018)

services in circumstances where attendance at the analyst's office or consulting room is not possible, including in parts of the world where psychoanalysis has yet to establish a foothold. The questions that these analysts and their patients then face include: what kind of partial protection is adequate, how can it be obtained, and who decides? Among the many difficulties they must consider is how to think about endpoint security, as discussed above, and whether to involve the patient in thinking about this. Typically, the patient will be using his or her own device to communicate with, and the analyst will have no direct control over its security.

Individual analysts evidently have widely differing views and beliefs about what constitutes an acceptable way of working psychoanalytically and of protecting confidentiality while doing so. The ethical obligation to protect patients' confidentiality means that in each particular case where telecommunication is involved, the analyst will need to consider carefully the nature of the analytic contract that is entered into with the patient. The issues to be considered will include:

- whether the risks to confidentiality have been thoroughly explored;
- how the specific psychopathology of the patient can be expected to affect exploration of these risks;
- whether they should be left implicit or made explicit to the patient;
- if they are made explicit, whether this should be done orally or in writing; whether or not to seek the patient's written consent;
- whether both the analyst and the patient have sufficient understanding of the technology to make informed decisions about its use;
- whether a viable psychoanalytic setting can be established, given that confidentiality cannot be guaranteed.

4.9 Conclusion

A serious problem is created for the IPA by the fact that confidentiality in telecommunications is not secure. A considerable number of psychoanalysts have already engaged in some form of remote working. Telecommunication is seen by many as a valuable tool for expanding psychoanalytic practice and culture globally, and institutional resources have already become committed to its use on a significant scale. It may therefore be difficult for the IPA to address this problem. Nevertheless, the long-term consequences for psychoanalysis of not addressing it may be more serious.

It is uncertain how far the contemporary classical setting is similarly compromised by telecommunications surveillance. To the extent that it is, thought needs to be given to whether IPA members can be offered guidelines for minimising the associated risks.

5 THIRD-PARTY REQUESTS FOR A BREACH OF CONFIDENTIALITY

Requests from outside the profession for breaches in confidentiality by psychoanalysts usually take one of three forms: requests that material that has come up in treatment be shared with another party who has a stake in the treatment (insurance companies, government agencies, parents); orders from a legal body (a court or the equivalent) that an analyst testify or produce clinical notes; and requirements to report to authorities suspicions about crimes or harm or risk of harm to self or third parties, such as minors. A court order, for example, might be to testify for the prosecution, for the defence, or for a third party. Such communications will often be experienced as demands having the force of the law, for example when they come from a solicitor, police officer, court official, or government agency. Implicit authority of this kind should always be questioned and guidance sought before making a response.

Analysts often envy the legal professional privilege exercised by lawyers on behalf of their clients as being better protected than our own clinical confidentiality but this comparison can be misleading. The “deliberative privilege” which protects the deliberative space of judges’ notes, cabinet meetings, and arbitrator’s notes is a better analogy for the psychological space in our consulting rooms. What matters in psychoanalysis is less a disclosing of conscious information, which may be of more interest to a lawyer, than a progressive uncovering of the quality of psychic life.

Nor is it entirely clear how much legal value the notes or testimony of an analyst could have. Lawyers may believe that they are able to evaluate the relevant evidentiary details from the psychotherapeutic relationship but they do not generally appreciate how contextually bound these “details” are to the patient’s free associations while being held by a specifically psychoanalytic listening.

The professional integrity and autonomy of psychoanalytic work is essential to its technical and clinical quality. In addition to the “public good” that is defined in terms of the safety of third parties or the protection of minors, there is also a public good in the contribution that psychoanalysis makes to society through its "work of culture" (Freud, 1933, p. 80). When a situation arises in which these have to be weighed against each other, the task of containing and interpreting primitive anxieties can become particularly challenging for the analyst.

Current recommendations from the Ethics Committee make a case for what is called “discretionary privilege”, meaning that the who, how, and why of any demand for a breach in confidentiality is considered first and foremost a matter for clinical decision and ethical judgment by the individual analyst, a decision that can be based on what best protects the integrity of treatment and the patient. The draft recommendations below of the Ethics Committee apply specifically to child and adolescent treatments but we endorse the principles that underlie them as applicable to all psychoanalysis. The recommendations read as follows:

"Confidentiality is one of the foundations of psychoanalytic practice. A psychoanalyst must protect the confidentiality of patients' information and documents. In regard to the treatment of minors, certain additional factors may have to be considered: When there is a concern of a credible threat of serious injury to self or others or of imminent suicide, a breach of confidentiality may be required. Appropriate steps may have to be taken that may include notification of a third party (e.g., parent/guardian, school official, etc.). Where local laws and/or regulations mandate reporting (e.g., of sexual abuse), the analyst, in determining how to respond, should weigh the impact on the treatment of reporting, bearing in mind the best interest and protection of the child and adolescent as well as his or her right to quality treatment. Whenever the question of reporting or appropriately informing parents, guardians, or other professionals comes up against patient confidentiality, the analyst must take into account the clinical situation, the age and stage of development, and weigh this against the need to keep the parent/guardian and other professionals appropriately informed."[23]

Some analysts working with children and adolescent have developed ways of including restoration of the parent-child relationship when this is possible as one of the treatment goals concomitantly with the restoration of the minor's path of progressive development (e.g. Novick and Novick, 2013). This conceptualization avoids a defensive splitting which excludes parents while protecting the confidentiality of the minor's work on him- or herself. There may be scope for further discussion in this field by IPA groups concerned with child and adolescent psychoanalysis: the Committee on Child and Adolescent Psychoanalysis (COCAP), the Committee on Child Abuse, and the Inter-Committee Project on Child Abuse.

We believe the IPA should, when requested, give support to institutions whose members are objecting on ethical grounds to attempts by external agencies to override the protection of confidentiality. This does not mean that we condone a disregard for the law or for public safety, nor does it mean that we fail to recognise the important functions of the courts in enforcing the law in cases concerned with violence, sexual abuse, exploitation, etc., as well as in resolving conflicts, or the functions of insurance companies in managing disability or life insurance policies. Rather, we believe that discretionary privilege is a necessary support for psychoanalysts who have to make difficult clinical decisions.

We hope that, when requests that confidentiality be breached arise, local and national psychoanalytic societies will explain to legal authorities and community institutions the grounds for their concerns about confidentiality. There is evidence, for example, that the production of psychotherapy notes in court cases is more likely to obscure the truth than to enhance it, a fact that has been recognized over the last 20 years by Canadian and American courts (*Jaffee v*. *Redmond*, 1996; *R. v. Mills,* 1999). Recently when efforts have been made

[23] Recommendation from the Ethics Committee to the Board, January 2017.

to articulate the specificity of psychoanalytic confidentiality, the results have generally been in favour of respecting the analytic relationship.

The general point for which we are arguing is that analysts should have the right to make their own decisions based on each individual treatment. Whenever pertinent, analysts should be encouraged to consult appropriately in arriving at a decision. It is not part of IPA policy that members should *automatically* accept third-party demands that could have considerable consequences for the course of treatment. There are documented examples in all regions of negative and even disastrous consequences for children and adults when a hasty reporting in accordance with legal requirements has been made. The Tarasoff cases (*Tarasoff v. Board of Regents of the University of California*, 1976), which became the spur to much American and Canadian reporting legislation, provide an example of this. See also *Garner v. Stone*, 1999; and *Vitelli*, 2014.

These conclusions are consonant with the advice received from the UK barrister and expert on data protection consulted by the IPA (see Proops, 2017). Though limited to the European context, the conclusions of the Proops report, especially the sections on Litigation/Disclosure (sections 48-53) and the Reporting Issue (sections 54-58), support our recommendations, and also the proposals quoted above by the Ethics Committee. In 2005 the Australian Law Reform Commission (ALRC) recommended the adoption of a discretionary privilege for confidential relationships, one that might also be asserted in legal proceedings on behalf of a child, if deemed in the child's best interests. Like our committee, the ALRC believes that the fact that the claimed privilege is discretionary allows the affected parties to be able to make an argument as to why the material should be or should not be disclosed, thus permitting a judge to reject illegitimate attempts to claim the privilege (ALRC, 2005, section 15).

6 COLLEAGUES AGAINST WHOM A COMPLAINT HAS BEEN MADE

Two clauses in the *Ethics Code* are directly relevant to the situation of a colleague against whom a complaint has been made to the Ethics Committee and when a decision has not yet been reached:

"Confidentiality: All Complaints that allege a breach of the Ethics Code shall be processed in confidence. Confidentiality must be maintained by the members of Ethics Committees and of other committees or boards who, in the course of their duties, are required to be privy to confidential information; this duty of confidentiality extends after any term of office has ended." (IPA, 2015, Part IV, paragraph A6)

"Publication: The IPA shall inform its Constituent Organisations and Members (via its Newsletter or comparable publication) of formal ethics actions, including the text of any action on an Inquiry and any suspension, separation or expulsion of a Member (which shall identify the violated Ethical Principle(s)), except if the Executive Committee or Board, in its discretion, finds extraordinary reasons for limiting or withholding publication." (IPA, 2015, Part IV, paragraph B8).

The Confidentiality Committee views these provisions as appropriate and adequate, but considers that there may need to be some clarification of the rules governing communications between the IPA Ethics Committee and the Ethics Committees of Component Societies at different stages in the process concerning cases of complaints made against IPA members.

7 PATIENTS' ACCESS TO FILES, INCLUDING PROCESS NOTES

The issue of patients' control/ownership of clinical material about them arises in connection with every use of such material, including in presentations, supervisions, publications, etc. Although this topic is not centrally one of confidentiality, and although such requests are still rare, any request for access to files or notes by someone who does not yet have access to them, including a request by a patient, potentially raises questions about whose confidentiality is being protected, and why.

In relation to a patient's right of access to any information held about them by a psychoanalyst, there appear to be noticeable variations internationally in the approach taken in different jurisdictions. The overall trend seems to be moving toward collapsing the distinction between formal, medical-type files (which must be accessible to the patient on request), and "process notes" taken by the analyst to aid their thinking about a case (which may remain private to the analyst). For example, in the UK all records, even those on which the name of the patient is not recorded, must be made available to the patient on request: a requirement to release the records is enforceable whenever the record has any sort of identifying information, or information which would enable a reasonably competent third party to identify the patient. The variability of this situation across regions and the paucity of test cases makes it difficult for the IPA to give specific guidance on this issue.

Nevertheless, since requests by patients for a copy of all the information related to them can be expected to occur sooner or later in the practice of many analysts, any analysts who have reservations about sharing personal or process notes in this way will need to think about how to prepare for such an eventuality. This means making themselves aware of the requirements of the jurisdictions in which they operate and – where possible – beginning a joint reflection with colleagues about how to prepare for, and handle, such a request. More generally, the psychoanalytic community needs to give consideration to these issues.

In many jurisdictions, the law recognizes the risk of harm to the client or to third parties as a legitimate reason for refusing to allow access to the personal notes of a professional service provider. On the other hand, the analyst's interest in maintaining his or her own privacy, and what that might mean within a psychoanalytic relationship, is more or less unexplored legal territory as far as we are aware. The wish by an individual patient to take advantage of a right of access may be rich in intersubjective meaning that is explorable in the analysis.[24]

Some useful suggestions for psychoanalysts to keep in mind include:

- Maintaining acceptable standards of record- and file-keeping;
- Keeping the official file on each patient required for insurance or regulatory purposes separate from process notes on the patient;

[24] Although one hears of occasional requests by patients to see their files we are not aware of much reference to this possibility in the analytic literature. See Furlong (1998-1999).

- Ensuring that process notes do not contain any personal identifying information such as name, address, birthdate, and the like;
- Maintaining secure storage for the time that records must be kept and then ensuring the secure destruction of records once that time has passed.

More background is given in the legal opinion by Proops (2017), paragraphs 33-39.

8 GENERAL CONCLUSIONS

The principle that confidentiality is one of the foundations of psychoanalysis, which is stated by the IPA in its *Ethics Code*, has consequences both for the IPA as a professional organisation and for its individual members. Confidentiality is a matter both of ethics and of technique. It is essential for the well-being and future development of psychoanalysis, as well as for the well-being and benefit of patients, that confidentiality be rigorously maintained.

Ensuring the maintenance of confidentiality can be a complex, difficult task and we need as a profession to keep it under constant review. In our current professional culture there are gaps between the theory and practice of confidentiality. We know, even if only anecdotally, that in actual psychoanalytic practice the thoroughness with which confidentiality is maintained is highly variable. This report aims to further the development of a culture of confidentiality in which failures in our practice can be recognised, thought about, understood, and acted upon.

In this report we have identified major risks to confidentiality across three broad areas:

- Sharing of clinical material with colleagues, which is for the benefit of individual patients and of patients generally, but which can come into unavoidable and ultimately unresolvable conflict with the need to preserve confidentiality (see section 3);
- Telecommunications and use of technology, especially but not exclusively in 'remote analysis', which is creating new risks for which only partial protection is possible (see section 4);
- Requests from patients and from third parties (including legal authorities) for access to process notes, etc., where ethical and technical considerations are at risk of being subordinated to legal or political ones (see sections 5 & 7).

Furthermore, across all three of these areas, problems arise concerning the possibility of obtaining 'informed consent', given the complications due to the transference in any psychoanalytic situation and the inherent unknowability of unconscious psychic content at all stages of psychoanalytic treatment.

The IPA has a responsibility to provide guidelines for its members concerning all of these risks, but the guidelines can only be of a general nature. Individual psychoanalysts cannot escape the obligation of making difficult ethical and technical decisions on a case-by-case basis, often with inadequate information. For this they may need not only guidelines but also institutional support.

Psychoanalysts generally need to become better informed about the risks to confidentiality. This implies a need for continuing professional development by individual analysts and a corresponding need for the IPA and its component organisations to develop ways of

meeting this need. There is also scope for the IPA to explore possibilities of outreach with other psychoanalytic organisations

The recommendations which follow are intended as contributions to the process of our becoming better informed and as steps towards a more robust and consistent culture of confidentiality.

9 RECOMMENDATIONS[25]

The overall recommendation of the Confidentiality Committee is that the IPA foster and strengthen a culture of confidentiality in every aspect of its operations. This will require an approach in which everyone has a responsibility to protect confidentiality wherever the need arises. In addition, we make the following particular recommendations:

9.1 Protection of patients in the use of clinical material

At the institutional level

The IPA should encourage its constituent organisations to:

- Include a seminar about confidentiality as part of training, promoting the presentation and discussion of clinical material with in-depth consideration of the following: advantages and disadvantages of the different ways in which confidentiality might be protected in the sharing of clinical material: disguise; informed consent from a psychoanalytic point of view; amalgamating case material; the role of multiple or anonymous authorship; and so on.
- Make the protection of confidentiality an issue of regular concern each time members or candidates present clinical material in society meetings, seminars, working groups, and so on and introduce periodic workshops on the issue (see also 9.2 below).
- Introduce workshops about safe and appropriate standards of record-keeping.

Presentation of clinical material in congresses and other scientific events[26]

To use clinical material in presentations, the following steps should be taken:

- Prepare a statement about confidentiality in calls for papers. In particular, presenting analysts should be alerted to some of the negative consequences of poorly controlled confidentiality on patients and analysts. They should also be advised to consult their peers if they wish to share clinical material in any setting. Prior consultation with colleagues should be encouraged regardless of the method used to protect patients.
- Review submitted papers carefully. The programme or scientific committee should review each submission containing clinical material and – when in doubt – ask for feedback from a select team of advisors about the protection of confidentiality. When clinical material cannot be changed, as in the narration of a dream, disguise, anonymization, or a carefully considered request for permission might be used to

[25] The numbering of these recommendations differs from that used in the April 2018 draft version of the report because it proved impractical to maintain strict correspondence with the numbering of the preceding sections.

[26] A preliminary version of some of these recommendations was accepted by the Officers on behalf of the Board in June and July 2017.

protect the patient (for possible complications concerning informed consent, see Section 3.1).

- When there is a programme, include a statement on confidentiality in it.
- Ask chairs to read a statement aloud before every presentation in which clinical material will be shared. Warn presenters and audiences that impromptu remarks can also breach confidentiality. (The statement used at the 2017 IPA Congress and two other representative statements are given in Appendix B.)
- Ensure that details have been changed to protect confidentiality and announce this.
- In large groups and any other groups in which not everyone knows everyone else, ensure that special precautions have been taken to protect confidentiality. Although informed consent is always complicated by transferential implications, in some jurisdictions, the presentation of clinical material may be *legally* safe only with the written consent of the patient. An alternative approach would be for the scientific committee or equivalent to review presentations in advance to evaluate the risks.
- Minimize the biographical details of the patient, revealing only what is absolutely necessary to the author's claims.
- Disguise clinical material. This should be done so thoroughly in all clinical presentations that the patient could not be identified by others (or even, ideally, by the patient)[27].
- Include in programme announcements and at the beginning of sessions containing clinical material that non-authorized video or audio-visual recording is not allowed.
- Invite each presenting analyst to consider presenting a brief statement justifying the strategy chosen for protecting confidentiality within his or her ethical framework.
- Candidates and colleagues are especially vulnerable when their personal analyses are spoken or written about by their analysts, given the risk of recognition.
- Consider the option of anonymous or pseudonymous authorship, or writing under the cover of a colleague's name.

Psychoanalytic journals and e-journals

- Psychoanalytic journals and e-journals should review their editorial policies on confidentiality with the new digital and internet realities in mind. (We have provided some samples of statements on confidentiality currently in use by journals in Appendix B.)
- A survey should be conducted of all psychoanalytic journals and other outlets to determine current practices and collect current statements concerning confidentiality.

[27] The Committee is aware that the idea of disguising material so that even the patient would be unlikely to recognise its origin may present serious and complex difficulties, and that it may not be appropriate in all circumstances.

Psychoanalytic research

- For multi-subject research, continue to require approval by a reputable external Institutional Research Board.
- For studies of individual cases or small numbers of cases involving presentation of information about individuals, we recommend that the Research Committee add a requirement that applicants demonstrate that they have in place the protections of confidentiality in the use of clinical material in congresses and other scientific activities laid out in Section 3.

9.2 Telecommunications and remote analysis

We recommend that the IPA adopt the following measures to reduce the risk of breaches of confidentiality through telecommunication:

- Revise existing policy documents. The final sentences of paragraph 7 of the *IPA Policy on Remote Analysis in Training and Shuttle Analysis in Training* (IPA, 2014-17) and of paragraph 8 of *Practice Note on the use of Skype, Telephone or Other VoIP Technologies in Analysis* (IPA, 2017), the texts of which are identical,[28] should be amended to read as follows: "Analysts must satisfy themselves that they understand the limits of the security provided by the technology they and their patients are using and the limits of their capacity to protect the patient's confidentiality. They should be aware that in psychoanalytic work undertaken using telecommunications the patient's confidentiality cannot be guaranteed."
- Advise IPA members to consider the analytic contract in each case. Analysts who offer psychoanalytic consultations or treatment by means of telecommunications should be advised to consider carefully in each case how the impossibility of guaranteeing confidentiality may affect the nature of the analytic contract that they enter into (and the analytic work that they do) with the patient.
- Add to the *Ethics Code* a section or sections on the specific risks to confidentiality that arise from the use of telecommunications.
- Recommend that IPA members review the security of the classical setting when devices such as 'smart phones' may be in or near their consulting room.
- Develop educational materials and sponsor educational opportunities for members and candidates on security of telecommunications, so that psychoanalysts become better informed about the nature of the telecommunications they are using and the risks to confidentiality involved. Both component Societies and the IPA should

[28] These paragraphs currently read as follows: "There are issues regarding security, privacy protection and confidentiality over all form of telecommunications, including fixed and mobile telephones, VoIP applications, email, and any other application which uses the internet. These issues need to be considered, and analysts/patients/supervisees need to make themselves aware of them before commencing treatment. *Analysts must satisfy themselves that the technology they are using is secure and protects the patient's confidentiality*." (our emphasis).

deliver such training. External experts in telecommunications engineering with specialised knowledge of security issues should be involved.

- Adopt a policy of reviewing the confidentiality of telecommunications in psychoanalysis every two years. Given the rapid pace of developments in this area and the difficulty of anticipating their impact on analytic practice, such reviews will be necessary. The results should be communicated to all members.
- As our internal expertise increases, in the future consider initiating outreach activities in collaboration with other psychoanalytic professional groups, to help raise awareness of the risks to confidentiality associated with the ever-increasing use of telecommunications by practitioners.
- Actively encourage analysts who offer remote services to hire appropriate technical expertise for the setting up and the maintenance of their computer and telecommunication systems.
- Seek appropriate specialist technical advice about cybersecurity to inform and review future policy development.

9.3 Third party requests for a breach of confidentiality

- We recommend that the default assumption within the IPA be that members have 'discretionary privilege' with respect to their psychoanalytic work. The who, how, and why of any request by a third party for a breach in confidentiality should be considered primarily as a matter for clinical decision and ethical judgment by the individual analyst, based on what best protects the patient and the integrity of treatment.
- We further recommend that the IPA give institutional recognition and support to the analyst's right to conscientious objection whenever third parties request that an analyst breach confidentiality. Support could take a number of forms, including legal support, as is detailed in Section 5 above.

9.4 Colleagues against whom a complaint has been made

In our view, the current protection of the confidentiality of members found in the *Ethics Code*, sections IV.A6 and IV.B8, when a complaint has been made to the IPA Ethics Committee and a decision has not yet been reached, is adequate.

9.5 Patients' access to process notes

- We recommend that analysts inform themselves in detail about the legal situation in their jurisdiction with respect to a patient's ownership of and rights of access to material about him- or herself, while bearing in mind that the general trend globally is to extend patients' access to all information kept about them, including private notes. The situation varies so much from jurisdiction to jurisdiction that we cannot offer general recommendations.

- Analysts who have reservations about sharing personal or process notes with their patients should think about how to prepare for such an eventuality. This might mean beginning a joint reflection with colleagues about how to handle such requests.
- Analysts should be reminded of the need for: acceptable standards of record- and file-keeping; keeping any official files on patients that may be required for insurance or regulatory purposes separate from process notes; ensuring that process notes do not contain any personal identifying information; maintaining secure storage for the time that records must be kept and ensuring the secure destruction of records once that time has passed.

9.6 Psychoanalysis and the wider community

- The IPA should actively explore avenues by which it can make a distinctive contribution to discourse about confidentiality and privacy in the wider community. This should include, though it need not be limited to, attempts to inform law-makers and to influence the development of new legislation wherever this has implications for psychoanalytic confidentiality. This Report and/or the Ethics Code could be used to provide documentary support.
- The IPA should encourage and support efforts by its members to collaborate with other psychoanalytic organizations in outreach and public educational activities relating to the ethical principle of confidentiality.

10 COMMENTS RECEIVED BY THE COMMITTEE CONCERNING THE DRAFT VERSION OF THIS REPORT

10.1 Introduction

A draft version of this report dated 16th April 2018 was initially sent to a number of individuals whose comments we felt would be helpful at an early stage. We received eleven sets of comments in reply, all of which were broadly supportive. The draft report was then discussed by the IPA Board at its June 2018 meeting in London, where it was well-received. The Board approved its immediate distribution for comment, to Presidents of component Societies and via the July Newsletter to all IPA members and candidates, with a request for comments to be submitted by 28th September.

By the end of September it was apparent that for various reasons, including the timing of annual vacations, not everyone who might potentially be interested in submitting comments had yet seen the draft report. Nevertheless, by 3rd October the Committee had received a total of 31 sets of comments, from colleagues in 13 component societies. Because we did not ask for permission to include names in this report, we give here only the IPA institutional affiliations of the respondents:

- American Psychoanalytical Association (APsaA)
- Australian Psychoanalytical Society
- Belgian Psychoanalytical Society
- British Psychoanalytical Society
- Buenos Aires Psychoanalytic Association
- Canadian Psychoanalytic Society
- Finnish Psychoanalytical Society
- French Psychoanalytical Association (APF)
- German Psychoanalytical Association (DPV)
- İstanbul Psychoanalytic Association (PSIKE)
- Paris Psychoanalytical Society (SPP)
- Swedish Psychoanalytical Association
- Uruguayan Psychoanalytical Association

We also received comments from the International Working Group on Teleanalysis[29] and from a staff researcher at the Citizen Lab, University of Toronto[30].

Summarised below are some of the main themes and issues raised by the comments we have received to date. We have not attempted to give a full or complete account of all the

[29] The International Working Group on Teleanalysis has both IPA and non-IPA members. Although not formally part of the IPA, it has run pre-congress workshops at a number of IPA congresses.

[30] Citizen Lab is an interdisciplinary laboratory based at the Munk School of Global Affairs and Public Policy, University of Toronto, focusing on research, development, and high-level strategic policy and legal engagement at the intersection of information and communication technologies, human rights, and global security.

comments received, and we anticipate that further comments will continue to be received after the report has been submitted to the IPA Board. Our hope is that the report in its present form will serve as a basis for continuing discussion among IPA members and that if an appropriate forum for this can be established some of the comments we have received will be reproduced there.

10.2 Comments on the report as a whole

The Committee received widespread praise for the overall quality of the draft report, as indicated by the following comments:

- *"…excellent and extremely helpful…"*
- *"…the level of professionality, information and competence reached by this report is a game changer for the IPA….".*
- *"…the report is impressive in its scope and completeness"*
- *"The most valuable thing in the report is that it recognizes the need of analyst to constantly share the problems in confidentiality issues with each other, to find reasonable solutions to individual often complex cases."*
- *"This work covers the field very well and there is not much if anything to be added."*
- *"…allowed me to recognize the complexity of the question of confidentiality and the need to think about it from different angles."*
- *"Confidentiality has never been addressed in such a complete and detailed way…"*
- *"…each issue has been unpacked showing the complexities analysts are facing (as done for example with the issue of Informed Consent) but also giving guidelines, a tool for the members to use, and an occasion for further reflection and thinking…."*
- *"…written in a lively way and its format is very clear and user friendly…. it is impressively comprehensive and well-thought through…"*
- *"…extensive and detailed approach…"*
- *"…a thorough, complete and useful work …"*
- *"…clear, interesting and stimulating …"*
- *"…the expanse and thoroughness of the report…."*
- *"The recommendations of the report succeed without a doubt with the committee's goal of fostering and strengthening a culture of confidentiality in the IPA and amongst its members in which protection of the patient´s privacy and dignity becomes a serious concern in every single aspect of our clinical work."*
- *"…in general it's a very smooth, very useful, consistent and comprehensive text."*
- *"Votre rapport est vraiment complet. Vous soulevez plusieurs points importants et vous couvrez un large éventail…Nous n'avons vraiment rien à ajouter à part penser à une version en français."*
- *"Impressed by the immense work preceding this draft; the great care for protecting the very specific importance of confidentiality has to be fully acknowledged."*

- *"…impressed by how the essential points were covered in such a thorough, well-considered and balanced manner…"*
- *"…an important and essential contribution to ongoing education on a complex and sometimes avoided topic…"*

There were also some critical comments and questions concerning the report as a whole, but there were fewer of these.

- One respondent wrote: "*Does the report in its defensive completeness risk throwing out the baby of discovery and exploration with the bathwater of rigorous self-regulation?*"
- Another wrote of the need for "*a balance between rigidity and excess of flexibility*".

Some specific suggestions were made about what should be done with the report.

- One respondent wrote that the report, or some sections of it, "*could have some official recognition and [be] published together with the Ethics Code on the website, so that members could access it easily and consult it, as they now consult the Ethics Code*."
- Another wrote that the suggestions in the report were clear but that they could be stated in a more compact form.

More than one comment stressed the need to widen discussion of the report to include non-IPA practitioners.

- One wrote: "*While this document is an IPA document supporting specific recommendations for official IPA policy, it need not systematically exclude reference to non-IPA analysts and organizations, or public education*".
- Another wrote: "…*we cannot really expect the needed ongoing dialogue to be achieved if we frame the issues in terms only of IPA analysts and fail to engage with other analysts and also other professionals, including academics and social scientists and, perhaps most importantly, the general public. I would hope that this point can be reflected in section 9.3, perhaps under the heading At the Institutional Level …: "Regularly organize public dialogues on the meaning of confidentiality among different psychoanalytic groups and with the general public*…" (See 9.2).

10.3 Intrinsic limitations of psychoanalytic confidentiality

Some respondents commented that there may be limits on the possibility of maintaining confidentiality in an analysis even under optimal conditions. One wrote: "…*one could argue that the very method of free association assumes a proper functioning of breaches of confidence within the analysand's internal structures. It is always astonishing how despite a presenter's best efforts at disguising a case that some vital aspect of the analysand's identity will pop through*". Another pointed out that if trust is an essential element in the analytic situation, feelings of *mis*trust are equally important, especially where infantile aspects of the transference are concerned, and that trust and mistrust can be understood as being in a

dialectical relation whereby the creation of trust makes possible the emergence of unconscious aspects of a profound mistrust. A third wrote of the importance of allowing the patient to have a fantasy that the analyst might divulge his secrets and not to be convinced of the analyst's perfect honesty.

10.4 The community-of-concern approach

The idea of a community-of-concern approach was commented on approvingly by more than one respondent. One wrote: "*We wholeheartedly support a community- of-concern approach…. The responsibility is shared by all [and] though we as analysts very well know the importance of confidentiality, it should not be taken for granted that it is followed rigorously, and a constant remainder is needed*."

10.5 Informed consent and sharing of clinical material

Although the question of informed consent arises potentially both in relation to consent to treatment and in relation to consent to sharing clinical material, much of the detailed discussion of it in the report concerns specifically the sharing of clinical material, and the comments we received were mainly about this aspect.

A wide range of views about the principle of informed consent was apparent in the comments. Some respondents argued that patients have a right to know when material is being shared and some argued the need for formal written consent. Others stressed the complications due to transference and doubted whether informed consent is even possible in a psychoanalytic context. One respondent suggested that program committees should state that no one can present material without written permission from the patient, and continued: "*I am of course aware of, and agree strongly with, that which you have carefully laid out as the profound problems with this choice. But there is no way around the essential fact that we are lying by omission to our patients when doing otherwise. If the treatment cannot withstand this intrusion then the question never should be asked, the material not [be] presented*."

This range of views was already represented in the draft report and the Committee remains of the opinion that it is not feasible for the IPA to devise a standard procedure for presenting and publishing clinical material that would be ethically sound and generalizable to all analysands.

Some respondents approved of the suggestion that authors explain their ethical position with regard to informed consent and confidentiality in clinical presentations and publications, while others were concerned that such statements would compromise confidentiality by giving information which would allow a reader to undo the disguise. Some were worried that consulting with colleagues would either be too cumbersome or lead to further confusion.

One respondent wrote: "*I would strongly suggest adding clear practical guidelines to your description of the situation about how to proceed. For example which editorial policies do you recommend? Which of these do you consider as absolutely obligatory and which are discretionary, that is according to the editor´s criteria?... If we don´t have these clear procedural steps to move forward, it will not be possible to overcome the situation of paralysis of on-line publications which we are currently suffering from*."

It was also pointed out that even from a legal point of view, the patient's consent may not always give sufficient authority as it could instead be regarded by a court as evidence of the analyst's influence on the patient.

10.6 Telecommunications

There was a very wide range of responses relating to confidentiality when using telecommunications and a considerable polarization of views was evident regarding both the extent of the risks and the implications of these risks for psychoanalytical practice.

For example, one respondent described the contents of section 4 of the draft report as "…*extremely valuable and very well presented in a balanced manner. A great deal of technical information has been digested*…" Another agreed with our assessment that telecommunications are inherently insecure but criticised the draft report for not drawing stronger conclusions from this and for not recommending that the IPA take a more authoritative stance against the practice of remote analysis. On the question of long-term risks due to mass surveillance this respondent wrote that it was: "*excellent that the report takes this seriously and does not regard it as scare-mongering*."

At the opposite end of the spectrum of opinion one respondent thought that "*a degree of paranoia crept into the report when some of the possibilities of electronic surveillance were being discussed*." Another thought that the report shows "*an unfortunate bias against teleanalysis*", and that "*the technical detail in this report may augment fear, and inflate the relative risks of distance-mediated analysis over in-office analysis*".

Some respondents appeared to treat the draft report as if it were intended as an assessment of remote analysis, which it is not. The debate about remote analysis that is currently taking place in the psychoanalytic community, in which strong views are being advanced both for and against remote analysis, has a much wider scope than just confidentiality. It includes fundamental questions about the role of physical presence and embodiment in the setting, and the effects of technology on the mind. This report is concerned only with those aspects of this wider debate which touch upon confidentiality.

It may nevertheless be relevant to note that there appears to be a correlation between the positions taken in response to the sections of the draft report that deal with telecommunication, and positions taken in that wider debate. Perhaps unsurprisingly, those in favour of remote analysis tend to be less concerned about the insecurity of telecommunications than those who are opposed to it.

Not all of the comments were polarised. One respondent wrote: "*telecommunication has not to be rejected totally and absolutely, if it is really necessary….In the majority of cases it might be more advisable to analyse the tremendous longing for comfort and passivation. This might minimise the use of telecommunication and its risks decisively*."

There were also reminders to continue making a distinction between training analysis and non-training analyses. One respondent wrote: "…*Remote Training Analysis concerns a limited number of candidates, while remote analysis concerns a large numbers of IPA members who conduct analysis and psychoanalytic psychotherapy training online in distant geographical areas or just in the same city*." Another pointed out that the situation in the USA is different from that which obtains elsewhere: "*the situation is not simple, as there are some APsaA institutes who offer online psychoanalytic training without complying to IPA Procedures on Remote Training Analysis, as the APsaA has some independence regarding training from the IPA. There are also some organizations initiated and run by IPA members who offer very competent psychoanalytic psychotherapy trainings online and who are actively seeking to expand their area of influence*."

Several respondents put forward the view that in today's world privacy is no longer possible. One wrote: "*We live in a society in which privacy as we knew it has ceased to exist. I understand the dilemma the IPA faces, but even if it is important to be aware of the realities of our world, there is little we can do about keeping privacy from being interfered. I think that we should measure the possible consequences of using telecommunications against the possibilities that it has provided for people that otherwise would not have the chance to have any analysis at all, not to speak about training*." Another wrote of: "…*the almost complete destruction of any viable concept of individual privacy in the current techno-cultural environment…*". A third wrote: "*the cultural environment clearly no longer supports concepts of privacy*". The Committee does not share the pessimism of the more extreme versions of this view, but it recognises the dangers to privacy and hopes that this report will contribute to protecting the privacy of psychoanalytic consultation. As we point out in section 2.6 of the report, privacy is protected both by the IPA Code of Ethics and by the UN Declaration of Human Rights.

There were many comments about how to manage the risks and improve our awareness of them. Here are some examples:

- *"…I appreciated being informed of e.g. end point vulnerability in otherwise apparently well protected systems";*
- *"…what to do if patients ask to record their sessions… but with smart phones recording events has become an almost everyday activity.";*
- *"I found the list of steps that can be realistically taken on page … more helpful than the preceding discussion which seemed to lament rather pointlessly to my mind that 100% security in electronic communication cannot be achieved."*

- *"How [do] you tell the risks to the patient has consequences. Even a mobile phone in the consultation room is not safe. This is easy to understand when it is question of a dictatorship but the hackers know no state borders. We have also to take into consideration that when something is once in the internet it may stay there for ever, and that using cloud services is said to be as open as a post-card.";*
- *"The other point I want to thank is the need to consult regularly IT-experts on the confidentiality issues in telecommunication. An ordinary analyst may find it difficult to imagine all the dangers there are involved and does not know what kind of security measures should be taken."*

One respondent underlined the point that in the classical setting the analysand also carries some responsibility for the setting: "*What are the responsibilities of the analysand to maintain the specificity of the analytic work? Along [with] for example what we say to him/her regarding missed appointments and other frame issues. The presence of cell phones that are kept open or that could be pocket dialing accidentally. Should we stress the common responsibility (analyst-analysand) of the protection of the analytic process (harm done to analysis) so that the issue not be exclusively the protection of the analyst or harm done to the patient?*"

10.7 Third party requests

One respondent wrote that "*the balanced advice to individuals and Societies about how to consider conforming with or arguing to resist demands made by a court for confidential material to be disclosed was excellent*"

Two respondents pointed out that process notes may be requested by courts: "*Process notes would be deemed by courts to be part of formal record*"; and *" <u>legally</u> there is no difference between the process notes and the formal dossier. … if a judge or lawyer knows of this parallel dossier, it will be considered as the formal dossier and the judge may force access to it*."

Another wrote: "*I would like to see in the final report something more about the possible intrusion by the health care system insurance companies to the analytic/psychotherapy process and its privacy."*

10.8 Child & adolescent analyses

There were comments on the special circumstances of child and adolescent analysis:

- "*The question of confidentiality is extremely complex in the case of adolescents who are living at home and where the main operative psychological unit is the family (in cases of severe conflicted dependence). Confidentiality may be instrumentalized to ban all communication with the parents as a defensive splitting rather that constructive interiority. This is even more important as the analytic work with them not only involves third party, health risk issues but also necessitates a special attention to boundaries and differentiation.*"

- "*The confidentiality issue in the case of child analysis (patients under 14 years old in Quebec) needs special consideration when the parents are separated or divorced and carries very specific legal implications as the non-custodial parent continues to have parental rights.*"

10.9 Analyses of candidates & colleagues

A number of comments supported the Committee's view that the analyses of candidates and of colleagues might be particularly vulnerable to breaches of confidentiality, so that greater emphasis might be needed on measures to protect their privacy.

10.10 Archives

It was pointed out that the draft report made no mention of the archives kept by component societies, which typically contain confidential material, as do the archives of IPA. This material may include: clinical reports about patients, information about individual members and candidates, membership papers, supervisors' reports, committee minutes, etc. We agree that this was an omission from the draft report and that all such archives should be subject to the same careful protections as all other confidential material.

10.11 Comments received after the report was finished

After the report was finished but before it was circulated to the Executive, we received comments from the Israel Psychoanalytic Society and further comments from the British Psychoanalytical Society. The Israel Society mainly raised the issue of confidentiality in the context of didactic (training) analyses with reporting. We did not discuss this issue but it could be a topic in the discussion that we anticipate will continue if our report is approved by the Board. The further comments from the British Society focused on two points arising from the Recommendations about informed consent and sharing of clinical material. One of these, which had also been raised by other respondents, is discussed in 10.5, paragraph 4, above.

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13 APPENDICES

Appendix A: The IPA Confidentiality Committee

Background

Psychoanalysis has been built on a number of fundamental principles, including the vital importance of confidentiality and the practise of sharing clinical cases to develop understanding and share best practice.

The Boston Congress demonstrated that changing technologies and growing globalisation are altering the context in which psychoanalysis is practised. At the Prague Congress, there was considerable unhappiness when the IPA restricted access to sessions where clinical material was to be discussed.

There are other profound changes taking place in the social landscape: to give one example, across the European Union there is a growing consensus that personal data are owned by the individual, not the clinician; that the individual should have control over their own data, especially "sensitive personal data" (a category likely to include much that emerges in analytic sessions); and that patients should generally give informed consent before their material is used. In the UK, where the IPA is registered, some breaches of data protection laws are now criminal offences.

These changes could have direct implications, to take two diverse examples, for the reports that are prepared by Supervisors working at IPA Institutes, and for the use of VoIP technologies to conduct remote analytic sessions.

The IPA should position itself to advise its Component Societies and Members on best practices in relation to these activities.

Mandate

1. To conduct a comprehensive overview of the ways that confidentiality pertains to and impacts on the work of IPA psychoanalysts.
2. To draft documents on best practices re: confidentiality for the IPA Board to review and approve.
3. To advise the IPA Board on issues related to confidentiality for the IPA's 2019 Congress.
4. To consult with other IPA Committees as needed.
5. To consult with experts on specific issues as needed.

Ways of working and reporting

The Confidentiality Committee will be expected to do most of its work electronically, using Skype, GoToMeeting, or other free-to-use communication systems. The Committee, like all IPA committees, will be expected to be self-supporting for secretarial and other purposes. It will have access to the web and email support services offered by the IPA.

Any face-to-face meetings should take place, so far as possible, adjacent to IPA or regional congresses. The Chair of the Committee will provide a written report to the Board at least annually.

Terms

The Committee is formed initially for a two-year period, which the Board may eventually extend, if desired. The members of the Committee will be appointed in the usual way, by the President of the IPA and with the consent of the Board of Representatives.

Composition of the committee

The Committee will consist of a Chair, plus two members from each Region. The Committee may request the appointment of Consultants to advise on specific issues as needed (Consultants will not be funded to attend in-person meetings). The Executive Director will be an ex-officio member and serve as the Committee's secretary.

Budget

The Committee will propose a budget during the annual IPA budget cycle.

Board approved January 2017

http://www.ipa.world/ipa/en/Committees/Committee_Detail.aspx?Code=CONFIDENTIAL

Appendix B: Examples of current notices

A comprehensive review of how component societies have addressed various aspects of confidentiality might be a useful, but substantial, undertaking. Given time constraints, the Committee has gathered only a limited number of representative examples of current practice, which follow. *NB: These are not intended as good or bad models, to be imitated or avoided, but simply as representative examples of statements currently in use.*

Examples of notices for authors

International Journal of Psychoanalysis

"In all submissions involving case reports authors should state in their cover letter which method they have chosen of protecting the patient's privacy (Gabbard, IJP 2000, 81:1071-1086). Such information should be kept out of the published paper itself to avoid undermining the disguise. When consent is obtained from the patient or patients, authors should indicate in the cover letter if the written consent has been saved and is available if necessary. Authors are responsible for obtaining permission from the copyright owner to use quotations, poetry, song lyrics etc and these permissions need to be supplied with the final accepted version of their article."

Revue Française de Psychanalyse

"Secret professionnel

"L'article proposé ne doit comporter aucune violation du secret professionnel. Il doit respecter l'éthique psychanalytique et ne présenter aucun élément à caractère diffamatoire. Dans les illustrations cliniques, le patient ne doit pouvoir être identifié par des tiers et ce qui est écrit doit pouvoir être repris avec lui sans que cela ne nuise à son analyse s'il venait à lire l'article."

Canadian Journal of Psychoanalysis/Revue canadienne de psychanalyse

"Authors warrant that they have taken appropriate measures to preserve confidentiality and protect patient anonymity within the ethical framework of the psychoanalytic profession (or of their own profession, if other than psychoanalytic). Sharing and publication of anonymous clinical material continues to be essential to the growth of individual analysts as well as to the advancement of the analytic profession as a whole. Yet the need to communicate our clinical experiences complicates the ethical requirement to preserve the confidentiality of the clinical encounter. There is no perfect solution to this dilemma, but there exist several time-honoured approaches to preserving confidentiality and to protecting the anonymity of the patient (and the privacy of anyone else involved), while maintaining the scientific integrity of a clinical publication: disguise, patient consent, the process approach, the use of composites, the use of short clinical vignettes or of

thumbnail sketches that can bring the clinical material alive while they avoid the detailed disclosures entailed in traditional case presentations.

“Each approach has its own set of problems, and the method of preserving confidentiality must be chosen by the author on clinical considerations, and therefore tailored to the individual case (see Gabbard, International Journal of Psychoanalysis, 81, 1071–1086, Kantrowitz, J. L. (2004). Writing About Patients: I. Ways of Protecting Confidentiality and Analyst's Conflicts over Choice of Method. J Am Psychoanal Assoc. 2004 52(1):69-99, and Kantrowitz, J.L. (2006). Writing about patients. Responsibilities, risks, and ramifications. New York: Other Press for a discussion of the specific set of problems generated by each approach).

“Authors are encouraged to carefully consider these alternatives when they prepare their manuscripts, and to give precedence to clinical concerns. They should also bear in mind that in this era of electronic publishing, which broadens the circulation of psychoanalytic papers beyond the traditional scope of professional or “learned” societies, any patient (or relative of the patient) may have easy access to what has been written.”

Revista de Psicoanálisis de la Asociación Psicoanalítica de Madrid

“Compromiso de Confidencialidad”

“El contenido de la Revista de Psicoanálisis es de uso exclusivo para los miembros y analistas en formación de la APM. Debido a los compromisos adquiridos por estar incluida nuestra revista en la base de datos “Psychoanalytic Electronic Publishing (PEP)”, queda absolutamente prohibido divulgar a terceras personas o instituciones el contenido de la revista.

“Quien haga uso de los contenidos de la revista de forma no permitida, habrá de responder a cuantos perjuicios se deriven como consecuencia del incumplimiento de este compromiso.

Calibán

“En caso de incluir material clínico, el autor tomará las más estrictas medidas para preservar absolutamente la identidad de los pacientes, y es de su exclusiva responsabilidad el cumplimiento de los procedimientos para lograr tal finalidad o bien para obtener el consentimiento correspondiente.”

Psychoanalysis.today

“Clinical Confidential Material

“Psychoanalysis.today is a public eJournal that can be accessed not only by health professionals and academics but also by members of the public, including interested patients of analysts.

"Under no circumstances should you break the obligation you have to respect a patient's confidentiality.

"Author warrant and undertake: That their article does not contain Clinical Confidential Material, or that any Clinical Confidential Material has been anonymised in such a comprehensive way that patients reading about themselves in a paper or listening to a recording of a presentation or discussion, would not be able to identify themselves."

Examples of printed statements included in conference programmes

From the 48th Congress (Prague)

IPA PRAGUE CONGRESS 2013

CONFIDENTIAL SESSION DECLARATION

I, {Insert your name here},

a participant in the Congress session {Insert title of session here}

hereby give my consent to abide by the IPA's Ethical Principle on patient confidentiality relating to the material presented or discussed in the above-named session. I will respect the confidentiality at all times of any material relating to patients discussed or presented during this session.

Signature

Date

From the 50th Congress (Buenos Aires)

50TH CONGRESS OF THE IPA – CONFIDENTIALITY ANNOUNCEMENT BY CHAIR OF ALL SESSIONS

To: Chairs of all Sessions. Please read out the words below and ask someone to sign to witness it. Then please leave this sheet on the table.

ANNOUNCEMENT BY CHAIR OF ALL SESSIONS: DECLARATION OF CONFIDENTIALITY
I ask the audience to respect the complete confidentiality of any clinical material that might be referred to by any presenter, and I would remind you that when you bought a ticket for this Congress you agreed to keep confidential any such material that you see or hear.

If any clinical material is being presented and discussed and you think you recognise the identity of the patient, you should protect the patient's confidentiality by quietly leaving the remainder of that session.

Special care must be taken to avoid conversations about clinical material in any public place (including the corridors and lobbies, outside this room). Emails and internet postings involving clinical material should be absolutely avoided.

Title of Activity: Name of Witness (Please Print):
Signature of witness: Date:

I confirm that the above disclosure announcement was made at the beginning of this Congress session.

From the APsaA 2018 National Meeting programme

"Confidentiality is of the utmost importance for our organisation. We would like to remind you about a few key issues concerning confidentiality at the National Meeting:

In order to protect confidentiality of patients and treatments, material presented in sessions must not be written about or discussed outside of the session.

Clinical material should not be discussed in halls or elevators, and should not be e-mailed or posted to the internet.

If you attend a session in which clinical material is being presented and you think that you recognize the identity of the patient, you should quietly excuse yourself from the remainder of that session.

Use appropriately disguised information and/or informed consent (where an attempt has been made to weigh the present and future transferential impact of either the patient one day recognizing himself in the disguise or of re-evaluating his consent) when talking about a patient. Keep in mind that even when demographic information is changed, specific details can make the patient identifiable to those who know him or her. This should be avoided where possible.

Attendance at these meetings is contingent upon registrant´s agreement to maintain confidentiality. Failure to do so is a breach of ethical principles for members and cause for legal action for non-members."