

LSE MEDIA POLICY PROJECT

Ensuring Independent Regulation for Online/Citizen Media

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New information and communication technologies have brought legal and regulatory challenges that could have far-reaching implications for freedom of expression online. As more online actors join the ever-expanding public sphere and user-generated content becomes a fixture of our online world, issues emerge regarding jurisdiction, liability for published content, and the applicability of protections and obligations for traditional media. The key question is: what kind of regulatory approach would ensure the independent regulation of online and citizen media and preserve freedom of expression? Should we decide on a case-by-case basis which online communication channels should receive the status of ‘media’ and the accompanying benefits and accountability?

This paper examines two options: whether registration by a national regulatory authority could be a “threshold” for blogs and other communication platforms to achieve the status of traditional media outlets in terms of rights and obligations, and whether or not current definitions in EU legislation, namely the Audiovisual Media Services Directive could be applied?

Online/Citizen Media Registration

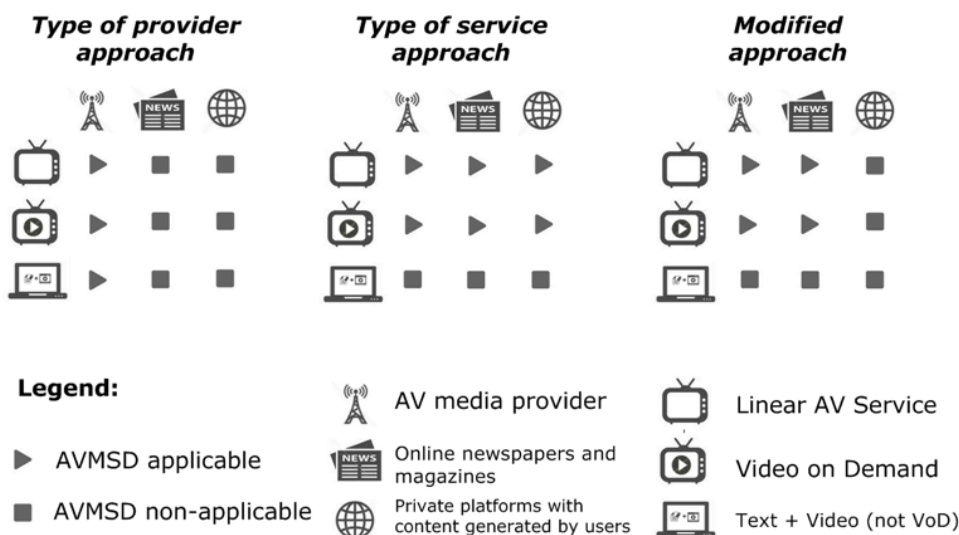
In August 2014, Serbia enacted the new Law on Public Information and Media¹ (*Zakon o javnom informisanju i medijima*) which excludes online platforms with the exception of web portals of traditional media from the scope of media regulation. These native online platforms have the option to “opt in” to media regulation by

registering, or to remain under the general liability regime. The other extreme can be found in Russia² and Singapore³, where lawmakers have introduced measures for mandatory registration and application of media legislation to blogs and news websites if they fulfil certain requirements.

SHARE Foundation conducted research on registration regulations and practices for online/citizen media in 14 countries of Central, Eastern and Southeast Europe⁴, with help from local media law experts. In some of the examined countries, such as Bulgaria and Romania, there were no legal provisions related to online/citizen media and their registration, but in others, such as Serbia, Macedonia, Croatia or Slovenia, laws have detailed provisions related to or at least some references to online media. Hungary’s regulatory approach towards these communication platforms is the broadest and results in the most kinds of active media being covered by its regulatory framework. For example, the definition of “press products” in the Act on Freedom of the Press and the Fundamental Rules of Media Content includes “online newspapers or news portals”⁵.

Although registration can offer online media certain rights, it is not optional if the legal provisions for media are unclear, so that it can be hypothetically applied to blogs or social media, it can be used by authorities to limit freedom of expression on the Internet.

Possible scenarios for regulation



Conclusion and Policy Recommendations

Many European countries have some kind of a “grey area” when it comes to these new media actors, which can generate legal problems, and leave space for governments to use national regulatory authorities to put pressure on online media. Since the AVMSD does not cover online/citizen

media, some adjustments to clarify the issues highlighted above should be considered.

Application of AVMSD

One piece of EU legislation that offers some definitions for media is the Audiovisual Media Services Directive (AVMSD). It is clear that primarily audiovisual media service providers, mainly traditional broadcasters, are subject to AVMSD’s rules even when providing linear or on-demand services online. It is less clear whether AVMSD rules are applicable to other content on their online platforms or to other content providers, such as electronic versions of newspapers and magazines, or private platforms with content generated by users that offer some forms of audiovisual content.

A proceeding recently initiated before the European Court of Justice by the Austrian Administrative Court addressed whether video services on an online newspaper platform can be compared with TV broadcasting and whether a part of a service provided by an online newspaper should be subject to AVMSD⁶. Also, guidance from the UK regulator Ofcom states that an online video service could be considered on-demand if it has certain characteristics, e.g. if it is “presented or styled (and marketed) as a television channel” or the “balance of the material is more likely significantly to lean towards the audiovisual”, if a video on a website is accompanied by text⁷. Ofcom’s guidance might be a useful basis for further clarification of definitions in AVMSD.

The approach of AVMSD should change: rather than seeking to regulate a single platform according to the nature of the provider, regulation should be segmented by the nature of the available content. European policymakers should consider guidelines for “opt-in only” registration for those online media that want the protections and obligations afforded to media, but that would ensure that private platforms that do not opt into media regulation would stay out of the AVMSD and national legislation, especially if they are not in competition with TV broadcasting. In addition, changes should encompass clear principles for division of video-on-demand (VoD) services and other video content. Such changes would help achieve legal certainty and establish a regulatory practice that would enable online media growth. ¹⁵

¹ Law on Public Information and Media, “Official Gazette of the Republic of Serbia”, no. 83/2014, available in Serbian at: http://www.paragraf.rs/proposi/zakon_o_javnom_informisanju_i_medijima.html

² Source: “Legislative restrictions on popular bloggers come into force in Russia”, RT.com. Available at: <http://rt.com/politics/177248-russia-bloggers-law-restrictions/>

³ Source: “Singapore: Space Narrows for Online News Media”, Human Rights Watch. Available at: <http://www.hrw.org/news/2014/10/15/singapore-space-narrows-online-news-media>

⁴ Serbia, Montenegro, Bosnia and Herzegovina, Croatia, Slovenia, Macedonia, Albania, Kosovo, Hungary, Romania, Bulgaria, Czech Republic, Slovakia and Poland.

⁵ See Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content, consolidated version effective from 15.3.2014, Article 1, Paragraph 6. Available in English at: http://hunmedialaw.org/dokumentum/152/Smtv_110803_EN_final.pdf

⁶ See Jenny Metzdorf, The Implementation of the Audiovisual Media Services Directive by National Regulatory Authorities National Responses to Regulatory Challenges, 5 (2014) JIPITEC, p. 91, para. 8.

⁷ Ofcom decision: http://www.atvod.co.uk/uploads/files/Ofcom_Decision_-_SUN_VIDEO_211211.pdf