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## **INTERNET AND NEW MEDIA**

# **Legal Analysis and Recommendations on the Use of New Technologies**

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## INTRODUCTION

The expansion of the Internet and the new media has resulted in new social, regulatory, political and cultural influence on the society as a whole. One of the most important consequences of such development is the global access to information, which carries certain responsibility that has to be defined in each specific case.

Article 10 of the European Convention on Human Rights protects the freedom of expression on the Internet, together with many other documents adopted by the Council of Europe. At the level of the European Union, legislation of member states is to be harmonized with the Audiovisual Media Services Directive. In our country, the Law on Public Information defines the Internet as a media outlet, together with other so-called "traditional media". Unfortunately, this is not the best solution because it is impossible to apply all rules relating to media outlet to each Internet portal – from publisher data to existence of the editor in chief, especially if the portal is registered on an international domain (.com, .net etc.). Also, there is an expansion of the so-called "citizen journalism" in the world and in our country, with citizens playing an active role in collection, distribution and analysis of information. Expansion of citizen journalism in "traditional media on the Internet" began on July 7, 2005 after the terrorist attack in London, after which the BBC published on its official web portal pictures and videos sent by citizens. Blogs also played a significant role. In our country this phenomenon occurred for the first time after the explosion of the ammunition depot in Paracin with online media publishing first pictures and video recordings before the traditional media outlets. This practice has culminated during the riots caused by the unilateral declaration of independence of Kosovo, when amateur recordings made by mobile phones were posted on web portals and made available worldwide.

Although it is believed that the Internet is not regulated, it is in fact the most regulated "place" on Earth. Most of the countries have a law related to the Internet. Since the Internet is available from any point on the planet, there is an issue of states' jurisdiction, especially regarding illicit content. For example, hate speech is regulated by the Penal Code in Germany, which applies to the Internet, while in America the exact same expression is completely free. This has caused many international disputes related to Internet content, because there are many questions that

cannot be clearly answered by modern Internet law, precisely because of political, cultural, religious and other differences between states.

Serbia awaits harmonization of regulations with the standards of the Council of Europe and the European Union related to the new media. This task should be taken very seriously and realized as soon as possible.

## **EXISTING REGULATORY FRAMEWORK IN THE REPUBLIC OF SERBIA**

At the moment, there are several laws in force in the Republic of Serbia – the Law on Broadcasting, the Law on Public Information, the Law on Access to Information of Public Importance, the Law on Telecommunications and the Law on Advertising – which are directly or indirectly related to the Internet and the new media. Besides, Serbia has also adopted the Strategy on Telecommunications and Information Society in 2006 but, unfortunately, not much has been done to implement it.

The Parliament of the Republic of Serbia has not yet ratified the European Convention on Transfrontier Television of the Council of Europe, which should be a top priority in the following period. It is of great importance that future legislation be immediately harmonized with the standards of the European Union. It is a positive development that the Office of European Integrations of the Republic of Serbia is already working on the national program of integration (NPI), which would allow more efficient harmonization of legislation with the regulatory framework of the European Union.

Another reality, related mostly to the new media, is the digitalization of the broadcasting spectrum. Digital "switch-off" has been agreed at the regional telecommunications conference on planning of digital broadcasting services in Geneva held between May 15 and June 16, 2006. It has been agreed at the conference that the final switch from analogue to digital programme broadcasting will occur on June 17, 2012 in the European Union, and on June 17, 2015 in other

countries. Of course, frequencies allocated in accordance with the plan of analogue frequencies will be protected until then. Broadcasting licences have been recently issued in Serbia and are valid until 2014 (national and regional licences) and 2015 (local licences).

Digitalization has had a positive influence mostly in allowing media pluralism through creation of new distribution networks. There is also a greater choice of channels for users, which will be best taken advantage of by media outlets broadcasting in minority languages, since they will be able to create more programmes. It is expected that broadcasting costs for broadcasters will be reduced. Of course, the quality of picture and sound will be significantly increased, which will at the same time improve the exchange and delivery of information to mobile phones, the Internet and other new media.

Risk factors in the switch from analogue to digital broadcasting of programme are mostly related to timely planning of the transition period, the lack of adequate legal framework, and insufficient awareness of citizens. Therefore, the work on preparation of the strategy of switching to digital broadcasting is extremely important. It has to entail protection of citizens, who should be timely informed about the digitalization, its importance and its influence on everyday life. The strategy should also include limitations on import and sale of TV sets which do not satisfy conditions for broadcasting of digital programme. In the end, the legal framework should also include special needs of people from certain categories of population (for example, persons with disabilities).

In the Republic of Serbia, digitalization is mentioned in the Law on Broadcasting, but not in the Law on Telecommunications. It should be noted that both laws were written mostly for analogue environment and at the moment when it was necessary to regulate a chaotic media market where most of the electronic media outlets were using expired licences, or had no licence at all. On the basis of the Law on Broadcasting, only the public service broadcaster is obliged to adopt the digital technology, and this should be taken into account during preparation of the strategy.

Apart from the problem caused by the fact that both laws were written for the analogue environment, another possible obstacle may be the existence of two regulatory bodies – the Republic Broadcasting Agency (RBA) and the Republic Agency for Telecommunications (RATEL). That may cause overlap of authority in the area new media and the Internet and is one

of the reasons for Serbia to consider the issue of convergence of regulatory bodies in the following years.

## **COUNCIL OF EUROPE REGULATORY FRAMEWORK WITH REGARD TO THE INTERNET AND NEW MEDIA**

Article 10 (1) of the European Convention says that "everyone has the right to freedom of expression. This right includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises". The Article 10 (2) of the Convention continues: "The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary".

Conditions under which the right to freedom of expression may be limited must be simultaneously fulfilled:

- When it is prescribed by law
- With the legitimate aim
- When the restriction is necessary in the democratic society.

If these conditions are not fulfilled, the European Court of Human Rights will decide that the Article 10 has been violated.

The Article 10 of the European Convention on Human Rights has been fully applied on the Internet and in the new media since most often there is no intermediary between citizens and the

new media, as was the case in traditional media outlets which have editors. Today, there are moderators in certain forums, but the largest part of the Internet is free, so that everyone can express their opinions and ideas.

Blogs are the most often used form of expression on the Internet. Weblog (blog in short) is a series of chronologically organized posts presented on web pages and having a form of a diary. Wide-ranging subjects are discussed, and posts can vary in topic, volume and format and mostly consist of news, notes, discussions (of text formats), photographs, sketches, graphical content (photoblog), video material (videoblog), audio material (podcasting) and links to other content on the Internet. Comments are allowed on blogs and they constitute a very powerful means of communication between authors and visitors. Blog also allows everyone to have an Internet presence without much technical knowledge and without any limitations. .

The so-called "citizen journalism" is also one of the most important forms of communication on the Internet.

"Citizen journalism" is most often defined as an "activity of citizens playing an active role in the process of collection, reporting, analysis and distribution of news and information". It has achieved its expansion in circumstances of emergencies and disasters, first on September 9 in New York, but most of all during the bomb attack in London subway on July 7, 2005, where all recordings were made by amateurs, taken mostly with mobile phones, and used by traditional media outlets. For example, the editor of the British BBC's web site received 20.000 emails on that day, together with 1.000 photographs and 20 video recordings during the first 24 hours after the explosions.

In Serbia, citizen journalism overcame traditional media outlets for the first time after the explosion in the ammunition depot in Paracin on October 19, 2006 at 3.45, when 3.500 tons of explosive went off. Tens of people were injured, large material damage was caused, and the highway was closed for several hours. Citizens were the first to react – local Internet forum [www.pnforum.net](http://www.pnforum.net) published the first message, "Explosion on the hill?!", at 3.46, while [www.paracin.com](http://www.paracin.com) posted first pictures during the night. Unfortunately, the public service

broadcaster and other "traditional media" outlets published first news only several hours after the explosion, and even then amateur recordings were used.

## **THE EUROPEAN UNION REGULATORY FRAMEWORK FOR ELECTRONIC COMMUNICATIONS**

During the '80s, today's members of the European Union had strong monopolies in the public sector, among others in the sector of telecommunications. On January 1, 1998, all telecommunications networks and services were liberalized, creating competition in the market and allowing new companies to enter the market. All of this was the result of the development of new technologies.

In 2002, the European Union has adopted a new, technologically neutral regulatory framework, based on the statement of the fact that a convergence had occurred with regard to telecommunication, media and IT sectors. This regulatory framework entered into force in 2003 and represents the last phase of the regulatory system of the European Union. It consists of the Framework Directive, the Directive on the Authorization of Electronic Communications Networks and Services, the Directive on Access and Interconnection, the Universal Service Directive and the Directive on Privacy and Electronic Communications. This regulatory framework for electronic communications is in fact technologically-neutral since it is based on recognition and adoption of convergence of telecommunication, media and IT services. But this regulatory framework does not relate to the contents of electronic communication services conveyed via electronic communication networks.



## **THE EUROPEAN UNION REGULATORY FRAMEWORK WITH REGARD TO INTERNET CONTENT**

In December 2007, the European Commission has adopted the Audiovisual Media Services Directive which supersedes the Directive on Transfrontier Television. The new Directive covers all audiovisual media services, from the so-called traditional television services ("linear audiovisual media service") to media "services-on-demand" ("non-linear media services"). There is still a debate within the European Union about the manner in which the member states should incorporate this Directive in their national legislations, most of all regarding the regulation of Internet content.

## **CHALLENGES AND POSSIBLE OBSTACLES IN CREATION OF THE INTERNET AND NEW MEDIA POLICY**

The greatest challenge is to achieve recognition of the development of the Internet and the new media as one of the priorities of the Government of the Republic of Serbia. This goal requires understanding of the regulatory framework of the Council of Europe and the European Union by the relevant ministries, parliamentary committees, regulatory bodies, journalists and the public. The next step is to decide which direction the country wants to take with regard to the development of the Internet and the new media, from regulatory to practical levels. In this case, it is necessary to take into account realistic problems faced by every country in the world, i.e. global access to the Internet, the speed of communication which hinders the identification of physical location, problems during identification of Internet users, and the speed of technological development, which has always been one step ahead of the regulators.

When it comes to Internet content, abuses can and will be encountered. The question is – how can we believe the content on the Internet? How should we regulate and penalize certain content? In the case of intergovernmental disputes, how can we establish whether the Republic of Serbia has jurisdiction or not? Because in the global world, on the Internet, the standard from

the Article 10, "prescribed by law", raises the issue of – which country's law? The standard described as "in democratic society" creates a dilemma – which society?

As a consequence of regulatory challenges on the Internet and in the new media, national legislations of various countries can be applied at the same time to a single activity on the Internet. Such overlap raises an issue – which principle is used to decide on the jurisdiction of a country or a court? On what basis a country may claim to have jurisdiction over a certain activity on the Internet that has begun or was ended in another country? Is it possible to solve the conflict between various national legislations? Is the limiting of the flow of information across state borders an effective measure?

In the end, it is important to take into account the protection of freedom of expression on the Internet and in the new media and, at the same time, to allow transparency of ownership in the new media.

## **RECOMMENDATIONS**

1. Urgent ratification of the Council of Europe Convention on Transfrontier Television.
2. Implementation of the existing Strategy on Telecommunications and Information Society, with clearly defined deadlines.
3. Harmonization of legislation with new recommendations of the Council of Europe related to Internet content.
4. Harmonization of legislation with the Audiovisual Media Services Directive, through consultations with other European Union member states, taking into account the specific legal system of the Republic of Serbia, and especially the experiences of new members.
5. Harmonization of legislation in the area of telecommunications with the European Union regulatory framework for electronic communication 2002.

6. Strengthening of independence of regulatory bodies in the area of broadcasting and telecommunications.
7. During the harmonization of legislation with standards of the European Union, it should be decided whether there is a need to merge the regulatory bodies for broadcasting and telecommunications in one converged regulatory body for electronic communications.
8. Adoption of the Strategy for transition from analogue to digital broadcasting, with clearly defined deadlines for switch over ("step-by-step" approach). It would be ideal if both Ministries in charge – the Ministry of Telecommunications and Information Society and the Ministry of Culture – could be engaged in preparation of the Strategy, as well as both regulatory bodies – the Republic Agency for Telecommunications (RATEL) and the Republic Broadcasting Agency (RBA).
9. Efforts to increase citizens' awareness of possibilities offered to them by the Internet, as well as their awareness of the existing dangers (for example, the protection of privacy, protection of children, etc.).
10. Launch of a campaign to equip each school in the Republic of Serbia with one classroom with computers.
11. Organization of local, regional and international workshops, round tables and conferences about the Internet and new media, with the aim to inform citizens about the Internet, its possibilities and best possible ways to use them.

## **POSSIBLE OBSTACLES IN IMPLEMENTATION OF THE RECOMMENDATIONS**

1. Political will that is necessary at highest levels for each of proposed points.
2. Understanding of all stakeholders that the process of regulatory transition is a long-term project:
  - a. It is necessary to spend several years on serious efforts to draft laws that will be harmonized with European Union standards.
  - b. Drafting of the laws needs to be a transparent process.
  - c. Public debate during the drafting process at all levels, to engage the stakeholders and citizens, is of utmost importance for achievement of full harmonization and, later, easier implementation of the new regulation.
3. It is extremely important to provide European Union's support in preparation of new laws.
4. In the meantime, it should be decided whether existing laws will be valid until the adoption of new ones, or if it is necessary to modify them in the short term. If there is a need to amending the existing laws, it should be clearly defined why it is necessary and the whole process must be transparent, with a wide-ranging public discussion.
5. Convergence of regulatory bodies, if the state decides to take such step, must be carefully planned to avoid unexpected problems in the functioning of the media and telecommunications system, as well as the new media.

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