



**Association of Independent Electronic Media (ANEM)**

**SUMMARY OF KEY NOVELTIES  
IN  
THE LAW ON PUBLIC  
INFORMATION AND MEDIA  
AND  
THE LAW ON ELECTRONIC  
MEDIA**

**2014**



Kingdom of the Netherlands

Production of this Summary was financially supported by the Embassy of the Kingdom of Netherlands  
<http://serbia.nlembassy.org/>

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# THE LAW ON PUBLIC INFORMATION AND MEDIA

## 1. New definition of media

**Media are means of public information using words, images and/or sounds to convey editorially shaped information, ideas and opinions and other content intended for public distribution and for an indefinite number of recipients.**

What is new in this definition:

- Means of public information is media because information, ideas and opinions and other content it distributes are **editorially shaped**. There is no media without editorial control. That is why Internet forums and social networks are not media;
- Websites and Internet portals of traditional media are always media;
- Independent websites and Internet portals are media only if they are entered in the Media Register.

## 2. New rules on who may and may not be media publisher

**A media publisher may be any natural or legal person**, provided it is registered for the activity it performs.

What is new in these rules:

- A natural person may be media publisher provided the person is registered as entrepreneur

**A legal person may not be media publisher** if it is established, directly or indirectly, by the Republic, autonomous province and local self-government, or a legal person whose shareholder is the state entirely or partly, or which is entirely or partly funded from public revenue, except:

- public services at the national and the level of the province;
- an institution established by the state in order to exercise the right to public information of the population living on the territory of the Autonomous Province of Kosovo and Metochy;

- institutions or companies or foundations established by National Minority Councils in order to exercise the right to information in minority languages or to improve public information in minority languages

### **3. The right to publish media is subject to legal transaction**

#### **How is that different from the old law?**

According to the amendments to Law on Public Information of 2009, the right to a media outlet or the right to publish media was not transferable, neither was it disposable with in another way, and a contract or other legal affair the subject of which was transfer, or other means of disposal with the right to a media outlet or the right to publish media, was null and void.

### **4. Rules pertaining to state aid to the media**

After the adoption of the old Law on Public Information of 2003, Serbia adopted the Law on State Aid Control in 2009, which in principle bans state aid defined, in accordance with the EU standards, as „any actual or potential public expenditure or realised decrease in public revenue which confers to state aid beneficiary a more favourable market position in respect to the competitors and as a result causes or threatens to cause distortion of the market competition“. This necessarily pertains to the media sector. Exceptionally, state aid may be allowed, for example, for the purpose of carrying out a particularly significant project or to promote protection and preservation of culture heritage. The Law on Public Information and Media defines what is of special interest or in other words - of public interest in the media sector, and thus may be financed by state aid on that grounds and in accordance with rules developed further on:

- public service at national and provincial level;
- an institution established in order to exercise the right to public information of the the population living on the territory of the Autonomous Province of Kosovo and Metochy;
- media in the languages of national minorities whose founders are institutions, companies of foundations of the National Minority Councils, and
- projects for the realisation of public interest.

## 5. Definition of public interest

In the field of public information, public interest means:

- Authentic, unbiased, timely and full information available to all citizens of the Republic of Serbia;
- Authentic, unbiased, timely and full information in the mother tongues of the citizens of the Republic of Serbia belonging to national minorities;
- Providing information in the Serbian language for the Serbian citizens living outside the territory of the Republic of Serbia;
- Maintaining cultural identity of the Serbs and national minorities living on the territory of the Republic of Serbia;
- Providing information for the foreign public in foreign languages, when of interest for the Republic of Serbia;
- Providing information for persons with disabilities and for other minority groups;
- Supporting the production of media content with a view to protecting and developing human rights and democracy, improving a constitutional state and a welfare state, free developing of character and protecting children and youth, developing cultural and artistic creativity, developing education including media literacy as part of education system, developing science, sports and physical culture and protecting environment and human health;
- Improving media and journalistic professionalism.

## 6. Co-financing projects

The Republic of Serbia, Autonomous Province and local self-government unit shall provide from their budgets part of the funding for the projects intended for realising public interest in the public information sector and shall allocate the funds on the basis of public competitions and exceptionally by means of allowances, without public competition (maximum 5 % of the total earmarked funds from the budget).

There will be public competitions for the projects pertaining to:

- Production of media content (at least 90 % of the amount allotted from the budget for a public competition);
- Organisation of and participation in expert, scientific and other adequate gatherings or events and improving professional and ethical standards in the public information sector.

The following shall have the right to participate in a public competition: a publisher of the media entered in the Media Register (except those financed from the public revenue) and independent productions.

Key assessment criteria for the competition applications are:

- the extent to which proposed project activities are appropriate for the realisation of public interest in the public information sector;
- the extent to which, based on the documents submitted, the applicant provides a better guarantee of his commitment to the professional and ethical media standards.

The assessment of submitted project proposals, based on which the decision on the distribution of funds is made, shall be done by a panel of experts whose members are independent media experts and media workers provided there is no conflict of interest and that they do not hold public office. The majority of the panel members shall be appointed at the recommendation of journalists' and media associations.

## **7. Media Register**

According to the new Law on Public Information and media, the Media Register shall include the information:

- about the natural and legal persons who directly or indirectly have more than 5 % share in the authorised share capital of a publisher, the information about associated persons, and the information about other publishers in whose authorised share capital these persons have more than 5 % share;
- on the amount of funds granted to the medium from public sources, through the mechanism of project-based co-financing or direct allowances;
- on the amount of funds received in other ways from public authorities, organisations vested with public powers, and legal persons founded or funded, fully or mostly, by the Republic of Serbia, the autonomous province, or a unit of local self-government.

## **8. Consequences of Failure to Register in the Media Register**

A media publisher not entered in the Register may not have its projects co-financed or receive state aid in any other way. The Republic of Serbia, Autonomous Province and a local self-government unit, or an institution, company or another legal person whose majority

shareholder is the state or which is entirely or predominantly funded from public revenue may not advertise in or use other services of the media not entered in the Register.

## **9. Media concentration**

The Law forbids media concentration that would lead to merging control:

- over 50 % of sold or in another way realised newspaper circulation on the territory of the Republic of Serbia in the calendar year preceding the year of merging;
- over media with more than 35% of ratings in the total rating of radio and television programs within their zone of coverage in the calendar year preceding the year of merging.

This does not exclude the application of the law that governs the protection of competition in a manner that forbids media concentrations that do not exceed the above stated limits if they would significantly limit, violate or prevent competition in the market of the Republic of Serbia or part of it, if this limitation, violation or prevention would be a result of the occurrence or strengthening of a predominant influence.

## **10. Publishing Information in Connection with Criminal Procedure**

The Law prescribes that the information from ongoing criminal procedure may be published only:

- if presented on the main hearing, or
- if received or may have been obtained from the public authority on the basis of the law governing the access to the information of public importance.

## **11. The right to authenticity**

Along with the right to dignity, the right to authenticity is also protected. Publishing information that portrays a person untruly by assigning him/her features or characteristics that he/she does not have or denying him/her features or characteristics that he/she does have is not allowed unless the interest for publishing information prevails over the interest of the protection of the right to authenticity, and particularly if it does not contribute to the public debate on an



occurrence, an event or a person that the information refers to. However, depicting a person in caricature, satire, collage or other similar form shall not be deemed the violation of dignity or the right to authenticity.

## **12. Joint liability**

Joint liability of a journalist, editor-in-chief and publisher with a journalist, editor-in-chief and publisher of another medium is explicitly excluded even in the cases when the same information is published by two media.

## **13. New and more precisely defined grounds for the exclusion of liability for compensatory damages**

In addition to the existing grounds for the exclusion of liability for compensatory damage, such as in the cases when untrue or incomplete information was accurately conveyed from a public parliamentary debate or a public debate in parliamentary body or from a court proceedings, the Law also prescribes new grounds for the exclusion of liability:

- when the information was accurately conveyed from a public gathering and a journalist acted with due diligence, and
- when the information was published in the live programme broadcast and a journalist acted with due diligence.

The old grounds for the exclusion of liability for compensatory damages that caused the most problems in practice – accurately conveyed information from a document of a responsible public body – is now more precisely defined. A journalist, an editor-in-chief and a publisher shall not be liable for damage if the information is contained in a document of a public body to which the law governing free access to information of public importance is enforced to, and the public has a reasonable interest to have a knowledge about the information.

## **14. New criteria for deciding on the amount of compensatory damages**

When deciding on the amount of compensatory damages, the court shall now particularly take into account:

- if a plaintiff has tried to decrease the damage by other means of legal protection in accordance with the provisions of the Law on Public Information and Media;
- if a defendant obstructed the plaintiff to decrease the damage by publishing reply, correction or other information on the basis of court ruling.

# THE LAW ON ELECTRONIC MEDIA

The Law on Electronic Media is harmonized with the EU Audiovisual Media Services Directive. The fact entails a series of important differences compared to the earlier Law on Broadcasting.

## 1. The Law on Electronic Media regulates all audiovisual media services

Audiovisual media services are regulated by the new Law regardless of the means of their provision. This is an important difference compared to the Law on Broadcasting, the focus of which was on analogue, terrestrial television broadcasting.

What are audiovisual media services?

These are services providing audiovisual programme content to an unlimited number of users via electronic communication networks under the editorial responsibility of the service provider, in the form of television broadcast, on-demand audiovisual media service, as well as audiovisual commercial communication.

## 2. Different levels of regulation, based on different capability of users to influence service content

The Law on Electronic Media differentiates between two types of services:

- television broadcast (linear audiovisual media service) is an audiovisual media service which a provider of audiovisual media services provides for simultaneous viewing of the programme based on the programme schedule, and
- on-demand audiovisual media service (non-linear audiovisual media service), as an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at their individual request on the basis of a catalogue of programmes selected by the media service provider.

Based on this difference, the Law on Electronic Media prescribes basic rules pertaining to all audiovisual media services, and a set of stricter rules pertaining, among other, to television advertising and the protection of minors, related only to linear audiovisual media services.

### **3. New regulatory body**

In lieu of the Republic Broadcasting Agency, the Law establishes the new regulator – the Regulatory Body for Electronic Media, as an independent regulatory organization. The list of authorized nominators of the members of the new regulator’s Council is somewhat changed. It now comprises:

- a competent committee of the Parliament (nominates candidates for two Council members);
- a competent committee of the Parliament of the Autonomous Province of Vojvodina;
- universities accredited in the Republic of Serbia;
- associations of electronic media publishers;
- professional associations of film, stage and theatre artists and professional associations of composers;
- associations dealing with freedom of expression and the protection of children;
- national councils of national minorities;
- churches and religious communities.

However, the most important changes pertain to:

- the broader scope of work of the new regulator compared to the former Republic Broadcasting Agency, and
- improvement of the publicity of its work.

The Law now contains an exhaustive list of acts, information and data that the regulator is obliged to publish; it defines the minimum content of annual reports that this body submits to the National Parliament; it establishes the obligation of conducting public debates in the preparation of all bylaws directly related to media service providers.

### **4. Strategy for the development of the media service of radio and audiovisual media services**

The regulator does not adopt the strategy for the development any longer, as was the case in the Law on Broadcasting, but it merely defines the Proposal of the strategy, while the strategy is adopted by the Government of the Republic of Serbia. The regulatory body is obliged to perform analysis of the relevant media market and conduct research of the needs of the users of media services, as well as to, protecting the interests of the users, uses the results of such analyses as the basis for drafting the strategy Proposal. The strategy, the Proposal of which is subject to public hearing, shall be used to determine, depending on the technical capabilities, analysis of the market and needs of the population, type of media content of providers in each broadcasting area, as well as other criteria by which to announce a public competition.

## **5. New bylaws adopted by the regulator - rulebooks, instructions and recommendations**

There are no more binding instructions and general binding instructions. New bylaws adopted by the regulator are rulebooks, instructions and recommendations:

- The rulebook is used by the Regulator to detail specific provisions of the law.
- The Instruction governs the manner in which the Regulator shall implement provisions of the Law or regulations relating to the obligations related to the programme content.
- The Regulator shall make a recommendation in the event that there is an uneven permitted practice of media service providers, in order to influence the consistency of the practice, if it is in the interest of users of media services to introduce a consistent approach.

## **6. Temporary ban on publication of the programme content**

The regulator has a new measure at its disposal – the possibility to temporarily ban publication of programme content. A temporary ban on publication of programme content shall be imposed on media service providers who perform a particularly grave breach of the obligations established by the Law. It shall be imposed for whole, or parts of, the programme content whose provision caused the violation, for up to 30 days.

## **7. The actual cost of regulation as a basis for determining the amount of payment for the right to provide media services**

The payment for the right to provide media services shall be based on the actual costs of regulation under the principle of proportionality, taking into account in particular the:

- Potential number of viewers or listeners;
- type of electronic media (radio, TV, other audiovisual media services);
- way of providing media services (linear or on-demand);
- type of media services by content (general media services, specialized media services);
- type of procedure in which the license is issued;
- programme concept of the service provider, i.e. the origin and type of content being provided.

The media service provider of the public broadcaster and the media service provider of the civil sector are exempt from the media service provision fee.

## **8. Protecting the rights of people with disabilities**

The Law prescribes the obligation for media service providers to make their programmes and their content accessible to people with hearing and vision impairments, in accordance with the media service providers' financial and technical capabilities, and authorizes the regulator to urge such practice.

## **9. New rules for audiovisual commercial communication**

The Law defines audiovisual commercial communication as images (with or without sound) intended for direct or indirect recommending of goods, services, or features of a legal or natural person in connection with the activities which that person performs for generating profit, in exchange for money or other compensation or for self-promotional purposes (for example television advertising, sponsorship, teleshopping and product placement).

The Law on Electronic Media regulates television advertising, sponsorship, teleshopping and product placement differently than used to be the case previously.

## **10. Obligatory proportions of European works, European works by independent producers and own production**

A television broadcaster shall ensure that European audiovisual works account for more than 50 % of the total annual broadcast programming, and that audiovisual works by independent producers account for at least 10 % of the total annual broadcast programme. A media service provider shall also ensure that its own production accounts for at least 25 % of its annual broadcast programme.

## **11. Licenses and authorizations for media service provision**

Along with envisaging different levels of regulation, based on different capabilities of users to influence the service content, the Law envisages different procedures for issuing of licenses, taking into account another matter – whether limited resources are used for service provision or not. On-demand media services are provided based on the authorization for media service provision, and linear media services – based on a license. A license is issued through a process of public competition for terrestrial transmission, digital or analogue, which transmission entails the use of radio frequencies, as a limited resource.

## **12. Obligation of transfer (must carry)**

The Regulator periodically, at least once every three years, in the national, provincial, or specific geographic relevant market (in terms of regulations governing the protection of competition) shall establish a list of radio or television programmes that shall be transmitted by operators whose electronic communications network for distribution and broadcast media content is used by a significant number of end users as the sole or primary method for receiving media content, in order to protect the public interest and media pluralism.

In compiling this list the Regulator shall observe the principle of proportionality and transparency, bearing in mind that the obligations prescribed for the Operator shall not be unreasonable.

Request for determination of the obligation of broadcast, together with the list, shall be submitted to the Regulatory body in charge of electronic communications.

## **Summary of Key Novelties in the Law on Public Information and Media and the Law on Electronic Media**

Publisher: Association of Independent Electronic Media (ANEM)

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The Summary was produced by the ANEM legal team from the Law Office "Živković & Samardžić", Belgrade

Prepared and edited by: ANEM

Free electronic edition

November 2014, Belgrade