

Promoting, Shaping
and Upholding Internet
Freedoms Project

ANALYSIS OF THE LEGAL FRAMEWORKS RELATED TO MEDIA

Author:
Dejan Georgievski

МЕТАМОРФОЗИС 
Фондација за интернет и општество



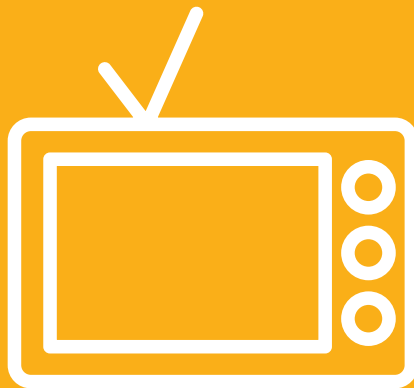
INTRODUCTION

This analysis aims to provide an overview of the situations with the legal frameworks related to media in the Republic of Macedonia in the past and current period as well. It is developed as part of the activities of the Promoting, Shaping and Upholding Internet Freedoms Project implemented by Foundation for Internet and Society, Metamorphosis, and supported by the Association for Progressive Communications (APC).

Main objectives of the Promoting, Shaping and Upholding Internet Freedoms Project are: promoting knowledge and understanding of situation related to the protection of the fundamental human rights online in the Republic of Macedonia, CSO and media capacity building, facilitating the process of sharing knowledge and good practices among citizens, CSOs and media.

The content of the paper is the sole responsibility of the authors and in no way reflects the views of the Foundation for Internet and Society, Metamorphosis, and Association for Progressive Communications (APC).

LEGAL FRAMEWORKS FOR REGULATING THE MEDIA





LEGAL FRAMEWORKS FOR REGULATING THE MEDIA

The response to the issue of regulating online reporting depends on the approach to defining the online media. Whether it will pertain to the work of the news websites (most commonly referred to as “Internet portals”, a term we are going to use in this report), above all? Whether, on the other hand, we will perceive the Internet as a media outlet in itself, since the definition of a media outlet as means of mass communication, means of transfer of signals, or means of keeping information and data applies to it fully.

Should we accept the second approach, we must conclude that issues pertaining to the infrastructure are subject to higher and stricter regulation while issues regarding the structure are regulated but at a low level. Generally speaking, the infrastructural issues pertain to the telecommunication means and channels used by the Internet for distribution, as well as the distribution of Internet domains and URL addresses.

...7

The issues of access, distribution, online behavior, or content remain unregulated.

Should we accept the first approach, i.e., if the focus is laid on the “Internet portals” as news and information media outlets viewed as a journalistic product in the sphere of the public interest, i.e., what in English is called “hard news”. In addition, we must differentiate the news websites that are extensions of existing, mainstream media, and the news websites that exist and publish online only, without being backed up by mainstream media (radio stations, TV stations, print newspapers).

Following the public’s perception about the role of “fake news” in the 2016 US Presidential Election and the 2016 United Kingdom European Union membership referendum, the so-called Brexit, it is evident that there is a

need for somehow regulating the contents of the online reporting, primarily the responsibility of the new actors that function as news and information aggregators and distributors.

In Macedonian experiences, similar calls for putting the online media in order appeared after the emergence of websites that served, above all, to support the propaganda activities of political parties (particularly ones in the previous government) and the promotion of their policies or concealing the abuse of office and budget.

This text provides an overview of the various documents and legislation, both international and national, in the area of media, with a focus on online media and their work and functioning. The overview consists of documents from the system of the United Nations (UN), Council of Europe (CE), European Union (EU), and other international organizations as well as the national media legislation of the Republic of Macedonia.

1.1 INTERNATIONAL LEGAL FRAMEWORKS RELATED TO THE AREA

From the point of view of the international legal frameworks in the area of media, the one system that has undergone changes during the period of publishing the 2017 report is the system of the European Union (EU), while the frameworks that are part of the United Nations (UN) and the Council of Europe (CE) were not altered.

WITHIN THE SYSTEM OF THE EUROPEAN UNION (EU)

Regarding the system of the European Union, the process of reviewing and amending the EU Audiovisual Media Services Directive (AVMSD) has been completed in 2018. The Council of the EU adopted the new Directive on 6 November, and it entered into force on 18 December 2018.

The revision of the AVMSD was motivated, above all, by the technological advancement in the digital era that leads to an increasing convergence of the television, online services, and the emergence of new services as well as the change of audience's habit for access to audiovisual content, particularly the youth.

As per the television services, the Directive prescribes further precision of the rules on territorial jurisdiction by strengthening the principle of "country of origin"; new rules on "on-demand" services; new rules on allowed advertising time; increased protection of minors; tackling hate speech; better promotion of European audiovisual works; and rules on strengthening the independence of regulatory authorities.

Of particular importance are novelties regarding the increased scope of the Directive, which from now on will cover the video-sharing platforms like YouTube, Dailymotion, but also the audiovisual content shared on social media like Facebook.

With regard to the need for new rules, the Directive defines the video-sharing platforms as commercial services for audience whose main objective is to offer the public programs and content created by users for the purpose

of informing, entertaining and educating; a service that is available via electronic communication networks; and where content is organized in a manner determined by the service provider.

Though the Directive does not cover the online editions of daily newspapers, still separate parts of their websites that offer audiovisual programs or content created by users will be deemed video-sharing platforms in terms of the EU Audiovisual Media Services Directive (AVMSD). Occasional use of video content on websites, blogs, and news websites does not fall under the Directive's scope.

In practice, the alterations would mean that states will ensure that video-sharing platforms apply measures for protecting minors from detrimental content by limiting the access of minors to such content, and will protect the public from calls inciting violence or hatred and content that represents crime (public calls on terrorism, child pornography, racism, and xenophobia).

The Directive encourages coregulation in the implementation of the new measures. Further, the implementation of measures must comply with the EU E-Commerce Directive.

EU member states are supposed to implement the Directive and harmonize the national legislation within 21 months. On the other hand, Macedonia, as an EU candidate state, is obligated to harmonize its legislation with the European *acquis communautaire* prior to accessing the EU. Therefore, integration of the novelties of the EU Audiovisual Media Services Directive (AVMSD) in the Macedonian legislation as soon as possible, as part of the ongoing reforms in the media sector, would be wise and desirable.

1.2 LEGAL FRAMEWORKS IN THE REPUBLIC OF MACEDONIA

LAW ON AUDIO AND AUDIOVISUAL MEDIA SERVICES

The Parliament of the Republic of Macedonia enacted the Bill on Amending the Law on Audio and Audiovisual Media Services on 28 December 2018. The Law was published in the Official Gazette of the RM, no. 247, as of 31 December 2018.

The Law Amending the Law on Audio and Audiovisual Media Services was enacted after a long delay of the procedure caused by political stakeholders' and decision makers' shift of focus to the Prespa Agreement, i.e., the resolution of the long-standing name dispute Macedonia had with the Republic of Greece. During that process, there have been several amendments to the original bill that we are going to refer to below.

As it was envisaged, the main amendments are in terms of the election of members of the Council of the Agency for Audio and Audiovisual Media Services, and the Program Council of the Macedonian Radio Television. It has to be noted that when it comes to these two bodies, there have been certain deviations from the primary goal of electing small expert bodies by eliminating the system of authorized proponents. But just like the media community warned, up until the moment of enacting the Law, the approach was altered, and we ended up with a system of selection that substituted the authorized proponents with obligatory letters of support, which is deemed equivalent to the system that proved to be vulnerable to political pressures and had to be replaced.

The provision that abolished the possibility for the governmental and public institutions as well as enterprises, i.e., all budget beneficiaries, including the local self-government units to plan a promotional budget for buying advertising time slots in broadcasters' programs, stirred up a great deal of attention. Criticism is mainly directed at that decision since plenty of the broadcasting media - the local and regional broadcasters, above all - have no other sources of funding except for the money used by the local

self-government units for buying advertising time slots for promoting their activities. Additionally, many local self-government units used the deadline for harmonizing with the provisions of the Law on Amending the Law on Audio and Audiovisual Media Services to conclude new annual contracts with the local and regional broadcasters that cannot be terminated by the Law.

Another provision stirred up attention too, and that is the newly introduced responsibility - moral, material and criminal - of the operators of public electronic communications networks regarding programs broadcasted by foreign stations and retransmitted by these operators, i.e., the need for obtaining the rights for airing the said programs on Macedonian territory. Despite being unjust, since the operators of public electronic communications network do not play any role whatsoever in the chain of selling and buying rights for broadcasting programs on TV, the implementation of these provisions (article 35 of the Law on Amending the Law on Audio and Audiovisual Media Services) will also be difficult in practice. Moreover, such provisions seem to run counter to the Directive on Satellite Broadcasting and Cable Retransmission (93/83/EEC) according to which the broadcaster that has acquired the rights for broadcasting a program in one country is also considered that has acquired the rights for all country in the common market in case of satellite retransmission. Although Macedonian hasn't harmonized the legislation with that Directive, it is our responsibility as an EU member state to do so, which is similar to the new Audiovisual Media Services Directive.

However, it must be stated that the past amendments to the media legislation in the area of audiovisual media services are insufficient. New policies and regulatory solutions are needed in multiple areas of the audiovisual media services. Some alterations are dictated by external factors, i.e., novelties in EU's Audiovisual Media Services Directive. Prior to anything else, Macedonia will have to adopt a proper national media strategy, which will provide the solutions in terms of policies and regulation (self-regulation).

LAW ON MEDIA

The Law on Media remains unamended, and the media community agrees that it has to remain so. But on several occasions, the government bodies have organized meetings with interested parties, primarily to consider whether and to what extent should the online media be represented in the media legislation. Although the dominant stance is that they ought to be left out of the media regulation, still the media community is becoming more vocal that they have to comply with the same obligations as print media do - formal registration, publication of an impressum, and publication of annual reports on financial results.

CASE LAW

With regard to the case law and the inconsistent treatment of online media in courtrooms, particularly in insult and defamation proceedings, the Supreme Court is still expected to respond to the initiatives, or upon its own initiative, to adopt a primary stance and opinion on the treatment of media that publish solely online and their journalists. That is, some courts consider them as media and journalists while others do not. This has to stop; otherwise, there might be severe consequences, especially when ruling on compensation for non-material damage.

ONGOING REFORMS





ONGOING REFORMS

As we have said already, the issue of online media and the need for regulating at least some aspects of their work appears among the media and general public periodically.

After the long talks with the print media, represented by the newly formed Association of Print Media, the Government made a decision to establish a system of subsidies, i.e., to cover 50 percent of the costs for printing and distribution of print media. Print media in languages of non-majority communities will receive an additional 20 percent of the costs for printing and distribution. Also, the Government left the print media to define the conditions and criteria for receiving that kind of aid themselves. Every type of aid for print media is welcome, but knowing their situation, not only in Macedonia but also worldwide, several open issues and problems regarding that program must be mentioned. First, such direct subsidies program, combined with the fact that indirect subsidies in the form of a preferential tax rate, and, above all, the mandatory announcements, are the primary funding sources of daily newspapers. The participation in the sale of a commercial advertising time slot forms an insignificant part of the total income, which means that the press is left to rely on government's will and availability of public funds to survive.

...17

We deem that the focus of the potential investment of public money in the media sphere ought to be laid on securing the survival of quality journalism, regardless of the publishing platform, and not just on a single platform, which seems that is in its final stage of existence.

Additionally, it seems that the Government has started talks for establishing a similar public fund for the electronic (broadcasting) media. We recommend any proposal to be a subject to a broader public discussion that will include as many stakeholders and representatives of the public (expert and general) as possible instead of having direct negotiations only with direct stakeholders and interested representatives of broadcasting media.

CONCLUSIONS AND RECOMMENDATIONS





CONCLUSIONS AND RECOMMENDATIONS

Talks about the potential regulation of certain aspects of the business activities and the status of news websites and online media form part of the public discussion on the reforms in the media sector. Various aspects of that issue require due attention.

The global trends, especially the intensified debate in Europe and EU member states on the need for regulating big tech companies that dominate the content distribution online, will be of impactful importance regarding the decision whether and which part of their functioning to be regulated.

...21

Considering the reform progress before and after the enactment of the Law Amending the Law on Audio and Audiovisual Media Reforms, we ought to stress the need for the reforms to follow logic and timeline of some kind. Macedonia never adopted one general media strategy that will incorporate all parts of the media sector - broadcasting activity, press, Internet - will define the expectations and needs, and will serve as a baseline for adopting adequate policies and measures that would lead to accomplishing the set strategic goals.

Hence, instead of focusing on individual burning issues, policy, and decision makers, in our case, the executive branch, should concentrate on drafting and adopting such general media strategy. Naturally, that must be a process that will include an all-embracing public discussion among all interested parties, the media community, expert and general public. Without a strategy of this sort, it is likely that the issue with the

reform in the media sectors, including the issue with informing online, will be curtailed to a series of small interventions in specific areas of crisis, which will not provide a substantial contribution to the reforms that ought to produce open, free, pluralistic, and sustainable media sector.

