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**FIRST STEPS OF INTERNET REGULATION IN LITHUANIA**

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There is uniform agreement among legislators and academia internationally that the Internet provides unmatched milieu for nourishing the fundamental values of the democratic society, such as freedom of speech or freedom of opinion. On the other hands, the Internet is increasingly becoming means for unlawful activities and a challenge to democratic rights such as privacy, provide new environment for conventional crime and modern forms thereof. The governments worldwide try to address the is dark side of the Internet, however the convenient traditional regulations seem to bring the side effects undermining the same values, which make the Internet so important for democratic society.

In a young democracy, such as Lithuania, the Internet provides unique tools for encouraging pluralism, increasing transparency and efficiency of the public service, facilitating access and exchange of information, etc. Lithuania also faces increasing need for regulation of the Internet, along with noticeable unjust or even criminal usage of the Internet, e.g. for facilitating human trafficking, distribution of child pornography or intellectual property infringements. Fast paced EU enlargement, also requires leapfrog into modern knowledge society, which may be assisted by up to date regulatory means.

In addition to common difficulties of Internet regulation, Lithuania and other Central and Eastern European countries face the lack of long standing democratic traditions, strong etatistic sympathies and inadequacy of societal apprehension, thus, making them particularly vulnerable to the said side effects of Internet regulation. Difficulty of dealing with global aspects of the Internet is also further aggravates the uneasy task – although the global nature of the Internet may dampen some negative effects of national regulation, it may as well negate the regulations serving the common good.

The challenges of Internet regulation recently were rather courageously met by the Lithuanian government through a series of enactments. Three late initiatives of the Lithuanian government shall be mentioned in particular:

- 1) 5 July 2002 Law on Telecommunications of the Republic of Lithuania No. IX-1053;
- 2) 10 September 2002 Law on Protection of Minors from Harmful Impact of Public Information No. IX-1067;
- 3) 5 March 2003 Resolution No.290 of the Government of the Republic of Lithuania “On procedures for control of harmful information and distribution of restricted information in publicly accessible computer networks”.

The above regulations also significantly rely on the 2 July 1996 Law on Information of the Public of the Republic of Lithuania, which had 15 revisions since enactment, and latest major overhaul in 2000, as well as cornerstones of the Lithuanian legal system in the form of Civil Code, Criminal Code and Code of Administrative Violations.

As it was mentioned, there is little argument about the need to regulate Internet in countries such as Lithuania. In 2000-2003 Lithuania has seen explosive growth of the Internet penetration, with the annual Internet user's growth of ~8% and current Internet penetration at ~25%. Although there is little reliable data, Internet misuse has also been rising significantly in Lithuania. Especially notable is Internet use as the media for intellectual property piracy, spread of racist and xenophobic ideas, privacy or simply fraud. More latent ways of internet misuse for facilitating human trafficking and child pornography are also present. Recent sociological research also shows little trust of Lithuanian public in the Internet products and services. All these circumstances are not unique to Lithuania and all speak for the need of certain internet regulation.

Specific issues important in Internet regulation in Lithuania are internet industry features, as well as the need to protect Lithuanian cultural identity on the Internet. Lithuanian internet industry may be in its relative youth, lacks social responsibility, unity and professional consciousness. These issues demonstrate themselves through absence of any bodies, which would unite the industry. As a result there is no common policies on privacy issues and user content, no self-regulation or content-rating systems, little co-ordination on unwelcome content, etc. National TLD administrator is hardly an example for the internet industry, with its notably authoritarianistic approach to domain name issues, as well as lack on any democratic and open governance of the TLD itself. This rather unsurprisingly leads to the lack of public trust in the internet and internet industry.

In this situation, the government may be preferred as a trailblazer of internet regulation, and is the only one capable of adopting industry-wide and mandatory regulations, supported by the governmental muscle. This argument for governmental involvement shall not however be understood in a way, which would encourage the government to ignore the value of self-regulation on the internet industry. Quite the opposite, it is very important that the government shall introduce regulations, which would encourage the organization of the internet industry, as well as self-regulation thereof. These objectives and means are supported in the existing EU documents, such as 25 January 1999 Decision No 276/1999/EC of the European Parliament and the Council on adopting a multiannual Community action plan on promoting safer use of the Internet by combating illegal and harmful content on global networks.

It is also rather obvious that above mentioned Lithuanian regulations are very recent, hence there is very little practice and empirical data of their application and effect. Short time in power does not allow full assessment of the advantages and flaws thereof. Notwithstanding of this, certain inherent flaws, already made a demonstration of themselves, or may be identified when comparing the above regulation with regional and international experiences in the field.

The Law on Telecommunications of the Republic of Lithuania, along to regulations on modern telecommunications framework, in Article 57 of the law contains provisions requiring telecommunication operators and service providers to implement surveillance and recording of transmissions through common access telecommunications networks, and to provide them to criminal investigator and other authorities according to the procedures established by the Government. Already prior

to coming into force of these provisions (which was set for 1 January 2003), these provisions have failed to survive the constitutionality challenge in the 19 September 2002 Decision of the Constitutional Court of the Republic of Lithuania. The Constitutional Court found that such provision is an unconstitutional invasion into privacy of the users of telecommunications services.

Law on Protection of Minors from Harmful Impact of Public Information attempts to define information, which is considered harmful to minors, as well as establish the prohibitions and restrictions for distribution of such information. The law embodying these provisions was passed only by overcoming the presidential veto. Key definitions on which the law relies remain vague and inconsistent, thus jeopardizing the benefits of this law. In particular this affects the definition of what is harmful information. An example of harmful information classified so in this law is erotica, as well as information causing fear and horror. Proposed definition relies on too much subjective considerations and appreciations in order to be effective.

The Resolution of the Government of the Republic of Lithuania “On procedures for control of harmful information and distribution of restricted information in publicly accessible computer networks” is designed as a reference of enforcement means for implementation of the content-control of the Internet. First of all it is not clear why such important issues were regulated in the resolution of the executive branch of the government, as opposed to the legislator. This governmental initiative clearly invades the territory of parliamentary jurisdiction, and hence questionable *per se*.

The resolution attempts to regulate publishing on the Internet (embracing individual acts of putting information on the Internet), and effectively extends the applicability of the current Lithuanian media laws to the Internet. Although the resolution recites European Parliament and European Council Regulation 1999/276/EC as the basis for this resolution, it hardly even mentions self-regulation and public involvement as the means for internet regulation, there are no means to encourage the self-regulation of the industry, as well as public involvement, as they are prioritized in the said European Parliament and European Council Regulation 1999/276/EC.

The key definitions of the resolution, in particular the definition of the electronic media, fail to recognize the actual situation of interned media, where traditional media entities are a web minority in comparison to information web pages operated by internet-only entities and independent individuals. Electronic media is defined as “web pages of media entities, providing public information, which is otherwise available by traditional means”, however, “electronic media may be established by any legal or natural person, under procedure established in the law, willing to or factually involved in media activities on the Internet”. Private web pages, which contain information on their principals, their data, works, products and services, etc., are not electronic media. It is unclear though whether private web pages containing information irrelevant to their owners, and especially web pages containing public forums, fall under the electronic media rules or not. This lack of clear separating line between private web pages and electronic media stresses most of the provisions of the resolution. Although electronic media is mandated to follow the rules of the media ethics, it is not acknowledged that some operators of Internet pages, especially private individuals, are not always governed by such professional ethics.

Definitions of restricted and harmful information are not provided in the resolution, and are invoked from the Law on Protection of Minors from Harmful Impact of Public Information, and Law on Information of the Public. The general underlining principles of the resolution is prohibition of publication and/or distribution of restricted information on publicly accessible computer networks (i.e. the internet), as well as prohibition of free accessibility of harmful information.

The resolution further deals with establishing the instant mandatory content obligations for the legal entities – web-page operators, which have to identify themselves clearly on the title page of their Internet pages, as well as liability principles for the internet content. As a general rule the operator of the internet page is responsible for the contents thereof. Hosting services provider is however responsible for the content of the hosted content, in case or after they learn on the existence of the illicit content. The liability of non-profession operators of internet pages, containing third party content (e.g. public forums) is not specifically regulated, hence may cause improper treatment of such operators.

The resolution again attempts to introduce the provisions requiring hosting service providers to log operations with data and content hosted in their servers and to provide them, along with the personal data of the individual and entities using the hosting services, to criminal investigator and other authorities free of charge. Although the obligation to provide logs is limited to logs saved for normal business operations, it is still difficult to comprehend the democratic reasoning of these requirements, especially in view of the constitutional failure of similar provisions in Article 57 of the Law on Telecommunications of the Republic of Lithuania.

Rating of information according to the resolution is suggested to be done by the Ministry of Culture. General public is not suggested to be involved in rating of information, and assessment of alleged violations. Investigation of violations is vested in the Ministry of Interior, which shall also maintain e-mail and hotline for reporting such violations. Monitoring of the fulfillment of the above surveyed provisions is assigned to the Information Society Development Committee at the Government of the Republic of Lithuania, which shall also take further means for development of industry and internet users associations, codes of conduct, filtering means. Thus, industry and internet public are left aside in the current resolution, however at least their involvement is not ruled out in the future.

The resolution does not provide any remedies to deal with the violation of the new rules, except for demands to block access to internet service providers and hosting service providers. To a certain extent the government may rely on the remedies provided in the Law on Information of the Public, as well as other laws (Criminal Code and Code of Administrative Violations). Unfortunately, many of such remedies are impractical and or even hardly applicable to electronic media, and especially to individuals. Finally and quite naturally the resolution does not clarify on any enforcement means outside the reach of Lithuanian jurisdiction.

Just a brief insight into current Lithuanian Internet regulation proposals suggests tendencies of excessive and inconsistent regulation, which is already found to compromise democratic values. Alternatives to governmental regulation, such as self-regulation of the industry, also are not yet recognized as the means by the Lithuanian

government. Overall analysis of the above regulations leaves a feeling of rather desperate attempt to stretch traditional media rules to the internet. This impression becomes especially viable in view of the global nature of internet. Already now, many web sites providing harmful and prohibited content are hosted outside of Lithuania. Moreover, the prohibitions formalized in the said governmental resolutions were effectively present through moral settings of most of Lithuanian internet service providers.

Above findings may suggest that regulations as they stand currently, may not serve the desired purpose. Regulations may need to be reworked, and designed not to directly regulate the internet content but to provide a legal backing for the self-regulation as the means for the purpose. It may also be suggested that broader regional/international framework is needed in order to balance the regulation and protection of the democratic values on the Internet. Such framework may assist national governments in shaping democratic regulations for the digital domain, i.e. provide model for national Internet regulation, as well as ensure certain cross-border uniformity, lastly, facilitate the enforcement, extending the capabilities for addressing the global aspects of the Internet. Existing regional initiatives do not provide sufficient framework and are not fully comprehended by the national governments, especially in young democratic countries.

It is important to acknowledge, that above conclusions on current regulatory attempts seem to be not unique to Lithuania. Other countries in Central and Eastern Europe, and even some of the EU countries, are undergoing similar experiences. Also, it may be increasingly important to address these issues, in view of the pending enlargement of the EU.