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ARMENIA'S NEW MEDIA CALL FOR NEW APPROACHES TO THEIR REGULATION

This article is about the current status and the most recent trends in the development of mass media legislation in Armenia. The "new media" is a concept describing a variety of mass communication media brought forth by rapid advance of information and communication technologies. The most common new media are Internet newspapers (electronic duplicates of print publications and media outlets produced exclusively in electronic form), web content created by individuals (personal websites and blogs), online radio and television (webcasting).

New media are more difficult to regulate compared with traditional ones for the following reasons:

- a) New media are available worldwide over large territories and usually accessible to unlimited number of users in different countries;
- b) They are interactive. Some of the new media have two-way communication tools and provide for "many-to-many" relationships.

The above-mentioned characteristics of new media call for new regulation mechanisms based on widely (internationally) accepted legal standards and approaches of which there are not too many today. Even the integrated legislative system of the European Union and the Council of Europe is definitely short of provisions defining common approaches to the regulation of new media.

One of the important international documents related to new media is the Council of Europe Declaration on freedom of communication on Internet, which defines general principles of the regulation of Internet content and approaches to the regulation of relevant telecommunication services. I shall try to draw comparisons between the ways these matters are approached by Armenian legislation and by the Declaration.

Principle 1: Internet Content Rules

"Member states shall not subject content on the Internet to restrictions which go further than those applied to other means of content delivery."

According to the Armenian Law on Mass Media words "mass media products" have the following meaning:

... a media product disseminated by or without subscription, on a paid basis or free of charge, including:

...

c) mass communication resources that could be accessible through public telecommunication network (network media product) for undefined number of persons, at a permanent address, irrespective of the frequency of updates, the duration of information maintenance or other criteria.

It is noteworthy that in the context of the Armenian law on Mass Communication the meaning of words "media communication" is defined as "information, accessible to an unlimited number of persons, the main purpose of which is to ensure a person's Constitutional right to seek, receive and disseminate information or ideas freely regardless of state boundaries."

In other words, media information is the information intended specifically for communication to the public. Apparently, the definition is vague and could include individuals' web pages and official websites of various organizations – governmental, non-governmental and private.

Armenian lawmakers tried to adopt the parallel regulation of mass media (regulation of content instead of the regulation of sources) in information society, but stopped halfway. Though the new Mass Media law contains some elements of parallel regulation it also contains some traditional approaches towards the regulation of media products such as mandatory publication of "imprint data" and reporting on funding sources (the latter applies to "network media" as well).

CE Declaration and relevant Armenian legislation

Principle 2: Self-regulation or co-regulation

"Member states shall encourage self-regulation or co-regulation regarding content disseminated on the Internet."

In most of post-Soviet countries self-regulation of mass media is not as common as in western democracies, and state regulation remains the principal means of achieving a balance between the freedom of media and other fundamental public values. The advent of new media has actuated self-regulation mechanisms that have always offered effective solutions to cyberspace problems. The declaration calls upon member states to encourage self-regulation of Internet content in general and new media content in particular. Unfortunately, most of post-Soviet governments have neither experience, nor traditions of promoting self-regulation and there is a pressing need for relevant guidelines. Considering the global nature of Internet, inter-regional and international cooperation in this field is very important. In Armenian media the practice of self-regulation is far from common, and new media are no exception.

Most of institutionalized Internet outlets follow the general rules applicable to mass media concerning the publication of "imprint data" and the coverage of elections. Some websites contain no such information contrary to the Mass Media Law requirements.

Principle 3: Absence of prior state control

"Public authorities shall not, through general blocking or filtering measures, deny access by the public to information and other communication on the Internet, regardless of frontiers. This does not prevent the installation of filters for the protection of minors, in particular in places accessible to them, such as schools or libraries."

"Provided that the safeguards of Article 10, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms are respected, measures may be taken to enforce the removal of clearly identifiable Internet content or, alternatively, the blockage of access to it, if the competent national authorities have taken a provisional or final decision on its illegality."

The third principle is very important in terms of the regulation of relationships between the new media owners/publishers and Internet and hosting service providers. In some countries service providers block access to or remove resources that potentially could be determined as illegal to avoid likely problems. Sometimes authorities claim that Internet content is different from that of traditional media and could be blocked or removed arbitrarily.

Principle 4: Removing barriers in individuals' way to information society

"Member states should foster and encourage access for all to Internet communication and information services on a non-discriminatory basis at an affordable price. Furthermore, the active participation of the public, for example by setting up and running individual websites, should not be subject to any licensing or other requirements having a similar effect."

The second of the above provisions is particularly important in terms of ensuring individuals' rights to disseminate information and should be taken into account by lawmakers when drafting regulations related to new communication channels and new media. Mistakes often happen when policy makers try to apply traditional legal formulas to new communication media.

Armenian legislation is a case in point. In compliance with formal requirements imposed on conventional media, personal websites ought to carry "imprint data" and specify sources of funding (income and expenditures related to the posting of the website). The requirement that the owner of a website be identified violates the right to privacy and personal data protection.

Principle 5: Freedom to provide services via the Internet

"The provision of services via the Internet should not be made subject to specific authorization schemes on the sole grounds of the means of transmission used."

Member states should seek measures to promote a pluralistic offer of services via the Internet which caters to the different needs of users and social groups. Service providers should be allowed to operate in a regulatory framework which guarantees them non-discriminatory access to national and international telecommunication networks."

Principle 7: Anonymity

"In order to ensure protection against online surveillance and to enhance the free expression of information and ideas, member states should respect the will of users of the Internet not to disclose their identity. This does not prevent member states from taking measures and co-operating in order to trace those responsible for criminal acts, in accordance with national law, the Convention for the Protection of Human Rights and Fundamental Freedoms and other international agreements in the fields of justice and the police."

Although not directly linked with the new media, the provision in respect of anonymity is an important factor in promoting of information technologies. In the context of new media, non-disclosure of users' identity ensures their protection from abuse by both government authorities and private companies and rules out the possibility of resources visited by the users being tracked down.

Armenian legislation does not require service providers to identify users, but makes it incumbent on them to keep phone logs. The law on electronic communication prohibits disclosure of personal data and data transmitted through telecom operators systems unless requested to so by law enforcement bodies.

Conclusion

For all the progressive measures taken in compliance with the Council of Europe Declaration on Freedom of Communication on the Internet and in the spirit of the best international new media regulation practices, Armenian media legislation still retains some post-Soviet approaches to the regulation of mass media that are hopelessly out of date. However, an important step has been made by Armenian authorities towards the adoption of parallel regulation which, however, was partial and

incomplete. Traditional approaches prevail so far and it may be some time before they are phased out to give way to modern media self-regulation mechanisms.

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