

## **LEGAL AND ETHICAL ASPECTS OF SOCIAL MEDIA USER PROVISION OF INFORMATION TO THE PUBLIC REGULATION: THE VIEW OF MEDIA REGULATORY AND SELF-REGULATORY BODIES IN LITHUANIA<sup>2</sup>**

***Abstract.** Social media users are recognised to be a new actor in the field of public information. Their activities along with professional journalists' activities of providing information to the public differ. The changing field of public information and peculiarities of providing information to the public by social media users prompt scientific discussions on social media regulation in relation to information provision to the public.*

*The aim of the research is to determine the criteria for equating activities of information provision to the public by social media users with activities of public information professionals in the context of legal and ethical regulation of professional media. The research is carried out by analysing legal documents regulating the activities of Lithuanian media and social media, as well as decisions adopted by self-regulatory bodies and other institutions.*

*Having conducted the research, it was established that in Lithuania the criteria for equating SM users to journalists are the criteria of journalistic activity (functionality) and journalistic professionalism. For acknowledgment that SM users provide information to the public like journalists, criteria of information publicity, dissemination, accessibility, and possibility of information control are raised.*

**Key words:** social media, social media users, journalism, self-regulation, legal regulation, Lithuania

### **1. Introduction**

Researchers recognise social media (hereinafter – SM) as a new, distinctive part of the public information field (Kruse, Norris & Flinchum, 2018; Shirky, 2011; ect.). Activities of people on social media are defined as technology based social interaction, while the sharing of data, information, opinions (content) by individuals and communities acknowledges opportunities of SM in the area of provision of information to the public. It is also noticeable that SM activities in the public information field give rise to new phenomena defined in various terms describing the

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actions of SM users when providing information to the public: citizen journalism, community journalism, civic journalism, participatory journalism, etc. (Engelke, 2019; Roberts, 2019; etc.). These phenomena are characterised by the active role of SM users in the process of collecting, reporting, analysing, and disseminating news and other information. New terms have been coined to describe these SM users' activities: produsage and prosumption, which indicates their dualistic role in producing, using or consuming online content.

However, when comparing the context of SM and media, it is noted that providing information to the public differs in the media and SM: the number of topics covered simultaneously is greater on SM, its users decide on context, audience, purpose, and time of providing information. Peculiarities of information provision to the public on SM are also highlighted when comparing the activities of professional journalists on SM and information provision to the public by SM users: professionalism is frequently lacking when collecting information, the reliability of published information is not guaranteed, users publishing information may be biased, etc. Obvious recognition of differences in information provision to the public by the media and SM is accompanied by debates on the topic of regulating information provision to the public on SM.

Zankova & Dimitrov note that “respectively, the regulatory mechanisms that operate vis-a-vis social platforms should take into account their peculiarities and, at the same time, be adequate to the specific nature of the Internet” (2020:78). Therefore, when discussing SM regulation, various opinions are expressed about methods of regulation, different areas of regulation are emphasised, arguments are provided for special solutions and it is considered what regulation is purposeful (special or general). As regards SM regulation, both self-regulation and legal regulation is discussed, influence is assessed on dissemination of content when regulating the activities of SM platforms.

The aim of the research is to determine the criteria for equating the activities of providing information to the public by social media users to the activities of public information professionals in the context of legal and ethical regulation of professional media. The research is carried out by analysing legal documents regulating the activities of Lithuanian media and social media, as well as decisions adopted by self-regulatory bodies and other institutions.

To achieve the aim of the research, the first part of the study presents the theoretical approach and views of researchers towards SM regulation and regulation of providing information to the public on SM. The second part discusses regulations of providing information to the public by SM users in the context of Lithuania's ethical and legal standards: the Law on Provision of Information to the Public, the Code of Ethics in Providing Information to the Public, decisions adopted by the Ethics Commission for Public Information and by the Office of the Inspector of Journalist Ethics, as well as relevant court cases in Lithuania (2017-2021).

## 2. Regulation of providing information to the public by social media users: theoretical views

Development of various technologies, application of technological solutions for SM activities (e.g., automated decision-making in news dissemination, tools expanding user involvement, etc.) increasingly consolidate the discourse of *legal non-regulation* of technology focused and Internet-based SM. This discourse changes legal regulations on SM with empowerment of subjects that guarantee their technological functioning (infrastructure, platforms, hosts, etc.) to take over certain regulatory functions. For instance, when presenting SM regulation ideas, Gillespie regards platforms to be the key regulatory concept, which he defines as: “[...] sites and services that host public expression, store it on and serve it up from the cloud, organize access to it through search and recommendation, or install it onto mobile devices” (Gillespie, 2017:1). Gillespie believes that standards of transparency and openness, and greater accountability to the public would be an appropriate direction for SM regulation. Clearly, the approach of technology-oriented SM regulation prioritises self-regulation, concentration of regulatory powers among separate participants of the digital information field. Balkin is of a similar opinion as he states that SM platforms may perform the role of curators and editors of public discourse seeking for public objectives (Balkin, 2020:90).

When empowering owners of private infrastructure (Balkin) and platforms (Gillespie) (hereinafter cumulatively – SM companies), these subjects are presumed to be accountable to the public, having the system of values accepted and supported by the public. What this means in practice is that the public space shaped by SM becomes dependent on separate values of SM companies and different rules laid down by them. Školkay (2020) notes that a phenomenon of “institutional self-regulation” is emerging in SM self-management, reflecting self-regulatory initiatives of SM companies and SM users. Self-regulatory empowerment of SM companies indicates their changing concept: SM companies are shifting from solely passive technological intermediaries towards active participants in the public information field, where SM companies combine features of publishers, media companies, telecommunications providers, and other firms. (Napoli & Caplan, 2017). Now SM companies function as traditional media companies: they carry out the gatekeeping function by monitoring, filtering, blocking and disabling access to content. However, current practice (the spread of fake news and hate speech, etc.) has proved that these initiatives and rules are ineffective, they do not guarantee human rights stipulated by laws. This highlights that orientation of SM self-regulation towards public objectives and related fulfilment of SM companies’ obligations must be accompanied by defined goals, officially known commitments and their compliance with legal regulations. Regulation of SM companies’ activities in the EU is implemented in this direction by adopting the Proposal for a Regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC (hereinafter – the Act). The Act plans to establish general

guidelines determining Internet service providers' (intermediaries, hosts, platforms) obligations and accountabilities concerning removal of illegal content and human rights protection, including the freedom of speech (Proposal for a Regulation..., 2020). This not only highlights challenges in SM regulation, but also justifies the necessity of complex or mixed SM regulation, by combining self-regulation and normative regulation (as regards regulation of information provision to the public on SM). Rationality of such SM regulation is addressed by Balkin (2020), Cusumano, Gawer & Yoffie (2021), Gorwa (2019).

Although their editorial functions are increasing, the activities of SM companies continue traditionally to be defined *de lege* in the legal system as provision of content hosting services (Bartóki-Gönczy, 2021). Therefore, only legal regulations (concerning provision of information to the public) set under such definition are currently mandatory for SM companies. Legal regulations in provision of information to the public for SM companies are applied peculiarly – by foreseeing the possibility to hold these companies accountable for the content created by SM users who are provided hosting services, yet this responsibility may be eliminated by certain immunity conditions. Immunity may also justify SM companies' self-regulatory activities of content moderation created by SM users (by limiting access to content). SM companies are not empowered in the legal regulatory system for a different control of content concerning provision of information to the public on SM. Fagan states that such SM legal regulatory model is linked to SM companies' disposition to set SM content moderating policies that would meet existing laws (Fagan, 2020). However, considering SM companies' functionality, without a doubt, there may be a shift in the future to a more normative/functional approach in SM regulation.

When assessing provision of information to the public by SM users, it is noted that every person is guaranteed the freedom of expression (as a basic human right) and can participate in provision of information to the public using various means and channels. This means that any individual disseminating information on SM first exercises one's own human rights (applicable rights). Such activities may be described as empowerment or self-empowerment to disseminate information on behalf of oneself. In the flow of information created on this basis, news topical to the public is distinguished, whose production and dissemination may be deemed as provision of information to the public. Yet can provision of information to the public by SM users be equated to activities of professional journalists or can SM users act under a different status, that of a special journalist, i.e., be empowered to provide information to the public as a journalist? The answer must be sought in the definition of *the journalist*, in evaluation of the journalist's professional activities providing information to the public.

Roberts believes the activities of journalists are distinguished not only by the definition of the journalist, but also by the system of values (ethics) focused on public services (Roberts, 2019:7). Orientation of SM users' information towards public services may be described as dissemination of information and opinion seeking for a varied, critical viewpoint of the active society which ensures best-informed

solution of societal problems. Provision of information to the public by SM users is linked to shaping the public agenda and it is characterised by democratising effects on the media; in social terms, such provision of information has influence on solving social issues (e.g., impact of hashtag campaigns), which suggests that provision of information to the public by SM users is oriented towards public services. Bodrozic & Paulussen (2018) underscore that the role of non-professionals is important when covering problems that do not attract the attention of media outlets. Mutsvairo & Salgado (2020) argue that the extent of significance of non-professional provision of information to the public is decided by every country's social and political context, social and economic factors, political openness, and cultural norms. This proves the potential of SM users' activities in the public information field and possibilities for equating the activities of information provision to the public by SM users to professional activities of journalists.

The importance of equating provision of information to the public by SM users and journalists is tied both to certain privileges of journalists (e.g., source confidentiality, accreditation right, legal immunity, etc.) and to their rights and ethical duties. It is therefore meaningful to direct the search of criteria for equating provision of information to the public by SM users and professional journalists towards considering criteria of the functional activity, who is forming the definition of the journalist.

Researchers identify various criteria for the definition of the journalist. Roberts indicates that the fundamental difference in provision of information to the public by SM users and professional journalists is related to ethical values (2019:8). Martin & Fargo (2013) emphasize the important ethical principle of impartiality. Impartiality is also underscored by Papandrea (2006), stressing that the key criteria for granting journalists' privileges is provision of information to the public. Craft (2017), agreeing that adherence to values is a sign of journalists' professionalism, notices that when discussing professionalism there is an inclination to move from the form of professionalism to its function. Dunkle-Polier (2019) states that access to status or functions is used for this, adding that the functional definition also applies to SM users providing information to the public, and drawing attention that the goal or intent to inform the public becomes an important factor, while emphasis on remuneration and operation in institutionalised structures diminish.

The following criteria are used when describing the journalist in European documents: self-perception (person perceives oneself as the journalist, "intent to act as media"), function (the journalist is engaged in the collection and dissemination of information to the public, "working methods which are typical for media", with emphasis on "editorial control"), journalistic activities are also described as professional activities (based on regularity, remuneration; the latter criteria is identified as optional), as well as ethical activity criteria linked to professionalism ("reliability", "respect for ethical standards", "transparency", "accountability", etc.) (*Recommendation (2000) 7...*; *Recommendation CM/Rec (2011)8...*).

Analysis of research resources has revealed that SM self-regulation must be associated with legal regulation of provision of information to the public, which sets

objectives and limits on media content control. This shows that when evaluating the public information activities of SM users, it is important to determine the possibility to apply the criteria of a journalist to them. Analysis of research resources substantiates the following criteria for distinguishing provision of information to the public by SM users and by journalists: provision of information to the public as a public service, adherence to professional journalist ethics and features defining journalistic professionalism (or status). Analysis of European guidelines allows us to discern criteria of journalists: self-perceptive, functional, and ethical.

### **3. Criteria for equating provision of information to the public by social media users and by journalists: situation in Lithuania**

**Research methodology.** Analysis of official documents was chosen for the research: Law on Provision of Information to the Public (hereinafter – LPI), decisions of the Ethics Commission for Public Information (hereinafter – the Commission), decisions of the Office of the Inspector of Journalist Ethics (media ombudsperson), and case law of Lithuanian courts in 2017-2021. The analysis of documents examines criteria shaping the conception of the journalist, as well as other criteria for application of legal and ethical standards in provision of information to the public by SM users.

**Research results.** The analysis of LPI has revealed that the purpose of the Law is to establish rules for collection, production, publication, and dissemination of public information, as well as the rights, duties and responsibilities of public information producers, disseminators, participants, journalists, and institutions regulating their activities. This means that LPI is applied very broadly – in its essence, it encompasses the entire dissemination of information to the public. This is affirmed both by the principles of provision of information to the public set in the Law that apply to all producers and disseminators of public information, as well as by LPI provisions dedicated to the freedom of information and its protection. These provisions stipulate that every person has the right to collect and publish information, as well as the right to receive information from state and municipal institutions and entities, and public information available to budgetary institutions about their activities, official documents (copies) and so on. It should be noted that in many LPI provisions the journalist is not distinguished as a target subject related to the rights of provision of information to the public, as producers and disseminators of public information are also regarded as such subjects. For example, LPI stipulates that the right to keep the confidentiality of a source and to protect against influence that would force media to publish inaccurate or biased information is recognised not only for journalists but also for producers and disseminators of public information, as well as for participants whose activities are connected to provision of information to the public in the media.

Yet LPI also has special provisions for the community of journalists in provision of information to the public: the Law sets special terms to obtain

information from state institutions (information has to be provided not later than within one working day; if additional data has to be accumulated, information has to be provided not later than within one week), information (received from a register or public information system manager) is provided free of charge. This privilege is granted to a journalist if a producer or a disseminator (editorial board) of public information, which the journalist represents, has not violated LPI in the last year and if the Ethics Commission for Public Information does not deem the journalist as non-compliant with professional ethics. As a result, implementation of this privilege is linked directly to adherence to standards of professional ethics. Another specific right of journalists set in LPI is accreditation with state institutions, political parties, political organisations, and associations, as well as other institutions on the agreement between these institutions and producers and/or disseminators of public information. Exceptional rights given to journalists are tied to the activities of a producer and a disseminator of public information and to compliance with ethical standards.

Both producers and disseminators of public information are defined in LPI as media companies, and as companies providing content services (hereinafter cumulatively – media company), and as natural persons (journalists, other individuals). A disseminator of public information is described as a content provider (audio-visual, TV or other), however, “any other person disseminating public information to the public” may also be deemed as a disseminator. A producer of public information is also described as content service provider (e.g., audio-visual media service provider, radio programme broadcaster), a media company (publishing house; film, audio or video studio; information, advertising or public relations agency; editorial board, etc.), and “an independent creator, a journalist or any other person producing public information or submitting it for dissemination.” The analysis of definitions of both producers and disseminators of public information provided for in LPI shows that these definitions are applied widely, while the main criteria is production of public information, its submission for dissemination and its dissemination, which ensure the activities of the media.

The fact that special rights of journalists are separated in the process of provision of information to the public suggests that LPI draws a distinction in provision of information to the public by journalists. Therefore, it is important to establish how this Law defines the journalist. LPI defines the journalist as a “natural person who, on a professional basis, collects, prepares and presents material to the producer and/or disseminator of public information under a contract with him and/or is a member of a professional journalists’ association.” It is noticed that functional criteria are used to define the journalist in LPI: the journalist is described based on actual activities – collection of information, its preparation and presentation to a producer and/or a disseminator of public information. It should be noted that when a producer of public information is defined not only as a media company but also as “an independent creator, a journalist or any other person producing public information or submitting it for dissemination” and when a disseminator is defined as “an independent creator, a journalist or any other person”, then it becomes obvious that a contractual relationship with a media company is not the essential criterion when defining the journalist. The

provision “and/or is a member of a professional journalists’ association” also does not suggest that membership in a professional organisation is a prerequisite when defining the journalist. Therefore, the conception of the journalist in LPI is described solely by functional criteria, whereby professional activities are emphasised (“on a professional basis, collects, prepares and presents material”), but there are no legal standards to describe professionalism.

LPI establishes the obligation for public information producers, disseminators, journalists and publishers to follow the standards of professional ethics, i.e., LPI authorises the Code in regard of all subjects acting in provision of information to the public, a self-regulatory body, the Ethics Commission for Public Information (hereinafter – the Commission), and a legal compliance monitoring body, the Office of the Inspector of Journalist Ethics (hereinafter – the Inspector), operate in Lithuania’s public information field. The approach of these institutions towards the activity of subjects providing information to the public is important when seeking to determine whether provision of information to the public by SM users is distinguished and what criteria is used for that.

The analysis of the Commission’s decisions revealed that in the discussed period its findings specialised on provision of information to the public by journalists on SM. The Commission’s activities are related only to provision of information to the public by journalists, producers and disseminators of public information, as well as to ethical behaviour of these subjects on SM (their blogs or Facebook accounts, etc.). When examining complaints filed in 2017-2020, in six cases the Commission adopted decisions concluding that journalists clearly violated law and ethics on their social network accounts (e.g., No. EKS-23/19, No. EKS-14/18, etc.).

Meanwhile, the Inspector’s reports dated 2017-2021 state that a trend has emerged in the last several years with many complaints filed in relation to information spread on the Internet. Accordingly, a large share of them is over information published on SM. The Inspector oversees provision of information to the public on all media, regardless of who its producer or disseminator is, whereas decisions focus on legal violations in provision of information to the public committed by all subjects.

When analysing Lithuanian court cases (2017-2021) it is noted that in many rulings concerning provision of information to the public by SM users, courts cite the judgement of the Supreme Administrative Court (hereinafter – LVAT) in the case No. A444-70/2009. The citation is included in court rulings in appeals filed against decisions of the Inspector, where public dissemination of information by SM users is deemed to be provision of information to the public (e.g., EA-58-261/2020, EI-1073-1066/2019, etc.). Court judgements state that requirements set for the content of public information apply regardless of the form, method or genre the information is provided. Therefore, the form (genre) does not create grounds in terms of LPI not to evaluate information or to evaluate it differently than provided for in LPI (e.g. IK-2846-815/2011, A-556-1314-12) that “a website [...] both in content and form is not traditional media, but, having assessed the rapid development of information technology and shifting social relationships determined by this process, [...] based



on publicity of information, its dissemination, accessibility, methods of activity and possibility to control information, it (website) meets the criteria of information society media” (A-502-668-13). Lithuanian court rulings clearly highlight technological neutrality of provision of information to the public and recognise opportunities for SM users to provide information to the public. Provision of information to the public by SM users is ascertained acknowledging their websites as media, after consideration of criteria for website conformity to information society media as defined in LPI.

This is established in the judgment of LVAT in the case No. A444-70/2009, which deals with a request for accreditation to Parliament by blogger L.U. The Office of Parliament did not issue the accreditation arguing that the applicant was not a journalist. Its decision was appealed to the court. LVAT elucidated that by professionally collecting, producing, and publishing information L.U. acted as a journalist and obliged the Office of Parliament to grant the accreditation. When hearing the case, LVAT explored what the producer of public information and the journalist are and how bloggers should be classified when deciding on accreditation with state institutions. LVAT systematically followed definitions provided in LPI and concluded that natural persons may also be producers of public information. Considering the nature of activities of these individuals and their function in providing information to the public, they can be regarded *sui generis* as media managers, hence, also as producers and/or disseminators of public information, while their blogs – information society media in terms of LPI. LVAT elucidated on access to the blog in question (it was publicly accessible to everyone via electronic networks meant for public use). Thereby LVAT evaluated peculiarities of activities of bloggers and judged that they may be equated to journalists considering the nature of functions of providing information to the public. LVAT concluded that when a producer of public information and a participant is the same natural person, then this person is responsible for media content, i.e., the natural person who actually manages a media outlet, a blog, may be regarded as a producer of public information. LVAT stressed that when deciding on whether a person meets characteristics of the journalist, it is sufficient to determine if a person collects, produces, and presents information on a professional basis, which the person uses acting as a producer of public information.

This shows that Lithuanian court case highlights functional and professional criteria of journalistic activity ascribed to SM users. Functional criteria are determined taking into account functions performed by journalists, tying them to professional requirements and objectives of journalistic activity – to constantly and systematically produce and disseminate public information. It is also important to note that providing information to the public by SM users is also connected to the recognition of information provided by them on SM as media, whereas criteria of information publicity, dissemination, accessibility, and possibility to control information is laid down for provision of information.

## 4. Conclusion

The fact that LPI orients provision of information to the public towards a wide range of subjects, but grants exceptional rights and duties solely to journalists, producers and disseminators of public information proves that in Lithuania a distinction exists between journalists and other individuals engaged in providing information to the public. Criteria for the definition of the journalist is shaped in LPI on the grounds of functionality and professional activities. Exclusive rights are granted to journalists on the precondition of adherence to ethical standards, which allows us the conclusion that criteria of journalistic professionalism are consolidated in the code of professional ethics.

In Lithuania, self-regulatory bodies and institutions monitoring legal compliance do not distinguish SM users in activities of providing information to the public. The Commission's decisions apply only to journalists who violate professional ethics standards on SM, whereas the Inspector's decisions apply to all violators of law related to provision of information to the public. The Inspector institutionally monitors the public space in full extent and adopts decisions on all subjects that commit violations.

The approach of Lithuanian courts towards SM users in the context of journalists' exclusive right of accreditation has demonstrated that activities of SM users under the status of journalists are also linked to the acknowledgment of information provided by them on SM as media. For such acknowledgment, criteria of information publicity, dissemination, accessibility, and possibility of information control are raised. Lithuanian courts justify recognition of SM users as journalists on the grounds of criteria for the definition of the journalist (functionality, professional activity) established in LPI.

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## PRAVNI I ETIČKI ASPEKTI PRUŽANJA INFORMACIJA KORISNICIMA DRUŠTVENIH MREŽA JAVNOJ REGULACIJI: POGLED MEDIJSKIH REGULATORNIH I SAMOREGULATORNIH TELA U LITVANII

**Apstrakt.** *Korisnici društvenih mreža prepoznati su kao novi akter u oblasti javnog informisanja. Njihove aktivnosti i aktivnosti profesionalnih novinara u informisanju javnosti se razlikuju. Promenljivo polje javnog informisanja i osobenosti informisanja javnosti od strane korisnika društvenih mreža podstiču naučne rasprave o regulisanju društvenih mreža u vezi sa informisanjem javnosti. Cilj istraživanja je utvrđivanje kriterijuma za izjednačavanje aktivnosti informisanja javnosti od strane korisnika društvenih mreža sa aktivnostima profesionalaca za javno informisanje u kontekstu pravnog i etičkog regulisanja profesionalnih medija. Istraživanje je sprovedeno analizom pravnih dokumenata koji regulišu delatnost litvanskih medija i društvenih mreža, kao i odluka koje donose samoregulatorna tela i druge institucije. Sprovedenim istraživanjem je ustanovljeno da su u Litvaniji kriterijumi za izjednačavanje korisnika društvenih mreža sa novinarima kriterijumi novinarske aktivnosti (funkcionalnosti) i novinarske profesionalnosti. Za priznanje da korisnici društvenih mreža pružaju informacije javnosti poput novinara, podižu se kriterijumi javnosti informacija, širenja, dostupnosti i mogućnosti kontrole informacija.*

**Ključne reči:** *društvene mreže, korisnici društvenih mreža, novinarstvo, samoregulacija, pravna regulativa, Litvanija*