Which Legal Standards Should Apply To Web-logs?

The present legal position of Internet journals in the European *iuris prudence* in the light of the European Parliament Committee's on Culture and Education report and Polish Supreme Court decision.

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Lex Electronica, vol. 13 n°3 (Hiver / Winter 2009)

1. Web-logs and press – same scope, different obligations

The legal status of publicly accessible electronic diaries raised little controversy, as long as their authors went no further than share their private dilemmas with those willing to read and possibly console or advice on private emotional struggles discussed therein. As the interest in Internet rose, many found it their chance to pursue a lifelong dream of becoming a journalist, or even an investigative reporter by creating and regularly updating a web-log ("blog"), which presented current and sometimes controversial information in particular area of general interest, form politics to entertainment gossip. As Internet became the most popular and influential media of the 21st century, the significance of the opinions presented therein considerably grew. It became fashionable and with time prestigious for professional journalists or politicians to have their own websites and present their latest achievements, nearest plans or views that shaped their professional choices. A web-log showed to be not only the quickest, but also the most direct way to contact the readers or possible voters. Since however websites of this character included contents of sometimes controversial character, the question of the limits of freedom of speech on the Internet came up in a new light. It included not only the traditional question of xenophobic or racist material on-line and the

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afore-known issues of different application of free-speech principles in new and old world, but more importantly it raised the question of whether on-line information should be protected and verified by law, and if so – to what extent. Quite soon, the Web was filled with self-proclaimed journalists who demanded "real-life" protection on-line on one side, and on the other with those presenting controversial or libelous opinions on public issues claiming to take no liability for their words as on-line publishing was not the same as publishing in print. The question of the legal status of on-line information and whether it deserved the same protection as printed articles came in full force in a significant recent American case, *Apple* v. *Apple News Sites* [1], where Apple accused operators of blogs informing on technological advancements that they have revealed Apple's trade secrets. The Santa Clara County Court awarded the administrators of those pages with secrecy privileges similar to those of journalists[2].

The old issue of freedom of opinion came in a new light also with controversial political blogs, such as that of a Polish right-wing politician Arnold Masin. Mr Masin is a member of a nationalist party Liga Polskich Rodzin (Polish Families League) who, on his web-log, calls the American presidential candidate Barack Obama "a black Hitler", insults many Polish public figures, including the President, and expresses many opinions of xenophobic character. Whether those opinions remain his own and rest within the limits of free speech or should be executed according to press law, remains unresolved[3].

It's not difficult to find other international examples of on-line liberty exercised in a controversial way. One of them might be the highly controversial, www.stromfront.org website that welcomes the visitor with a short but meaningful slogan: "White pride, worldwide". An infamous case of the Killbattyman.com website focused around the Jamaican blog that encouraged to attac and execute certain gay celebrities and activists. "The First Amendment Exercise Machine" endorses its philosophy by claiming: "Race mixing is genocide". Another controversial motto is that of the Church of Euthanasia: "The four pillars:

[1] The decision is available August 13, 2008 at: http://w2.eff.org/Censorship/Apple_v_Does/memo_of_points.pdf.

[2] Following the MacNN website: "Apple pays $700,000 for bloggers' legal fees", January 29, 2007, available August 13, 2008 at: http://www.macnn.com/articles/07/01/29/apple.pays.legal.fees/&startNumber=10.

[3] http://masin.blog.onet.pl/ (available August 13, 2008). The very subtitle of the blog encourages controversy: "Uncensored. On politics, fairies, Jews, masonry, communists, thieves, niggers […]".

suicide, abortion, cannibalism, sodomy"[4]. All those websites operate based on the freedom of speech principle; they however also offer up-to-date information on political or social events.

More recent causes for the growing interest in legal regulation of blogging was, on one hand, the fight against terrorism being spread on-line, and on the other the very attitude of social or political bloggers, who wish to be recognized as journalists rather than as common Internet users.

This problem in now being recognized by national authorities, who try to adopt their national laws to suite the circumstances of the ever-changing cyber-realm.

2. European Parliament Culture Committee Report

A document that stirred up much discussion on this issue in Europe was the **European Parliament Culture Committee Report "on concentration and pluralism in the media in the European Union" (2007/2253(INI))**[5]. The Culture Committee Report starts off with a very important declaration – it emphasizes having in regard, while motioning for an EP Resolution, the fundamental free-speech guarantee of European law: art.11 of the Charter of Fundamental Rights of the European Union[6]. It also mentions, as basis for any further work, the key EU documents on media and pluralism[7].

The document touches upon the burning issues of European media in the electronic age. It emphasizes the EU commitment to defend and promote media pluralism, "as an essential pillar of the right to information and freedom of expression enshrined in Article 11 of the

[4] Examples mentioned by: E. Ringmar, *A Blogger's Manifesto; Free Speech and Censorship in the Age of the Internet,* Anthem Press 2007, p. 101.
[5] Adopted by MEPs of the Culture Committee on June 3, 2008.
[6] *1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.*
2. The freedom and pluralism of the media shall be respected.
The Charter of Fundamental Rights of the European Union is a part of the newly agreed Lisbon Treaty.
[7] Enumerating literally the Commission staff working document on media pluralism in the Member States of the European Union (SEC(2007)0032), the amended Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (O.J L 332, 18.12.2007, p. 27) and its resolution of 20 November 2002 on media concentration (O.J C 025, 29.1.2004, p. 205), as well as the report of the Committee on Culture and Education and the opinions of the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Industry, Research and Energy and Committee on Economic and Monetary Affairs (A6-0000/2008).

Charter of Fundamental Rights" and as "fundamental principles in preserving democracy"[8]. The Report expresses the need for new technologies and information services to enhance media pluralism and cultural diversity. What is more important however, it discusses openly the need for recognizing new phenomena, such as the growing role of user-generated content (UGC)[9] and the dramatically changing professional situation of journalists[10]. It also points to the changes caused by new media to the advertising market and the way it has shifted, with more revenues from advertising coming to on-line outlets[11].

On the issue of web-logs, the Committee emphasizes that:

> "[w]eb-logs are an increasingly common medium for self-expression by media professionals as well as private persons, the status of their authors and publishers, including their legal status, is neither determined nor made clear to the readers of the web-logs, causing uncertainties regarding impartiality, reliability, source protection, applicability of ethical codes and the assignment of liability in the event of lawsuits […] ".[12]

Therefore, it recommends that the Member States should: "clarify the status, legal or otherwise, of web-logs and encourages their voluntary labeling according to the professional and financial responsibilities and interests of their authors and publishers"[13]. In the Explanatory Statement to the Report, the Committee repeats that: "the undetermined and unindicated status of authors and publishers of web-logs causes uncertainties regarding impartiality, reliability, source protection, applicability of ethical codes and the assignment of liability in the event of lawsuits"[14]**.**

The author of the Report, Estonian socialist MEP, Marianne Mikko explained that her wish was for blogs to clearly represent those, who support them. "I am a strong supporter of media pluralism, especially of new media that blogs are a part of. […] Blogs aim at showing

[8] Preamble, pt. A.
[9] P. 4, Preamble, pt. M: "commercial publications are increasingly utilising user-generated content, especially audiovisual content for a nominal fee, raising questions of unfair competition among media professionals".
and pt. N: "the increased use and reliance on user generated content may adversely affect the privacy of citizens and public figures by creating conditions of permanent surveillance".
[10] P. 4, Preamble pt. L: "an increasing proportion of journalists find themselves employed under precarious conditions, lacking social guarantees common on the normal job market".
[11] Preamble, pt. T: ''new media channels have emerged over the last decade and […] a rising share of advertising revenues going to Internet outlets is a source of concern for print media outlets".
[12] *Id.,* p. 4.
[13] *Id.,* p. 9.
[14] *Id.,* p. 7.

the truth, but some bloggers may use false personal data to accuse or humiliate others", she said[15].

Mrs. Mikko also said that "the blogosphere has so far been a haven of good intentions and relatively honest dealing. However, with blogs becoming commonplace, less principled people will want to use them". Asked if she considered bloggers to be a threat, she explained: "we do not see bloggers as a threat. They are in position, however, to considerably pollute cyberspace. We already have too much spam, misinformation and malicious intent in cyberspace". She added, "I think the public is still very trusting towards blogs, it is still seen as sincere. And it should remain sincere. For that we need a quality mark, a disclosure of who is really writing and why"[16].

Another MEP, German liberal Jorgo Chatzamarkakis, supplements by saying: "bloggers cannot automatically be considered a threat, but imagine pressure groups, professional interests or any other groups using blogs to pass on their message. Blogs are powerful tools, they can represent an advance form of lobbyism, which in turn can be seen as a threat". He added "any blogger representing or expressing more than their personal view should be affected by this report"[17].

The proposition of the Committee was not followed by any specific suggestions on the way this "labeling" or accreditation should occure. Asked about the details, Mrs. Mikko said that "the details were left to professionals". In her opinion a group of scientists called-upon by the EU to research European media pluralism, should come up with a solution by the end of the year[18].

The Report of the European Parliament Committee caused a vigorous discussion among European bloggers, who feared their independence was endangered and that the recommendation might result in rigorous state legislation. Critical comments ranged from ones finding the EP proposition insulting to all blog-subscribers and readers[19] up to doubting

[15] Following a press report: D. Pszczolkowska, "Europarlament uważa, że blogi są groźne [European Parliament finds blogs dangerous]", *Gazeta Wyborcza*, June 24, 2008.
[16] Official European Parliament statement, "User-generated content and weblogs – a new challenge", June 5, 2008, available August 14, 2008 at: http://www.europarl.europa.eu/news/public/story_page/058-31021-161-06-24-909-20080605STO30955-2008-09-06-2008/default_en.htm.
[17] *Id.*
[18] D. Pszczolkowska, préc., note 18.
[19] B. Waterfield starts off his commentary to the Report by rhetorically asking: "Are you stupid? That's really, really stupid? Are you a grown up? Can you read? Do you know how to think? Are you able to judge for yourself? What's your answer? Yes? Sorry, no. You are stupid, really stupid. You are not able to judge for

the actual possibility to achieve the goal suggested by the Culture Committee and emphasizing the minimal role that EP resolutions play in European legislature[20]. It is true that there is quite a long way from an EP Resolution to national or European law, however one must not disregard the first formal statement of European authorities on this growing issue and the potential it holds. The main result of the Report is that the discussion on the status of weblogs and press is as lively as never before. National governments are dealing with the issue on their own (as discussed in few examples below) and any opinion or statement of the EP may not be neglected.

The Report, as mentioned above, touches also on the issue of user generated content and the professional and social situation of journalism in modern media. In brief those two subjects should also be addressed here in order to show the wider scope of the problem discussed.

The proposal made by the EP on the issue and status of UGC is very clear – the EP "proposes the introduction of fees commensurate with the commercial value of the user-generated content as well as ethical codes and terms of usage for user-generated content in commercial publications"[21]. This idea is completed by a statement in the explanatory part of the Report[22] and in accompanying documents published by the EP[23]. They emphasize the new problems brought on by the on-line media:

> "Web-logs and other new on-line media pose new challenges […]. The growth of commercial media outlets for user-generated content, such as photos and videos that are used without paying a fee, raises problems of ethics and privacy, and puts

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yourself. So says the European Parliament."; B. Waterfield, "Blog off EU", The Telegraph, June 13, 2008, available August 13, 2008 at: http://blogs.telegraph.co.uk/bruno_waterfield/blog/2008/06/13/blog_off_eu.

[20] J. Worth, "Whinge, whinge… Get a grip! EP has no chance of controlling blogging", Euroblog, June 13, 2008, available August 13, 2008 at: http://www.jonworth.eu/whinge-whinge-get-a-grip-ep-has-no-chance-of-controlling-blogging/. He also points to the amendments to the resolution proposed by Maria Badia i Cutchet that suggest ''cutting back the text and saying only clarity is needed when it comes to legal protection for bloggers, and suggestions to delete the article about voluntary standards for bloggers from Ignasi Guardans Cambó and Claire Gibault".

[21] The idea behind equal fees for professional and amateur materials aims at forcing publishers to make their choices of content published solely on the quality of the material, not on its price.

[22] "The report acknowledges the spreading use for a nominal fee of user-generated content by the commercial publications and the privacy and competition issues this generates. It recommends compensating non-professionals commensurately to the commercial value they generate and using ethical codes to protect the privacy of citizens and public figures.", p. 7.

[23] Official European Parliament statement, préc., note 19; EP press release "Protect editorial independence and media pluralism, says Culture Committee", June 2, 2008, available August 14, 2008 at: http://www.europarl.europa.eu/news/expert/infopress_page/039-30532-154-06-23-906-20080602IPR30531-02-06-2008-2008-false/default_en.htm.

> journalists and other media professionals under pressure, they say. […] new legal measures are needed to protect the privacy of citizens and public figures in cases where it is breached by the growing use of the user's own videos and photos. As weblogs represent an important new contribution to the media pluralism, there is a need to clarify their status, and to create legal safeguards for use in the event of lawsuits as well as to establish a right to reply." [24]

As one of those safeguards that should protect the evolution that media law and practice take on, EP proposes a new institution of **media ombudsmen**. In the Report itself the EP suggests "the creation of independent media ombudsmen in the Member States"[25], based on the practice of states that already have appropriate regulations in place[26]. As explained in the statement accompanying the Report:

> "the report recognizes the decision of the European Commission to entrust determining the reliable and impartial indicators of media pluralism to a consortium of 3 European universities. In addition, this report stresses the need to institute the monitoring and implementation systems based on the indicators thus determined. Media ombudsmen are seen as a part of the necessary systems."

Such a solution may serve properly the aim that it has been designated for only if there are more guidelines from the EP in place, especially concerning the difficult task of managing the on-line activities. Marc Grober of the European Federation of Journalists goes to say: "[t]he intentions are good, but unfortunately they are not focused enough. The report clearly identifies the problems […] but it does not go far enough to propose concrete solutions."[27]

Another instrument, recommended by the EP to protect media pluralism and cultural diversity are the **editorial charters** that would help avoid interferences of private owners, shareholders or governments in the editorial content[28]. Such charters should be similar to one another and applied in consistent manner in all EU countries to protect journalistic and editorial independence. The Report calls for the creation of "a charter for media freedom" and recommends for the Member States "to strive for its Europe-wide acceptance"[29]. Such a

[24] EP press release, préc., note 26.
[25] Committee on Culture and Education of the European Parliament, Draft Report on concentration and pluralism in the media in the European Union, 2007/2253(INI), pt. 2, p. 5.
[26] This institution is quite popular in the United States, however also quite strongly criticized as not objective and vulnerable to political or lobbyists' influence.
[27] L. Phillips, "Media content, concentration and pluralism in Europe in the digital age", EUobserver, May 2, 2008, available August 14, 2008 at: http://euobserver.com/871/26075.
[28] EP press release, préc., note 26.
[29] Culture Committee on Culture and Education of the European Parliament, Draft Report on concentration and pluralism…, pt. 3, p. 5.

charter should not only serve to protect the values of free and objective press and enable the free media to keep their role as a society watchdog, but should also include appropriate professional guarantees for professional journalists: "[t]he report also recognizes the ongoing efforts of publishers' and journalists' representatives to create a charter of media freedom. In addition, the report underscores the need for social and legal guarantees for journalists and editors."[30]

Undoubtedly the virtue of the Report lies in the fact that it boldly touches upon issues of current significance. What is more important however is that it raised much media controversy. That controversy will certainly provoke discussion which will improve the present state of national and international legislation and legal practice. Unfortunately despite the wide scope of the Report, there are – as of yet – no answers to particular questions raised by the every-day practice of the on-line community. States are left alone to interpret their legal norms in such a way that they do the least harm to new forms of communication and expression. Some examples of these struggles are presented below.

3. National practice with web-logs and press law

A recent Polish Supreme Court decision is a good example of a practical answer to – what might seem like – a trivial question posed in the title of this essay.

Starting with the facts, one must mention that the freedom of press is guaranteed by art. 54 par. 2 of the Polish Constitution, which prohibits "preventive censorship of the means of social communication and the licensing of the press".

The Polish multimedia regulations are divided between two basic legal acts: The Radio and Television Act form 29th Dec. 1992 (Ustawa o radiofonii i telewizji, D.U. 2004/253/2531), which finds little application to Internet and Press Law Act from 26th Jan. 1984 (Ustawa Prawo prasowe, D.U. 1984/5/24), which might be applicable to webpages that constitute press, as defined by the Act.

[30] Committee on Culture and Education of the European Parliament, Draft Report on concentration and pluralism…, Explanatory Statement, p.7.

The Act defines "press" as

> "any periodic publications, which do not constitute a closed, uniform entity, appearing no less frequently than once a year, having a regular title or name, current number and date, and in particular: journals, periodicals, news services, regular fax transmissions, bulletins, radio and television programs and film chronicles;
>
> as press are considered also any means of mass media, existing or appearing as a result of technical progress, including broadcasting stations and public television and radio address systems that broadcast publications periodically as print, picture, sound or using any other broadcasting technique;
>
> press includes also groups of people and particular persons engaged in the journalistic activity."[31]

Art. 20 of the Press Law Act requires the **registration** for the publishing of journals and periodicals. Such a registration should be done by a district court (sąd okręgowy) in the place of the domicile of the publisher[32].

The Act defines "**journals**" ("dzienniki") as well as "**periodicals**" ("czasopisma") in its art. 7 par. 2 pt. 2 and 3:

> "*a* journal is a periodic print or a transmission by sound or sound and vision of general information, appearing no less frequently than once a week", (par. 2)
>
> [while]
>
> "*a* periodical is a periodic print appearing no more frequently than once a week and no less frequently than once a year; the regulation may also be applied appropriately to transmissions of sound or sound and vision other than described in par. 2." (par. 3)

The interpretation of these very articles lies at the roots of a case that thoroughly stirred the Polish press and Internet community.

The core of the problem lies in the answer to the question, whether a journal or a periodical appearing solely on-line (possibly in the form of a weblog) requires registration, when it does contain "transmissions of sound or sound and vision" and is updated regularly, more than once a year.

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[31] Art. 7 par. 2 pt. 1 of Polish Press Law Act.

[32] The registration obligation seemed a major breakthrough in 1992, which opened up the printed media to private publishers, after long years of state-licensing. In most European countries however, such as France or Germany, there is no registration needed to publish a printed periodical – only an application suffices. The proposed changes of Press Law also tend to remove the registration obligation.

The problem with answering that question results from the fact that the court allowing registration of a journal or a periodical is not authorized to judge the character of the webpage applied for registration, and assess whether it does constitute a journal or a periodical. It is the sole will, obligation and responsibility of the publisher to register their on-line news portal, but not fulfilling this obligation may be charged with a fine or up to 12 months of public service[33].

According to art. 21 the court may only decline registration of a journal or periodical, if the application form does not contain the required information or registering a periodical or a journal would infringe the right to protection of a name already existent. At no stage is the court obliged to verify, whether the "journal" or "periodical" submitted for registration fulfills the legal definition of art. 7 par. 2. Therefore the "publishers" of "web-periodicals" must decide on their own, whether they wish to file for a registration of their "periodical" or risk the fine or a public service sentence. Registering a periodical however requires not only providing information on the name and address of the publisher, name and address of the Editor-In-Chief, place and date of publication, name of the printing company, ISSN and current numeration, but also means submitting the web-journal to all the requirements foreseen for the free press in the Press Law, including all the traditional obligations of a journalist that now should lie upon the "publisher" of the web-service. To put it shortly – running a general information web-page that provides information through sound and vision (e.g. a video-blog) makes it press requiring registration, with all the duties and obligations bound therewith, such as e.g. the responsibility of the Editor-Ion-Chief for the published press material[34].

[33] Art. 45 of Polish Press Law Act.

[34] Such a form of legal responsibility is foreseen in art. 49a of the Polish Press Law Act with the potential punishment of a fine or public service obligation. This article was the basis of another breakthrough case of "Gazeta Bytowska", which has not yet reached the Supreme Court. It concerned an Internet journal also "published" without registration and its editor, who was found responsible for the "posts" on the portal's forum. Two subsequent court instances found the editor responsible for publishing a periodical without proper registration and having considered the Internet journal as press, found the editor responsible for the content of the comments on its forum (Slupsk District Court (Sąd Okręgowy) decision VI Ka 409/07, in appeal to the decision of Slupsk Local Court (Sąd Rejonowy)). The decision is presently being revised – there is no final sentence in this case yet (August 2008), however it has already been the subject of a constitutional complaint filed by the International Helsinki Federation for Human Rights.
A relatively similar case was decided by an Italian court in 2006. In the case of Roberto Mancini, the author of the Il Bolscevico Stanco (The Weary Bolshevik) blog against two journalists and a judge, who found themselves slandered by an article on the blog, the Italian court found Mr. Mancini guilty of defamation, even though "the complainants were not able to show they [the columns – J.K.] were untrue" (as reported by R. Cornwell, Blogger found guilty of defamation in test case, The Independent, June 25, 2006 avaliable August 18, 2008 at:

So far the Polish courts have either declined the registration of Internet sites, dismissing the motion to register a website, assuming that publishing a periodical through Internet does not require registration, as such an obligation does not result explicitly from the provisions of the Press Law Act[35] or (in more recent cases) found the editors of Internet journals guilty of the crime described in art 45 of Press Law Act, but acquitted them due to the minimal public menace of the offence[36]. All that is about to change with the new practice of courts that follows the Supreme Court Decision from 2007.

The case concerns an Internet journal ("czasopismo Internetowe") called "Szyciepoprzemysku", available solely on-line.

In December 2004 the District Attorney in Przemysl filed an indictment on Norbert Z. and Tomasz K., claiming they had infringed art. 45 of Press Law Act by jointly publishing an Internet journal "Szyciepoprzemysku" under the Internet address www.szyciepoprzemysku.prv.pl between July 2003 and May 2004 in Przemysl and in Glogow without the proper registration. Furthermore they were indicted for committing a crime described in art. 49 of the same Act by not displaying in a visible place the name and address of the publisher, the address of the editor, the name of the Editor-In-Chief, the place of publishing and the ISSN number, as it is the duty of a publisher of a journal.

The Local Court (Sąd Rejonowy) in Przemysl acquitted the accused (decision number II K 55/05). As a result of the appeal filed by the D.A. in Przemysl, in a decision from Feb. 13, 2006 (II Ka 20/06) the District Court (Sąd Okręgowy) in Przemysl revoked the decision and returned the case to the Local Court for retrial. The D.A. altered the indictment by adding

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http://www.independent.co.uk/news/world/americas/blogger-found-guilty-of-defamation-in-test-case-405397.html). The article in question reported on political and social events in Aosta, northern Italy in language that was described as "sarcastic" and "crude", although the plaintiffs were not able to prove those statements as untrue. The conviction relied also on comments posted on the forum by its users. Freedom of speech organizations found this decision as attempted censorship. They claimed that Mancini "was punished for his bad language and not because he posted false information, which is unacceptable" (Reporters Without Borders statement, quoted in "'Bad' Words Earn Blogger Big Fine", Associated Press, June 23, 2006, available August 18, 2008 at: http://www.wired.com/techbiz/media/news/2006/06/71232). The case shows an important facet of the problem discussed in this article – the role of "professional" press as "gatekeepers" for information that is not welcomed by state authorities.

[35] Prior court decision in the "szyciepoprzemysku" case: Przemysl Local Court's (Sąd Rejonowy) decision from 22 Sept. 2006 and Przemyśl District Court's (Sąd Okręgowy) decision form 6 Feb. 2007 and earlier courts' decisions starting in 2005 with the Krosno District Court from 17th March 2005 (I Ns. Rej. Pr. 3/05). All the courts assumed that "publishing" a periodical on the Net is not subject to registration, as there is no explicit mention of it in the Press Law Act.

[36] The already mentioned "Gazeta Bytowska" case.

the allegation that the two had been publishing the periodical on paper, as well as placing it on the Net[37]. In the retrial the Local Court (Sąd Okręgowy) in Przemyśl found the accused guilty of publishing in print a periodical without registration and without displaying in a visible and commonly accepted place the required data. Each of the accused was sentenced with a fine. In appeal from the retrial the District Court (Sąd Okręgowy) found the accused not guilty of the crimes indicted by the D.A. The decision was submitted to the Supreme Court by the D.A. on the charges of failing to fulfill the obligations set by Polish criminal procedure.

The Supreme Court, in its decision from 26 July 2007 (IV KK 174/07) found that the

> "key problem in this case was ascertaining whether the publisher of a journal or a periodical in electronic form – on the Internet – was obliged to register it or not. In this legal matter both, the Local Court in Przemysl, sentencing the accused, as well as the Regional Court justifying their acquittal, were clearly mistaken, while the position of the Regional Court was under visible influence of the Appeal Court's (Sąd Apelacyjny) in Rzeszow decision from May 25th 2005 that upheld the ruling of the District Court (Sąd Okręgowy), where the motion to register an electronic periodical, available as a web-page, was dismissed."

Having recalled the contents of articles defining press in the Polish Press Law, cited above, the Supreme Court concludes:

> "**It cannot be disputed that journals and periodicals, due solely to the fact that appear in the form of an Internet transmission, do not lose the feature of a press title, regardless** whether such an Internet transmission is accompanied by a transmission published on paper, printed, with its alternative form on-line, or **whether the transmission exists solely in the electronic form on the Internet, but appear periodically, fulfilling the requirements set in art. 7 par. 2 pt. 2 of Press Law."** [emphasis added – JK].

The Court goes on to state:

> "The deliberations [of both courts – J.K.] on the fact that in the light of law, publishing press in electronic form does not require registration are wrong and contrary to entrenched doctrine opinions. The mistake in the reasoning of the two courts is based on identifying the Internet with the periodical transmission having the form of a journal or periodical distributed through the Internet. It is clear that the

[37] That was not true, as stated by the Supreme Court, which found the evidence allegedly proving the printing of the newspaper to be only the printouts of the Internet pages; IV KK 174/07, p. 8 *in fine*.

> Internet may not be registered […], neither may paper. Paper as such does not have to be registered, however the printed paper must be registered, what is more – not the very paper itself, but rather the activity of printing on it and publishing it in the form of a journal or periodical – meaning press. Internet is only the medium, with the aid of which correspondence may be exchanged, just as it may be exchanged on paper. While exchanging correspondence on the Internet does not require registration, the electronic publishing of periodical, available on-line - does."[38]

Finally, the Court goes on to say that:

> "**the distributing without registration in the suitable district court, a journal or a periodical on the Internet, regardless whether such a distribution is accompanied by a transmission in print, next to its electronic form, or whether it exists solely in the electronic form on the Internet, suffices to recognize the crime described in art 45 of Press Law as having been committed.**"

The accused were eventually acquitted by the Supreme Court, which called upon the constitutional principle of the rule of law (as stated in art. 7 of the Polish Constitution) and the ensuing obligation to protect the trust of a citizen to the state (a conviction in this case would break the collateral estoppel rule), however the decision quickly awoke media frenzy and raised the fear of a need to register all websites that were regularly updated.

The spokesman of the Polish Supreme Court later explained that the sentence of the Court was not intended to cause a mass registration of all Internet "periodicals" (most of all web-logs) and that neither weblogs, nor Internet sites that were regularly updated, needed registration. Such an interpretation of the Polish press law did not appear clear based only on the original text of the decision that leaves much ground for uncertainty. Even though the Supreme Court acquitted the two accused, the justification and the legal analysis presented in the decision raised many commentaries and a strong wave of criticism towards the outdated Press Law and its interpretation. The Polish Branch of the International Helsinki Federation for Human Rights have already filed a constitutional complaint, demanding for the Constitutional Tribunal to state that web services should not be treated as journals or periodicals and require registration[39].

The core problem with the interpretation presented by the Supreme Court lies in the wide responsibility of the web-publisher that in this case is the page-administrator, who –

[38] *Id.*, p. 4-6.
[39] The complaint was filed in the case of ''Gazeta Bytowska" – a case discussed already in this text, dealing with the very same issue of the requirement to register Internet sites of informational character that are regularly updated and might be considered as press.

according to the Supreme Court Decision – should be saddled with all the responsibilities of an Editor in Chief of a traditional newspaper. The Polish Press Law foresees this responsibility as encompassing above all the responsibility for the press material published in the periodical or journal under his authority[40].

Furthermore, there is no legal rule allowing for clear distinction between the web-pages ("Internet periodicals") that require registration, and those that do not. The answer to the question, which web-pages constitute "journals" or "periodicals" is not easy and in the present state of regulation left solely to the alleged "publisher" himself. The law gives only the definition of a "journal" or "periodical" as such. Expanding that definition to the Internet requires a detailed analysis of each and every web-page, in order to state, whether that very page constitutes a "journal" or a "periodical". That means whether it is "of generally informative nature" and is "a transmission of sound or sound and vision", appearing regularly (at least once a week for journals, or once a year for periodicals)[41]. Leaving this difficult analysis solely to web-page administrators seems a task far to heavy for them to carry[42].

What is more, such an obligation, and – following the suggestion of the Supreme Court – the punishment of ones who do not fulfill it should be considered a breach of one of the basic rules of criminal law: *nullum crimen sine lege certa et stricta*[43]**.** There is no "clear" and "certain" rule of law that tells the web-administrators of a certain category of web-pages that it is their duty to register their webpage (a webpage of a certain sort, as it is clear that not

[40] So far the courts examining the ''Gazeta Bytowska" case have fund the Editor-In-Chief of this webpage responsible for the comments submitted on the forum of the portal.

[41] As emphasized by two authorities of Polish media law, Professors Barta and Markiewicz, to fullfil the "periodicity" criteria it seems to be required for new issues of the "transmission" to appear in even intervals of time. Updating an Internet page does not fulfill that obligation, as there is definitely no media, upon which such new issues are distributed and released. The periodicity requirement is not met, when only some portions of the transmission are altered and there is no indication of how much of the information should be updated for the webpage to be considered a new "issue". J. Barta, R. Markiewicz, "Rejestracja e-dzienników i czasopism", Rzeczpospolita, October 10, 2007).

[42] *Id.,* Possibly demanding registration would be in that case all video-blogs that contain commentaries of recent, political or social, events. Presumably the number of those would not be too large. It seems quite clear that an Internet transmission may not be considered a "visual" transmission and as such requires registration as a "periodical".

[43] This argument was also raised by the defendant of the accused in the "Gazeta Bytowska" case and by the Helsinki Federation.

all web-pages may be considered journals or periodicals). Interpreting that rule out of the existing regulations is an expanding interpretation of a criminal norm that is inadmissible[44].

The decision of the Supreme Court seems quite surprising and unclear, as on the very next day after issuing the sentence, the Spokesman of the Court, its President and the Reporter of the case explained that the decision only concerned the electronic versions of traditional newspapers, not all Internet pages. It seems as having written that clearly in the statement would have saved Polish bloggers a lot of stress. What is left to hope is that in the upcoming case of *Gazeta Bytowska* that will probably also reach the Supreme Court, the interpretation of art. 45 and 49a of Polish Press Law that sanction the lack of registration of a web-page, will be more moderate[45].

One must not forget that in the Polish legal system the Supreme Court Decision is binding solely in the particular case. Nonetheless the role that the legal interpretations made by the highest legal instance plays in the further application of legal norms, must not be underappreciated.

In the search an answer to the question on the status of web-logs and press, there seem to be only two simple ways to follow: either to regard on-line informative activity as press with all the consequences or to disregard it as press and allow for an on-line freedom in the present state, much larger than that allowed for traditional journalism. For either solution to be feasible a re-definition of "press" is needed. This very route was chosen by the US federal authorities, who in the **Free Flow Of Information Act** have equalized the status of on-line journalism and traditional press[46]. The so-far state regulations on press secrets and so-called "shield" laws have never come into one coherent federal regulation due to the differences in the definition of "press"[47]. Finally, as state courts have on their own had to deal with the

[44] The Press Law does say that "as press are considered also any means of mass media, existing or appearing as a result of technical progress […] " that definition is however not sufficient to interpret out of the contents of art. 7 par. 2 pt. 2 or 3 defining "journals" and "periodicals" the obligation to register Internet pages.

[45] J. Barta, préc., note 44 : J. Barta and R. Markiewicz point also to the possible breach of art. 10 of European Convention of Human Rights that allows for the limitation of free expression of opinions only on the ground of a justified public interest.

[46] The US Senate has however decided to start by re-defining "press", rather than interpreting the existing (state) regulation. More on this issue e.g.: J. Cheng, "New bill to give bloggers same shield law protection as journalists", Ars Technica, May 07, 2007, available August 12, 2008 at: http://arstechnica.com/news.ars/post/20070507-new-bill-to-give-bloggers-same-shield-law-protection-as-journalists.html and T. Nguyen, "Bloggers to Receive Similar Legal Protection as Journalists", Daily Tech, May 8, 2007, available August 12, 2008 at: http://www.dailytech.com/Bloggers+to+Receive+Similar+Legal+Protection+as+Journalists/article7200.htm.

[47] The very trigger for the regulation might have also been the aforementioned Apple case decision of California Court of Appeals that granted a web information service the protection of the California "shield" law foreseen

status of web-logs and press, a proposal for a federal law was introduced. The proposed equalization of bloggers and press is incorporated in the new definition of "journalism" that – as explained in the official Section-By-Section Analysis –

> "is intended to afford the protections of the Act to any person engaged in any phase of the journalistic process, from gathering news and information to writing, editing, and publishing news and information. The inclusion of the term "or information" is intended to include within the ambit of the Act such media as newsletters and wire services that disseminate information not necessarily encompassed by the term "news." On the other hand, the definition is intended to be limited by the term "[...] that concerns local, national, or international events or other matters of public interest for dissemination to the public." Thus, the Act would provide no protection to a person who gathers information with the intention of using it to gain private advantage, rather than disseminate it to the public. If the recipient of a leak is a spy, a terrorist, or a company intending to exploit leaks from a competitor, the Act will not afford any protection to that person."[48]

It does seem that finding a new, adaptable to the Internet era definition of press (or its forms, such as journals or periodicals) is the key point for any further discussion on weblogs as press. Without it the decisions of courts working with the same or similar legal texts may vary quite significantly.

It is worth mentioning that the interpretation of Polish Supreme Court that actually extends the limits of state control over Internet content goes in the quite opposite direction than the decision of a German Local District Court (Amtsgericht) in Frankfurt/Main[49]. This case very much resembles the "Gazeta Bytowska" one, as it also deals with the responsibility of a web-page administrator for comments placed under a text[50]. The case concerned abusive comments on a weblog, of which the accused was the technical administrator. He received a

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for press as well as another California case: that of Josh Wolf which concerned a freelance on-line journalist, obliged by the court to reveal his materials and sources (final sentence of the Ninth Court of Appeals available August 18, 2008 at: http://www.cfac.org/handbook/cases/joshwolf.pdf; all legal documents available August 18, 2008 at Josh Wolf's homepage: http://joshwolf.net/freejosh/?page_id=16); A similar case of Canadian Charles LeBlanc found however a clearly opposite verdict to that of the California Ninth Circuit Court. A blogger arrested during a protest was found as merely "performing his trade" and acquitted of obstructing justice by a New Brunswick judge; e.g.: Judge acquits N.B. blogger on obstruction charge, Last Updated: Saturday, CBC News, November 25, 2006, available August 18, 2008 at: http://www.cbc.ca/canada/new-brunswick/story/2006/11/24/nb-bloggeracquitted.html.

[48] The Free Flow of Information Act of 2007, Section-By-Section Analysis, p. 11-12, available August 12, 2008 at: www.asne.org/files/FFIAAnalysis.pdf.

[49] Amtsgericht Frankfurt/Main (Az.: 31 C 2575/07-17, decision from July 16, 2008).

[50] As mentioned before: two Polish Court instances fund the administrator of "Gazeta Bytowska" responsible for user comments submitted to his page.

complaint from the plaintiff, following which he removed the comment in question from the blog. He also signed the cease-and-desist declaration. He however did not pay the attorney fees that the accused demanded. In this case the court expressed an opinion that laying the obligation of preventive surveillance of blogs and forums would endanger the existence of opinion forming portals. The "obligation of preventive censorship" laid on the operators would eventually put in question the very idea of Internet forums and blogs.

The Court:

> "The plaintiff's suggestion that particularly in the case of blogs with critical or controversial content there is a general obligation for preventive control must be dismissed. It must be observed that running an Internet forum benefits from the protection of freedom of opinion suitable for the free media and that the very existence of such a forum would be in danger, should it be subject to excessive control (similar opinion [OLG Hamburg, decision form 22.08.2006 - 7 U 50/06]). With the assumption of a general preventive censorship obligation for all original articles containing critical statements or controversial content certain ideas would have to be modified and the very model of Internet forums or blogs would be put in question (compare: [AG München, decision from 06.06.2008 - 142 C 6791/08])."[51]

As mentioned by the Frankfurt court, there are similar recent decision of German lower courts[52], however as mentioned in the accompanying press reviews[53], this line of judgment may only be treated as a signal of changes to come. These decisions show the current trend in deciding on weblog administrator's responsibility for the contents of the webpage – German courts find an excessive control exercised by the administrators contradictory to the existing scope of freedom of press and freedom of speech. The recent German decisions remain in clear conflict with the decision of the Polish Supreme Court, discussed above that enlarges the scope of web-administrators responsibility, making it equal to that of an Editor-In-Chief of a traditional, printed periodical.

It is clear that some sort of censorship on the Internet is necessary. It seems however that to define the scope of page administrators' responsibility it is necessary to define which pages constitute press and should be submitted to the standards appropriate for printed periodicals. **The simplest solution that might have been used by the Polish Supreme**

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[51] Amtsgericht Frankfurt/Main (Az.: 31 C 2575/07-17), pt. (2).

[52] Hanseatisches Oberlandesgericht Hamburg decision from August 8, 2006, 7 U 50/06, JurPC Web-Dok. 98/2006 par. I, available August 11, 2008 at: http://www.jurpc.de/rechtspr/20060098.htm; Amtsgericht Muenchen decision from June 6, 2008, 142 C 6791/08, available August 11, 2008 at: http://www.foren-und-recht.de/urteile/Amtsgericht-Muenchen-20080606.html; Oberlandesgericht Düsseldorf decision from June 7th, 2006, I-15 U 21/06, JurPC Web-Dok. 77/2006, par. 1 – 34, available August 11, 2008 at: http://www.jurpc.de/rechtspr/20060077.htm. One should mention here that the German press law is decided solely on federal level.

[53] E.g. P. Otto, "Keine "Vorab-Zensur-Pflichten" bei Blog-Haftung", eRecht24, August 4, 2008, available August 11, 2008 at: http://www.e-recht24.de/news/abmahnung/905.html.

Court would be to assume that only on-line versions of traditional periodicals should be treated as press requiring registration. The Supreme Court elaborated on the issue and found that Internet is only the medium for the press, such as is paper. And "publishing" on-line is just the same as publishing in print. That parallel holds much place for speculation and brings many consequences that the existing legal regulations do not suffice to solve. If courts and legislator insist on identifying these two forms of publishing, they should supplement the existing legal regulations with a clear definition of Internet-press allowing for a distinction between periodicals that benefit from press law regulations, and those that are free from both, rights and obligations that press regulations hold[54].

An interesting solution for disciplining the on-line "publishers" was presented by the newly founded Polish Society of Journalists and Internet Media[55]. As a possible response to the requirement set by the European Parliament, a declaration of the Society reads:

> "We, the undersigned journalists and publishers of Internet media, calling to life the Society, hereby declare:
>
> - not to publish, create or multiply contents of fascist, communist or racist and especially anti-Semitic propaganda character,
> - not to publish, create or multiply pornography, advertise cruelty or violence,
> - not to publish, create or multiply unverified claims of slanderous character on third persons […],
> - not to publish, create or multiply any information, of which we are not certain to be true,
> - to pursue for the standards enclosed in the Media Ethics Charter to be commonly present in our community."[56]

Asked about the reasons for such a declaration, a representative of the undersigned said:

[54] Such regulations should encompass the problems of e.g. political web-logs. Authors advertising views commonly recognized as racist or xenophobic nature should not be able to call upon the freedom of speech without any limitations. In the present state of international private law and the law of the cyberspace there is no international understanding on the scope of web-administrators' liability. The basic civil-law analysis points to the traditional cause-and-effect analysis, showing no web-administrators responsibility if there is no fault that might be arrogated to them. Observing the web-administrators as editors of an on-line periodical puts a whole new scope of obligations onto them. Maybe using press law and the obligation to take responsibility for contents of certain sort might show to be a satisfying solution of the problem of politically incorrect content on the web. This possibility however must be further examined and looked into.

[55] Stowarzyszenie Dziennikarzy i Mediów Internetowych.

[56] The declaration available on August 11, 2008 at: http://www.racjonalista.pl/kk.php/s.4426 .

> "If we want to be taken seriously, we must distance ourselves from the clamorous minority of Internet media that by their unethical behavior ruins the opinion of all of us. It is because of such media that Internet press is not taken seriously in Poland these days. [...] We'll be taken seriously only if we ourselves behave seriously. We are not a political organization [...] but certain standards of solidity and honesty must be kept. Without them we'll achieve nothing." [57]

A relatively similar solution is that of the British National Union of Journalists that has developed a code of practice for what it calls "witness contributors" that bloggers might sign up to and receive a special logo to put on their website[58]. The code is intended "for publishers of citizen journalism designed to encourage responsible and ethical use of user-generated material"[59]. As claimed by the authors, "the union produced the 10-point guide in response to the growing trend among mainstream media of publishing newsworthy photographs and video produced by the public"[60].

A possible solution for the questionable position of web-logs might in fact lie in the self-organization of the community itself. Clarifying the status of bloggers and regarding them as press or depriving them of privileges and obligations bound with professional journalism in its so-far known definition is of high importance for those of bloggers that wish to exercise real, sometimes investigative journalism on-line[61]. Such a solution naturally does not solve the universal problem, but might show a direction to follow. Perhaps it would show feasible to allow for the community to define on its own, whether a particular author of Internet contents wishes to be regarded as a journalist, with all its consequences, or whether he wishes to stay free of the additional burden. The media market would then be left free to shape its boundaries, the state might only decide whether the proper way for an on-line periodical to be regarded as press should be the same as a printed one (e.g. alter the registration/application details).

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[57] K. Łoziński on behalf of the Polish Society of Journalists and Internet Media, as quoted in the above mentioned declaration, précité.

[58] L. Phillips, *Media content, concentration and pluralism in Europe in the digital age*, EUobserver, May 2, 2008, available August 14, 2008 at: http://euobserver.com/871/26075.

[59] J. Kiss, "Union launches code of practice for use of citizen journalism", journalism.co.uk, January 26, 2006, available August 13, 2008 at: http://www.journalism.co.uk/2/articles/51689.php.

[60] *Id.* The proposition was however strongly criticized by the alleged "citizen journalists", who claim that the actual aim of the Code was to protect the status of "real" journalists and make the barrier between "real" and "cyber" ("citizen") journalism even stronger; e.g. J. Jarvis, "Regulating the rabble", BuzzMachine, January 30, 2006, available August 13, 2008 at: http://www.buzzmachine.com/2006/01/30/regulating-the-rabble/.

[61] A good example might be that of Matthew Lee, accredited by the UN as an official commentator, but working solely on-line (www.innercitypress.com); as described in: M. Aspan, "As Blogs Proliferate, a Gadfly With Accreditation at the U.N.", New York Times, April 30, 2007, available August 12, 2008 at: http://www.nytimes.com/2007/04/30/business/media/30blog.html?_r=1&hp=&adxnnl=1&adxnnlx=1218543384-onAVXYxtnjIn3mZP/QJ2nA&oref=slogin .

4. Should web-logs be considered press? Results of the analysis

Why is the answer to this question so important? It cannot be denied that "citizen journalism" is a growing power[62]. Many publicists, politicians and social activists use the cyberspace to express their opinions and influence the minds of others. Those opinions often result in certain social actions or political decisions. Web-logs play an important role in that debate. The problem with on-line published content is that – unlike traditional media – it is subject to no legal or state control. In traditional press it is the author of a publication or/and the editor of the periodical, who are to confirm their information and take responsibility, should such a verification show not thorough enough. Regarding the growing power of on-line influence in public opinion shaping, such a lack of control for blogs may raise certain concerns.

What is more, the influence of the new-media onto their traditional counterpart proves to be forever greater, as shown in a recent study by the Oriella PR Network[63] entitled "*The European Digital Journalism Study*"[64]. According to the study,

> "User Generated Content (USG) plays a central role in European journalism with 62% welcoming it as part of their story package. Over 70% of publications encourage comments on stories online and almost 30% accept and publish reader pictures. The influence of the blogosphere continues to grow, with almost a quarter of journalists regularly quoting bloggers in their articles."[65]

[62] The power that bloggers hold has been recognized by the U.S. Senate during the discussion on amending the lobbying bill. Referred to as "grassroots lobbying", the social movements on certain topics that are aimed at achieving political, social or legal changes, might have been surrendered to an obligatory registration. In a proposal of amendment of the lobbying bill Senator D. Litter defined the term "paid efforts to stimulate grassroots lobbying" as "*any paid attempt in support of lobbying contacts on behalf of a client to influence the general public or segments thereof to contact one or more covered legislative or executive branch officials (or Congress as a whole) to urge such officials (or Congress) to take specific action, (…)"* while "*the term `paid attempt to influence the general public or segments thereof' does not include an attempt to influence directed at less than 500 members of the general public*." Senate Bill 1, sec. 220, Disclosure of Paid Efforts to Stimulate Grassroots Lobbying. These unspecific definitions caused much concern of a possible need to register among others weblogs and on-line services that had more than 500 readers. In result, the amendment was not passed by the Senate.

[63] An alliance of communication agencies from 20 countries around the world.

[64] Available August 14, 2008 at: http://www.europeandigitaljournalism.com/. The Study contains information gathered from among 347 journalists from broadcast, national, regional and trade media across Europe.

[65] The foreword to European Digital Journalism Study "*How the Digital Age has affected journalism – and the impact for PR*", available August 14, 2008 at: http://www.europeandigitaljournalism.com/.

> The report also shows the dynamically changing face of the media – a press article is no longer solely done in writing – almost half of journalist queried testifies to be obligated to add multimedia content, such as video or audio files, to their publications. Almost a half of journalists are offered the possibility to run their own blog on their employee's domain[66]. The on-line journalism has also changed the face of the profession itself – being good with words no longer suffices to be a good journalist; the professional requirements nowadays demand a high-level of media literacy and computer skills[67].

Blogs mean however much more than just "citizen journalism" and USG available on professional news-portals (with or without revenue). On one hand the lack of responsibility for web-log content brings along a serious danger for those, whose rights might be injured on-line. The case of K.U. vs. Finland (no 2872/02) being examined by the European Tribunal of Human Rights will show, whether "no effective remedy to discover the identity of the author of a defamatory text posted on the Internet in the name of a minor" may be regarded as infringing art. 8 and art. 13 of the ECHR[68]. The problem of stating the identity of an author of libelous or generally harmful Internet content is already raising serious problems for national authorities.[69]

On the other hand however, one must keep in mind situations such as those of bloggers obliged by national authorities to reveal information, they would not be obliged to reveal, had they been professional journalists[70].

What is the ultimate solution? What rights should be allowed for bloggers and should they be equal for all those, who share their thoughts and opinions on-line?

It is clear that not all web-logs (or web services, for that matter) constitute press. Private web pages that have no inspirations to compete with news services or mind-shaping

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[66] *Id.*

[67] *Id.*, p. 1; With no professional training in this area – almost two-thirds of the surveyed journalists admit to being self-taught.

[68] That is the right to privacy (art. 8) and effective remedy (art. 13) before national authorities for violations of rights under the ECHR. As reported by the Court Registry in information available August 18, 2008 at: http://www.echr.coe.int/Eng/InformationNotes/INFORMATION%20NOTE%2088%20%20(provisional).htm.

[69] An interesting case might be that of an Internet portal: DontDateHimGirl.com, where anonymous comments on individuals may be posted. A Pittsburgh lawyer sued the owner of the portal and some authors of allegedly libelous posts for defamation; P. Lattman, *Pittsburgh Lawyer: Don't Defame Me, Dontdatehimgirl.com*, July 3, 2006, available August 18, 2008 at: http://blogs.wsj.com/law/2006/07/03/pittsburgh-lawyer-dont-defame-me-dontdatehimgirlcom/ and C. Jones, *Scorned Attorney Sues Kiss-and-Tell Web Site*, Daily Business Review, July 5, 2006, available August 18, 2008 at: http://www.law.com/jsp/article.jsp?id=1151658319991.

[70] The aforementioned cases of Josh Wolf and Charles LeBlanc, which completely differ in results.

forums but exist solely to satisfy the social needs of its author should not be considered press and should be seen only through the free speech limitations perspective, should such a need occure.

It may also be stated with a great amount of certainty that on-line versions of traditional newspapers remain press with all its consequences and foreseen obligations. The fact that a printed press article is available on-line does not change its legal character.

The real question here concerns the **public interest web-sites that share and influence opinion on actual, political or social issues and that by the intention of its authors might be considered as competitive to traditional press**. The starting point for determining their character should be the **amendment of existing definitions of press to include such an activity**. Surrendering a web-log to press standards may be either **obligatory**: in such a new definition of press all web pages of current, general interest character would be included, possibly with an obligation for them to undergo registration/application; or **voluntary** – it would be up to the web-page operator to register their web-log and, pursuant such a registration, follow all the provisions foreseen for press and take responsibility for all contents available on-line within his service. The obligation of state registration of a web-log might be substituted by including the existing journalist organizations (like the British National Union of Journalists) or new on-line publishers' societies (like the Polish Society of Journalists and Internet Media) in a procedure of creating and enforcing a charter or code of practice for the on-line publishers. The norms contained there-in should include the standards applicable to traditional press as well as the goals envisaged by the cyber-community. Such charters might show a proper tool for introducing on fair terms the user-generated content into the world of traditional journalism (e.g. by setting equal rates for using UCG in media). The result of such a voluntary acquisition of obligations foreseen for traditional press by an on-line publisher should result in his higher position in the world of on-line media – a certain accreditation of national journalism association or by the state itself[71].

Such a solution would prevent the uncomfortable situation that appeared in Poland after the above-discussed Supreme Court decision, where an on-line publisher finds out about his obligation to register his web-site no sooner than when being sentenced for not having fulfilled it; a situation that might appear in other countries, should proper legal regulations or

[71] Naturally the British idea of a certain logo assigned to on-line press might suffice.

amendments not appear on time. It is certain that the present legal insecurity does not support the development of information society and the cultural diversity that are declared as goal for the European and international community.