UNDERSTANDING MEDIA SERVICES AND PRESS PRODUCTS IN THE NEW HUNGARIAN MEDIA REGULATION

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1. Introduction

The European Union adjusted its audiovisual regulation to the digital environment in 2007. Within the framework of this, the most significant change was that the scope of the Television Without Frontiers Directive[1] was extended to a certain group of "Internet services", the so-called on-demand, nonlinear audiovisual media services based on individual needs.[2] This meant the acknowledgement of the fact that audiovisual services showing a likeness to broadcasting have a similar social significance and may have similar impact as television. Therefore, they had to be provided with uniform market entry conditions similar to that of television broadcasting, so that the uniformity of the internal market and free movement of services could be guaranteed.

The new Hungarian media regulation also takes into account that in the area of providing consumers with media content, new technologies appeared in the realm of media services and press products. For this reason, starting from the principle of technology neutrality and taking into account the increasing significance of new types of services, besides traditional printed press products, the regulation of online press products and, along with linear, the regulation of on-demand media services also became necessary, considering that

[1] Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities.

[2] Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council 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 (hereinafter: the 2007 AVMS Directive) and Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (hereinafter: the AVMS Directive).

these services play similar roles in the process of mass communication. The European regulation does not cover radio media services and press products, but at the same time, the AVMS Directive gives free hand to the Member States to regulate these services.[3]

The new regulation only covers media services published with mass communications purposes and press products whose principal purpose is the provision of a certain media content to the general public. Besides the presence of other criteria, it is very important that the scope of the acts only extends to services intended to a significant portion of the general public. The distinction between private and public communications is clearly apparent in the new regulation.

It is important to emphasize that from the principle of technology neutrality it also follows that for the determination of the material scope, with respect to both press products and media services, always the given, concrete media content has to be evaluated. Thus, the given service is *primarily* assessed not by its form of appearance or the provider of the service but based on the content provided to the public. This, of course, does not mean that based on the content itself (or a certain portion of it) the given service can always be judged, because many other aspects have to be taken into account in the course of the assessment. However, the form of appearance or name alone of the given media content will never be determinative.

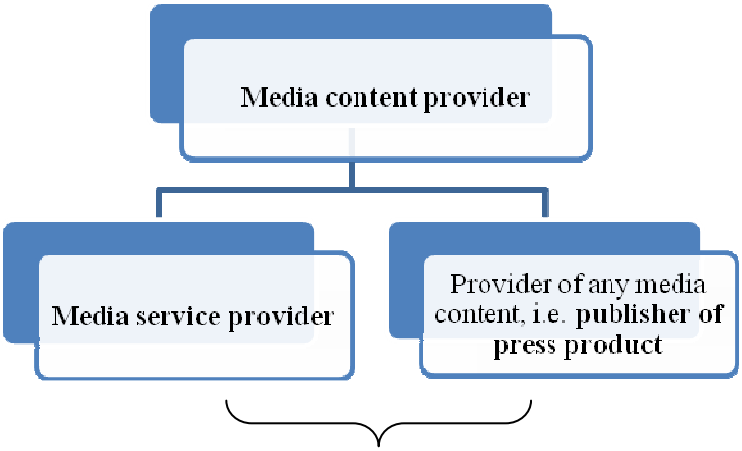
The present study provides the detailed analysis of the concepts of media services and press products serving as the basis of the conceptual system of the new Hungarian media regulation.

2. The conceptual system of the Press Freedom Act and the Media Act

The starting point in the determination of the material scope is that both Act CIV of 2010 on the freedom of the press and the fundamental rules of media content (the Press Freedom Act) and Act CLXXXV of 2010 on media services and mass media (the Media Act) apply to media services provided by, and media products published by, media content providers established in the Republic of Hungary.[4] The acts define the concept of establishment in accordance with the AVMS Directive.[5]

Article 1(1) of the Media Act divides into two large groups the basic services under its scope: the first is media services and the second is press products. The structures of their definitional elements are similar, which similarity stems from the fact that the legislator created them based on the media service concept[6] of the AVMS Directive. The new regulation refers to the providers of the two different services as media content providers.

[3] See Recital 23 of the Preamble of the AVMS Directive.
[4] Article 2(1) of the Press Freedom Act; Article 1(1) of the Media Act.
[5] Article 2 of the AVMS Directive; Article 2(2)-(4) of the Press Freedom Act; and Article 1(2)-(7) of the Media Act.
[6] Article 1(1)(a) of the AVMS Directive.

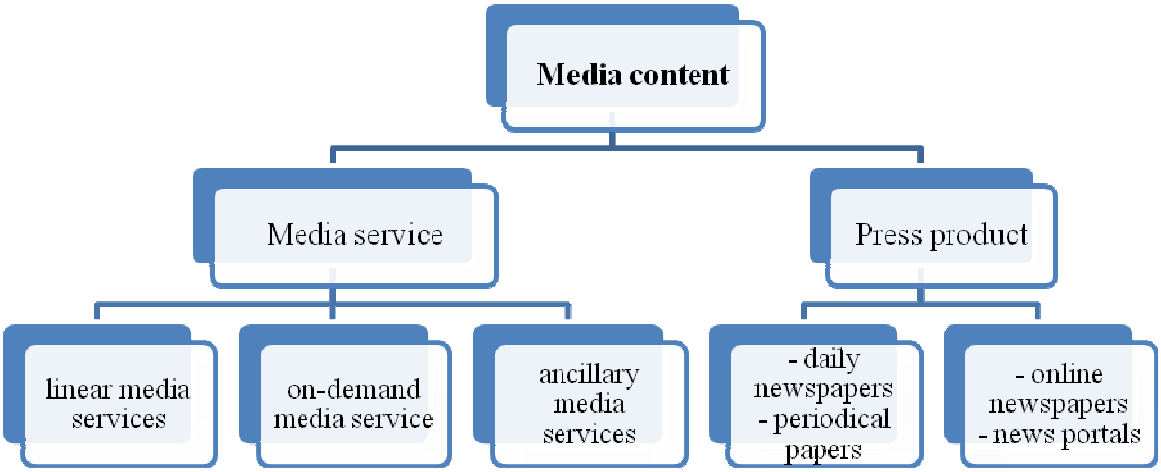


To determine the material scope, we should not start from the definition of media content provider and media content,[7] considering that these are summary categories, which lead us back to the already described basic services, the definitions of media services and press products.

Media service shall mean "any independent service of a commercial nature, as defined in Articles 56 and 57 of the Treaty on the Functioning of the European Union, provided on a regular basis, for profit, by taking economic risks, for which the media service provider bears editorial responsibility, the primary aim of which is the delivery of programmes to the general public for informational, entertainment or educational purposes through an electronic communications network".[8]

Press products shall mean "individual issues of daily newspapers or other periodical papers, online newspapers or news portals, which are offered as a business service, for the content of which a natural or legal person, or a business association without legal personality has editorial responsibility, and the primary purpose of which is to deliver textual or image content to the general public for information, entertainment or educational purposes, in a printed format or through any electronic communications network. Editorial responsibility shall mean the responsibility for the actual control over the selection and composition of the media content and shall not necessarily result in legal responsibility in connection with the press product. Business service shall mean any independent service of a commercial nature, provided on a regular basis, for profit, by taking economic risks."[9] Both services are business services, for which the provider of the service bears editorial responsibility and whose principal purpose is the provision of the service to the general public for information, entertainment or education purposes. We analyse in detail these definitional elements just as the differences between the definitions of the services.

[7] According to Article 203(42) of the Media Act, any content offered in the course of media services and in press products.
[8] Article 203(40) of the Media Act and Article 1(1) of the Press Freedom Act.
[9] Article 203(60) of the Media Act and Article 1(6) of the Press Freedom Act.



2.1. Common definitional elements of media services and press products

The legislator has created the general, dynamic concept conforming with the technical development of the services provided by the media service provider and the publisher of the press product (together: media content), which, instead of the various types or forms of appearances of media services and press products, concentrates on their function. The four basic attributes that turns services into media services or press products are the following:

- "business service"-like quality;
- editorial responsibility;
- purpose of providing information, entertainment or education; and
- the principal purpose of the provision of the service to the general public.

Only if all these elements are met simultaneously can we say that the service falls within the scope of the regulation. These criteria enable the dynamic interpretation of the concept with respect to additional technical-technological developments that can be expected in the future, and they do not force an interpretation in relation to already existing technical solutions.

After the interpretation of the four common definitional elements, we are turning to the particular individual definitional elements of the different services.

2.1.1 "Business service"

For the definition of media services, the legislator relied on the concept of business service as defined under Articles 56 and 57 of the TFEU[10]. The definitional elements that were included in the case of the media services reoccur in the definition of press products: business service is an independent service of a commercial nature provided on a regular basis, for profit, by taking economic risks.

According to Article 57[11] of the TFEU, *services* shall be considered to be 'services' where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons. Services shall in particular include:
a) activities of industrial character;
b) activities of commercial character;

[10] The Treaty on the Functioning of the European Union (TFEU) replaced the Treaty on the EC on 1 December 2009.
[11] The former Article 50 of the TEC.

c) activities of craftsmen; and
d) activities of the professions.

Thus, Article 57 of the TFEU is a general clause, after which a non-exhaustive list of examples provide further guidance. The concept was filled with content by the judgements and legal analyses of the European Court of Justice (ECJ), based on which the publication of media content is clearly considered as a service.[12]

The service must be of "economic" character, for the fulfilment of which the fulfilment of the below two definitional elements are essential:

1. It is fundamental that the activity be of a commercial nature. Act IV of 2006 on business associations also uses the concept of "commercial nature", but it does not define it either. According to the explanation of the act,[13] commercial nature generally means striving for profit with taking economic risks, and in addition, it assumes regular, long-term, and organised economic activities. Thus, the activity is considered as an activity of a commercial nature if it is conducted on a regular basis for the purpose of making profit or income.[14] The Press Freedom Act and the Media Act also build on these definitional elements known from Hungarian jurisprudence and the definition of Act LXXVI of 2009 on the general rules on commencement and pursuit of service activities[15] specifying service activities. Thus, in the case of business services that are conducted
a) on a regular basis,
b) for making profit,
c) by taking economic risks,
we talk about services.

Regularity presumes a sort of periodicity and continuity. "The Court of Justice has consistently held that the temporary nature of the activities in question should be determined in the light not only of the duration of the provision of the service, but also of its regularity, periodical nature or continuity."[16]

The concept of *profit* or remuneration should be interpreted broadly, as the consideration for the service does not necessarily come from the user of the service (reader, viewer or listener), but with the user or independently from the user, they can be also paid by third parties (e.g. advertisers). For example, the ECJ in the *Bond van Adverteerders* case[17]

[12] Cf. the 30 April 1974 judgement of the ECJ in the *Giuseppe Sacchi* (C-155/73) case [ECR, 1974, 00409], as well as the 9 July 1997 judgement of the ECC in the *Konsumentombudsmannen (KO) v. De Agostini (Svenska) Förlag AB* (C-34/95) and *TV-Shop i Sverige AB* (C-35/95 and C-36/95) consolidated cases [ECR, 1997, I-03843], and the 26 April 1988 judgement of the ECJ in the *Bond van Adverteerders et al. v. Netherlands State* (C-352/85) case [ECR, 1988, 02085].

[13] FERENC ZUMBOK, *A gazdasági társaságokról szóló törvény magyarázata* [*Explanatory Notes on the Companies Act*], Budapest, Magyar Hivatalos Közlönykiadó [Hungarian Official Publisher of Bulletins], 2006.

[14] ANDRÁS KISFALUDI and MARIANNA SZABÓ (editors), *A gazdasági társaságok nagy kézikönyve* [*The Big Handbook on Business Associations*], Budapest, CompLex Kiadó [Complex Publications], 2007, 39. The authors provide this definition in comparison with the concept of non-profit companies (Article 57(1) of the Civil Code).

[15] According to Article 2(l) of Act LXXVI of 2009, service activity is any independent economic activity of a commercial nature, provided on a regular basis, for profit, by taking economic risks, with the exception of production activities and exercise of public authority; o) production activity: the manufacturing of any products, even by the processing of other products, including the placing on the market of the product manufactured by the manufacturer in accordance with Article 2(2) of Regulation (EC) 765/2008 of the European Parliament and of the Council.

[16] Recital 77 of the Preamble of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (hereinafter: Services Directive).

[17] The 26 April 1988 judgement of the ECJ in the *Bond van Adverteerders et al. v. Netherlands State* (C-352/85) case [ECR, 1988, 02085].

found that an activity is considered a service if it was provided for remuneration, but it is irrelevant who pays the remuneration for the service provider.

It is important to underline that the existence of actual tangible profit is not necessary for considering the activity as a service of economic nature. It is sufficient to pursue profits (if, however, the service provider does not strive for generating income but maintains the press product with the purposes of "good will", then it is not governed by the regulation). If the activity cannot be characterised by any means with the pursuit of profits but it simply realizes the exercise of the freedom of expression of opinion, we cannot talk about services.[18] (In the *Grogan* case one of the student organizations of Ireland, which prohibits abortion, had published a list of British clinics performing abortions, which activity was not considered by the ECJ as a service.)[19] In the case of an application for registration, the authority considers the fact of the filing of the application (in the absence of information or data to the contrary) as the applicant's express statement acknowledging the performance of activities of a commercial nature. However, in the course of a proceedings for the failure to register, based primarily on public information or facts in official registries, or available data and information, and if necessary, based on the data provision of the customer, the authority examines whether the service is provided as a business service. This, however, is only significant, if the service in question is characterised by the other definitional elements without exception. Considering that it is the service provider itself that knows exactly whether it provides business services (and the authority does not have relevant prior information), in the case of a dispute it may prove that contrary to the allegations, its activities are not business services, and thus, it is not a media service or press product.

The fact in itself that the service is free is not determinative, as, for example, the so called "free" media service (*free-to-air television/radio service*)[20] itself also works based on a certain business model, but, e.g. in the individual services, advertisements found in print media or on websites, may refer to the business character of the service in question. We can encounter very often the phenomenon that the person bearing the editorial responsibility provides compensation for the website in question to the authors of the website. The existence of paid contributors or employees may also indicate the economic character of the service.

The absence of *taking economic risks* also suggests that the service is non-economic in nature. Considering that every business service entails risk, the taking of risk exists not only in services in the pursuit of generating profit but also in the case of activities aimed at the maintenance of the service.

Many websites operate while taking economic risks. From the existence of banners and advertisements theoretically we can conclude that there is economic activity, but at the same time, it is important that these appear on the website in question in a manner indicating that the website pursues profit from the service, and the website in question does not contain advertisement only in an ancillary manner. However, in the case of certain websites, we cannot talk about taking of economic risks, no independent business services take place, and the advertisements appear on the site indeed only in an ancillary manner. In the latter situation, examining the service as a whole, it can be concluded that there are no economic risks taken, we cannot talk about economic activity, and, thus, we cannot talk about media service or press product either.

[18] ERNŐ VÁRNAY and MÓNIKA PAPP, *Az Európai Unió joga* [*The Law of the European Union*], CompLex, Budapest, 2010, 618.
[19] The 4 October 1991 judgement of the ECJ in *The Society for the Protection of Unborn Children Ireland Ltd v. Stephen Grogan et al.*(C-159/90) case [ECR, 1991, I-04685].
[20] Unencrypted, free-to-air broadcasting.

2. The service must be an *independent* business service. Such a service that is closely and inextricable connected to another economic activity (providing not media service or press products), cannot be considered independent, and, thus, it is not governed by the acts. Accordingly, the Press Freedom Act and the Media Act do not cover Internet websites of commercial purpose that serve for information exchange within a certain interest group (e.g. a commercial on the website of the manufacturer of a product or service), or which serve for the display of businesses, the advertisement of their products or services, or information or statements regarding their business activities.[21] The existence of the independent nature of the service should be assessed on a case by case basis. It should be determined after evaluating all circumstances of the relationship between the non-media service or press product and somehow related services providing information or information exchange (thus, whether the latter is independent or only related or ancillary by nature).In other words, there is no restriction for a business operating in a given area to provide press products or media services in addition to its basic activities.

Also exempt are those websites that provide services related exclusively to information society or electronic commerce, and the service provider provides information in association with these services.

Games of chance involving a stake representing a sum of money (lotteries, betting and other forms of gambling services), as well as online games and search engines, but not programmes devoted to gambling or games of chance[22] , should also be excluded from the material scope of this Directive.[23] These services are not considered media services, because they only present audiovisual contents in an ancillary manner relating to the underlying business service, and not as an independent economic service.

The electronic versions of printed newspapers and magazines published with different contents than their printed version, however, may be considered as independent services, and, thus, they can fall within the material scope of the acts as online press products. It is also possible that on a given website both the publication of press products and the provision of media services are taken place. (See Section 2.4.)

In cases of economic activities, it is important that we emphasize that the scope of the regulations extends to all forms of those activities (thus, also, e.g. to the activities of public service and community media services), but they do not extend by any means to services that are fundamentally not economic of character, which are not in competition with, in the case of media services, traditional (linear) media services (e.g. private webpages or audiovisual contents produced by private persons shared among each other within communities with the same interest), or, in the case of press products, with traditional, printed press.[24] Thus, in the course of the interpretation of the "business service" definitional element, all possible forms of the activity must be considered, irrespective of the form of the business association or business model of the given service.[25]

Owners of blogs or private websites are not governed by the acts if they do not provide their services as media content providers, in other words, as independent business services. The assessment of blogs or private websites do not change if audiovisual services are also presented on them, because in accordance with the Directive, the Press Freedom Act and

[21] Cf. RTR Aktuell: Medien Newsletter, Medien09/2010. 4. It may be downloaded from http://www.rtr.at/de/komp/NewsletterM092010.
[22] Recital 22 of the Preamble of the AVMS Directive.
[23] Recital 25 of the Preamble of the Services Directive and Recital 22 of the Preamble of the AVMS Directive.
[24] Recital 21 of the Preamble of the AVMS Directive.
[25] Cf.: ATVOD decision in the *BNPtv* case at http://www.atvod.co.uk/regulated-services/scope-determinations/bnp-tv.

Media Act do not cover activities that are fundamentally not economic in nature and are not in competition with television media services (see the interpretation of the concept of "*television-like*" services under Section 2.2.2). Thus, video blogs or audiovisual contents published on social websites do not fall under the material scope of the acts either.

2.1.2 "Editorial responsibility"

According to Article 6 of the Press Freedom Act and Article 203(60) of the Media Act, editorial responsibility means the responsibility for the actual control over the selection and composition of the media content and shall not necessarily result in legal responsibility in connection with the press product.

In accordance with the AVMS Directive,[26] editorial responsibility is the effective control over the selection and organisation of programmes, in the case of linear audiovisual media services, the chronological schedule of programmes and in the case of on-demand audiovisual media service, the catalogue of programmes. Editorial responsibility does not necessarily result in legal responsibility under national law with regard to the content or service provided (pursuant to the Hungarian regulation also, the service provider, usually a legal entity, bears the legal responsibility and not the person actually carrying out the editing of the programme violating the regulations). The Directive adds additional comments to the concept of editorial responsibility[27] based on which, from the perspective of the definition of media service provider and, thus, media service, and because of the special features of the Hungarian regulation, the publisher and press product, the establishment of editorial responsibility is of fundamental essence. Member States may further specify other aspects of the definition of editorial responsibility, notably the concept of 'effective control', when adopting measures to implement this Directive.[28] The Directive, on the other hand, does not pertain to the exemptions from liability set forth in Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market[29]. In the application of the Directive, the concept of media service provider does not extend to natural or legal persons that broadcast only such programmes, for which editorial responsibility lies with third persons.[30]

According to the Directive, editorial responsibility means the exercise of effective control over both the selection and organisation in programme catalogues of programmes. Based on this, the editing of content means that the media service is realized in each case as a result of the organisation of more programmes[31] and, with regard to press products in the Hungarian regulation, editorial activity is realized in the organisation of content comprised of text and pictures. The proposals worded in the course of the amendment of the AVMS Directive mentioned also what activities exactly the selection and organisation of media content means. Thus, in the case of linear media services, the scheduling of programmes (programme schedule) and in the case of on-demand media services, the selection of programmes (catalogue of programmes) are covered by the responsibility. The concept of

[26] Article 1(1)(c) of the AVMS Directive.
[27] Recital 25 of the Preamble of the AVMS Directive.
[28] Recital 25 of the Preamble of the AVMS Directive.
[29] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.
Hereinafter: Directive on Electronic Commerce.
[30] Recital 26 of the Preamble of the AVMS Directive.
[31] POLYÁK GÁBOR, Az audiovizuális médiaszolgáltatások meghatározása és szabályozási terhei [The Definition and Regulatory Burdens of Audiovisual Media Services], *AKTI füzetek* [*AKTI [Alkalmazott Kommunikációtudományi Intézet or Intitute for Applied Communication Sciences] Papers*], November 2007.

"programme schedule" is not defined either by the Hungarian acts or the Directive. The design of programming is internationally labelled by the *scheduling* term of art, which entails the designation of the placement and broadcasting time of the programmes. Accordingly, the Directive sets forth that the editorial activities covered by the editorial responsibilities manifest in the chronological organisation of programmes and the organisation of the catalogues of programmes. This was not included in the Hungarian concept definition, but it can be derived from the Directive.

In the course of the examination of the editorial responsibility definitional element, not merely the responsibility for effective control but also editing as an activity should be taken into account. The activity of the editor, in addition to the organisation and selection of the media content they want to provide to the public, also means a value added to the services, as editors carry out professional activities. The processing of information by a professional is also an element of the concept of mass communications[32]. In the case of printed press products, because of the traditions, the interpretation of editorial activity can be considered clear, and its definition in the case of online press products have to be executed based on the analogy of the former. The definition of periodicals[33] as set forth by the no longer effective Press Act, as well as judicial practice[34] show that the attributes *indicating* that the material is edited are the formal requirements, publication with the same title and topic, the volume number, the issue number and the date; the legal criteria pertaining to content is that it publishes a written piece, either as an original work or a translation, belonging in the genres of journalism, literature or scientific literature (news, news report, article, interview, study, poem, short story, etc.), photograph, graphics, caricature or puzzle. These criteria are not included in the current regulation, but taking them into account for the distinguishing between the various services may be helpful.

Accordingly, for example, in the case of a webshop, the person placing and uploading to the website the description of the product offered for sale cannot be considered an editor, and, thus, in this case there is no editorial responsibility. In the case of printed advertising publications, it is a decisive criteria whether we merely talk about a "listing" of certain products and related data, and, thus, these are only simple flyers not qualifying as press products, or we talk about an organisation requiring editorial activities (e.g. about a paper, where the editor decides which ones of the ads received may be published, even if the decision is that all advertisements will be published in the newspaper).Even an online advertising publication "operated" by a software can be an online press product, assuming that the content on the given website meets the definitional elements of press products (in other words, e.g. there is editorial responsibility).

All this is also strongly connected with the "supplemental" criteria, according to which the on-demand audiovisual media services under the AVMS Directive are similar to the traditional (linear) audiovisual media services[35] ("*television-like*"). Because the Directive requires the regulation of on-demand media services only in cases where they are aimed at the same audience and compete on the same market as television broadcasts, and they are similar to them as regards their content and appearance as well. This principle, because of the logic of the Hungarian regulation and the definition of press products, must be also applied as regards online press products. In other words, online press products have to be "press-like" or similar

[32] "Mass communications is the process in the course of which the message from the information source reaches smaller or larger groups of people, together, the general public, processed by professionals operating in specialized institutions and through technical intermediaries, the so called media." MIHÁLY GÁLIK and GÁBOR POLYÁK, *Médiaszabályozás* [*Media Regulation*], Budapest, KJK-KERSZÖV [a legal and economics publishing house, since 2006, Complex Publishing Ltd.], 2005, 18.

[33] Article 20(f) of the Press Act.

[34] Budapest Court of Appeal, 2.Pf, 20, 793/2006/3 and Budapest Court of Appeal, BDT 2009, 2148.

[35] Recital 24 of the Preamble of the AVMS Directive.

to printed press products. The Hungarian legislator included the online press products also under the regulation, because they compete with printed press products, and, thus, it is logical and justified by the protection of users to apply similar regulations to them. Hence, the Media Act and Press Freedom Act do not wish to regulate those services that qualify as economic by nature, their purpose is to provide their contents to the general public, but neither by content nor by form, they do not resemble printed press products and do not fulfil their function either. The Press Freedom Act and the Media Act specify uniform concept and thus identical definitional elements with respect to the printed and online press products, and therefore, in the case of all press product types, we talk about "press-like" services. (See also Section 2.3.2.)

2.1.3 "Purpose to inform, entertain or educate"

Pursuant to the AVMS Directive, the definition of audiovisual media service covers media services in their function to inform, entertain and educate the general public[36]. Thus, the Directive also emphasizes the limitation of the regulation to activities of mass communications. Therefore, under the Directive, the concept of audiovisual media services includes exclusively those audiovisual, either linear or on-demand, media services which are intended for reception by, and could have a clear impact on, a significant portion of the general public.[37]

These supplemental criteria also appear in the Hungarian regulation. It is clearly expressed both in the title and the Preamble of the Media Act that the act governs certain forms of mass communications within the scope of the regulation.

The intentions of mass communications can be well integrated into the functions appearing in the concept of media services set forth in the Directive. These are the following:
a) information (compilation, storage, processing, publication and distribution of news, data, images and facts);
b) education (dissemination of scientific, cultural and artistic knowledge, and the development and shaping the taste and knowledge of the individual); and
c) entertainment.[38]

The Press Act had defined before the concept of the provision of information. According to its Article 20(e), "providing information is the public communication, through a press product, of facts, events, official announcements, speeches, as well as opinions, analyses and evaluations relating thereto." The National Radio and Television Commission (ORTT) detailed the concept of entertainment in Resolution No. 1476/2002 with respect to light entertainment as follows: "Light entertainment programme is a non-fiction programme whose purpose is to provide light entertainment to the audience (e.g. playful game shows, talk shows, musical entertainment programmes and cabaret programmes)." Pursuant to the Resolution, entertainment as a purpose can be best captured as a means to provide entertainment.

No matter which of the above purposes are at issue, without the business service nature, the given service cannot be considered mass communications under the Press Freedom Act and the Media Act, as media services and press products are also business services at the same time. Blogs, for example, want to provide information, participate in the shaping of

[36] Recital 22 of the Preamble of the AVMS Directive.
[37] Recital 21 of the Preamble of the AVMS Directive.
[38] KRISZTIÁN PETE, ANNAMÁRIA CSISZÉR and ILDIKÓ PALOVITS (editors), A kommunikáció funkciója [The Function of Communication], *Kommunikációtudományi Nyitott Enciklopédia* [*Open Encyclopedia of Communication Sciences*], *AKTI* [*Alkalmazott Kommunikációtudományi Intézet or Intitute for Applied Communication Sciences*], 30 June 2010.

public opinion, but in general, they are not governed by the act, because "blogging" characteristically is not carried out in a commercial manner, taking economic risks and for generating profit. At the same time, there could be also examples for websites calling themselves blogs while providing business services. Thus, if the real purpose of the website is to provide business services (according to the above, generating income by itself is not sufficient to establish this), if the website is edited, and if based on its content it is within the scope of mass communications, then it can be considered as a press product or media service.

The criterion regarding information, education and entertainment cannot be separated from the condition of providing content to the general public, because the Directive and in accordance with it, the Media Act and the Press Freedom Act do not wish to regulate services that are private in nature or accessible only within a certain, narrow circle. Accordingly, for example, they do not apply to the various forms of private correspondence, thus, to e-mails,[39] sent to a limited number of recipients, considering that those are still within the scope of private communications (e.g. e-mail circulars). "Press-like" media content communicated in the form of a newsletter (thus, sent via e-mail), however, may be considered as an online press product if it meets all other conditions.

Social or file sharing websites in general are not within the scope of the Press Freedom Act and the Media Act, because from the perspective of the person uploading the content, they fundamentally are not economic in nature or are not edited. In the course of these services, sharing and exchanging contents prepared by private persons themselves within communities of the same interest is taking place, and these are not in competition with linear media services (the service is not "*television-like*"). Although, we can find users on social websites who operate their own websites with business purposes, but in these cases, we do not talk about independent business services, because the subpages of these registered users serve the advertisement and promotion of their own activities and businesses, and their purpose is not the generation of profit by this content provision (thus, their services are not economic in nature). In general, community websites as independent services are within the scope of private communications and their purpose is not mass communications. They do not meet the definition of press products either, as their content is not "press-like".

Such, already mentioned, services that serve to display information or communication of persons in connection with themselves or their activities, can be excluded from the scope of the regulation as well. With respect to such contents, the assessment of the economic nature of the given service and the evaluation of the purpose of the service deserve special attention. In the case of websites presenting and promoting the activities of certain individuals, it can be concluded that the principal purpose of the service is not mass communications. For example, the website of a certain performing artist or public figure that contain news, articles and videos of the person as well, cannot be considered in itself either as a press product or on-demand media service, because its principal purpose is to effectuate the provision of private information and self-advertisement. Although, without doubt, these websites have the purpose of providing information, their principal purpose is not the provision of contents, having a purpose that can be found in the definition of press products (information, entertainment or education) with the *purpose of mass communication*. These websites do not qualify as independent business services either, because they serve, built on another business service or other activity, connected to their persons, activities or businesses, falling within the scope of another regulation, not the Press Freedom Act or the Media Act, the advertisement and promotion thereof.

If, for example, public news or "*television-like*" contents also appear on such a website, the purpose and character of the whole website in its entirety has to be examined.

[39] Recital 22 of the Preamble of the AVMS Directive.

Because if they *principally* provide it with a purpose of mass communications, if, from the perspective of the user uploading the content, the service qualifies as economic, if it competes with linear media services or printed press products, and it is similar to them in its appearance and content, then it may be considered an on-demand media service or online press product.

2.1.4 "Providing the general public with content" as the principal purpose

Several of our acts provide definitions for the concept of public disclosure. According to Act LXIII of 1992 on the protection of personal data and the disclosure of data of public interest, public disclosure means the disclosure of data to the general public.[40] Based on the definition, it can be concluded that the number of people with access, the actual users of the service is irrelevant from the standpoint of the occurrence of public disclosure. The emphasis is on accessibility. Accessibility is also realized if access to a specific content requires some sort of registration and login, in other words, if access is only for a certain group, assuming that the service falls outside the scope of private communications. Thus, the objective of providing the general public with content does not necessarily mean that any member of society has actual access to the given media content. This is because mass communications means "providing smaller or larger groups of people, together, the general public"[41] with the media content.

From the perspective of the concepts of press products and media services (in other words, the consideration of a specific service as press product or media service), it is irrelevant actually how many people receive the given content (for example an Internet newsletter may reach a larger group of readers than, e.g. a printed press product). It is also irrelevant from the perspective of the concept that how many people actually visit a website. As regards the assessment, not the number of visitors but the fulfilment of all the definitional elements is relevant as well as the fact, as to whether the given service is intended to a significant portion of the general public and whether the given service could have an impact on the general public.[42] It is another question that in the case of an alleged violation, it can be relevant as to what proportion of the general public received the illegal content (it can be an evaluation factor when judging the gravity of the violation).

Article 20(d) of the Press Act had defined the concept of public communication, according to which the selling, distribution, delivery, commercial rental, free dissemination, public presentation, broadcasting or cable transmission of press products are considered as such. Although, this enumeration included the possible forms of accessibility, because of the technical development and emergence of new forms, listing of possible forms and means seems unnecessary. The Press Freedom Act and Media Act are built on the principle of technology neutrality, and thus, it is unnecessary to put special emphasis on the means of the provision of the content to the public within the specific types of services. It is not the form or means that has to be examined but the fulfilment of the criterion as to whether the given service is intended to a significant portion of the general public and whether the given service could have an impact on the general public.[43]

In the case of both on-demand and linear media services, the competition is for the same audience, and "the nature and the means of access to the service would lead the user reasonably to expect"[44] protection in connection with both services. In the *Mediakabel* case,[45] the ECJ found that the decisive criterion of the concept of television broadcasting was the

[40] Article 2(11).
[41] POLYÁK, 2005, op. cit., 18.
[42] Recital 21 of the Preamble of the AVMS Directive.
[43] Recital 21 of the Preamble of the AVMS Directive.
[44] Recital 24 of the Preamble of the AVMS Directive.
[45] The 2 June 2005 judgement of the ECJ in the *Mediakabel v. Commissariaat voor de Media* (C-89/04) case.

transmission "intended for reception by the public" of programmes, in other words, the simultaneous transmission of the same images for an indeterminate number of potential television viewers. Stemming from the principle of technology neutrality, the means of the transmission of the images is not determinative in the evaluation. In the case of on-demand media services, the issue is the provision of content to the general public but upon the individual initiation (request) of the service by the user.

For the interpretation of the concept of online press products it also deserves attention that in the course of the service, the provision of content to the public emerges as a principal purpose. It is true that with the rapid expansion of the Internet, the blurring of the boundaries of private and public communications can be observed, but in addition to the criterion discussed previously, we cannot overlook this either in the course of the interpretation.

2.2 Media services

In the case of media services, the subject of the service is the series of *programmes*, and the provision of service can exclusively take place via *electronic communications networks*.

The provider of a media service is the *media service provider*.[46](A service provider, naturally, can provide more than one type of services. It is more and more common that a media content provider, as a *multimedia-service*, provides various contents, thus, both media services *and* press products.)

In the *Mediakabel* case,[47] the ECJ found that the most important element of the television broadcasting service was the television programme. According to Article 203(47) of the Media Act, programme shall mean the series of sounds or moving images or still images with or without sound, which form a separate unit in the *programme schedule* or *catalogue of programmes* selected by the media service provider and the form and content of which is similar to that of radio or television media services.[48] Thus, not only moving images can be considered as a part of the programme but also still images presented in the media service (e.g. photographs shown in a news broadcast). The form and content of the programme have to be comparable with the form and content of television broadcasting services if it contains still images. Thus, for example, a photo gallery attached to an online press product can be considered as part of the press product and is not considered as an on-demand media service. According to the definition, thus, the programme can present still images besides moving images, or merely still images in the media service can create a programme, if its form and content is comparable with the form and content of television broadcasting services.

As we have previously noted, the Hungarian regulation and the Directive do not define the concept of programme schedule and catalogue of programmes. However, based on the grammatical interpretation of the words and the definitions of the specific media services, it is clear that in the case of *linear* media services, the media service provider enables the simultaneous viewing of programmes it provides based on a *programme schedule* (in other words, we talk about chronologically organised programmes), while in the case of *on-demand* media services, we cannot talk about a programme schedule, because the programmes can be viewed or listened to upon individual demand, and, thus, in this case, the users can only select from a *catalogue of programmes* prepared by the media service provider.

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[46] According to Article 203(41) of the Media Act, media service provider shall mean the natural or legal person, or a business association without legal personality who or which has editorial responsibility over the composition of the media services and determines their contents.

[47] The 2 June 2005 judgement of the ECJ in the *Mediakabel v. Commissariaat voor de Media* (C-89/04) case.

[48] Cf. Recital 24 of the Preamble of the AVMS Directive.

The comparison of on-demand media services with television (linear audiovisual), as well as linear radio media services has a significant importance, as the definitional element of programme according to the Media Act is that the form and content thereof is *comparable* with the form and content of radio and television broadcasting services. The new definition of television and radio (linear) media services is built on the previous broadcasting definition.[49]

The category of "media service", thus, includes more than one type of services, which, according to the new Hungarian regulation, can be divided into two types, *linear and on-demand media services* (the third type is the ancillary media services, which based on the extent and means of the regulation can be considered as much less important).[50]

2.2.1 Linear media services

According to the Hungarian regulation, in accordance with the AVMS Directive,[51] the scope of linear media services include radio and television broadcasting services, but the services of *webcasting* (such Internet programme or linear media service, which do not appear on other distribution networks), *simulcasting* (the digitalization and online transmission of television or radio programmes, simultaneously with the respective television/radio programme) and *near-video-on-demand* (hereinafter: NVOD) can also be included here. Simulcast cannot be considered an independent linear media service, because it only makes available on another platform the given media service.

The webcasting and simulcasting services only differ from traditional radio or television programmes that they do not reach the public with the help of television or radio sets but via computers, but they are generally not recorded permanently in the memory of the computers.

The NVOD service means the repeat display of the same programmes on multiple channels at different times, and it does not make it possible for the viewer to select the time of access as opposed to *video-on-demand* services based on individual demand. The concept of "on individual demand" was first analysed by the ECJ in the *Mediakabel* case.[52] Although in the case of the service that was the subject of the dispute, the service could be used by a decoding key sent by the service provider, the ordering of films that could be realized in this manner was only possible at times determined by the service provider. In view of this, the ECJ did not find that the possibility of "individual demand" existed, but considering the possibility of "near individual" demand considered the service at issue in the case as a broadcasting service.[53]

Services that merely provide technical assistance for the viewing of a linear programme such as the *time-shifted television* (TST) or *personal video recorders* (PVR) are not considered as media services. Of course, this does not mean that the linear programme itself, the edited media content, provided by the media service provider is not within the scope

[49] According to the repealed Article 2(30) of Act I of 1996 on radio and television broadcasting (hereinafter: the Radio and Television Broadcasting Act), "broadcasting service shall mean the production of radio or television programmes by a broadcaster intended for reception by the general public and display in the form of electronic signals."

[50] Articles 203(35) and (36) of the Media Act.

[51] According to Recital 22 of the Preamble of the AVMS Directive television broadcasting currently includes, in particular, analogue and digital television, live streaming, webcasting and near-video-on-demand.

[52] The 2 June 2005 judgement of the ECJ in the *Mediakabel v. Commissariaat voor de Media* (C-89/04) case.

[53] LEVENTE NYAKAS, *Elemzés a médiaszabályozó hatóságok munkájáról, valamint a nemzetközi audiovizuális szabályozás irányairól* [*Analysis of the Activities of Media Regulatory Authorities and the Directions of International Audiovisual Regulation*], Budapest, AKTI [Alkalmazott Kommunikációtudományi Intézet or Intitute for Applied Communication Sciences], May 2007.

of the regulation, but it means that these types of services provided by the media service distributor that enable the viewing of the programme at a later time are not considered as media services, because they do not have independent media contents.

The rules pertaining to linear media services apply also to noninteractive teletext, which, according to Article 203(21) of the Media Act, is a programme broadcasted in linear audiovisual media services, which primarily serves as textual provision of information, and, in addition, may contain still images, moving images, sound or computer graphics.

As regards editorial responsibility, "effective control" means in the case of linear media services with respect to the selection and organisation of media content advance control and editing, in the course of which statutory requirements must be taken into account (avoiding the broadcast of illegal content), and in the case of live programmes, it provides presenters and managing editors with the opportunity to immediately intervene to eliminate the violation. In phone-in programmes, which have a risk that the content of viewers' communications may be illegal, according to Decision No. 865/2005 (V. 22) of the National Radio and Television Commission [ORTT], the liability of the service provider, for hate speech in the concrete case, "is substantiated not by the hateful speech itself, but because the opinion at issue could reach the viewers without obstruction." According to the decision, it is the task of the service provider (concretely the editor and presenter of the programme) in the case of illegal communications to mitigate or counterbalance the speech, actually distance from it or even to interrupt the viewers' communications. The Decision found that the broadcaster was also liable with respect to SMS messages, because all the tools were available for them to publish the viewers' opinions received by moderating them and in compliance with the law. The Tribunal concluded that the programme was capable of inciting hatred after considering in their entirety the viewers' statements spoken during the program and the SMS messages accompanied the conversation.

Thus, the editor, in addition to counterbalancing the statements spoken, is responsible for the preliminary review of the messages that will be displayed on the screen, and the publication of SMS messages in compliance with the law considering that the messages displayed in this manner are part of the programme (and what is more, in these situations there is no opportunity for subsequent mitigation).

2.2.2 On-demand media services

According to the definitions section of the Press Freedom Act and the Media Act, on-demand media services "shall mean the media services where, on the basis of a catalogue of programmes compiled by the media service provider, the users may, at his/her own request, watch or listen to the programmes at any time of his/her own choice."[54] Thus, for the interpretation of the concept of on-demand media service, the following has to be examined:
a) who or what businesses may be considered media service providers;
b) whether, with the option of individual choice, including the choice of the time also, access is realized; and
c) what type of services are included within the scope of the media service.

Ad a) Those may be considered media service providers, who bear editorial responsibility for the selection of the content of the media service and determine its organisation. Intermediary service providers,[55] media service distributors[56] or anybody else that do not edit the content or

[54] Article 1(4) of the Press Freedom Act and Article 203(35) of the Media Act.
[55] Article 2(l) of Act CVIII of 2001 on certain issues of electronic commerce services and information society services (hereinafter: E-Commerce Act).

determine its organisation are not considered media service providers. Regarding certain video on-demand services, it can happen that it is the media service distributor itself that organises the catalogue of programmes, so it is not impossible that the media service distributor also carries out editorial activities, and, thus, provides media services.

In the case of on-demand media services, in addition to the presence of „business service", the principal purpose of providing content to the general public and the purpose of information, entertainment and education, with respect to the analysis of editorial responsibility, it has to be determined who organises the catalogue of programmes, because that person will be the subject of editorial responsibility. In the case of all services where the organisation of the catalogue of programmes is not carried out by the service provider but by somebody else (for example the users), these are not considered media services either.

Ad b) The main difference between the on-demand media services and linear services is that in case of the on-demand media services the user has individual access to the programme(s) based on a given catalogue of programmes (so called point to point service), while regarding the latter, we talk about a so called point to multipoint service, where simultaneous, programme schedule based access is realized.[57] We also call on-demand or, in other words, nonlinear media services *video-on-demand* services based on the wording of the Directive.[58] The Hungarian regulation expands this concept with services that provide access to programmes consisting exclusively of sounds, for example an on-demand media service of a radio (in which such Internet based programmes can be found, which can be listened to on individual demand).

Ad c) The subject of the on-demand service is the collection of programmes. According to Article 203(47) of the Media Act, programme shall mean the series of sounds or moving images or still images with or without sound, which form a separate unit in the catalogue of programmes selected by the service provider and the form and content of which is similar to that of radio or television media services.

The AVMS Directive extended its scope to cover on-demand audiovisual media service to acknowledge that they were related to broadcasting and had similar social significance as television broadcasting (*television-like services*). This thinking is apparent, on one hand, from the coordination of regulatory topics pertaining to on-demand audiovisual media services and television broadcasting,[59] and, on the other hand, from the definition of audiovisual media services[60] in the requirement of "information, entertainment and education" as public communications purpose. Recital 24 of the Preamble of the Directive states that "it is characteristic of on-demand audiovisual media services that they are 'television-like', i.e. that they compete for the same audience as television broadcasts, and the nature and the means of access to the service would lead the user reasonably to expect regulatory protection within the scope of this Directive. In the light of this and in order to prevent disparities as regards free movement and competition, the concept of 'programme' should be interpreted in

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[56] Article 203(51) of the Media Act.

[57] In other words, on-demand media services are considered sort of ISSs just as the online versions of press products. Cf. GÁBOR POLYÁK, *A médiarendszer kialakítása* [*Designing the Media System*], Budapest, HVG-Orac, 2008, 136.

[58] Based on Recital 11 of the Preamble of the AVMS Directive: "It is necessary that at least a basic tier of coordinated rules apply to all audiovisual media services, both television broadcasting (i.e. linear audiovisual media services) and on-demand audiovisual media services (i.e. nonlinear audiovisual media services)."
According to Recital 21 of the Preamble of the AVMS Directive, "For the purposes of this Directive, the definition of an audiovisual media service should cover only audiovisual media services, whether television broadcasting or on-demand, which are mass media, that is, which are intended for reception by, and which could have a clear impact on, a significant proportion of the general public."

[59] Chapter II of the AVMS Directive.

[60] Article 1(a) of the AVMS Directive.

a dynamic way taking into account developments in television broadcasting." The concept of "competition for the same audience" has to be interpreted comprehensively with respect to the media consuming audience as a whole. This provision does not aim at the definition of the market at issue from a competition law perspective, but it refers to the fact that whether the service providers broadcast media contents either in linear or on-demand form, they are intended without exception for "the media consumers". And although contents strive to reach well-defined target groups on the increasingly fragmented media market, it is still true that they can only approach viewers, listeners and readers at the "expense" of other service providers. The popularity of on-demand media services increases in opposition to linear services, and online press products take away readers from print newspapers. Thus, based on the logic of the regulation, we have to consider the market of media services and press products separately as uniform. The precise definition of target audience by media service providers based on professional considerations, the methods employed to reach different social groups and the media content supply developed based on these to satisfy special needs of the viewers outline a diverse market, but the analysis and assessment of this do not fall within the scope of the Media Authority.

The Hungarian act was developed in accordance with this. The similarity with television broadcasting as a requirement appears in the definition of programme adopted from the Directive.[61] The same principle should be applied accordingly to the relationship of linear radio and on-demand radio media services.

For the determination as to when can a service be considered television-like with respect to its form and content, neither the Hungarian regulation nor the Directive provides further reference points. Television broadcasting in the traditional sense is not an easily definable category either, because with respect to its theme, technology and design, we talk about a constantly changing environment, which constantly renews its own appearance. The survey conducted for the British regulator Ofcom[62] to facilitate the interpretation and applicability, established a system of criteria, which is built on the opinion of consumers as to based on what characteristics they consider a service "television-like".

Based on viewers' opinions, the characteristics of the content of a given on-demand media service include the following:
a) whether it was available before on television;
b) whether its standard, value and quality are close to that of television services;
c) whether its target audience is the same as, or similar to, that of the linear media service;
d) whether its title is similar to that of a television programme;
e) whether the producer of the programmes is the same; and
f) whether the format in which the service is broadcasted to the general public is similar.

With respect to the characteristics of format, viewers found important in connection with the packaging of the content the following:
a) the brand name of the service provider;
b) the visualization and presentation of the content; and
c) the price of the service.

The participants also evaluated other factors during the study, such as the purpose and genre of, as well as the means of access to, the programme, but they did not find these as crucial

[61] Cf. Recital 24 of the Preamble of the 2010 AVMS Directive.
[62] The regulation of video-on-demand: consumer views on what makes audiovisual services "TV-Like" – A qualitative research report Prepared by Essential Research December 2009.

criteria of television-likeness. Although the purpose of the production and process of the programme does not help viewers in the assessment of the category, the creators, and, thus the media service providers have to know already at the moment of production whether the purpose would be television broadcasting, because then they create the given programme and also determine the budget of the production accordingly. The above mentioned characteristics based on consumer perception are not legal and not conjunctive conditions for the determination of the likeness to television of a programme. They can only be considered as considerations assisting interpretation. Thus, the fact that a given video content could have been seen previously on television can be a clear indication that it is an on-demand media service, but a content can be "television-like" even in the absence of this.

As with respect to the target audience, the so called mainstream content intended for a significant portion of the general public shows similarity to television, while services filling in gaps intended to special, smaller audiences do not. The title of the programme may also substantiate the similarity, if it clearly refers to a television programme. Regarding the format, the viewers considered for the most part the longer programmes as television-like but the shorter contents and video clips they did not, although in these cases based on the quality, they could make a decision easier. For example, they did not compare a home video uploaded to a file sharing website to television programmes. The professional quality of a video content can be a clear sign of "television-likeness", but this does not mean that exclusively professional contents can satisfy the "television-like" definitional element.

The above mentioned characteristics defined by the viewers may possibly provide assistance for the interpretation of the acts, but they are not necessary and indispensable conditions of the conclusion that an on-demand media service has television-like characteristics.

As regards formal requirements, including brand names, it could be concluded that the viewers rather perceived those contents as television-like which were accessible through websites maintained by television media service providers, than the contents that could be downloaded from less familiar websites. From the perspective of the presentation of the content, they highlighted structure, well designed menu bars and clear signals, which serve safe search. They saw similarity to television generally in easy and passive accessibility.

The criteria system of the survey based on viewers' impressions conducted in connection with the implementation of the Directive into the British legal system may assist us in the interpretation of the Press Freedom Act and Media Act, but, of course, it is not legally binding.

If a programme that was previously broadcasted as a linear programme later becomes accessible with the same content in on-demand format, pursuant to Recital 27 of the Preamble of the AVMS Directive, in addition to the rules pertaining to linear media services that had been already necessarily applied, it is not necessary to apply the rules prescribed with respect to on-demand services. Thus, in this case the two different means of access do not generate different rules with regards to the content of the same programme.

This means that it is not necessary to alter the content of a linear programme in order to make it available in on-demand format, because it had already met the content requirements pertaining to linear programmes. The objective of the Directive with this purpose is the exemption from further obligations of service providers providing both linear and on-demand media services (although the Press Freedom Act and the Media Act do not provide for such provisions stricter than the regulation of linear programmes pertaining to the content of on-demand media services). Thus, as regards the content of the programme, new obligations cannot be created, but with respect to the means of access, the programme must comply with

the special rules arising from the special nature of the on-demand media service (e.g. regarding registration, protection of minors or programme quotas).

Making the same media contents available in on-demand format, as a service, irrespective the fact that as regards content requirements they are subject to the same rules as linear media services, they are considered on-demand media services, and, with the exception of content requirements, they are governed by the substantive and procedural rules applicable to on-demand services taking also into account the currently effective provisions of the co-regulation.

At the same time, if in on-demand services, regarding the content of the programme, a longer or shorter version of the same programme can be accessed (for example "uncut" shots related to a news program) or the two services are clearly distinct, two systems of rules should be applied, because they are considered distinct services. In the latter case, the "*television-like*" nature of the on-demand service must be examined. Two services are considered distinct services if compared to each other they constitute separate entities in a well perceivable way. For example, on the website of a linear media service provider, the television programme accessible in the same length with the same content and other media content accessible exclusively as an on-demand media service substantiate the distinction between the two services.

2.2.3 Ancillary media services

The scope of the act also extends to ancillary media services and their service providers.[63] According to Article 203(23) of the Media Act, ancillary media services "shall mean all services - also containing content provision - which are transmitted through a media service distribution system and which qualify neither as media services nor as electronic communications services. For example, electronic programme guides are ancillary media services." This constitutes a change compared to the Radio and Television Broadcasting Act in that while the old concept expected the information to reach the general public through the same programme distributor and programme broadcasting channel simultaneously, closely connected to the broadcasting, this definition requires fewer conditions. In addition, it includes the concept of value increasing services from the previous regulation, which consists of the distribution of programmes and information that are not related to the broadcasting. The ancillary media services are such independent contents that regarding their nature and distribution are related to the media services.

Among the ancillary media services, the electronic programme guide is specified by name in the act. The electronic programme guide (EPG) in practice provides assistance in the direct access of media services. The users (subscribers) can see in it what media services are available for them, and they also can look up in them in advance and retroactively information about specific programmes, including the start and end time of their broadcasting. Ancillary media services also include traditional teletext services, as well as RDS services that send small amount of digital information during FM radio shows (during analogue broadcasts also). The different types of these are the AF (Alternative Frequency), the CT (Current Time), the EON (Enhanced Other Networks, which monitors other networks and switches to e.g. traffic news), the TA and TP (to identify, search for, and increase the volume of, Traffic Announcements and Traffic Programmes), the TMC (Traffic Message Channel, which works together with the GPS navigation system and sends information of traffic jams, accidents and changes in traffic patterns), the PI (Programme Identification), the PS (Programme Service, 8 characters displaying the name of the media service), the PTY (Programme Types, searches

[63] Article 2(1) of the Media Act.

31 pre-defined programme types by genre, e.g. news, drama, rock and state of emergency news), the REG (Regional signal, where we can listen to radio stations of a given region), the RT (Radio Text, which is a 64-character free format text that can be used, for example, a slogan or the title of a song currently playing).

2.3 Press products

In the case of press products, the *subject of the service* is the content consisting of text and images, and the *provision of the service* takes place in print format or through electronic communications networks. Text here refers to written text and images refer to still images, or in certain cases to moving images.

The *service itself* is the individual issues of daily newspapers and other periodical papers, as well as online newspapers and news portals. The specification by name of daily newspapers and other periodical papers, as well as online newspapers and news portals in the definition of press products is a fundamental difference compared to the definition of media services. While in the latter definition the subject of the service is not specified, in other words, the presence of all the definitional elements is the condition for the realization of media services, in the case of press products, it is important that the service is a daily newspaper or other periodical paper, or online newspaper or news portal. Thus in this way, as compared to the definitional elements of media service, a fifth definitional element can be found in the definition: such services qualify as press products that are daily newspapers and other periodical papers or newspaper-like or "press-like" online contents similar to these.

Article 20 of the already repealed Press Act and the judicial decisions[64] which, by interpreting the previous statutory definitions, extended the concept of periodical newspapers to online press products, thereby bringing them within the scope of the regulation, indirectly help to define the concepts of print and online press products. We will discuss in detail the set of criteria that can be outlined based on this at the specific types of services.

The „business service" definitional element requires a certain regularity and continuity in the case of press products also. Accordingly, daily newspapers are published on a daily basis and periodical newspapers on a certain regular basis. In other words, press products by definition are published periodically without a planned "final point in time" (last publication). When people start a newspaper, they usually plan it for an indefinite period of time hoping that their enterprise will withstand time, while, e.g. the regular publication of the complete works of Jókai [a famous nineteenth century Hungarian writer] necessarily will end with the last work of the author. This differentiates e.g. printed press products from an also regularly published book series. In the case of online newspapers and news portals, the given service is also accessible on a regular basis, every day, for the most part (even if the content is not updated daily but only periodically).

Under the Press Freedom Act and the Media Act, editorial responsibility is included not only in the concept-definition of linear and on-demand media services but is also a definitional element in the case of press products. According to Decision No. 57/2001 (XII. 5) AB of the Hungarian Constitutional Court, edited contents, "the opinions and value judgements presented in a concrete press product are controlled by the columnists, editors, the editor-in-chief and finally by the owner, who take into account not only the aspects of publishing competing opinions in the press, but also those of preserving the specific image and spirit of the press product concerned, the marketability of the product and the requirement

[64] Budapest Court of Appeal, 2.Pf, 20. 793/2006/3, and BDT2009. 2148. (See in detail under Section 2.3.2 on online press products.)

of profitable operation." This excerpt sheds light on the essence of editorial activities, within the framework of which the effective control of the content is realized.

The definition of press products does not specify *who* the provider of the service is in the case of a press product. However, the Media Act, at most places, clearly specifies the publisher as the subject of obligations and responsibilities. The fact that the founder was included in the regulation means the confirmation of a tradition of the history of the press and the practice of the newspaper market, as well as the partial adoption of the previous regulation, based on which the founder has those general powers that provide him with the right of disposal over the press product. According to the rules of the Press Act, the previous press law, the founder of the press product ensures the financial, material and personnel conditions of the operation of the newspaper, and, further, is financially liable for the operation of the newspaper, while according to the Media Act, founders, if they are different from the publishers, may play a role at the time of registration[65] and at the time of the cancellation of the registration,[66] they can register the press products and are also entitled to designate the publisher. However, in most cases the founder is the same as the publisher, but if the person of the founder and publisher is different, the question is which one of them has the right to use the name of the newspaper. It follows from the previous regulation and jurisprudence that the founder of the newspaper has the right to use the name. Accordingly, thus, if the founder and the publisher are different, the founder is entitled to designate the publisher, to which inseparably belongs the step, that the founder authorizes the publisher to use the registered name of the newspaper. This restrictive interpretation of the founder's rights can be derived from the regulations. Pursuant to Article 46(1) of the Media Act, the parties shall incorporate their responsibilities and rights vis-à-vis said media product in an agreement.

Upon reviewing the jurisprudence of the past years, it can be stated that the legal relationship between the founder and the publisher has a few such cardinal points that may justify that the parties stipulate in their agreement as to who and within what scope they have financial liabilities, who is entitled to design the content of the press product, who and in what cases can exercise monitoring powers and whether the rights in connection with the press product can be assigned. If the publication of the newspaper is based on *license* rights, the parties may stipulate as to under what conditions the newspaper has to be operated, and, in addition, if the company has employees, who has the authority to exercise the employer's rights. In sum, it follows from the regulation that with the exception of the registration, the subject of the rights and obligations provided by law is the publisher, with the caveat that, naturally, the publisher cannot change the person of the founder.

2.3.1 Printed press products

Considering that printed press products can be daily newspapers and other periodical papers, the previous Press Act, that included the definition of *periodical paper*, can be useful for the interpretation of the concept. According to Article 20(f) of the Press Act, *periodical paper* was "a daily newspaper, magazine and other newspaper that is published at least once in a calendar year, published with the same title and topic, is provided by volume number, issue number and date, publishes written pieces, either as original works or as translations, belonging in the genres of journalism, literature or scientific literature (news, news report, article, interview, study, poem, short story, etc.), photographs, graphics, caricatures or puzzles." Accordingly, periodical papers include daily newspapers also, which are specified

[65] Article 46(1) of the Media Act.
[66] Article 46(6)(b) of the Media Act.

by the currently effective media regulation. The press products definition of the Press Act[67] included the "individual issues of periodical papers" expression, which was partially also adopted by the new regulation. The decision of the Budapest Court of Appeal published under Decision No. BDT 2009 2148 concluded that a press product qualifies as a periodical paper if it has editorial staff, imprint, bears the essential and content elements of a periodical paper, its publication, update and accessibility are continuous, provides news and publishes articles. (Pursuant to Article 46(9) of the Media Act, the imprint must include the publisher's name, registered office and the name of the person in charge of publishing, and the name of the person in charge of editing.)

The modern media world rendered the periodical paper definition of the Press Act somewhat obsolete. The rigid insistence on format requirements (topic, volume number, date, etc.) would have rendered the new regulation inflexible, but taking these into account as auxiliary aspects might come into play in the course of the application of the law, when making the necessary distinctions.

In the concept of *publication* as defined by the Media Act, we can discover the previous concept of "press product" of the Press Act. According to Article 203(22) of the Media Act, publication shall mean the book, press product in electronic or printed format, the periodical publication, and other printed material, films, sound recordings and musical compositions. Thus, publication is a collective term that includes books, press products and other materials (for example, a newspaper, which is not provided as a business service and which does not qualify as a press product, qualifies as a publication). While the Press Freedom Act and the Media Act create detailed rules with respect to printed and online press products, "publications" only have a role under Article 46 of the Media Act among the provisions pertaining to legal deposit copies.

In the case of printed press products as well, it is an important criterion that it is a business service. Print newspapers are so called dual market products, and, therefore, in their case, the business service nature has to be examined with respect to income received from both the consumers and advertisers. This means that even free newspapers may fall within the scope of the act, as it is possibly that they generate income from the publication of advertisements. It is the intention to generate profits and the taking of economic risks that are decisive and not the actual realization of profit. Thus, in the case of loss-making and free newspapers, the criterion of business service may also be established. The decisive factor is whether at the time of the publication of the press product the publisher took steps in order to realize income or profit, in other words, whether the purpose of the service is generating profit.

In the case of newspapers of local governments or official authorities, it cannot be decided based merely on the fact that the newspaper is free whether or not they are printed press products. The examination of the individual definitional elements is necessary in these cases also (for example the advertisements published in these newspapers may also generate income). If the promotions and advertisements are only published in an ancillary manner, we do not necessarily talk about business services (all of the aspects of the latter definitional element have to be examined). However, it is indeed considered a business service when, despite the intention, no profit is actually realized or if the profit only serves the self-preservation of the service.

[67] According to Article 20(b) of the Press Act, press products are individual issues of periodical papers, radio and television programmes, books, flyers and other publications containing texts, except bank notes and bonds, publications containing musical compositions, graphics, drawings or photographs, maps, films tapes intended for public showing, video cassettes, music tapes and records, as well as any other technical devices containing information of programmes intended to public presentation.

Certain services that were previously considered periodical papers do not meet the press products definition of the Press Freedom Act and the Media Act. In the case of certain university and college newspapers for example, which before were clearly considered as periodical papers, under the current set of criteria, editorial responsibility is established, as the editor is clearly identifiable, who exercises effective control and their purpose is obviously the provision of certain texts and images to the general public. However, if they are not published as business services, in other words, if they do not publish intentionally advertisements, they do not have any other outside incomes and they are free, then they are publications not classified as press products. However, if the publisher of the university newspaper seeks to generate profits (or at least it is not inherently precluded from its operational characteristics), in other words, if the definitional element of business service is met (for example it is a characteristic attribute of the newspaper that it contains advertisements), then the given newspaper is considered as a press product.

As we have explained while analyzing the "business service" definitional element, with respect to the "purpose of generating profits", in the case of the submission of an application for registration, the Authority considers the fact of the submission of the application (in the absence of information or data to the contrary) as an express and admitting statement by the applicant regarding the activity of a commercial nature, while in the course of the proceedings initiated because of failure of registration, primarily based on information publicly available or contained in official registers, or available data, information or if necessary, based on the data provision of the customer, examines whether the given service is provided as a business service.

According to Article 41(5) of the Media Act, in the event that a media service provider provides both linear and on-demand services, or if a publisher publishes both printed and online press products, it shall register each of its media services or press products separately. In the case of media services, this means that if a television or radio media service provider provides both linear and on-demand media services, those have to be registered separately. This is not subject to the above mentioned provision of the Directive, according to which the publication of a linear programme in on-demand format does not generate further obligations with respect to the content of the programme, as the act requires the registration of the service and not the programme, and here we talk about the provision of two different means of access, linear and on-demand media services.

This rule should be interpreted in the course of the registration of press products that, for example, in the case of a service published in print format and a service operating as an online press product providing more content than the content of the print version, even if its title is the same as that of the former, both services must be registered. However, if a publisher provides its press product *with the same content* on paper and through an electronic communications network, it has to be considered as a single press product. In this case we talk about one press product which is published with the same content on multiple platforms, i.e. in print format and through an electronic communications network. This interpretation can be derived from the fact that the regulation only recognizes the concept of uniform press product, and it makes a distinction only within that, between printed and online press products based on the means of access. If, therefore, the content on both platforms is the same, notwithstanding the commercial communications ancillary to the media contents and necessarily different with respect to printed and online publications, then we talk about a uniform service with a single registration obligation.

Thus, the electronic versions of registered printed press products already in the register of the National Office of Cultural Heritage published with the same content and transmitted through an electronic communications network do not have to be registered as online press

products, but they have to be considered as press products (having the same content as printed press products), which have already fulfilled their registration obligation. In the case of services entering the market after the act entered into force, they have to clarify at the time of the *registration* of the press product whether the publisher provides the press product in print and/or electronic format. If it publishes under similar names two (print and online) press products with different contents, they are considered two independent services. If a publisher does not register separately its press product that can be accessed online, in other words, it does not register the service as an online press product, then it can be assumed that it has the same content as the version of the press product published in print version, and thus, the service provided on two different platforms is considered as a single press product.

In the case of different contents, thus, when, in addition to the necessarily different commercial communications, the online version has a different content, we talk about two independent press products (e.g. certain columns are only published in the online version), and, thus, both the print and the online press products have to be registered. In this case, with respect to the *title* of the two press products, in the course of the examination of the similarity of names, it has to be taken into account, if the founder and the publisher are the same and they wish to publish the online newspaper under a title similar to that of the print version (although it has a different content, and, accordingly, formally it is considered an independent press product, but at the same time, it is in close relation with the print publication).

It has to be noted that the registration does not have a legal consequence, pursuant to which the employees of the registered press products automatically would be considered "journalists", or that only the employees of registered press products could be qualified as "journalists". Registration only pertains to the press product itself and has no legal consequences as regards the employees. (At the same time, Articles 6-8 of the Press Freedom Act provide certain rights to employees or other persons in work-related legal relationship with the media content provider, and, thus to "journalists" as well. The question as to who is qualified as a journalist has to be examined on a case by case basis, because it cannot be defined in the regulation in a general sense.)

2.3.2 Online press products

Online newspapers and *news portals* are types of services that are specified by name in the concept definition of "online press products". Although we cannot find the definition of these types of services in the act, the legislator, by mentioning the term "newspaper", clearly refers to the fact that online press products are published in a similar way and means as printed press products (newspapers).

The sharp distinction between online newspapers and news portals would be difficult and also unnecessary, because in the regulation, these services do not appear as the differentiated subjects of rights and obligations. The publishers of press products may call their services at the same time online newspapers and news portals. In the course of the performance of their registration obligations, it is the publishers themselves who carry out the categorization and fill in the registration form as to whether they consider their services online newspapers or news portals. As regards their rights and obligations, it is irrelevant, under which types of online press products they categorize their services.

For the interpretation of online press products, we may be assisted by previous judicial decisions that interpreted the concept of periodical papers in an extensive manner. The decision of the Budapest Court of Appeal published under Decision No. BDT 2009 2148 concluded that if an online news portal carries out media activities, and, thus, it has an

editorial staff, imprint, continuous publication,[68] contact information, updates, as well as provides news and publishes articles, then it bears the essential and content elements of a periodical paper, and, therefore, the obligation of press correction applies to it and is subject to the Press Act. In its Decision No. 2.Pf.20.793/2006/3, the Budapest Court of Appeal concluded that if a press product is regularly published on the Internet, has an imprint, an editorial staff and an editor-in-chief, then it can be considered as a periodical paper. In its Decision No. Pf.I.20.369/2005/9, the City of Győr Court of Appeal imposed similar conditions on online press products (that at the end, contrary to the judgement of the trial court, it did not qualify as a periodical paper). Here, the court examined whether the given website was published with continuously updated content and the same title, several times, practically daily, within a calendar year; whether the permanent topics on the top of the website could be read, which were identical with the classical columns of daily newspapers; whether in addition to mere news communication, it regularly published written pieces belonging within the scope of the genre of journalism that were in part as original and in part work of authorship adopted from elsewhere (edited news, news reports, articles or interviews); whether the year and also the date were displayed; and, in addition, whether it was identical with traditional periodical papers in its functions and impact.

In this sense, thus, every such press product must be considered as an *online press product* (in other words online newspaper or news portal) which, in its function, appearance and impact is similar to printed press products, and which is offered as a business service, for the content of which a natural or legal person, or a business association without legal personality has editorial responsibility, and the primary purpose of which is to provide textual or image contents to the general public for information, entertainment or educational purposes, *through an electronic communications network.*[69] Thus, the emphasis is on the simultaneous presence of these definitional elements.

In addition to text and still images, online press products may also contain moving images. To make a distinction between these moving images from on-demand media services, the following considerations must be taken into account. If a moving image (a video content) appears on the website of an online press product embedded in the text in a supplementing, ancillary manner, we do not talk about a programme of an on-demand media service but about the content, a part of an online press product containing text, as well as still and moving images. If a website contains moving images (videos) not in this manner, but they appear in a "*television-like*" manner creating a catalogue of programmes, it has to be examined whether the service has the definitional elements of on-demand media services. In practice, thus, there is nothing to prevent a publisher of an online press product to also provide at the same time an on-demand media service (and in this case, both services must be registered). However, the mere fact that video content is featured on the website of an online press product does not mean that the given website also provides on-demand media services. Moving images that do not meet the criteria of on-demand media services are simply integrated parts of the online

[68] Monitoring of regular publication is simple in the case of printed press products thanks to the legal deposit copies, but as regards online press products, currently there is no obligation to provide electronic legal deposit copies. Although, according to its Section 1, the scope of Government Decree No. 60/1998 (III. 27.) on the provision and utilization of legal deposit copies of press products applies to "press products", pursuant to Article 4, it is clear that the obligation only applies currently to printed press products.

[69] According to Act C of 2003 on electronic communications, "'Electronic communications network' shall mean transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals between specific terminal points by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed." (Article 188(19))

press product and are not separate services. If the service provider creates a catalogue of programmes of the videos on the website of the online press product, then we can talk about a "television-like" service, and it can be considered as an on-demand media service. Accordingly, videos may constitute a catalogue of programmes if they have been collected in a video library categorized and labelled, and the viewer may select from the edited and organized videos. However, the service provider may make the catalogue of programmes available in other manner not only by organizing them in a video library.

The perspective of the business service nature may assist us also in connection with the assessment of online "diaries" (so called blogs), as, despite meeting the other criteria, websites that do not provide business services are not within the scope of the act. In the case of blogs, it is important to underline that regarding the assessment of the service, we must primarily start from the recognizable characteristics and not the name. We can differentiate between countless types of blogs, but the starting point in the case of all of them is that they are generally not subject to the act, considering that although they may be able to address a large portion of the general public, they do not do this for the purpose of providing business services. However, if a blog qualifies as a business service, then the missing definitional element is realized, and the given service called "blog" may become subject of the act.

As regards the "editorial responsibility" definitional element, we can also conclude in the case of online press products that with emphasizing the "responsibility for effective control", the legislator prevented the possibility of broad interpretation of editorial responsibility. Otherwise, editorial responsibility could also mean that the publisher is also responsible for those media contents over the publication of which it has no direct influence. Thus, the extent of editorial responsibility cannot be extended unnecessarily. The responsibility covers the selection and organisation of the various contents. The fact that a publication is edited can be indicated even by the placement of various advertisements by the editor on the given page (for example when an advertisement "pops" up when an article is clicked, or a content consisting of moving images begins with a commercial, or when between the paragraphs in the text or on the left side of the text such advertisements appear that were also placed there by the editor of the given page).

The editorial decision made in the course of the selection and organisation of contents and the responsibility generated in this way can be determined in the case of an online press product by the "editing into" the website of the given content. For the contents accessible from the homepage of an online newspaper or news portal, including the contents published under the title "blog", also the editorial staff of the press product have editorial responsibility (the publisher of the press product bears legal liability, and the author of the blog has no liability). The publisher bears the editorial responsibility for the online newspaper in this case also, as the content of the blog in question, which can be reached directly from the homepage, by editing it into the homepage becomes part of the contents of the press product. It is important to underline, though, that this does not mean at all the full extension of the liability of the publisher of the press product to a content edited by someone else. If, for example, an edited blog post is updated, after being edited into the website, without the control or influence of the editor of the press product and becomes subsequently illegal, then legal (in this case primarily civil or criminal but not media law) liability can be established only with respect to the author of the blog.

Blog posts and comments posted subsequently to the content of a given online press product do not fall within the scope of the regulation, considering that these are not part of the given press product. With respect to them, there is no editorial responsibility. Thus, forums and comment boxes on the website of the press product, unless their contents are placed there after editing and selection, are not governed by the Press Freedom Act and the Media Act. Subsequent moderation does not serve as a basis for editorial responsibility either, because

this activity does not render the given comment box or blog an edited part of the press product, as even in the case of contents left untouched by the moderator, editorial decision is absent with respect to the publication. (This does not mean that the posts of forums or comment boxes on the online platform provided by the publisher of the press products may be published on the given website without regards to other legal requirements. In the case of the violation of the limit of any right to expression of opinion, it is the user of the forum or publisher of the press product against whom steps may be taken for the termination of the violation pursuant to the rules of the E-Commerce Act, as well as the Civil Code and the Criminal Code.)

As regards the assessment of „linked" contents, it can be stated that the manner of the publication, placement and relation to the press product of the link determines the evaluation of the content that can be reached through the link. The question as to whether the linked content should be considered as edited content, in other words, part of the press product, should be analysed on a case by case basis. Even if it can be established about a link that it qualifies as edited content, the content and manner of the communication together determines the illegal quality, in each case, for example, how the embedding of an article containing hate speech in the form of a link into another article should be judged. If in this case, the content of the link is subject to scholarly analysis or public debate, and its authors exclusively post it for the sake of clarity, and call attention to the illegal nature of the content and distance themselves from it, then the further communication (transmission) of the infringing content does not constitute another legal violation.[70] This does not mean that the publisher can be liable for the Twitter stream running on the website, because it is not part of the press product. The publisher is only liable for the content that was adopted from it and edited into the press product.

As to the "business service" nature, we have to note that the application of Google AdSense or placement of some banners does not necessarily mean that we talk about a business service (especially, if from the given advertisement not the editor of the content of the website but its operator generates income, or it is the same in the case of the Facebook page of a given press product, as it is not the editor of the content that strives to generate profit from the uploaded contents). For a service to fall within the scope of the act, it is not enough to receive income in an "ancillary manner" from the given service, but business services have to be primarily provided with taking economic risks (naturally, actual generation of profits is not a precondition in the case of online press products either).

2.4 Assessment of "complex" services

If a service provider through the same or different electronic communications networks provides more than one service, they have to be assessed separately by types of services and not together as a "complex service".

If the services of a website partly fall under the definition of online press products and partly under the definition of on-demand media services, then both services must be registered. In case an online press product contains television-like audiovisual elements with the primary purpose of providing media services, then these elements may be classified as on-demand media services, and thus, the service provider has a registration obligation with respect to both services. The reason for this is that the media content providers in this situation enter the market not only as a press product, but they compete on the same market for the same audience with the other media service providers, and thus, they have to be

[70] Cf. Decision No. IZR 191/08 of the German Federal Court in the "AnyDVD" case, where the court found that the link of the "heise online" news portal pointing to a pirated software was not illegal.

subject to the same rules.[71] As we previously wrote in the subchapter on online press products, it can be established that the audiovisual contents similar to television programmes, published by the service provider on the webpage of an online newspaper (thus, for example, "television-like" videos accessible on the website of an online press product), meeting all the definitional requirements, qualify as on-demand media services,[72] whereas the content on the given website consisting of text, still images, as well as moving images and videos not qualifying as on-demand media services, connected to the content of the text, is considered as press product.[73] An article and attached photo gallery can be considered as a press product, as in this case the still images are displayed not as a part of a programme, thus not as a media service.

If a service provider provides more than one type of service or produces various contents and some of those are under the material scope of the acts and some of them are not, then the distinction between the given contents must be examined first. In the case of websites where only one distinct part of the service provided (e.g. the content of a subpage) meets the definitional elements, only that page has to be registered independently as an online press product. If there is no possibility to formally divide the given service, then it has to be examined whether the given service as a whole constitutes an activity that falls within the material scope of the acts and not whether all the elements of a website (interface) constitute such activity. In this situation, if there is no distinguishable subpage, technically the given website is registered, but the registration pertains only to those contents that are considered as press products or media services, and thus registration naturally does not concern the other contents of the website. However, in the course of the individual evaluation, it cannot be disregarded whether the purpose of the service is the provision of the programmes, texts, and images, even in exchange for a fee, to anybody, and whether the format and content of the media content provided can be compared to television, radio or the press. Thus, registration may be required even in the case of websites containing a mix of private communications and edited content (naturally, only with respect to the media contents of the given website).

3. Summary

The legislator adopted a dynamic definition of media services and press products to conform with their technical developments. When examining the fulfilment of the specific criteria regarding the specific services, it is not the name of the activity to be evaluated, but primarily the assessment of the actual service provided that will determine whether or not the given activity falls within the material scope of the new regulation.

The starting point is that private communications are not subject to the regulation of the acts. The Press Freedom Act and the Media Act contain provisions only with respect to mass communications. In addition to the specific key definitional elements („business

[71] See Recital 24 of the Preamble of the AVMS Directive.

[72] In conformity with the decision of ATVOD in the *Sunday Times* case: http://www.atvod.co.uk/regulated-services/scope-determinations/sunday-times-video-library., where the ATVOD found that the video library on the electronic version of the Sunday Times was an on-demand media service and not merely a part of the online press product, as it was such an independent business service, which offered a media content that was television-like, not ancillary to the content of the newspaper, viewable at any time and edited into a catalogue of programmes.

[73] If media service providers provide both linear and on-demand services, or if publishers of press products publish both printed and online press products, pursuant to Article 41(5) of the Media Act, they are obligated to register their media services and press products separately. If a service provider provides various services both as publisher and as media service provider, naturally, registration, separately for each service, is a basic requirement in these cases as well.

service", „editorial responsibility", „information, entertainment or educational purpose" and „providing content to the general public"), as a supporting principle, in the case of on-demand media services, their similarity to television (radio) media services, and in the case of online newspapers, their similarity to printed periodical papers should be examined.

Thus, the new Hungarian media regulation, in conformity with the objectives of the European Union, contains harmonised provisions with respect to services playing similar roles and competing for the same audience in the process of mass communications.