[SK] Identifying Media Service Provider

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On 23 November 2011 the Council for Broadcasting and Retransmission of the Slovak Republic ("Council") issued a decision concerning a complaint against "Internet TV" run at www.tnitv.weebly.com. The given service was labelled as "Internet TV of the city of Trencin" and provided a list of short (on-demand) videos mostly dealing with topics related to the city of Trencin. After a first assessment of this service the Council gained reasonable suspicion that it may be qualified as on-demand audiovisual media service and its provider thus may have failed to meet the statutory obligation to notify the Council of providing such a service. The Council may impose a fine up to EUR 1,000 for a repeated violation of this obligation.

The service itself failed to clearly identify its provider. Nevertheless the official notice about the start of legal investigations was delivered to the legal entity ("participant") listed within the service as "production". In its response the legal representative of the participant stressed that the participant is not the owner of the given Internet domain and he advised the Council to contact the owner of the domain "weebly.com" (USA hosting service). The participant claimed that the provider of this service is an unspecified company established in the USA and it targets Slovaks living in the USA. The content of the service (mostly related to the city of Trencin and only in Slovak language) was "created and supplied" to this US-company by Slovak "volunteers" such as the participant. The participant thus declared that the content of this service is "created" outside the Slovak Republic (and the EU), the service is not run on Slovak (or EU) domain and the server of this service is stationed outside the Slovak Republic (and EU). Therefore this service could not fall under the jurisdiction of the Council.

The Council repeatedly submitted the participant to answer some additional questions (especially to specify the US-company that allegedly runs the service) in person but with no response. Eventually the participant explained over the phone that he is not entitled to deliver any more statement concerning the service since he is not its provider and he already presented all relevant facts to the Council in his written response.

The Council, after evaluation of all available facts, delivered a decision where it stated that the service in question does indeed constitute an on-demand audiovisual media service. The Council stated very clearly in its reasoning that it

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was completely irrelevant where the server of the service is situated and also who owns the internet domain of the service. For the identification of the media service provider it is necessary to determine who is responsible for choosing and organising the service content, in other words who has the editorial responsibility over it. With regard to the given service the Council stated that the participant failed to identify the US-company which allegedly chooses and organises the service content even though the participant itself is supposed to communicate with this company as well as send video content to this company. The Council also argued that the participant failed to explain why all contacts within the service (labelled e.g. “production”, “commerce and marketing”, “audiovisual manufacturing”) refer to people with Slovak telephone contacts and within the whole service there is no reference to the mentioned US-company.

The Council eventually came to the conclusion that this service despite of the participant’s allegations does not target Slovaks living in the USA since all advertising within the service refers to businesses that operate solely in the Slovak Republic (mostly in the region of Trencin e.g. local radio, cafés etc.). All content of this service (editorial and advertising) therefore clearly targets the population of the Slovak Republic. The Council stressed that the participant itself is labelled as “production” whereas this word in Slovak language means “(artistic) creation of the (artistic) works or aggregation of artistic work”. The Council stated that under these circumstances it is safe to assume that “production” actually refers to choosing and organising the service’s content. It thus identified the participant as provider of this on-demand audiovisual media service and imposed a sanction - a warning (it was his first violation therefore warning was mandatory) for the failure to notify the Council.

The Council did not receive any appeal to this decision. The Internet site stopped operating very soon. However, it was recently discovered that probably the same service (“Internet TV of the city of Trencin”) is provided on a different site. The contact information refers to a company established in Panama and the participant is clearly identified as a subject that cooperates with this service in the matters of advertising (e.g. selling advertising on this service).

Rada pre vysielanie a retransmisiu, Rozhodnutie c. RL/98/2011, 23.11.2011

http://www.rada-rtv.sk/_cms/data/modules/download/RL_98_2011.pdf

Decision of the Council for Broadcasting and Retransmission of the Slovak Republic c. RL/98/2011 of 23 November 2011

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