

UNOFFICIAL TRANSLATION

Draft act relating to editorial independence and responsibility of editor controlled journalistic media (the Media Liability Act)

Chapter 1 Introductory provisions

Section 1 Purpose

The purpose of the act is to facilitate open, informed public discourse by ensuring editorial independence and establishing clear liability regulation for content published by editor controlled journalistic media.

Section 2 Area of application

The act applies to media engaged in regular journalistic production and dissemination of news, current affairs and debate to the public.

The act does not apply to media whose primary activities are advertising or marketing, or that are primarily intended for members or employees of particular organisations, associations or companies.

Section 3 Definitions

In the present act, the following definitions apply:

- a) Editor: a natural person who makes decisions concerning the content of a medium or parts thereof.
- b) Publisher: a natural or legal person who bears financial and administrative responsibility for the publication of a medium.
- c) Editorial content: a statement in the form of text, sounds, images, etc. published under the leadership and control of an editor. Advertising and marketing shall not be deemed to be editorial content.
- d) User-generated content: a statement in the form of text, sounds, images, etc. published in an electronic medium by a media user outside the leadership and control of an editor.

Chapter 2 Duties related to publication of editor controlled journalistic media

Section 4 Duty to appoint an editor

The publisher or owner of a medium covered by the act shall appoint an editor for the medium.

Section 5 Duty of disclosure

The editor shall ensure that the medium clearly identifies the appointed editor.

The editor shall ensure that media users have simple and clear access to contact information for the medium.

The Ministry may issue regulations on the disclosure duty.

Section 6 Duty to publish replies to editorial content [Ed. Right of reply]

The editor shall publish replies to factual information in the medium as soon as possible.

The editor is not obliged to publish value judgments. A demand for publication of a reply may be rejected if publication would constitute a criminal offence or cause the editor to incur civil liability.

A demand for publication of a reply must be made by the person directly affected by the publication no later than three months after publication of the information. If the editor refuses to publish a reply, he or she shall provide a statement of reasons for the decision as soon as possible, and provide information on redress mechanisms established through the press self-regulatory system.

Section 7 Duties related to user-generated content

The editor shall ensure that user-generated content is clearly separated from editorial content in the medium.

The editor shall clearly identify user-generated content that has not been edited in advance and provide information on the rules applicable to user-generated forums. The editor shall facilitate the notification of unlawful content and provide information on available redress mechanisms for persons whose user-generated content is removed.

Chapter 3 Editorial independence

Section 8 Editorial independence

The editor shall lead the medium's editorial activities and make decisions on editorial questions within the framework of the medium's stated values and purpose.

The owner or publisher of the medium may not issue instructions relating to or review the editor's decisions on editorial issues, and may not demand the right to review text or images or to listen to or view programme material prior to general publication. This shall not restrict the power to issue orders or to decide and implement forcible measures under the Dispute Act.

The provisions in the first and second paragraphs may not be deviated from by agreement or other legal means to the disbenefit of the editor.

Chapter 4 Legal liability for the content

Section 9 General provision on criminal and civil liability

Any person who makes a statement or contributes to the publication of editorial or user-generated content shall bear criminal and civil liability for such content pursuant to general statutory provisions.

Section 10 Special criminal liability of editors in respect of editorial content

The editor shall bear criminal liability for publication of editorial content if the editor would have incurred criminal liability pursuant to another statutory provision if he or she had been familiar with the content.

If the editor substantiates that he or she cannot be blamed for deficient checks of such content or deficient editorial leadership, the editor may not be held criminally liable pursuant to the first paragraph.

The penalty for contravention of the first and second paragraphs shall be a fine or imprisonment for a term not exceeding six months. The imposed penalty may not be stricter than the penalty prescribed by the statutory provision that would have applied if the editor had been familiar with the content.

Contribution shall not be penalised.

Section 11 Special civil liability of editors in respect of editorial content

The editor shall bear civil liability for publication of editorial content if the editor would have incurred liability pursuant to section 3-6 and section 3-6 a of the Compensation Act if he or she had been familiar with the content.

If the editor substantiates that he or she cannot be blamed for deficient checks of such content or deficient editorial leadership, the editor may not be held liable pursuant to the first paragraph.

Section 12 Civil liability of owners and publishers

If a person who has acted in the service of the owner or publisher of the medium is held liable pursuant to section 11 or section 3-6 or section 3-6 a of the Compensation Act, the owner or publisher shall also be liable in respect of the compensation awarded. The same shall apply to compensation awarded for non-financial injury, unless the court grants an exemption on special grounds. The owner or publisher may also be ordered to pay such additional compensation for non-financial injury as the court deems reasonable.

Section 13 Exemption from criminal and civil liability for technical contributors

No penalty shall apply to a person who has contributed only through technical preparation, production or distribution of editorial or user-generated content published in the medium on behalf of the medium.

Contributors as specified in the first paragraph may not be held liable pursuant to section 3-6 or section 3-6 a of the Compensation Act.

Section 14 Exemption from criminal and civil liability in respect of user-generated content

The editor or any person acting on behalf of the editor may only be penalised for the publication of unlawful user-generated content in the medium if he or she has acted with intent. In order for civil liability to be imposed, he or she must have acted with gross negligence.

The editor or any person acting on behalf of the editor shall always be exempted from a criminal penalty or from civil liability if he or she has taken necessary steps to remove or disable access to the unlawful statement without undue delay after liability arises pursuant to the first paragraph.

Chapter 6 Entry into force

Section 15 Entry into force

The act shall enter into force on the date decided by the King. The King may decide that the individual provisions of the act shall enter into force on different dates.