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The State of the Art of the e-publisher provides an overview of the relevant current media regulation, case-law and legal literature with regard to the electronic publishing of (sometimes copyright protected) electronic content. In the first place the observation was made that there is no legal definition of the “electronic publisher” as such. In the second place it is clear that the professional activity of publishers is founded upon the fundamental right of freedom of expression (and its corollary, press freedom). The Belgian legislation foresees additional guarantees (on penal level a cascade regulation and on procedural level the competence of the Belgian “Assisenhof”) for the (printed) press. But because of the restrictive wording it is not clear at all whether these guarantees count for all media. Another issue which was examined concerned the liability issues. Often legal claims are filed against “inaccurate” journalistic activities, illegal published information, press crimes, in sum: situations where the borders of freedom of expression have been trespassed and caused harm. Publishers can be held liable as well, though only in second order. The cascade regulation established by the constitutioner states that a writer / journalist must be held liable in first order, provided he can be identified and has its place of residence in Belgium. The ratio of this rule – prevention of private censorship by publishers – seems to be out of date due to social developments. Another issue which is being discussed on this level is whether the cascade regulation also affects civil liability or not. Furthermore, whether the cascade regulation could also be applied to the internet is affirmed by some scholars/judges and denied by others. Besides the possibility of claiming damages, one could also make use of other options like the publication of the court’s ruling or the right of reply. Here too, the question rises whether the classic regulation can be applied to electronic publications. Things get even more complicated since everyone has worldwide access to the internet and can “publish” anonymously given the low technological, legal and financial requirements. The situation of victims of press crimes has worsened in this online environment. Firstly it is not obvious to trace down the offender. Secondly it is not an evident case to find out who (one or several persons) can be held liable. Thirdly the question rises at which court the victim should file a complaint and which national law is applicable in a given situation. If the offender cannot be found, victims often tackle internet service providers for damages. This can have a serious effect on the freedom of services and even jeopardize the “free flow of information”. Hence, the European legislator created special exemptions of liability (on penal and civil level) for internet service providers. To enjoy the “*safe harbour*” rules they have to fulfill several conditions which are not always phrased very clearly (for example it is very unclear when an intermediary is deemed to have knowledge of illicit information and at what time exactly he should intervene). In any case, the illusion that the internet is a separate unregulated space (contrary to the offline environment) seems to have been departed. A

regulation of the internet to prevent certain crimes and to protect internet consumers has received a lot of attention during the past years. Although Human Rights Organizations, the Council of Europe, the European Union already declared several times that the freedom of expression should also be guaranteed on the internet, it was also acknowledged that restrictions are sometimes necessary (for example to protect minors and human dignity, to fight crimes such as child pornography etcetera). Finally, it can be observed that the distinction which is traditionally made between the different media is no longer tenable, especially on legal level where contradictions, conflicts of competence and loopholes flourish. The old constitutional provisions with regard to press freedom / cascade liability / Assize Court for press crimes were drafted according to the characteristics of the medium which existed at that time (namely the print media). Traditional legal concepts such as “publisher / broadcaster” and “cascade regulation” cannot be easily transposed to the new electronic environment and should be re-interpreted. Traditional publishers can no longer claim an exclusive right on the gathering, editing, interpreting and distributing of news. After all, since the existence of the virtual and interactive internet simple everyone can spread its opinions without having to count upon a publisher / broadcaster as an intermediary. The fact that you can act anonymously or under a pseudonym lowered the threshold to publish even more, which in turn led to an enormous increase of user-generated content and competition of new media players. Convergence also led to conflicts of competence between the different regulatory authorities and contradictions amongst the regulation. This does not make it any easier for multimedia companies, since they are subjected to several regulations. For example copyright, freedom of expression, (right of reply in) the print media, several aspects of the audiovisual media, electronic commerce and liability issues belong to the federal state’s field of competence. The Flemish regulator is competent for almost all aspects related to radio and television and the supporting of the print media by means of subsidies. Moreover, apart from the Belgian and Flemish regulation there is an exponential increase of European Regulation (E-Commerce Directive, future Audiovisual Media Services Directive, recommendation regarding the right of reply in the online environment etcetera) which has to be taken into account. In sum, there is no overall policy for electronic media but, on the contrary, a fragmented regulation / policy which causes legal uncertainty. The question rises whether this unequal / separate treatment of the media (print, audiovisual, electronic) can (still) be justified on the mere basis of their specific (technological) characteristics. Current regulation has become a tangled ball in which electronic publishers can no longer find their way. It is clear that there is an urgent need for a harmonized, technologically neutral and flexible regulation.