

Appendix 2:
Media Systems (Country Reports)

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1. LIST OF CORRESPONDENTS

Austria

Dr. Robert Rittler

Freshfields Bruckhaus Deringer
Wien

Belgium

Prof. Dr. Dirk Voorhoof

Ann Braeckmann

Rijksuniversiteit Gent - Vakgroep
Communicatiewetenschappen
Gent

Prof. Dr. Francois Jongen

Université de Louvain
Chastre

Cyprus

Christophoros Christophorou

Nicosia

Czech Republic

JUDr. Vladimír Kroupa

Attorney at Law
Praha

Milan Šmíd, Ph D.

Dpt.of Journalism,
Charles University Prague

Denmark

Soeren Sandfeld Jacobsen

Copenhagen Business School
Frederiksberg

Estonia

Monika Silvia Valm

University of Oslo
Oslo/Norway

Finland

Olli Ylönen und Kaarle Nordenstreng

University of Tampere

with assistance of Antti Alanen (Finnish Film
Archive), Ari Heinonen (University of
Tampere) and Marina Österlund-Karikanta
(Finnish Broadcasting Company)

France

Claude-Jean Bertrand

Université de Paris 2
Le Vésinel

Germany

Dr. Wolfgang Schulz

Hans Bredow Institut für Medienforschung
Hamburg

Alexander Scheuer

Institut für Europäisches Medienrecht (EMR)
Saarbrücken

Greece

Dr. Petros Iosifidis

City University London
London

Hungary	Dr. Márk Lengyel Körmendy-Ékes és Lengyel Tanácsadó Iroda Kft. Budapest
Ireland	Marie McGonagle National University of Ireland, Galway
Italy	Prof. Roberto Mastroianni Università di Firenze Firenze
Latvia	Solvita Strausa Deloitte & Touche Riga
Lithuania	Gediminas Pranevicius/ Laimonas Skibarka Vilnius
Luxembourg	Jacques Neuen Luxembourg
Malta	Dr Eugene Buttigieg LL.D., LL.M. (Exon), Ph.D. University of Malta, Malta
Netherlands	Marcel Betzel, LL.M. Commissariaat voor de Media Hilversum
Poland	Jerzy Naumann Naumann-Trela-Zuchowicz Attorneys at Law Warszawa
Portugal	Carlos Landim Instituto da Comunicação Social Lisboa
Slovakia	JUDr. Josef Vozár Institute of State and Law Bratislava
Slovenia	Brankica Petkovic Peace Institute/Mirovni institut Ljubljana
	Jernej Rovsek Human Rights Ombudsman Ljubljana
Spain	Prof. Dr. Julian Rodriguez Pardo Universidad de Extremadura Badajoz
Sweden	Michael Plogell / Erik Ullberg Wistrand Advokatbyrå Göteborg

United Kingdom

**Prof. Lorna M. Woods, LLB (Leeds), LLM
(Edinburgh), Solicitor**
University of Essex
Colchester

Australia

John Corker
National Pro Bono Resource Centre
Sydney

Canada

**Dr. Marc Raboy /
Bram Dov Abramson**
McGill University
Montreal, Canada

2. REQUEST AND QUESTIONNAIRE

Dear Madam, dear Sir,

The Institute of European Media Law (EMR), Saarbrücken, and the Hans-Bredow-Institute (HBI), Hamburg, have been assigned by the European Commission with the compilation of a study on Co-regulatory measures in the media sector. One of the aims of the study is to get a complete picture of the media regulatory systems in general and of the existing forms of co-regulation in the media sectors in the Member States and in three representative examples of non-European countries. For this purpose, country reports describing and analysing the media regulatory systems in general as well as the co-regulatory systems in the media sector have to be compiled for each country. In this context, we would like to resort to your professional competence and ask if you are interested in elaborating such a survey for your country. In the following we would like to give you more information about the required content of these reports and about the study as such.

First Step: Comprehensive country reports

Our request

One of the first parts of our study will be a stocktaking of the media systems in the Member States. For this purpose, country reports will be elaborated by legal experts in the field of media in each country. These reports shall contain all necessary information about the regulatory system in the respective country having an impact on the media sector, including the description of the constitutional and legal framework, functioning and organisation of the authorities involved, as well as co-regulatory and self-regulatory systems in the media sector. The country reports should follow the presentation grid attached; this procedure is regarded to facilitate comparability of the country reports to the largest possible extent.

Workload

Regarding the estimated workload, we assume that your contribution will not exceed a size of approximately 10 pages, depending on the circumstances in your country.

Time frame

Unfortunately, we have to work in accordance with a very tight time schedule, predetermined by the requirements of the contract. Therefore, your country report should be presented by end of February, i.e. at 28th February 2005 at the latest.

Moreover, we would like to ask you for further assistance: Do you have any information about studies, evaluation reports or other scientific resources regarding co-regulatory or self-regulatory systems in the media sector in your country? If so, we would be very happy, if you could provide us access to such documents or give us the bibliographic data of these studies. We need this information for another part of the study: we (HBI and EMR) will have to

develop a set of criteria to define which concepts of regulation that make use of self-regulatory elements fall under what is called “Co-regulation” in the European context. The aim of this part of the study is to provide for criteria to distinguish co-regulation from pure self-regulation and traditional command-and-control-regulation, as well as to distinguish different forms of co-regulation. Starting point of this theoretical analysis will be the White Paper on European Governance. In addition, we intend to analyse all relevant studies on co-regulatory or self-regulatory systems in the media sector (Press, Broadcasting, Online Services/Information Society Services, Film/Computer Games). Against this background, we would be very grateful, if you could give us this information as soon as possible.

Second Step: Description of co-regulatory measures

Our request

In a second step, country reports describing the co-regulatory systems in the media sector will be compiled. If, according to the information included in your first report, there seems to exist a co-regulatory system as defined for the purposes of this study in your country, we would like to collaborate with you again. Then, we will provide you with a set of criteria in order to determine which of the regulatory systems existing in your country could most likely fall within that definition of co-regulation. We shall deliver you with further information, particularly another presentation grid for the second country report, at the end of March.

Workload

We assume that this part shall not exceed a size of approximately 10-12 pages depending on the circumstances in your country.

Time frame

According to our time schedule, these (co-regulation) reports should presumably be presented in mid-April 2005.

Remuneration

The financial remuneration to be proposed for the country reports on the co-regulatory systems will range in accordance with the number of systems analysed (for the overall study as well as in your country) and the foreseeable workload involved. However, we presume it will not lie below the amount foreseen for the first report.

Third step

In a third step, we intend to analyse, whether the public policy goals followed in media regulation are achieved in an effective manner. For this purpose, we will collect and evaluate the results of surveys already undertaken. Additionally, we will undertake our own field research to validate and/or complete our findings. This field research will rely on a representative sample of co-regulatory systems in different member states. Provided that one or more of the co-regulatory systems in your country will be chosen, we would like to cooperate with you again. Then – probably in June 2005 – we will provide you with further

information, particularly as regards the necessary instruments and methods for this field research.

English shall be the working language.

We would be very happy, if you would agree in participating in this project. With view to the early deadline for the first report, we have to ask for your consent as soon as possible, until 11th February 2005 at the latest. If you need further information, please don't hesitate to contact me or Mr. Alexander Scheuer, our General Manager (a.scheuer@emr-sb.de).

Yours sincerely,

Carmen Palzer

Study on Co-Regulatory Measures in the Media Sector

First country report: the relevant regulatory framework for the media sector in Country XX

Structure

03/02/05

General remarks

Media sectors

The “media sector” shall cover at least the following subsectors;

- • Press, including newspapers, magazines, etc.
- • Broadcasting, i.e. radio and television, including technical specifications
- • Online services, offering content for the public
- • Film and Interactive games

If in your country further media (or neighbouring) sectors are relevant with view to co-regulatory measures, please feel free to add them.

Policy objectives

With regard to policy objectives, the study will mainly focus on:

- • protection of minors and human dignity
- • advertising
- • quality, ethics, diversity of media
- • access, standard setting.

Summary

According to the following structure, regulatory measures aiming at implementing the above mentioned policy objectives should be described within each media sector, where applicable. Nevertheless, there might be systems, for example in the area of youth protection, which cover and apply to several sectors. It may then be preferable to describe the respective (overarching) system with view to one medium, and, subsequently, to refer to this when other media are at hand (indicating any possible specificity).

To facilitate the understanding of the general regulatory approach, or, in other words, the philosophy underlying the system, e.g. if youth protection for different media is concerned, also the interaction – as foreseen by law and/or as implemented in practice between regulators and (self-regulatory) bodies , would be worth outlining.

Media regulatory systems in Country XX

Introduction

The introduction is intended to include in a short form basic data, sociological characteristics, historical development, etc., as far as being important for the comprehension of the media regulatory system. In order to provide for an example, as regards the TV broadcasting sector, we would like to refer to the attachment to this structure, points I 1.-)

Constitutional law

Description of constitutional law provisions relevant for the media sector (i.a. freedom of expression, youth protection, provisions relating to public service broadcasting and media regulatory authorities) and for the specific purposes of this study. As regards the latter, it would be most useful to learn about provisions in respect of the state's organisation and the conditions applicable to public administration. In particular, are there any rules which would govern the pursuit of public policy goals by public administration and/or should be respected in relation to entrusting private bodies with such tasks?)

1. Broadcasting

Within the description of the legal framework for the different media (1.-4.), in particular the relevant rules for the implementation of such public policy goals as described above (see general remarks) should be taken into consideration. However, "who does what, how and why" should be covered.

1.1. Regulatory framework

The regulatory framework comprises the legal framework, relevant administrative regulations, and/or other provisions and agreements, especially codes of conduct.

1.1.1. Legal provisions

1.1.2. Administrative regulation/rules

1.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

At this stage of the study, it is not necessary, to describe the self- or co-regulatory systems in detail; a comprehensive analysis of the self- or co-regulatory systems in your country will be required for the second country report. Further on, it is not necessary to carry out the distinction, if the portrayed system is a co-regulatory or a self-regulatory system. This will also be done during the second step. For the purposes of the country reports on the media regulatory system in general, it is absolutely sufficient to describe the systems as such, notwithstanding the terminology used.

1.2 Regulatory authorities/bodies

1.2.1. Authority/ies

1.2.1.1. Legal basis

1.2.1.2. Functions/competencies

1.2.1.3. Organisation

1.2.2. Self- or Co-regulatory body/ies

Organisation involved in a self- or co-regulatory system

1.2.2.1. Legal basis

1.2.2.2. Functions/competencies

1.2.2.3. Organisation

2. Press

2.1. Regulatory framework

2.1.1. Legal provisions

2.1.2. Administrative regulation/rules

2.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

2.2 Regulatory authorities/bodies

2.2.1. Authority/ies

2.2.1.1. Legal basis

2.2.1.2. Functions/competencies

2.2.1.3. Organisation (composition of the authority/members of the board, etc.)

2.2.2. Self- or co-regulatory body/ies

2.2.2.1. Legal basis

2.2.2.2. Functions/competencies

2.2.2.3. Organisation (composition of the authority/members of the board, etc.)

The same for

3. Online Services

4. Film/Interactive Games

5. Summary

3. COUNTRY REPORTS MEMBER STATES OF THE EU

3.1. Austria

Introduction

Austria's broadcasting landscape has for a long time been characterised by the *ORF's* monopoly which ended in 1997. In the first half of 1998 numerous radio broadcaster started their operation. The economic situation of most of the private radio stations is still poor. In 2004 the first nation-wide radio broadcaster was licensed. It is expected that the concentration will improve the profitability of private radio broadcasters. The only nation-wide terrestrial television broadcaster *ATV+* started to broadcast via terrestrial radio-stations in 2003. The company has not yet reached an operating profit. For satellite and cable TV, there have been entries into the market after the enactment of the respective act in 1997.

The newspaper market is characterised by the two newspaper with the largest circulation, the "Kronen Zeitung" and "Kurier". Both are published by the same group of companies.

Austria only has a small film industry that is economically of minor relevance. Almost all Austrian films are either produced with subsidies or in cooperation with the public broadcaster *ORF*. Nevertheless, domestically produced films can gather great publicity in Austria and are therefore important for the national cultural identity.

The media market has for some time been a market where some media companies fought grimly against one competitor while others were very peaceful. This meant that they did not take legal steps against alleged violations of the law.

Constitutional law

Those constitutional provisions that are specifically important for the media in Austria will be described below. There are no specific constitutional provisions on youth protection and media regulatory authorities.

a) The Federal Constitutional Act on the Independence of Broadcasting

The Federal Constitutional act on the independence of broadcasting (*Bundesverfassungsgesetz über die Unabhängigkeit des Rundfunks*; Federal Official Journal No. 1974/396) obliges parliament to define detailed provisions and the organisation of broadcasting by law. Such laws have to guarantee the impartiality of reporting, the observance of the diversity of opinions, the fair balance of the programmes as well as the independence of the persons and organs that are in charge of broadcasting (paragraph 2 of that Federal Constitutional Act). Paragraph 3 declares that broadcasting is of public interest.

b) Article 10 of the European Convention on Human Rights

The European Convention on Human Rights (Federal Official Journal No. 1964/59, last amended by Federal Official Journal III No. 2002/179) is part of the Austrian Federal Constitution. It has therefore a prominent position within the Austrian legal system and is relatively often discussed by the Constitutional Court (*Verfassungsgerichtshof*) or the Supreme Court (*Oberster Gerichtshof*).

c) Resolution of the Provisional National Assembly of 30 October 1918 on the abolition of censorship

The resolution (Federal Official Journal No. 1918/3) reads as follows:

- "1. All censorship is abolished as illegal because contradictory to the basic rights of the citizen.*
- 2. Stops on publications and the issue of a postal distribution veto on such cease forthwith.*
- Hitherto operative stops and postal distribution vetoes are abolished. Complete freedom of the Press is established.*
- 3. ..."*

d) § 31a(1) ORF-Act

This provision declares that the financial activities of the ORF shall be subject to the control of the court of auditors (Federal Official Journal No. 1981/352).

e) Rules on the state's organisation

Austria's Federal Constitution (Federal Official Journal No. 1930/1 [re-published], last amended by Federal Official Journal I No. 2004/153) contains many provisions on the state's organisation which makes this field of the law highly complex. This is why the Constitutional Court frequently quashes laws on the organisation of authorities. This was also the case with broadcasting supervisory authorities (most prominent the cases VfSlg. 15.886/2000 and 16.189/2001). The following text can only give a rough overview on the most important principles and exceptions.

(i) Principles

In principle, public policy goals must be pursued by the general federal public administration that is led by a federal minister (Article 77 of the Federal Constitution)¹.

Public authority may in principle be exercised only by persons that were either appointed by the federal president or his assignees (Article 66 of the Federal Constitution) or by election. The Constitutional Court also accepted that certain organisations may delegate persons into an authority as long as this is reasonable in the light of the democratic principle.

(ii) Self-regulation

The principle that federal laws have to be executed by the general federal public administration leaves little room for self-regulation of the media.

¹ This principle applies for provincial laws *mutatis mutandis*.

On historical reasons, the Constitutional Court held that it is constitutional that an independent legal entity (*Selbstverwaltungskörper*) may exercise public power under certain preconditions ("self-administration" = *Selbstverwaltung*). The preconditions are that (a) the legal entity must be organised according to democratic principles, that (b) the general federal public administration supervises the entity, that (c) such an organisation is reasonable, and that (d) all responsibilities of the entity, that it may exercise independently, are at least predominantly in the interest of its members.

The aggregation of all media (of a branch) to a legal entity with democratic structures could be a big effort and cost a lot of money. It is unlikely that the media enterprises would agree to such a measure. In general, in Austria some memberships are compulsory for companies and self-employed persons (Federal Chamber of Commerce = *Wirtschaftskammer Österreich*; Institution for social security of entrepreneurs = *Sozialversicherungsanstalt der gewerblichen Wirtschaft*). Enterprises are careful in entering new obligations to be a member of a legal entity. Furthermore, the sole aggregation of the media enterprises would fail to cover all persons in whose interest the regulation of the media (of a certain branch) would be. That means that representatives of the media consumers, including the youth, would have to be integrated. There is no case law on the question if such a representation would suffice to meet the precondition (d), mentioned above.

An alternative may be the delegation of public power to a private or semi-private legal entity (*Beleihung*). The Constitutional Court gave the following preconditions: The delegation must be (aa) reasonable (*sachlich*) and (bb) efficient, (cc) must cover only single responsibilities that (dd) do not belong to the most important policies of the state and (ee) the legal entity must be bound by the instruction of a federal minister.

Under these preconditions, a regulatory regime cannot be called self-regulatory.

(iii) Co-regulation

Co-regulation cannot be organised in an independent legal entity (*Selbstverwaltungskörper*), like described above. A mixture of civil servants and delegates of the media enterprises in an entity cannot meet the preconditions of the constitutional concept of self-administration.

The concept of delegation, as mentioned above, involves a minister's right of giving instructions. This does not conform to the concept of co-regulation.

Article 133(4) of the Federal Constitution allows the establishment of specific authorities ("Art.133(4)-authorities") that are not bound by instructions. There are more than 70 such authorities in Austria, two of them are relevant for the media sector, the Federal Communications Board (*Bundeskommunikationssenat*) and the Telekom-Control Commission (*Telekom Control-Kommission*). Art.133(4)-authorities are characterised by the membership of at least one judge, the membership of two or more persons, the independence from instructions, and its decisions are, in principle, not subject to revocation and amendment. Appeals against decisions of such authorities may be filed with the Administrative Court and the Constitutional Court.

In such an Art.133(4)-authority civil servants could be mixed with one or more judges and delegates of the media companies.

The Constitutional Court held in case G 175/99 and others of 29 June 2000 (= VfSlg. 15.886/2000) that the establishment of such an authority needs a specific justification for its independence from the federal minister. The more important its responsibilities are, the better needs to be the justification. One justification can be that it is only responsible for the supervision of authorities or private persons. The Constitutional Court explicitly mentioned the forerunner of the Federal Communications Board, the Board for the Compliance with the ORF-Act (*Kommission zur Wahrung des Rundfunkgesetzes*), that ceased to exist in 2001. From this can be derived that the establishment of an Art.133(4)-authority with one or more judges, civil servants and delegates of the media companies (and probably of NGOs) could be constitutional.

These considerations mean that the establishment of co-regulatory elements is difficult under Austrian constitutional law, but not definitely impossible.

1. Broadcasting

1.1. Regulatory framework

1.1.1. Legal provisions

The most important legal provisions for the content of broadcasting programmes are the following:

a) Media Act

The Media Act is applicable to all mass media. It contains some regulations on the violation of the Penal Code (*Strafgesetzbuch*; see 1.1.1.b below) by the way of mass media. The Media Act refers to the Penal Code regarding the concept of defamation (*üble Nachrede*) and libel (*Beleidigung*). It also contains rules on the compensation of persons whose right to privacy or right to be presumed as innocent was violated.

These provisions are enforced by the criminal courts on the application of a concerned person.

According to § 26 Media Act advertising must be indicated as such, in case that its nature is not obvious.

b) Penal Code

The Penal Code (*Strafgesetzbuch*; Federal Official Journal No. 1974/60) contains the prohibition of defamation (§ 111 Penal Code) and libel (§ 115 Penal Code). Both offences can only be prosecuted by the victim, but not by the public prosecutor (*Staatsanwalt*).

c) Act on Pornography

The Act on Pornography (*Pornographiegelgesetz*; Federal Official Journal No. 1950/97) contains provisions on the dissemination of obscene texts, pictures, films or other such goods. § 2 of

the Act on Pornography prohibits leaving less obscene texts, pictures, films or other such goods to minors.

Such acts are prosecuted by the public prosecutor (*Staatsanwalt*) according to the Code of Criminal Procedure (*Strafprozessordnung*; Federal Official Journal No. 1975/631) before the criminal court.

d) General Civil Code

The General Civil Code (*Allgemeines bürgerliches Gesetzbuch, ABGB*; Official Journal of the Monarchy No. 1811/946) prohibits libel (*Ehrenbeleidigung*) and damaging of one's reputation (*Kreditschädigung*). The insulted person has the right to claim default and compensation.

The General Civil Code also contains a general protection of one's personality (§ 16 General Civil Code).

e) Copyright Act

The Copyright Act (*Urheberrechtsgesetz*; Federal Official Journal No. 1936/111, last amended by Federal Official Journal I No. 2003/32) protects the right of one's picture (§ 78 Copyright Act).

f) Laws on the protection of minors

The general protection of minors lies with the provinces (*Laender*). Each province has an act on the protection of minors. Their provisions are, however, not relevant to the media, because the federal media laws cover the rights of the minors and the parents' responsibilities.

g) ORF-Act

The Federal Act on the Austrian Broadcasting Foundation ("ORF-Act"; Federal Official Journal No. 1984/379 [re-publication], last amended by Federal Official Journal I No. 2004/97) contains rules on the organisation and business objectives of the Austrian Broadcasting Foundation (*ORF*) and its subsidiaries. It imposes specific duties on the *ORF*, like the provision of three nation-wide and nine region-wide radio programmes as well as two nation-wide television programmes. § 4 and § 5 oblige the *ORF* to broadcast programme that covers all important interests in a high quality. § 4 ORF-Act reads as follows:

"§ 4. (1) The Austrian Broadcasting Foundation, by means of the total programme distributed under § 3, shall provide the following services:

- 1. comprehensive information on all important political, social, economic, cultural issues and issues related to sports;*
- 2. promotion of understanding for all questions of democratic society;*
- 3. promotion of Austrian identity from the perspective of European history and integration;*
- 4. promotion of understanding for European integration;*
- 5. presentation and promotion of arts, culture and sciences;*
- 6. due regard for, and promotion of, Austrian artistic and creative productions;*
- 7. presentation of a varied cultural programme;*
- 8. presentation of entertainment;*
- 9. due regard for all age groups;*
- 10. due regard for the causes of disabled people;*

11. due regard for the causes of families and children and for the equal treatment of women and men;
 12. due regard for the importance of legally recognised churches and religious communities;
 13. dissemination and promotion of public and youth education with special emphasis on school and adult education;
 14. information on issues relating to environmental, consumer and health protection;
 15. promotion of public interest in active involvement in sports;
 16. information on importance, function and duties of the federal state and promotion of regional identities of the provinces;
 17. promotion of understanding of economic issues;
 18. promotion of understanding of questions of European security policy and comprehensive national defence.
- (2) In compliance with its mandate, the Austrian Broadcasting Foundation shall provide a varied aggregate programme comprising information, culture, entertainment and sports for everyone. The programme offered must be geared to the variety of listeners' and viewers interests and take a balanced approach in considering these interests.
- (3) The well-balanced total programme must contain an equivalent proportion of sophisticated substantive elements. The annual and monthly programme schemes of television must be designed in such a way that, as a rule, there is a choice of high-quality programmes at prime time (8:00 to 10:00 p.m.). In its competition with commercial broadcasters, the Austrian Broadcasting Foundation must ensure the preservation of the unique aspects of the Austrian public-law broadcasting foundation in terms of content and performance. The fulfilment of quality criteria must be subject to constant evaluation.
- (4) In particular, information, cultural and scientific programmes must excel on account of their high quality. The Austrian Broadcasting Foundation shall also take special account of Austria's cultural identity, history and political and cultural autonomy as well as the federal structure of the Republic.
- (5) In its programming, the Austrian Broadcasting Foundation shall also ensure the following:
1. an objective selection and presentation of information in the form of news and reports including coverage of the legislators' work and broadcasts of their debates, if any;
 2. the submission and presentation of commentaries, viewpoints and critical statements with due regard for the variety of opinions represented in public life;
 3. self-produced commentaries, analyses, and presentations with due regard for the principle of objectivity.
- (6) Independence is not only the right of journalists and programmers, but also their duty. Independence means independence from state and party influence as well as from other – electronic or print – media or political and business lobbies.
- (7) The staff members of the Austrian Broadcasting Foundation shall be committed to the aims of the programme mandate and shall actively contribute to the fulfilment of these aims."

§ 10 ORF-Act contains programming principles, the following of which are relevant for the topic of this report:

"General principles and the protection of minors

- § 10. (1) All programmes of the Austrian Broadcasting Foundation must respect the human dignity and fundamental rights of others with regard to presentation and content.
- (2) The programmes must not incite others to hatred on grounds of race, sex, age, disability, religion and nationality.
 - (3) The programme policy shall strive at quality, innovation, integration, equal rights and understanding.
 - (4) Comprehensive information is to help form free individual and public opinion in the service of the responsible citizen and thus to contribute to the democratic discourse of the general public.

(5) Information shall be comprehensive, independent, impartial and objective. Any newscasts and reports shall be examined carefully as to their truth and origin, and there shall be a clear distinction between newscasts and commentary.

(6) The diversity of opinions held in public life shall appropriately be taken into account, the human dignity, personal rights and privacy of the individual shall be respected.

(7) Commentaries, analyses and presentations shall be objective and based on reconstructible facts.

...

(10) Entertainment is to take account not only of the diversity of demands but also of the fact that it shapes modes of conduct, self-perception and identity to an extent hardly achieved by any other sector.

(11) Broadcasts shall not include any programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence.

(12) In the case of radio and television broadcasts which are likely to impair the physical, mental or moral development of minors, the selection of the time of transmission or other measures shall ensure that minors will not normally see or hear such broadcasts.

(13) The unencoded transmission of broadcasts under paragraph 12 shall be preceded by an acoustic warning or identified by the presence of a visual symbol throughout the entire duration. The Federal Government may issue an ordinance governing the detailed design of optic or acoustic identifiers.

(14) Programmes whose content largely aims at minors must not contain appeals to call value-added services."

The §§ 13 to 18 ORF-Act provide for detailed regulations on advertising an teleshopping. They are valid for radio and television broadcasting. § 13 contains the definition of advertising and some other important general rules on advertising for the ORF:

"§ 13. (1) Within the framework of its radio and television programmes, the Austrian Broadcasting Corporation may allocate transmission time for commercial advertising in return for payment. Commercial advertising means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment.

(2) The Austrian Broadcasting Corporation shall be prohibited to allocate transmission time for direct offers to the public for the sale of goods or the provision of services, including immovable property, rights and obligations, in return for payment (teleshopping).

(3) Advertising shall be readily recognizable as such. It shall be kept quite separate from other parts of the programme service by optical and/or acoustic means.

(4) Advertising broadcasts which are below the limit of perception as well as any type of advertising for spirits and tobacco products shall be prohibited. At the proposal of the Federal Minister for Social Security and Generations, the Foundation Council may determine further restrictions regarding commercial advertising, which are necessary in the interest of public health.

(5) Unless otherwise provided by this Federal Act, the Foundation Council shall determine, at the proposal of the Director General, the extent of advertising broadcasts in the programmes of the Austrian Broadcasting Corporation. Transmission times for commercial advertising must not be allocated on Good Friday as well as on 1 November and 24 December. For the calculation of longest-permissible advertising time under this Federal Act, advertising shall not include announcements of the Austrian Broadcasting Corporation in connection with its own programmes and broadcasts and ancillary products directly derived from them as well as public service announcements and charity appeals broadcast free of charge.

(6) One of the nation-wide radio programmes under § 3 shall be free from advertising. In radio programmes disseminated nation-wide, advertising broadcasts shall be admissible only on a nationwide basis. On the yearly average, radio advertising broadcasts must not exceed the daily length of a total of 172 minutes, deviations of not more than 20 per cent per day being

admissible. In one programme, advertising broadcasts must not exceed 8 per cent of daily broadcasting time on the yearly average. Radio advertising broadcasts transmitted regionally shall be counted only once and must not exceed the daily length of five minutes on the yearly average, deviations of not more than 20 per cent per day being admissible. The length of advertising broadcasts which are transmitted simultaneously in more than one regional programme shall be included in each case in the five minutes devoted to advertising in the specific regional programme.

(7) In television programmes, advertising broadcasts are admissible only on a nation-wide basis. On the yearly average, advertising broadcasts on television shall not exceed the length of 5 per cent of daily transmission time per programme, deviations of not more than 20 per cent per day being admissible. The calculation of the length of permissible television advertising shall be based on a daily transmission time, independent of the actual length, of not more than 14 hours per day and programme. Within one full hour, the proportion of television advertising must not exceed 20 per cent. Hours shall mean the 24 equal parts of one calendar day.

(8) Advertising on television for periodic printed works may refer to the title (name of the printed work) and the reporting policy but not to their content. The transmission time allocated for this purpose must not exceed two minutes of overall weekly advertising time. Such transmission times and the fees shall be allocated to all media owners of such printed works on equal and non-discriminatory conditions. Details are governed by the Fee Guidelines for advertising broadcasts (§ 21 paragraph 1 subparagraph 7).

(9) Advertising radio programmes of the Austrian Broadcasting Foundation in television broadcasts of the Austrian Broadcasting Foundation (§ 3 paragraph 1) and vice-versa shall be inadmissible unless it consists of references to the content of individual broadcasts."

§ 14 par. 1 ORF-Act contains some general prohibitions for advertising, such as of discrimination on grounds of race, sex, age, disability, religion or nationality, any offence to religious or political beliefs and asks for respect for human dignity:

"Principles of advertising, product placement, interrupting advertising

§ 14. (1) Advertising shall not

- 1. prejudice respect for human dignity,*
- 2. include any discrimination on grounds of race, sex, age, disability, religion or nationality,*
- 3. be offensive to religious or political beliefs,*
- 4. encourage behaviour prejudicial to health or to safety,*
- 5. encourage behaviour prejudicial to the protection of the environment,*
- 6. encourage unlawful practices,*
- 7. be misleading and harmful to consumer interests.*

(2) Surreptitious advertising is not permissible. Surreptitious advertising means the representation in words or pictures of goods, services, the name, the trade mark of the activities of a producer of goods or a provider of services in programmes when such representation is intended by the Austrian Broadcasting Corporation to serve advertising and might mislead the public as to its nature. Such representation is considered to be intentional in particular if it is done in return for payment or for similar consideration.

(3) Advertisements shall not feature, visually or orally, persons who regularly present news and current affairs programmes or present other broadcasts regularly as programming or journalistic collaborators of the Austrian Broadcasting Corporation.

(4) Advertisers or sponsors must not exert an editorial influence on the content of programmes.

(5) The visual or oral representation of goods, services, the name, trade name or the activities of a producer of goods or a provider of services in return for payment or for similar consideration, unless such payment or consideration is negligible, outside advertising broadcasts (product placement) shall be prohibited. The prohibition of product placement does not apply to feature films, television films and television series. The media support under § 17 paragraph 7 of the Gambling Act shall not be considered a product placement.

(6) Product placement outside advertising broadcasts shall be permissible if it is necessary in the transmission or coverage of sports, cultural or charity events. This paragraph shall not apply to programmes for children and adolescents.

(7) Television advertising shall be broadcast in blocks between programmes. Isolated advertising spots shall remain the exception.

(8) In the case of sports programmes and broadcasts of similarly structured events and performances comprising intervals, advertising may be inserted only between the autonomous parts or in the intervals. Interrupting other television broadcasts in programmes under § 3 paragraph 1 by advertising shall be prohibited.

§ 15 ORF-Act contains provisions on cut-in advertising for format programmes, that is operated by subsidiaries of the ORF.

The advertising for medicines and alcoholic beverages is restricted by § 16 par. 1 to 4 ORF-Act:

"§ 16. (1) Advertising for medicines, medicinal products and therapeutic treatments which are only available on medical prescription shall be prohibited.

(2) Advertising for all other medicines, medicinal products and therapeutic treatments shall be readily recognizable as such and shall be honest, truthful and verifiable. It shall not be harmful to humans.

(3) The provisions on advertising of the Medicines Act, Federal Law Gazette No 185/1983, and the Act on Medicinal Products, Federal Law Gazette No. 657/1996, as well as the restrictions on advertising contained in the regulations governing the exercise of health-care professions shall not be affected.

(4) Television advertising for alcoholic beverages shall comply with the following criteria:

1. It shall not be aimed specifically at minors or, in particular, depict minors consuming these beverages.

2. It shall not link the consumption of alcohol to enhanced physical performance or to driving.

3. It shall not create the impression that the consumption of alcohol contributes towards social or sexual success.

4. It shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts.

5. It shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light.

6. It shall not place emphasis on high alcoholic content as being a positive quality of the beverages."

§ 16 par. 5 and 6 ORF-Act contain regulations for the protection of minors:

"(5) Television advertising shall not cause moral or physical detriment to minors, and shall therefore comply with the following criteria for their protection:

1. It shall not directly exhort minors to buy a product or a service by exploiting their inexperience or credulity.

2. It shall not directly encourage minors to persuade their parents or others to purchase the goods or services being advertised.

3. It shall not exploit the special trust minors place in parents, teachers or other persons.

4. It shall not unreasonably show minors in dangerous situations.

(6) Immediately before and after children's programmes, the broadcasting of advertisements aimed at minors shall be prohibited."

h) The Private Television Act

The Federal Act on Private Television ("Private Television Act", *Privatfernsehgesetz*; Federal Official Journal I No. 2001/84, last amended by Federal Official Journal I No. 2004/169) contains general rules on programmes, rules on advertising and on the protection of minors.

The general rules on programmes and on advertising are less strict for private television broadcasters than the rules for the ORF. However, human dignity is explicitly protected by § 37 Private Television Act:

"§ 37. Television advertising and teleshopping shall not

- 1. violate human dignity;*
- 2. contain any discrimination on the basis of race, sex, disability or nationality;*
- 3. offend religious or political beliefs;*
- 4. encourage behavior hazardous to health or safety;*
- 5. encourage behavior hazardous to environmental protection;*
- 6. encourage unlawful practices."*

Advertising and teleshopping shall be clearly recognizable as such. They shall be clearly separated from other programme sections by means of optical or acoustic means (§ 38 Private Television Act).

§ 43 provides for the protection of minors:

"§ 43. (1) Television advertising and teleshopping shall not cause any physical or mental damage to minors, and they shall therefore be subject to the following criteria for the protection of minors:

- 1. They shall not address any direct sales appeals at minors, exploiting their lack of experience and credulity.*
- 2. They shall not directly induce minors to persuade their parents or third parties to buy the advertised good or service.*
- 3. They shall not exploit the special confidence that minors have in parents, teachers and other persons of their trust.*
- 4. They shall not show minors in dangerous situations without a justified reason.*

(2) In addition, teleshopping shall not induce minors to enter into purchase, rent or lease agreement for goods or services."

Advertising for cigarettes and other tobacco products is prohibited (§ 39 Private Television Act). Advertising for medicines and medical products is restricted according to § 40 Private Television Act:

"§ 40. (1) Advertising for medicines that are only available by prescription, as well as advertising for medical products that are subject to a prescription according to § 100 of the Medical Products Act shall be prohibited.

(2) Advertising for all other medicines, medical products and therapeutic treatments shall be clearly recognizable as such and shall be honest, truthful and verifiable. It shall not be harmful to man.

(3) The provisions on advertising of the Medicines Act, Federal Official Journal No. 1983/185, and of the Medical Products Act, Federal Official Journal No. 1996/657, as well as the advertising restrictions contained in the statutory provisions on the exercise of the health-care professions shall not be affected."

Advertising for Alcoholic Beverages is restricted by § 42 Private Television Act, which reads as follows:

"§ 42. Advertising broadcasts and teleshopping for alcoholic liquids shall be prohibited. In addition, television advertising and teleshopping shall comply with the following criteria:

- 1. They shall not be directed specifically at minors and, in particular, they shall not show minors consuming alcohol.*
- 2. They shall not establish any linkage between an improvement of one's physical performance with the consumption of alcohol or the driving of vehicles and the consumption of alcohol.*
- 3. They shall not create any impression that the consumption of alcohol promotes social or sexual success.*

4. *They shall not suggest that alcohol has a therapeutic, stimulating, soothing or conflict-solving effect.*
5. *They must not encourage the immoderate consumption of alcoholic beverages, nor must they present abstinence or moderate consumption in a negative form.*
6. *The level of the alcohol content of beverages must not be emphasized as a positive characteristic."*

The Private Television Act contains, in contrary to the ORF-Act, only a few provisions on the organisation of private broadcasters. § 49 Private Television Act provides for the respect of the independence of journalists.

i) The Private Radio Act

The Federal Act on Private Radio ("Private Radio Act", *Privatradiogesetz*; Federal Official Journal I No. 2001/20, last amended by Federal Official Journal I No. 2004/169) is in respect to the topics that are dealt with in this report relatively similar to the Private Television Act. § 16 Private Radio Act contains general principles for radio programmes. Such programmes must be impartial and diverse. They have to reflect the public, cultural and economic life within the covered area. Radio programmes must not be pornographic or glorify violence. All radio programmes must respect the human dignity and fundamental rights of others with regard to presentation and content.

§ 19 and § 20 Private Radio Act contain rules on advertising:

"§ 19 (1) Advertising (radio spots, short programmes and specially produced advertising including specially arranged announcements and closing announcements of sponsored programmes) must not exceed an annual average of a daily maximum of 172 minutes, with a maximum tolerance of 20 percent each day.

(2) Advertising for tobacco products and alcoholic beverages as well as advertising messages below the limit of perception are not permitted.

(3) Advertising must be identifiable as such and be unequivocally separated from other programmes by acoustic signals.

(4)

a) Advertising must not be misleading or detrimental to the interest of consumers.

b) Surreptitious advertising is prohibited. Surreptitious advertising is understood to mean mentioning goods, services, names, brands or activities of somebody who manufactures goods or performs services, in programmes, when such mention is made by the radio station operator intentionally for advertising purposes and may mislead the general public with regard to the actual purpose of such reference or representation. A reference or representation is deemed to be intentional whenever it is made for payment or a similar consideration.

c) No person must appear in advertising who regularly presents newscasts and programmes featuring current political events.

d) An advertiser must not have any editorial influence on the contents of programmes.

...

(6) Broadcasts of religious services, programmes featuring religious contents, programmes for children, newscasts and current events magazines must not be interrupted by advertising.

(7) The radio station operator shall establish a system of rates for commercial messages for the area he covers.

§ 20. (1) Advertising presenting pharmaceutical products and therapeutic treatments available only against doctor's prescription are prohibited.

(2) The provisions of the Medicines Act, Federal Official Journal No. 1983/185, remain unaffected."

§ 21 Private Radio Act provides for the respect of the independence of journalists.

1.1.2. Administrative regulation/rules

There are no administrative regulations on the content of broadcasting programmes as to the topic of this report.

1.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

There are no co-regulatory or self-regulatory measures for broadcasters in Austria.

The *ORF* has according to § 19 par. 1 ORF-Act four organs, the foundation council, the director general, the audience council and the auditing commission. The director general is, in principle, in charge of the programme content (§ 23 par. 1 ORF-Act). She/he is also responsible for establishing general guidelines for the design, planning and coordination of programmes on radio and television as well as for planning the annual broadcasting schedules with the approval of the foundation council (§ 23 par. 2(1) in connection with § 21 par. 2(1) and (2) ORF-Act). The foundation council may decide on restrictions to be imposed on commercial advertising (§ 21 par. 1(13) ORF-Act).

The director general issues, in accordance with the foundation council, professional standards for the *ORF* (§ 23 par. 2(1) ORF-Act). They are available in German under http://publikumsrat.orf.at/go_arl.html. They bind the organs and employees of the *ORF*. The standards provide in some parts more detailed regulations than the law, but don't do so in other parts.

§ 30 ORF-Act reads as follows:

“(1) The audience council shall:

- 1. make recommendations regarding the design of programmes as well as proposals for technical expansion;*
- 2. appoint six members of the Foundation Council, of whom three members must be chosen from among the six members of the audience council appointed on the basis of the results of the direct election and, at all events, one member each from the sectors of officially recognised churches and religious communities, academic institutions and the arts;*
- 3. appeal to the Federal Communications Board;*
- 4. approve decisions of the Foundation Council concerning the amount of programme fees (radio and television fees);*
- 5. submit proposals for compliance with the mandate relating to the cases laid down in this law, and comment on the allocation of programme shares to national minorities. For that purpose, the audience council may hear representatives of the national minority advisory councils;*
- 6. make recommendations to the Foundation Council concerning annual broadcasting schemes;*
- 7. make recommendations on quality assurance systems;*
- 8. make recommendations on the provision of programmes for persons without hearing or with impaired hearing (§ 5 par. 3).*

(2) The audience council is authorised to fulfil the tasks listed in paragraph 1, i.e. to interview the director general, the Managing Directors and Regional Directors about all of the tasks of the Austrian Broadcasting Corporation to be discharged by them and to procure all the necessary information. The interviewees shall reply to the inquiries in writing or orally, if so requested, within a period of two months. A reply to such an inquiry may only be withheld to the extent that this is in the prevailing interest of the Austrian Broadcasting Corporation or in the public interest.

(3) If the audience council has made recommendations concerning the design of programmes, the director general shall report to the audience council, within a reasonable time not

exceeding three months, on whether and in what form the recommendation has been complied with or else why the recommendation was not implemented.

(4) The meetings of the audience council shall be attended in an advisory function by the director general or by a representative nominated by him or her. The audience council has the right, on the basis of a request to the director general, to demand the presence of a Managing Director or Regional Director. The Members of the Foundation Council have the right to attend the meetings of the audience council in an advisory capacity.

(5) The audience council may – in addition to the opinion poll conducted by the Austrian Broadcasting Corporation itself – call for the Austrian Broadcasting Corporation to have a representative survey conducted once an year among the programme subscribers on topics laid down by the audience council. The results of all opinion polls of the Austrian Broadcasting Corporation shall be communicated to the audience council.”

1.2 Regulatory authorities/bodies

1.2.1. Authorities

Two new specific authorities for broadcasting regulation were established in 2001, the KommAustria and the Federal Communications Board. At the same time, the RTR GmbH was created, a limited-liability company without juridical powers.

1.2.1.1 KommAustria

1.2.1.1.1 Legal basis

The legal basis of KommAustria is § 1 to § 10 KommAustria Act.

1.2.1.1.2. Functions/competencies

Authorities of KommAustria's include, among other things, the approval of private television operators, the authorisation of technical equipment and supervision of private television operators (§ 2 par. 1 KommAustria act; §§ 60 and 66 Private Television Act). KommAustria does not supervise either the *ORF* or its subsidiaries.

Depending on their nature, KommAustria has three different kinds of supervisory proceedings to execute:

- i) Complaint proceedings pursuant to § 61 Private Television Act and § 25 Private Radio Act;
- ii) Administrative penal proceedings pursuant to § 64 Private Television Act and § 27 Private Radio Act, in conjunction with the Administrative Penal Act (*Verwaltungsstrafgesetz*)
- iii) Approval revocation proceedings pursuant to § 63 Private Television Act and § 28 Private Radio Act.

Decisions of KommAustria may be appealed against before the Federal Communications Board. Appeals in administrative penal cases may be filed with the Independent Administrative Tribunal in Vienna (*Unabhängiger Verwaltungssenat Wien*).

1.2.1.1.3. Organisation

KommAustria consists of one director and the staff. It is an independent authority as to its external business practices, but bound by instructions of the Federal Chancellor (§ 3 par. 3 KommAustria Act). Its director and deputy director are to be appointed by the Federal Chancellor.

1.2.1.2. Federal Communications Board

1.2.1.2.1. Legal basis

The legal basis of the Federal Communications Board (*Bundeskommunikationssenat*) is § 11 to § 15 KommAustria Act.

1.2.1.2.2. Functions/competencies

The Federal Communications Board has two different kinds of supervisory proceedings, depending on their nature, to execute in the first instance:

- i) Complaint and petition proceedings pursuant to § 36 ORF-Act, and
- ii) Administrative penal proceedings pursuant to § 38 ORF-Act, in conjunction with the VStG.

The Federal Communications Board is also the appeal instance for decisions of KommAustria.

1.2.1.2.3. Organisation

The Federal Communications Board consists of five members three of whom must be judges. Its members are appointed by the federal president upon proposal of the federal government for a term of six years. For each member, a substitute shall be appointed (§ 12 par. 2 KommAustria Act). For the appointment of each of the three judicial members (substitute members), the federal government shall be bound by proposals consisting of three persons belonging to the judiciary, namely one proposal for appointment submitted by the president of the supreme court and two proposals for appointment submitted by the president of the Vienna court of appeal.

As opposed to the KommAustria the Federal Communications Board is set up at the federal chancellery. That means that the chancellery provides administrative support. It has no legal influence on the decisions.

The board is an authority in the sense of art 20 par. 2 and art 133(4) of the Federal Constitution. That means that it is not bound by any instructions and that its decisions are, in principle, not subject to revocation or amendment by administrative action. Appeals against decisions of the Federal Communications Board may be filed with the administrative court and with the Constitutional Court. These courts can quash the decision in the case of a violation of the law respectively the constitution. The board has then to continue its proceeding. It is not possible to amend the decisions of the board. Appeals in administrative penal cases may be filed with the independent administrative tribunal in Vienna.

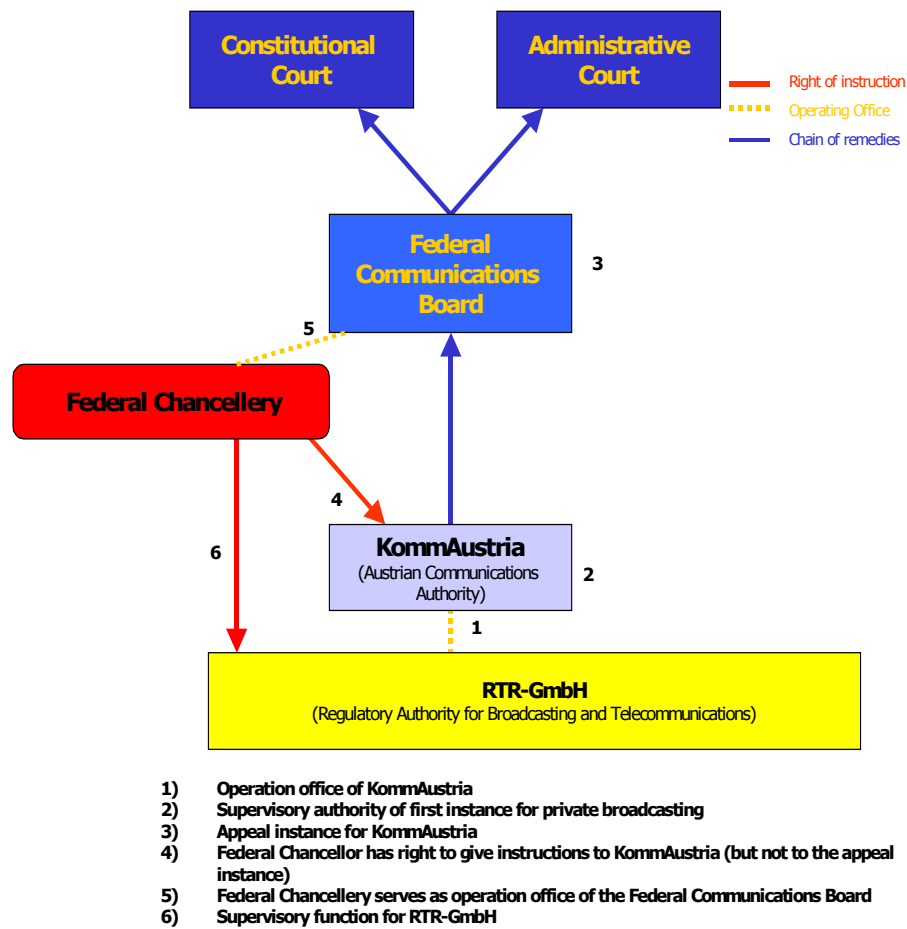
1.2.1.3. RTR-GmbH

The RTR-GmbH is a non-profit limited-liability company. It was set up in order to provide administrative support to KommAustria and the Telecom Control Commission. All of its shares are reserved for the Federal Government. The RTR-GmbH has no juridical powers and is, within the framework of their activities for KommAustria, bound by the instructions of the Director of this authority. The same applies to the activities for the Telekom Control Commission (§ 6 paras. 3 and 4 KommAustria Act). The RTR-GmbH is supervised by the Federal Chancellery as to broadcasting law and by the Ministry for Transport, Innovation and Technology as to telecommunications law.

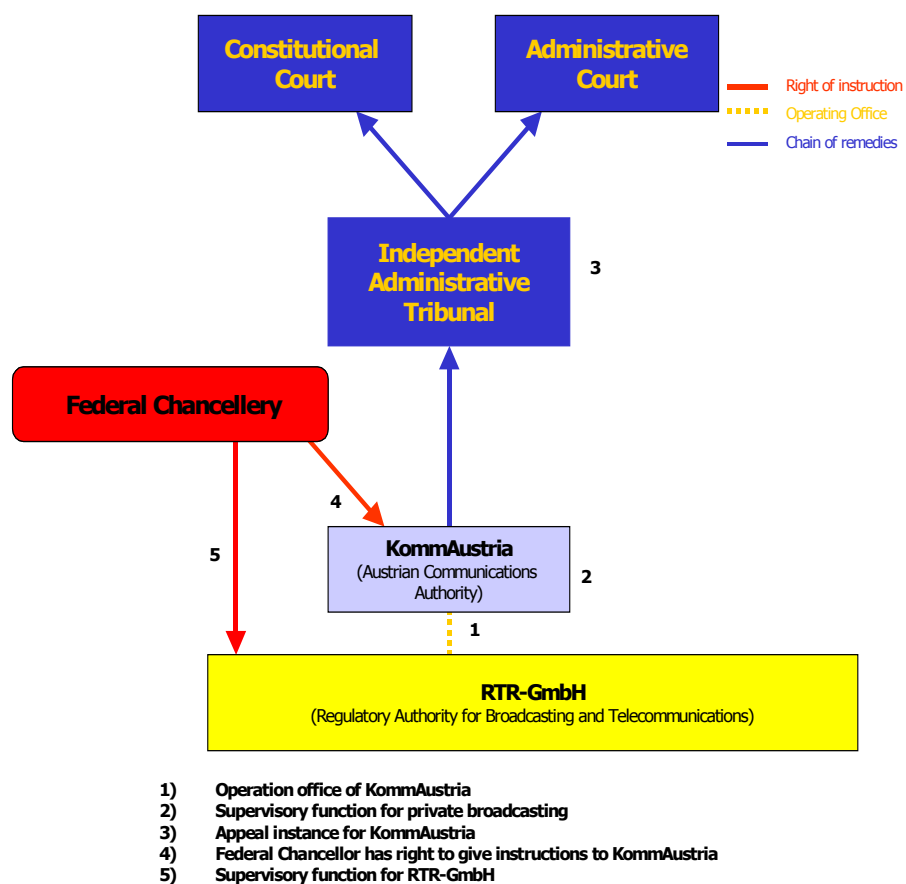
1.2.2. Self- or Co-regulatory body/ies

There are no organisations involved in a self- or co-regulatory system in Austria.

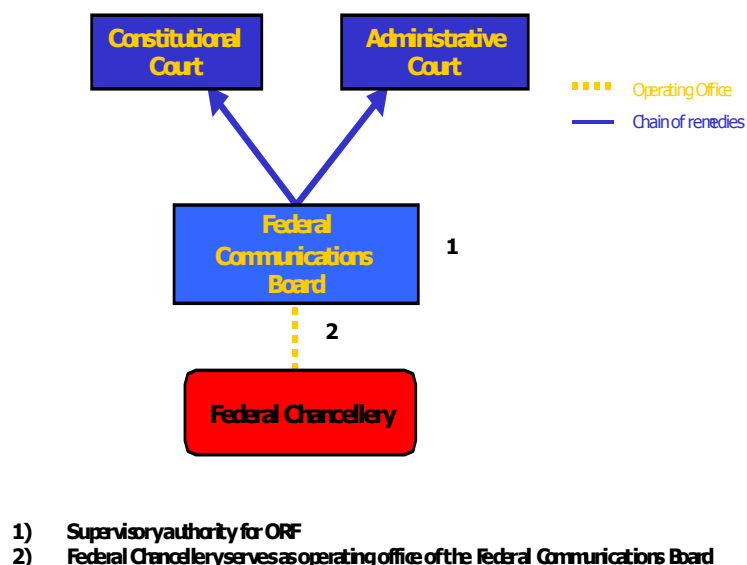
Structure of the Authorities and Chains of Remedies for the Supervision of Private Broadcasters



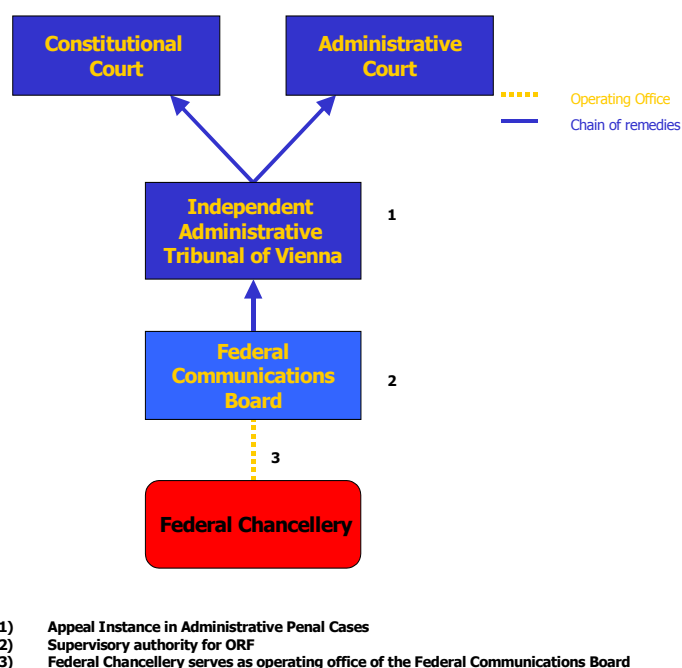
Structure of the authorities and chains of remedies in administrative penal cases regarding private broadcasters



Structure of the Authorities and Chains of Remedies for the Supervision of the ORF



Structure of the Authorities and Chains of Remedies in Administrative Penal Cases regarding the ORF



2. Press

2.1. Regulatory framework

There is no specific regulatory framework for the press. The Media Act (1.1.1.a.) is applicable for all mass media and is the most important law for the press. The Penal Code, the act on pornography, the general civil code and the copyright act (1.1.1.b.–e.) apply to the press as well.

a) The Stock Exchange Act

The Stock Exchange Act ("Börsegesetz", Federal Official Journal No. 1989/555, last amended by Federal Official Journal I No. 2004/127) contains regulations on statements and ratings on stock companies that are given in the media. Analysts who recommend to buy/hold/sell stocks in writing (for example in brochures, the press or the internet) have to comply with some provisions on the information that has to be provided to the investors (§ 48f par. 2 items 1–3 Stock Exchange Act). The supervisory authority for the compliance with these regulations is the Financial Market Authority (www.fma.gv.at), unless the analyst is subject to the supervision of an effective self-regulatory regime in a Member State of the EU. The travaux préparatoire to this provision only state that the intent of that provision is to transform Art 2 Directive 2003/125/EC. This is why this provision is no indication for a more positive attitude of the Austrian lawmaker towards co- and self-regulation of the media.

2.2. Regulatory authorities/bodies

2.2.1. Authority/ies

There are no specific regulatory authorities or bodies for the press.

2.2.2. Self- or co-regulatory body/ies

There is currently no self- or co-regulatory body for the press in Austria.

In 1961 the Association of Austrian Publishers of Newspapers (*Verband österreichischer Zeitungsherausgeber und Zeitungsverleger*) and the Department of Journalists of the Union of Arts, Media and Freelance Workers (*Gewerkschaft Kunst, Medien, freie Berufe – Sektion Journalisten*) founded a self-regulatory board for the compliance with professional standards (*Presserat*). The membership was not compulsory. The daily newspaper with the largest print run, the "Kronen Zeitung", left the Presserat in the 1980ies. The organisation disbanded in 2002.

The Austrian Board for Advertising (*Österreichischer Werberat*; website: www.werberat.at) is an organ of the Association for Self-regulation of the Advertising Branch (*Verein Gesellschaft zur Selbstkontrolle der Werbewirtschaft*). Its members are associations of press enterprisings, of regional media, of direct marketing companies, of producers of products with branded goods and a subsidiary of the ORF that markets its advertising time (*ORF Enterprise GesmbH & Co KG*).

The association has issued rules on the self-discipline of its members, which are available on the Internet at www.werberat.at/download/sbcoddddo.pdf (German only). They consist of a part of general rules and a part on specific topics (alcohol, women, children, vehicles and tobacco). Everyone is entitled to file a complaint against advertising, that may infringe the rules on the self-discipline.

The Austrian Board for Advertising is responsible for complaints regarding advertising in all kind of media.

3. Online Services

3.1. Regulatory framework

3.1.1. Legal provisions

There is no general specific regulatory framework for online services. The Media Act (1.1.1.a.) is applicable for all mass media and is the most important law for online services. The Penal Code, the Act on Pornography, the General Civil Code and the Copyright Act (1.1.1.b.–e.) apply to the press as well.

The *ORF* is allowed to provide an online service for Austrians living abroad (§ 2 par. 1(2) ORF-Act). It is the most popular online news service in Austria. According to § 18 ORF-Act some of the provisions of this act are applicable to the online service. Amongst them are the general principles for the programme and the protection of minors. The amount of permissible advertising has to be determined by the foundation council.

The E-commerce Act (*E-Commerce-Gesetz*, Federal Official Journal I No. 2002/152) transposes the Directive 2000/31/EC on electronic commerce, OJ 2000 L 178/1, into national law. It imposes obligations to provide some data, like the name, the geographical address, the e-mail-address, the number of the company in the commercial registry, the supervisory authority (if applicable), the Chamber of Commerce, to which the operator is member, and the VAT-identification number, on the provider of commercial Internet-services (§ 5 E-commerce Act). Providers of commercial information have to comply with additional rules (§ 6 E-commerce Act). They are, for example, obliged to render commercial communication clearly identifiable as such. According to § 7 E-commerce Act, a service provider who provides commercial communication by e-mail shall make it clearly identifiable as such.

3.1.2. Administrative regulation/rules

There are no administrative regulations for online services.

3.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

There are no co-regulatory or self-regulatory measures for online services.

3.2. Regulatory authorities/bodies

There are no specific regulatory authorities/bodies or self- or co-regulatory body/ies for online media.

The nic.at Internet Verwaltungs- und Betriebsgesellschaft m.b.H. is a limited-liability company and the central registry for Austrian top-level domains (<http://nic.at>). Their general terms and conditions (http://nic.at/en/agb/ag_agb2003.asp) contain some rules on the applicant's responsibilities but, as to their content, only refer to legal obligations. This cannot be regarded as regulation.

4. Film/Interactive Games

4.1. Regulatory framework

The production of films and interactive games as well as lending films and interactive games does not require a specific permit with the exception of the trade permit according to the Trade Code (*Gewerbeordnung*; Federal Official Journal No. 1994/194 [re-published], last amended by Federal Official Journal No. 2004/151). The commercial presentation of films can be bound to a license.

Interactive games are partly covered by provincial laws on the protection of minors. However, these rules do not apply to interactive games in the mass media. There are no regulations on interactive games on the internet.

4.1.1. Legal provisions

The legal regulation of cinemas lies with the provinces. According to the Vienna Law on Cinemas (*Wiener Kinogesetz*; Official Journal of Vienna No. 1955/18, last amended by the Official Journal of Vienna 2004/8) the public presentation of a film requires a license (*Kinokonzession*). According to § 10 par. 1 Vienna Law on Cinemas, minors under the age of 16 are not admitted to cinemas. Par. 2 of that provision provides for administrative exceptions for a film that does not detriment minors. Such exceptions may be granted for specific ages of the minors.

There are nine Austrian provinces in total.

4.2. Regulatory authorities/bodies

4.2.1. Authority/ies

In principle, the Vienna law on cinemas is executed by the municipal authority (Magistrat) and the police (§ 18 par. 1 Vienna Law on Cinemas). For the grant of the exceptions according to § 10 par. 2 Vienna Law on Cinemas there is a board established.

4.2.1.1. Legal basis

The legal basis of the Vienna board for film assessment is § 11 Vienna Law on Cinemas.

4.2.1.2. Functions/competencies

The Vienna board for film assessment grants exceptions according to § 10 par. 2 Vienna Law on Cinemas.

4.2.1.3. Organisation (composition of the authority/members of the board, etc.)

The Vienna Board for Film Assessment (*Filmbeirat der Stadt Wien*) consists of one policeman or -woman, one member of the municipal school authority, one expert for education science, one expert for youth care, one expert for national education, one representative of parents, one of the minors, two representatives of the film industry and, at the maximum, three more persons (§ 11 par. 2 Vienna Law on Cinemas).

The Vienna Board for Film Assessment is, despite its composition, no example for co-regulation because the board only executes legal norms and has no competence to set standards.

4.2.2. Self- or co-regulatory body/ies

There are no self- or co-regulatory body/ies for films or interactive games.

5. Summary

Austria has not yet started to discuss self-regulation or co-regulation for the media market. In view of its tradition in the administration, it seems unlikely that Austria will become a leader in this respect. It is unlikely that § 48f par. 2 Stock Exchange Act is the beginning of a development towards more co- or self-regulation of the media.

3.2. Belgium

Introduction

According to Article 1 and 2 of the Constitution, Belgium is a Federal State made up of three communities and three regions. The three communities, responsible for the media, are the French Community, the Flemish Community and the German Community.

Being a small country speaking three different languages but no own language, Belgium has always been turned to its neighbours: it's obviously the case for the little German Community (less than 70.000 people) looking to Germany but also for the French Community (around 4.500.000 people), closely linked to France. The Flemish Community (around 5.500.00 people) seems to be more autonomous towards the Netherlands. The presence of radios and above all, televisions from France in the French Community of Belgium is therefore significant, as shown in figures hereafter.

Constitutional law

Two provisions of the Constitution refer to the freedom of expression. Article 19 is a kind of general provision applicable to all forms of expression, whereas Art. 25 is specific to freedom of press (which means, according to case-law, only printed media):

“Art. 19. Freedom of worship, public practice of the latter, as well as freedom to demonstrate one's opinions on all matters, are guaranteed, except for the repression of offences committed when using this freedom.”

“Art. 25. The press is free; censorship can never be established; security from authors, publishers or printers cannot be demanded. When the author is known and resident in Belgium, neither the publisher, nor the printer, nor the distributor can be prosecuted.”

No constitutional provisions refer specifically to protection of minors.

Article 127 of the Constitution deals with the competencies of the Communities:

“Art. 127. § 1. The French and Dutch Community Councils, respectively, establish by decree: 1° cultural issues; (...)”

The policy and regulation on “*radio-broadcasting and television*” being classified in the federal law on institutional reform as **a cultural issue**, is a competence of the communities since 1970.

A. The Flemish Community

In the Flemish Community, broadcasting law was coordinated in the decree of 25 January 1995¹. The coordination was updated in a new version of the Broadcasting Act by decision of the Flemish Government of 4 March 2005.²

a. television

The Broadcasting Act recognizes seven different categories of **television broadcasting companies**³:

- The **public broadcasting company** *Vlaamse Radio en Televisieomroep* (VRT, Flemish Radio and Television Organisation) which has two channels (*Eén* and *Canvas*).
- **Private broadcasting companies for the whole of the Flemish Community**: the most important commercial station is the *Vlaamse Media Maatschappij* (VMMa, Flemish Media Company) with three channels (*VTM*, *Kanaal 2* and *JIM*). Since 1 March 2002 the former British commercial broadcasting station *VT4* (part of the SBS-group) is operating with a Flemish broadcasting licence. This group has also a broadcasting licence for *VijfTV*, which started in October 2005. Mainly targeting at smaller or specific audiences, there is also *Liberty TV.com* (Event TV Vlaanderen NV, travelling and events), *Kanaal Z* (Belgian Business Television NV), *TMF* (MTV Networks Belgium BVBA, music) and *Vitaya* (Media ad Infinitum NV, lifestyle).
- **Regional stations**: ten regional stations, mainly relying on advertising and sponsorship for finances.
- **Target groups and theme television**: Target groups and theme television have not become operational yet or rather took the option for obtaining a licence as a general broadcaster, such as *Liberty.TV.com*, *Kanaal Z*, *Vitaya* and *TMF*.

¹ Further referred to as “Broadcasting Act”. Since 1995 the Broadcasting Act has been modified at several occasions.

² Decree of the Flemish Parliament of 4 March 2005 concerning the co-ordination of the decrees on radio-broadcasting and television”, *Moniteur* 8 april 2005.

<http://www2.vlaanderen.be/ned/sites/media/media/decreten4maart05.pdf>

³ All private/commercial television broadcasters licensed by the Flemish community are directly transmitted by the cable networks. Only the public broadcaster VRT is allowed to use all available frequencies necessary for wireless broadcasting.

- **Pay-television:** *Canal+* is the only pay-TV network in Flanders with 3 channels: Canal+ Blauw, Canal+ Rood and Canal+ Digitaal (with “*pay-per-view*”-channels)
- **Teleshopping television stations:** *H.O.T. Thuis Winkelen*, Home Shopping Europe Belgium has had a licence, but the licence has been withdrawn after the bankruptcy of this channel.
- **Television services:** television stations who target a public with “*different kinds of services*”. Netwerk Televisie N.V. has the aim to bring digital television. Actually it has a licence as a general broadcaster (not operational for the moment), but in the future it has the purpose to produce “internet-television”.

Market shares television (January 2005)⁴

Medium Type	Whole Day
Eén	28,2 %
Canvas	9,0 %
VTM	23,0 %
Kanaal 2	5,3 %
VT4	5,9 %
VIJFTV	0,015 %
Nederland 1	1,6 %
Nederland 2	1,6 %
Nederland 3	0,8 %
Others (Vitaya, TMF Kanaal Z, JIM, ...)	23,1 %

b. radio

The Broadcasting Act recognizes five different **radio broadcasting companies**:

- The **public broadcasting company** *Vlaamse Radio en Televisieomroep* (VRT, Flemish Radio and Television Organisation) which has six channels (*Radio 1*, *Radio*

⁴ <http://www.audimetrie.be>.

2, *Klara*, *Studio Brussel*, *Donna* and *Radio Vlaanderen Internationaal* (*Radio Flanders International*) which is the VRT world service radio).

- Since September 2001 the possibility to broadcast **private radio for the whole Flemish Community** has been integrated in the legal framework of the Broadcasting Act. Two commercial radio stations obtained a licence: *Q-music* (VMMa) and *4FM* (Talpa Radio International).
- **Local and regional private radios.** The first broadcasts in a city, a part of a city, municipality or a limited number of neighbouring municipalities. The latter broadcasts for maximum one province.
- **Private cable radios** transmitted by cable (Flanders has a high cable penetration) to the whole of the Flemish Community.
- **Radio services:** radio stations who target a public with “*different sort of services*” or who transmit their programmes exclusively by way of internet.

Market shares radio (September – December 2004)⁵

Medium Type	Whole Day
Radio 1	11,3 %
Radio 2	32,5 %
Klara	2,8 %
Studio Brussel	7,5 %
Donna	18,5 %
Q-music	11,2 %
4FM	5,8 %
Others (local, regional stations)	10,4 %

B. The French Community

The French Community has one public broadcaster (*RTBF*) with two television networks (La 1 and La 2), one main private broadcaster (*RTL*) with three networks (*RTL-TVi*, *Club RTL* and

⁵ <http://www.cim.be/radio/nl/d/dn.html>.

Plug TV), one pay-TV group (*Be TV*, former *Canal+ Belgique*) and one new private broadcaster since 2002: a Belgian branch of the French group AB, with two Belgian networks (*AB 3* and *AB 4*, *AB5* being expected shortly). Some additional private broadcasters are operating some niche programs (*Liberty TV* for tourism, *MCM Belgique* for music, *Canal Z* for business TV...).

According to Audimetrie, audience shares for the French Community in January 2005 were:

RTL-TVI :	19,2 %
TF1:	16,5 %
La 1:	12,8 %
France 2:	9,2 %
Club RTL:	5,5 %
France 3:	5,1 %
AB 3:	3,8 %
AB 4:	2,2 %
La 2:	1,9 %
Plug TV:	1,3 %
Be 1:	0,7 %
Others :	21,8 %

C. Federal level

Circulation of daily papers in Belgium has decreased from 1.598.000 copies in 1991 to 1.529.000 copies in 2002, the loss being stronger for papers of the French Community (from 595.000 in 1991 to 501.000 in 2002).

The cinema sector is divided between two main groups (Kinepolis and UGC), with some independents exhibitors.

In 2004, according to the ISPA (Internet Service Providers Association), there were 1.622.000 private subscribers to the Internet (with 73 % broadband) and 370.000 business subscribers (with 90 % broadband).

1. Broadcasting

1. 1. Regulatory framework

1.1.1. Legal provisions

A. The Flemish Community

The Broadcasting Act contains provisions concerning the protection of minors and human dignity, advertising, quality, ethics, the diversity of media, access and standard setting.

Access and standard setting:

According to the Broadcasting Act the VRT is a public broadcasting organisation, submitted to the regulation as stated in the Broadcasting Act. The executive Agreement between the VRT and the Flemish Government organizes the public service task of the VRT (*cfr. infra*). Private television broadcasters are licensed by the “Vlaams Commissariaat voor de Media” (Flemish Media Authority). The licensing of local, regional and commercial private radio stations is assigned to the Flemish Government.

In order to secure pluralism and cultural diversity a provider of a cable network is submitted to a *must-carry*-rule for the following broadcasting programmes:

- The broadcasting programmes of the public broadcaster VRT (radio and television)
- The broadcasting programmes of the regional stations (television)
- The broadcasting programmes of the regional stations which offer television programmes by way of a digital packet
- Two radio and two television programmes of the public broadcaster in the French Community and the radio programme of the public broadcaster in the German Community
- Two radio programmes and the television programmes of the public broadcaster in the Netherlands (Art 128).

In the field of standard setting the Articles 134-142 of the Broadcasting Act regulate the standards and conditions for providers of radio broadcasting networks and television broadcasting networks. They operate by way of digital frequency channels and frequency blocks which are accredited by the Flemish Government

Diversity, protection of minors, human dignity and non-discrimination:

a. VRT

Article 8

§ 1 The VRT carries out the public service task for the Flemish Community, as described in this article. As public service broadcaster, the VRT has the duty to reach as many viewers and listeners as possible with diversity of programmes which attract the attention of the viewers and the listeners and satisfy them.

§ 2 [...] The programming must be adapted so that it aims at certain sections of the population and age groups, especially at children and youth.

§ 3 The programmes have to contribute to the further development of the identity and diversity of the Flemish culture and of a democratic and tolerant society. The VRT has to contribute through its programmes to form an independent, objective and pluralistic opinion in Flanders. Therefore the VRT has to aim for a leading role in information and culture.

§ 4 To realise the involvement of as many Flemish people as possible and to secure the credibility of the public service broadcaster, a sufficient number of programmes has to be directed at a large and general public. Besides these general programmes, other programmes will meet specific interests of viewers and listeners. The aimed target group must be large enough and they have to be reached by the programmes concerned.

Article 23

§1 In the programmes, every form of discrimination is prohibited on the basis of the Universal Declaration of Human Rights. Programming may not cause discrimination between ideological and philosophical convictions.[...]

b. all types of broadcasters established in the Flemish Community

Article 22 of the Television Without Frontiers (TWF) Directive⁶ requires the Member States to take the appropriate measures to ensure that television broadcasts guarantee the protection of minors and public order. This obligation has been implemented by Art. 96 of the Broadcasting Act, reflecting almost literally the provision of Art. 22 of the TWF-Directive. Article 96 of the Broadcasting Act applies to **all (private and public) broadcasters**, both radio and television.

Article 96

§ 1. The broadcasters are not allowed to broadcast programmes that can seriously harm the physical, mental or moral development of minors, in particular programmes with pornographic scenes and gratuitous violence. Other programmes which also might damage the physical, mental or moral development of minors have to be encoded or shall be broadcasted by selecting the time of the broadcast that minors in the area of transmission will not normally hear or see such broadcasts. Non-encoded broadcasts of this type have to be preceded by an acoustic warning.

§ 2. The broadcasting programmes may not incite to hatred on grounds of race, gender, religion or nationality.

§ 3. The Flemish Government can suspend the distribution of a programme, either on proposal of the Flemish View and Listening Council on Radio and Television in case of a manifest, important and serious violation during the previous 12 months on at least two occasions of Art. 96 § 1, or on proposal of the Flemish Council for Disputes on Radio and Television in case of a manifest, important and serious violation of Art. 96 § 2. A suspension is only possible under certain conditions and following a specific procedure.

⁶ EC-Directive 89/522, mod. 97/36.

Finally the **private broadcasters** are also submitted to some specific rules. Article 61 prohibits broadcasting of television programmes which are violating public order or the security of the state, programmes not respecting morals or which are defamatory for another's conviction or for a foreign state.⁷ Article 64 guarantees non-discrimination in the programmes of the private broadcasters.⁸

News, impartiality, quality and ethics:

According to the Articles 34 § 2, 40, 44, 45 § 1, 3°, 48, 49, 3°, 64 and 69 the private radio and television broadcasters are obligated to guarantee diversity of the programmes, especially concerning **information** and entertainment. For the public broadcaster (*VRT*) Art.8 § 1 guarantees diversity of (and in) the programmes (*cf. supra*).

The private television broadcasters are obligated to broadcast at least two journals a day.⁹ The journals and informative programmes must be impartial and must apply to the journalistic ethic codes. The journals must also be guaranteed editorial independence.¹⁰

As formulated in Art. 23 § 1 the information programmes, statements and the programmes with a general informative content and all other informative programme parts on the **VRT** must be impartial and truthful. The codes of journalist ethics as stated in the ethical code have to be applied in the programmes of the news service. Those programmes are guaranteed editorial independence as stated in the editorial regulation. The ethical code and the editorial regulation are prescribed by the managing director in consult with the representative labour organisations.[...]

Advertising:

The definitions and provisions of the Flemish Broadcasting Act reflect almost literally the definitions and provisions of the TWF-Directive. Again the regulation is different for the public broadcaster VRT and the private broadcasters.

According to Art. 97 § 1 of the Broadcasting Act the **VRT television** is not allowed to broadcast advertising and teleshopping, with the exception of self-promotion. Sponsoring however of VRT television programmes is possible. Article 97 § 2 authorises the broadcasting of advertising and sponsoring on the **VRT radio**.

⁷ Article 34 § 3 formulates an identical provision for private radiobroadcasters.

⁸ Article 34 § 2 formulates an identical provision for private radiobroadcasters.

⁹ Article 70 Broadcasting Act.

All private broadcasters are allowed to broadcast advertising, sponsoring and teleshopping.¹¹ As stated above the provisions of the Flemish Broadcasting Act reflect almost literally the provisions of the TWF-Directive, apart from some minor differences and especially some stricter rules.

Four relevant differences can be underlined:

- The EC-Directive formulates a ***total prohibition*** on insertions of advertising and teleshopping in any broadcast of a religious service, while the Broadcasting Act broadens this prohibition. According to the Broadcasting Act insertions of advertising and teleshopping is not allowed in programmes of religious services, religious and philosophical programmes, news programmes and children's programmes.¹²
- Article 11 § 5 of the EC-Directive makes no difference between “news and current affairs programmes”, as both types of programming can be interrupted by advertising spots and teleshopping if their scheduled duration is more than 30 minutes. The Broadcasting Act only allows the insertions of advertising and teleshopping in current affair programmes (and documentaries) with a scheduled duration of more than 30 minutes. **News programmes** however may never be interrupted by advertising and teleshopping according to the Flemish Broadcasting Act, regardless of their duration. Documentaries and current affair programmes follow the terms of the EC-Directive, whereas news programmes in the Flemish Community are a specifically protected television format.
- The EC-Directive only contains a prohibition of insertions of advertising and teleshopping in **children's programmes** with a scheduled duration of less than 30 minutes, whereas the prohibition of the Broadcasting Act extends to all children's programmes, **regardless of their duration**. Programmes are considered as children's programmes if these programmes are targeting at minors of less than 12 years old, which, according to Art. 2, 12° of the Broadcasting Act can be derived from the content, time, form, presentation, way of announcement and audience figures of

¹⁰ Article 64 and 73, 9° and 14° Broadcasting Act. See also Article 36 with regard to radio broadcasting.

¹¹ Article 97 § 1 Broadcasting Act.

¹² A children's programme is considered as a programme targeting at children less than 12 years old, which can be derived from the content, the time of broadcasting, the form, the presentation, the way of announcement and the audience figures of the programme concerned (Article 2, 12° Broadcasting Act).

these programmes. The extension by the Broadcasting Act towards a total prohibition of advertising and teleshopping spots in children's programmes is in conformity with the terms of Art. 3 § 1 (and 20) of the EC-Directive. The definition of children's programmes including children only up to 11 years old however can have a restricting effect on the application of Art. 11 § 5 of the EC-Directive.

- The EC-Directive in Art. 11 § 5 only provides for restrictions on the insertions of advertising **in** television programmes. The Broadcasting Act also bans advertising, sponsoring announcements, teleshopping spots and teleshopping blocks immediately **before and after children's programmes**¹³.

B. The French Community

The main regulatory framework for broadcasting in the French Community is found in the Décret de la Communauté française sur la radiodiffusion of 27 February 2003. For the RTBF (public broadcaster), the main text is the Décret de la Communauté française portant statut de la Radio Télévision Belge de la Communauté française (RTBF) of 14 July 1997, as amended by a Décret of 19 December 2002, but some provisions of the Décret sur la radiodiffusion of 27 February 2003 are also applicable to the RTBF.

The public broadcasting service is created by the Décret of 14 July 1997. According to the Décret sur la radiodiffusion, private broadcasters are licensed by the Conseil supérieur de l'audiovisuel (CSA, see hereafter), excepted the local broadcasters which are considered more as local public services and therefore licensed by the government. As the licence is only a licence to broadcast without any allocation of frequencies, all applicants will receive a TV licence as far as they fulfil all legal conditions. For radio, things are different: licensed applicants do receive a terrestrial frequency, and the CSA has therefore to make a choice between applicants considering their experience, their financial capacities, the quality of their project but also the diversity of the market.

All broadcasters are entitled to carry advertising, and all of them are subject to the regulatory control of the CSA

C. Federal level

Some national ("federal") rules concern all kinds of media, such as:

¹³ Article 101 § 6, 102, 5° and 106 § 1 Broadcasting Act (so called "5 minutes rule" with regard to advertising and teleshopping spots and "15 minutes rule" with regard to teleshopping blocks).

Advertising:

Loi relative aux pratiques du commerce et à la protection du consommateur of 14 July 1991

Arrêté royal concernant la publicité pour les denrées alimentaires of 17 April 1980

Arrêté royal relatif à l'information et à la publicité concernant les médicaments à usage humain of 7 April 1995

Loi interdisant la publicité pour les produits du tabac of 10 December 1997

Protection of minors:

Article 383*bis* of the Criminal Code prohibits any form of diffusion of objects, pictures films, or any visual supports representing sexual positions or relations with pornographic character involving minors (see also Art. 380*ter*, 383 and 387 of the Criminal Code).

Article 80 of the Loi relative à la protection de la jeunesse of 8 April 1965 prohibits the reports of debates in the courts for minors, and prohibits the publication of texts, drawings or pictures able to disclose the identity of minors sued.

Human dignity:

Loi tendant à réprimer certains actes inspirés par le racisme et la xénophobie of 30 July 1981

Loi tendant à réprimer la négation, la minimisation, la justification ou l'approbation du génocide commis par le régime national-socialiste allemand pendant la seconde guerre mondiale of 23 March 1995

Loi tendant à lutter contre la discrimination of 25 February 2003, as partly cancelled by decision 157/2004 of the Cour d'arbitrage of 6 October 2004

1.1.2. Administrative regulation/rules**A. The Flemish Community****Executive Agreement between the VRT and the Flemish Government 2002-2006**

According to Article 15-17 of the Flemish Broadcasting Act an agreement between the VRT and the Flemish Government is to be settled for each new period of five years. The actual executive agreement 2002-2006 replaces the agreement of 1997-2001.

The agreement emphasizes the "mission statement" of the VRT as formulated in the Flemish Broadcasting Act (Article 8), with explicit reference to the Resolutions of Prague (1994) and Cracow (2000) on the role of public broadcasting in a democratic society. The VRT has to provide a reference point for all members of the public and a factor for social cohesion and

integration of all individuals, being attentive to the needs of minority groups and develop pluralistic, innovatory and varied programming which meets high quality standards. Quality is defined as "public quality", "functional quality", "ethical quality", "operational quality" and "professional quality". Especially for news and information programs (average of 1,5 million viewers a day) and cultural programs concrete purposes and options are formulated. Special efforts have to be undertaken with regard to educational programs (average audience of 10 % of population) and children's programs (4-12 year: average audience of 70 %). From 18 p.m. until 23 p.m. at least 50 % of the programs shall be Flemish TV-productions (or co-productions). The six radio stations of the VRT should reach 65 % of the audience on a weekly basis. The agreement also contains important innovative options with regard to new technologies: digitalisation, e-services and e-platform, to be developed within a framework of an ASP-model (Application Service Provider). These projects of the "E-VRT" will be separately financed by the Flemish Government, according to a specific agreement with the VRT. The accelerated digitalisation and annotation of the VRT-archive of sound and images depends also on additional financing by the Flemish Government. Other chapters of the agreement deal with the transmission infrastructure, the development of DAB and DVBT, the exploitation of rest capacity of transmission networks, process management and ICT-applications in working processes and information flows (ERP - Enterprise Resources Planning) and Human Resources Management (training, remuneration, evaluation, function-classification, consumer orientation).

The public funding that the VRT will receive for the implementation of the agreement 2002-2006 is 229.326.000 Euro in 2002, increasing each year with 4 % up to 268.279.000 in 2006.¹⁴

Policy Note Media 2004-2009

The Policy Note "Media 2004-2009" of the Flemish Minister of Media formulates some discussion points and new options concerning the media policy for the future. The essential points of the note concerning broadcasting are:

The option for centralisation of one supervising organisation: **the Flemish Regulator for the Media (VRM)**. The VRM will become the monitoring and supervisory organisation with separate specialised "Chambers". The VRM will have two specific tasks: to regulate and to monitor the media;

¹⁴ Executive agreement between the VRT and the Flemish Government, VRT, www.vrt.be/documentation.

A public inquiry of the role of the public broadcaster;

More financial transparency of the VRT and guarantees about the use of the finances within the mission of public service broadcasting and

A democratic introduction of digital television.

B. The French Community

A government decree of the French Community of 23 June 2004 relatif à la protection des mineurs contre les programmes de télévisions susceptibles de nuire à leur épanouissement physique, mental ou moral settles a system of signs to be added to every program likely to impair or which might seriously impair the physical, mental or moral development of minors. As the presence of French televisions in Belgium is significant, this system is a copy of the French system.

1.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

A. The Flemish Community

The ethical code of the news service of the VRT (Deontologische Code VRT)

According to Article 23 § 1 of the Broadcasting Act the VRT news service has to operate in application of an ethical code, based on accuracy and meticulousness, impartiality and loyalty. According to the Code impartiality means that the different relevant point of views should be heard. Yet impartiality doesn't imply that all parties and opinions should be heard in one programme. The more controversial a topic, the more one aims the right to speak and the right to reply one after another. With due observance of the mission task of the VRT and the ethical code the VRT news service has to contribute to a democratic and pluri-ethnic society, apart from the obligation to be impartial.¹⁵

The Note “VRT and a democratic society”

In 2001 the VRT formulated a document “The VRT and a democratic society”. The VRT was worried about the rise of the Vlaams Blok (*Flemish Block, now Vlaams Belang, Flemish Interest*), an extreme right, even racist party, which opinions and statements do not contribute to mutual understanding and do not stimulate at all tolerance within the multicultural

¹⁵ See also Medialex, *Selectie van de bronnen van de media- en informatiewetgeving / Collection of sources of media legislation and information law*, Kluwer rechtswetenschappen, Antwerpen, 2000, 535-545.

society¹⁶. This document formulates some guidelines concerning the way news and information programmes should refrain in reporting about the opinions of (the politicians of) this party, inciting to hatred or xenophobia.

Private broadcasters and ethical codes

The private broadcasters aren't obligated to develop an ethical code. In practice however the news service of the VMMA uses some basic principles:

the information must be based upon (at least) two reliable sources;

respect for the right to speak and the right to reply for all parties, esp. in case of reporting on conflicting interests;

the facts must be covered correctly and as completely as possible;

a person's privacy earns respect.¹⁷

The Charter of Diversity of the VRT¹⁸

In April 2003 the VRT committed itself to its Charter of Diversity, in which it is mentioned that the VRT aims to build bridges between all citizens living in the Flemish Community, regardless of origin or nationality. The VRT wants to contribute to a harmonious, plural and tolerant society where everyone can feel at home. For this purpose the VRT formulated a whole set of guidelines concerning:

- the reporting about people with a “foreign” background;
- the presence of ethnic-cultural minorities in ordinary programmes as citizen, as expert, as participant in a show, as public, ...
- non-discrimination in the human resources management of the VRT and in the staff composition.

B. The French Community

The various sections of the CSA (see hereafter 1.2.1. and 1.2.2.) have issued several codes or recommendations. Some of them have been discussed by all the professionals in the Collège

¹⁶ As already stated in Article 8 of the Broadcasting Act the VRT has to contribute to mutual understanding, increase tolerance and stimulate community relations in a pluri-ethnic and multicultural society.

¹⁷ K. DE CLERCQ, *Journalistieke zelfregulering. Het Belang van deontologische codes en zelfregulering in de journalistieke ethiek*, Leuven, Acco, 2002, 57-58.

¹⁸ VRT, Charter Diversiteit, 26 april 2003, www.vrt.be (documentation).

d'avis or in the former Collège de la publicité (merged since 2003 into the Collège d'avis) and can be therefore considered as co-regulatory (Co-R) as they've been issued by a co-regulatory body; some other have been issued only by the Collège d'autorisation et de contrôle (in which professionals are not represented) and are therefore more authority-minded (A). The Collège d'avis is competent to issue code in several limited matters such as advertising, protection of minors, human dignity or political information during electoral periods: those codes can become binding (B) if they're approved by the government; codes which are not approved by the government or recommendations issued by the Collège d'autorisation et de contrôle are only indicative (I).

Following codes and recommendations have been issued so far:

Code d'éthique de la publicité of 27 May 1998 (Co-R, B) : rules about advertising on radio and television;

Recommandation relative aux jeux et concours of 22 March 2000 (Co-R ; I) : games and competitions in radio and television programs ;

Recommandation relative à la dignité humaine et à la télévision de l'intimité of 12 June 2002 (Co-R ; I) : « reality television » ;

Code d'éthique de la publicité audiovisuelle à destination des enfants of 10 July 2002 (Co-R ; I) : rules about advertising to children on radio and television ;

Recommandation relative au traitement des conflits armés of 26 March 2003 (A, I) : rules about information on wars – and, especially, Gulf War II –, images of prisoners etc...;

Recommandation relative à la diffusion de messages électroniques sous toutes formes of 2 July 2003 (A, I) : control of broadcasted SMS and other private messages on television;

Recommandation relative à la publicité of 10 November 2004 (A, I) : information about the applicability of legal rules to the latest technical evolutions in television advertising and information about the case-law of the Collège d'autorisation et de contrôle for what advertising is concerned;

All those codes and recommendations of the CSA are applicable to all licensed broadcasters (éditeurs de services de radiodiffusion) and, if necessary, to the network operators. Infringement of the provisions of the codes can lead to a sanction decided by the Collège d'autorisation et de contrôle if they're linked to an infringement of a general legal principle, but this will always be a question of matter.

C. Federal level

Some non-binding codes have also been issued within or are applied by the Jury d’Ethique Publicitaire (see hereafter), such as the Code of Advertising of the International Chamber of Commerce.

1.2. Regulatory authorities/bodies

1.2.1. Authority/ies

A. The Flemish Community

- a. The Vlaams Commissariaat voor de Media (The Flemish Media Authority, VCM)
- b. The Vlaamse Kijk- en Luisterraad (The Flemish View and Listening Council on Radio and Television)
- c. The Vlaamse Geschillenraad (The Flemish Council for Disputes on Radio and Television)
- d. in future, The Vlaamse Regulator voor de Media (The Flemish Regulator for the Media - VRM)

B. The French Community

The Collège d’autorisation et de contrôle (licensing and controlling section) of the Conseil supérieur de l’audiovisuel is the regulatory authority for broadcasting in the French Community

1.2.1.1. Legal basis

A. The Flemish Community

a. The Vlaams Commissariaat voor de Media (The Flemish Media Authority, VCM)

The Vlaams Commissariaat voor de Media was established in 1998¹⁹ and is actually operating in application of the Articles 167-173 of the Broadcasting Act. It is an (independent) public body, its members being appointed however by the Flemish Government. The VCM is funded by public finances from the Flemish Community.

¹⁹ Decree of the Flemish Parliament of 17 December 1997 concerning the “Vlaams Commissariaat voor de Media” and the “Vlaamse Mediaraad”, *Moniteur* 13 January 1998.

b. The Vlaamse Kijk- en Luisterraad (The Flemish View and Listening Council on Radio and Television)

The Vlaamse Kijk- en Luisterraad was established in March 1999²⁰ and is actually operating in application of Article 175 of the Broadcasting Act. It is an (independent) public body, its members being appointed however by the Flemish Parliament. The Flemish View and Listening Council is funded by public finances from the Flemish Community.

c. The Vlaamse Geschillenraad (The Flemish Council for Disputes on Radio and Television)

The Vlaamse Geschillenraad was established in application of Article 14 of the Flemish Decree of 28 January 1987 concerning the cable distribution and the private broadcasting organisations in the Flemish Community. The Flemish decree of 4 May 1994 extended the competence of the Council. The regulation concerning the Vlaamse Geschillenraad was included in 1995 in the Broadcasting Act. Actually the Council for Disputes on Radio and Television is operating in application of Article 174 of the Broadcasting Act.

d. The Vlaamse Regulator voor de Media (The Flemish Regulator for the Media - VRM)

In the Media Policy Note 2004-2009 the Flemish Minister of Media has formulated the intention to establish one organisation monitoring the application of the Broadcasting Act. The new **Flemish Regulator for the Media (VRM)**, with separate specialised chambers, will integrate the Flemish Council for Disputes on Radio and Television, the Flemish View and Listening Council on Radio and Television. Actually the Council of State (*Raad van State/Conseil d'Etat*) and the Flemish Media Council are requested to give their advice on the draft version of the proposed modification of the Broadcasting Act, establishing the Flemish Regulator for the Media.

B. The French Community

The Conseil supérieur de l'audiovisuel is established by the Décret sur la radiodiffusion of 27 February 2003.

²⁰ Decree of the Flemish Parliament of 30 March 1999 modifying Articles 78 and 79 of the Broadcasting Act, *Moniteur* 11 May 1999.

1.2.1.2. Functions/competencies

A. The Flemish Community

a. The Vlaams Commissariaat voor de Media (The Flemish Media Authority, VCM)

The VCM has different tasks, such as:

- to monitor the application of most of the obligations under the Broadcasting Act. The VCM may impose penalties for infringement of the regulations formulated in the Broadcasting Act;
- to award, suspend and withdraw the licences to broadcast advertising and sponsoring;
- to award, suspend and withdraw the licences for private television broadcasters. The VCM has only a preparatory and advisory role with regarding the licensing of local, regional and commercial radio stations in the Flemish Community, as the final decision of licensing is with the Flemish Government;
- to award, modify and withdraw the licences for the private television broadcasters for the transmission and transporting of broadcasting programmes;
- to award and withdraw the licences for cable networks for the transmission of broadcasting programmes.

b. The Vlaamse Kijk- en Luisterraad (The Flemish View and Listening Council on Radio and Television)

The Council's unique competence is to supervise the application of Art. 96 § 1 of the Broadcasting Act with regard the protection of minors (*cfr. supra, 1.1.1. Broadcasting, Legal provisions*).

c. The Vlaamse Geschillenraad (The Flemish Council for Disputes on Radio and Television)

The Council's competence is to guard over the application of the Articles 23 § 1, 34 § 2, 36, 64, 73, 9° en 14° and 96 § 2 of the Broadcasting Act. In short the Council is specifically competent over journalistic ethics, editorial independence, impartiality, non-discrimination and non-incitement to hatred on the ground of race, gender, religion or nationality.

B. The French Community

The mission of the Collège d'autorisation et de contrôle (licensing and controlling section) is to licence TV and radio services, but also to give various advices to the government. The

Collège d'autorisation et de contrôle has also to control that all licensed services obey the broadcasting laws, decrees, codes and other rules. It's also entitled to draw up recommendations to the licensed services where it seems necessary to do so.

1.2.1.3. Organisation

A. The Flemish Community

a. The Vlaams Commissariaat voor de Media (The Flemish Media Authority, VCM)

The VCM is composed of a president (a judge), two commissioners and the three deputy members, all working on a part-time basis. Administratively and technically the VCM is supported by civil servants of the Ministry of the Flemish Community, *inter alia* by a registrar.

The VCM can start a procedure on its own initiative (“**ex officio**”) or **on demand** of the Flemish Government. To assist in enforcement, also individuals or legal persons may complain about advertising, sponsoring and teleshopping because of alleged violation of the applicable provisions. Applicants don't need to rely on a personal interest or a specific or present damage. The procedures before the VCM guarantee the right of defence and the transparency of the decision-making of the VCM. There is a possibility to request for a rehearing by the VCM. The decisions of the VCM may be subject of a procedure before the High Administrative Court, the Council of State (*Raad van State/Consil d'Etat*).

The Council of State can suspend or annul the decisions of the VCM.

The VCM may impose **penalties** for non-compliance. These penalties range from:

- an admonition, with the request to stop an infringement;
- an obligation to broadcast the decision of the VCM;
- an obligation to publish the decision of the VCM in newspapers or magazines;
- the imposition of an administrative fine up to 125.000 Euro;
- the suspension or revocation of the licence.

b. The Vlaamse Kijk- en Luisterraad (The Flemish View and Listening Council on Radio and Television)

The Vlaamse Kijk- en Luisterraad is composed of nine members. Three members are experienced in the field of child psychology or pedagogics, three experts are recruited because

of their experience with family and children interests, two members are judges, specialised in media law or youth law and one member is an academic expert in the field of communication sciences. Administratively and technically the Council is supported by civil servants of the Ministry of the Flemish Community.

The Vlaamse Kijk- en Luisterraad can take decisions, whether on its own initiative, whether after a complaint. If the Council is of the opinion that Art. 96 § 1 of the Broadcasting Act is not respected by a television broadcaster, the Council is in the position to take measures against the broadcasting organisation. The VCM may impose **sanctions** for non-compliance, ranging from:

- an admonition, with the request to stop an infringement;
- an obligation to broadcast the decision of the View and Listening Council;
- an obligation to publish the decision of the View and Listening Council in newspapers or magazines;
- the imposition of an administrative fine up to 125.000 Euro;
- under certain conditions the Council also can propose that the distribution of the programme will be suspended by the Flemish Government.

c. The Vlaamse Geschillenraad (The Flemish Council for Disputes on Radio and Television)

The Vlaamse Geschillenraad is composed of nine members. The members must meet a least at one of the following requirements:

- minimum ten years experience as a magistrate;
- minimum ten years experience as an academic expert in the field of the communication sciences or law or
- minimum ten years experience as a professional journalist

Administratively and technically the Council is supported by civil servants of the Ministry of the Flemish Community.

The Vlaamse Geschillenraad can take decisions after a complaint. If the Council is of the opinion that one of the Articles 23 § 1, 34 § 2, 36, 64, 73, 9° en 14° or 96 § 2 of the Broadcasting Act is not respected by a television broadcaster, the Council is in the position to

take measures against the broadcasting organisation. The Council may impose **penalties** for non-compliance. These penalties range from:

- an admonition;
- an obligation to broadcast the decision of the Flemish Council of Disputes;
- under certain conditions (a manifest, important and serious violation of Art. 96 § 2) the Council can also propose that the distribution of the programme will be suspended by the Flemish Government.

Perspectives: *cfr. infra regarding “The Vlaamse Regulator voor de Media”*.

B. The French Community

In the Collège d’autorisation et de contrôle, the four members of the executive board (“Bureau”, one chairman and three deputy chairmen) are joined by six members known for their abilities in the media sector and representing the various political parties. The members of the Collège d’autorisation et de contrôle are appointed partly by the government and partly by the parliament.

1.2.2. Self- or Co-regulatory body/ies

A. The Flemish Community

The Raad voor de Journalistiek (The Council for Journalism - RvdJ)

B. The French Community

The Collège d’avis (advisory section) of the Conseil supérieur de l’audiovisuel can be considered as a co-regulatory body competent for broadcasting.

C. Federal level

With regard to advertising, a purely self-regulatory body exists, competent for advertising on all medias: the Jury d’Ethique Publicitaire can handle complaints made by individuals or institutions against all kinds of advertisings. The JEP is member of the European Advertising Standards Alliance (EASA) and respects its rules and procedures.

1.2.2.1. Legal basis

A. The Flemish Community

The Council for Journalism has **no legal basis**. It is a complete self-regulatory initiative. In December 2002 the Council of Ethics of the Belgian Association of Professional Journalists

has been replaced by the Council for Journalism in the Flemish Community. The Council for Journalism was formed by the organisation of professional journalists and by publishers and media houses in Flanders. It is funded half by the publishers and the audiovisual media companies, and half by the organisation of professional journalists (VVJ). VVJ receives a subsidy from the Flemish Community for this purpose.²¹

B. The French Community

The Conseil supérieur de l’audiovisuel is established by the Décret sur la radiodiffusion of 27 February 2003.

C. Federal level

The Jury d’Ethique publicitaire has **no legal basis**.

1.2.2.2. Functions/competencies

A. The Flemish Community

The Council for Journalism is the independent body for self-regulation of the Flemish media in Belgium. It is a non-governmental organisation, which handles on its own initiative (if necessary), responds to questions and handles complaints from the public about the journalistic conduct of the press. The Council is a self-regulatory body without any disciplinary power. Its decisions are made public and are intended to encourage the compliance with journalistic ethics. The Council aims to provide the public with a free and fast way of redressing possible mistakes by the media. The Council also acts as a forum for discussion about the ethics of journalism. Its decisions are meant to underline the rules of good journalistic practice and to encourage ethical and professional standards of journalism.

B. The French Community

The task of the Collège d’avis is to give advises to the government about every question regarding the broadcasting sector, with special attention dedicated to human rights and protection of minors, to give advises for every draft of amendment to the Décrets or other regulations, but also to draw up codes in the following matters: advertising and sponsorship, protection of minors, human dignity and political information during electoral campaigns.

²¹ 80.000 euro on an annual basis.

C. Federal level

The Jury d’Ethique publicitaire (<http://198.104.187.9/jep/>) decides upon complaint made or gives advice on any advertising. It can decide:

- that it has no objection towards and advertising;
- that it recommends to stop an advertising;
- that its only objections towards an advertising are question of good taste.

1.2.2.3. Organisation

A. The Flemish Community

The Council for Journalism has 18 members: six journalists, six representatives of the publishers and the media houses, and six members who are not involved in the media. A secretary-general is managing the organisation. The secretary-general is also the ombudsman of the Council for Journalism. He answers any questions from the public about press ethics. In his role as an ombudsman, the secretary-general mediates when a complaint is filed. He talks with the complainant and the involved journalist or media organisation to try to achieve an 'out of council' settlement. In most cases, a satisfactory settlement can be obtained. If no settlement is possible, the complaint is brought before the Council by the secretary-general. The Council takes a decision after having heard all parties. The decisions of the Council for Journalism are published on its website (www.rvdj.be) and in the magazine '*De Journalist*'. As part of its decision the Council is authorised to ask the involved newspaper, magazine or the television or radio programme to publish or broadcast a rectification.

B. The French Community

The Collège d’avis is a typical co-regulatory structure, with 30 members representing the media professionals (televisions, radios, public and private broadcasters, network operators, newspapers, advertisers, copyright holders...) and the 4 members of the executive board. The members of the Collège d’avis are appointed by the government upon proposal of the professionals, having in mind a representation of the various political tendencies proportional to their representations in the parliament (professionals are supposed to have a “political colour”).

C. Federal level

The Jury d’Ethique publicitaire is composed of eight members representing the medias, four members representing the advertising agencies and four members representing the announcers.

2. Press

2.1. Regulatory framework

2.1.1. Legal provisions

Beside Art. 25 of the Constitution, the legal framework for press in Belgium is limited. The loi relative à la reconnaissance et à la protection du titre de journaliste professionnel of 30 December 1963 settles the main lines of the status of professional journalists. The law of 7 April 2005 gives protection to journalistic sources.²² There is no law about press concentration, nor about media concentration.

For the French Community, a new Décret of 31 March 2004 organises some public financial support for the publishers of daily papers.

Federal rules regarding advertising, human dignity and protection of minors (see 1.1.1.) are of course also applicable to the press.

2.1.2. Administrative regulation/rules

None

2.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

For advertising, see 1.2.2. for the codes of the Jury d’Ethique publicitaire.

2.2. Regulatory authorities/bodies

2.2.1. Authority/ies

There is no regulatory authority for press.

2.2.2. Self- or co-regulatory body/ies

The former Conseil de déontologie of the AGJPB (Professional Journalists Association), who gave opinions about complaints made against professional journalists, ceased to exist at the end of 2001. It’s existence was hardly known, and the opinions were often suspect of self-

²² Federal Law of 7 April 2005 on the protection of journalistic sources, *Moniteur* 27 April 2005.

indulgence towards journalists (the members of the Conseil being only professional journalists).

The Conseil de déontologie has been substituted by the new Raad voor Journalistiek, but this new body is only competent for the Flemish Community.

For advertising, see 1.2.2. for the Jury d’Ethique publicitaire.

3. Online Services

3.1. Regulatory framework

3.1.1. Legal provisions

The only specific regulatory framework for the online services is the loi sur certains aspects juridiques des services de la société de l’information of 1 March 2003 transposing in Belgium the directive 2000/31/EC of 8 June 2000 on electronic commerce.

Federal rules regarding advertising, human dignity and protection of minors are of course also applicable to the online services.

3.1.2. Administrative regulation/rules

None

3.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

The Internet Rights Observatory has given some non-binding advices (see hereafter).

Cooperation protocol of 28 May 1999 between ISPA-Belgium and the Minister for Telecommunications and the Minister of Justice, in order to combat illegal acts on the Internet and the ISPA-Belgium code of conduct especially its point 3 (www.ispa.be).

For advertising, see 1.2.2. for the codes of the Jury d’Ethique publicitaire.

3.2. Regulatory authorities/bodies

3.2.1. Authority/ies

There is no regulatory authority for online services.

3.2.2. Self- or co-regulatory body/ies

The Internet Rights Observatory is a co-regulatory body.

See also ISPA-Belgium.

3.2.2.1. Legal basis

The Internet Rights Observatory is established by a Royal Decree of 26 November 2001.

3.2.2.2. Functions/competencies

The duty of the Internet Rights Observatory is to submit opinions to the federal government on economic problems brought about by the use of new information and communication technologies (e.g. e-commerce, data privacy in the internet), to organise consultation between the economic actors concerned and to inform and to raise the awareness of the public on these aspects.

The Internet Rights Observatory has no power to decide something, but is only an advisory board.

See also ISPA-Belgium (code of conduct) and the Cooperation protocol of 28 May 1999 to combat illegal information on the internet, especially child pornography.

3.2.2.3. Organisation (composition of the authority/members of the board, etc.)

The Internet Rights Observatory is composed of four experts in these matters chosen among the academic staff of universities and university centres, four representatives of internet users, four representatives of information society service providers and two representative of the government.

For advertising, see 1.2.2. for the Jury d’Ethique publicitaire.

4. Film/Interactive Games

4.1. Regulatory framework

4.1.1. Legal provisions

An (old) Loi of 1st September 1920 is still regulating the access of minors to cinemas in Belgium. The principle is that minors of less than 16 years old are not allowed to enter the cinemas as long as the movies have not received an “Enfants admis” (children allowed) visa.

A commission whose members are chosen by the governments of the Communities grants this visa. There are no official criteria to determine whether films will or won’t receive the “children allowed” visa: decisions of the Commission de contrôle des films can be challenged before an appeal Commission. If the visa “children not allowed” is confirmed by the appeal Commission, film distributor have a possibility of judicial review to the Conseil d’Etat (administrative high Court) but, due to the delays in the procedures of the Conseil d’Etat, it

will probably last three or four years for them to get a decision. Which, for a movie, is of course much too long.

There is no specific legislation regarding video and DVD. The visas of the Commission de contrôle des films apply only to the cinemas and are therefore not applicable to videos and DVD's. Videos and DVD's sold in Belgium are usually labelled either with French or Dutch (Kijkwijzer) visas.

There is no specific legislation and therefore no control regarding interactive games. Labels which appear on interactive games are chosen by the distributors.

Federal rules regarding advertising, human dignity and protection of minors are of course also applicable to the film and interactive games.

4.1.2. Administrative regulation/rules

None

4.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

For advertising, see 1.2.2. for the codes of the Jury d'Ethique publicitaire.

4.2. Regulatory authorities/bodies

4.2.1. Authority/ies

The Commission de contrôle des films cinématographique can be considered as the regulatory authority for cinema in Belgium.

4.2.1.1. Legal basis

The Commission de contrôle des films cinématographique is organised by the Loi of 1st September 1920 and by a royal decree of 10 November 1920.

4.2.1.2. Functions/competencies

The Commission de contrôle des films cinématographique grants the visa for the films « children allowed ».

4.2.1.3. Organisation (composition of the authority/members of the board, etc.)

The Commission de contrôle des films cinématographique is composed of around hundred people. Sections made-up of five members decide whether films are allowed to children or

not. A possibility of appeal is open to the movie distributors (or to the chairman of the Commission); appeals are brought to an appeal section.

4.2.2. Self- or co-regulatory body/ies

There is no self or co-regulatory body for cinema in Belgium.

For advertising, see 1.2.2. for the Jury d’Ethique publicitaire.

5. Summary

Regulatory authorities:

Collège d’autorisation et de contrôle du Conseil supérieur de l’audiovisuel

Vlaams Commissariaat voor de Media

Vlaamse Geschillenraad voor Radio en Televisie

Vlaamse Kijk- en Luisterraad voor Radio en Televisie

Commission de contrôle des films cinématographiques

Co-/self-regulatory authorities:

Internet Rights Observatory

ISPA-Belgium

Jury d’éthique publicitaire

Council for Journalism

3.3. Cyprus

Introduction

Overview of media system

Cyprus joined the European Union in May 2004 as a divided country; the media institutions and regulatory frameworks described in the present report are those operating in the areas under the effective control of the government of the Republic of Cyprus.

The media landscape

The print media

The written press has gone through many changes in the last two decades; today's major features are the decline or disappearance of many dailies and weekly newspapers, the multiplication of specialized publications and concentration of ownership.

In 2004, seven dailies were published, six in Greek and one in English language. There were also one English language and two Greek weeklies, as well as four sport and one financial weeklies. Only five weekly magazines are published; three of them are free supplements to newspapers. In recent years we witness the growth of special interests and lifestyle publications, mainly bi-monthly and monthly.

The largest in circulation newspaper *Φιλελεύθερος* (Phileleftheros - Liberal) belongs to the *Phileleftheros Group*, which is also the owner or is associated with the publishers of 11 special interests magazines. The group is also linked to a radio station. *Σημερινή* (Simerini – Today's) also belongs to a publishing group, *Dias Publishing House Ltd*, a company that owns or is associated with eight specialized magazines and extends its activities to broadcasting.

Exact circulation figures are not available; no circulation audit bureau exists in Cyprus. A readership survey revealed that 69% of the readers read *Phileleftheros* in weekdays and about 50% on Sunday¹.

The estimated overall advertising expenditure² for 2004 is 38,300,000 Cyprus pounds (65,500,000 euro). The share of the print media is 7,000,000 CP (18.3%).

The broadcast media

The broadcasting sector underwent profound changes following the liberalisation of the sector. Liberalisation was forced by municipal authorities and public pressure; it eventually led to the hasty introduction of the *law on radio stations* (1990)³ and of the *law on television*

¹ Survey by *Synovate*, published in *Phileleftheros*, 23 May 2004.

² Estimates by the Association of Advertisers

³ Official gazette, 9.7.1990

stations (1992⁴), replaced in 1998 by the *law on radio and television stations*. The public service broadcaster led from the first days of commercial radio and television a direct competition policy with the new entrants.

The public service *Cyprus broadcasting corporation* (CYBC) has two television channels, *RIK1* and *RIK2*. The first channel focuses on general interest programmes and broadcasts an important part of the programmes of the Greek channel *Alpha*. *RIK1* had in 2004 12.5% share⁵ of the market compared to 9.7% in 2003.

The second channel (*RIK2*), created in 1992, is more entertainment oriented, with extensive coverage of sports. It also broadcasts *Euronews* in the early morning hours. Its share *RIK2* in 2004 was 6.9%, which is slightly lower than in 2003 (7.1%).

There are today five commercial TV stations operating island wide; two of them are subscription broadcasters. There are also six local television channels.

The first commercial television broadcast went on air in 1992, two days after the enactment of the law allowing the licensing of private television stations. *Ο Λόγος TV* (Logos – The Verb) and *Logos Radio* are owned by the Church of Cyprus. The Greek *Mega TV* is participating in the channel's capital. The channel's audience share⁶ in 2004 was 15.9%, (17.0% in 2003). *Sigma TV* started operation in 1995 and owned by *DIAS Publishing House* has a share of 25.4% of the audience. *ANTI* television belongs to the owners of *ANTI FM* radio and has no links with the print media sector. Its share was 20.3% in 2004 (21.5% in 2003). *LTV* (*Lumiere TV*) and *Alpha TV* are subscription channels (54,000 subscribers in March 2003⁷).

Local television stations operate in the capital Nicosia (*one*), in Larnaca (*one*), in Limassol (*two*) and in Paphos (*two*).

The programme of the public service television *NET* is relayed to Cyprus.

The public service CYBC operates four radio channels. *Radio channel 1* broadcast in Greek (21%⁸), *channel 2* addresses mostly a non-Greek-speaking listenership; *to trito* (Channel 3), created in 1991 has established its leadership with 36%. The fourth channel relays the programme of the Athens-based music station *Radio LOVE*.

In the field of commercial radio, nine channels have an island wide license, 34 are local broadcasters and four are small local stations.

⁴ Official gazette, 23.4.1992.

⁵ AGB-Cyprus.

⁶ Figures from AGB-Cyprus.

⁷ <http://www.multichoice.biz/index1.php>.

⁸ Survey by Synovate, in daily Politis, 30.01.2005.

Super FM and *Ράδιο Πρώτο* (Proto - First) rank second, behind CYBC's *to trito*, with 32%. They are both closely linked to *Dias Publishing House Ltd*, which also owns *Sigma TV*⁹. *Ράδιο Σφαίρα* (Sfera – Globe), linked to *Phileleftheros Group* has a share of about 20%, one point more than *Ράδιο Αστρα* (Astra – Stars), a general interest channel having close relations with AKEL, the left-wing political party.

The estimated **advertising expenditure** on broadcasting media was 24,250,000 CP for television and 3,100,000 CP for radio. The nominal investment for television advertising in 2004¹⁰ was 101,854,539 CP, spent for the screening of 308,091 spots. There was an increase of about 20% compared to 85,051,015 CP and 259,033 spots in 2003. The real investment, though, is estimated to 22,100,000 CP in 2003 and to 24,250,000 in 2004.

Sigma TV screened 39.5% of the spots in 2004, ANT1 24.6%, MEGA 23.9% and the two channels of the public broadcaster totalled 11.9% of the spots.

Satellite and digital broadcasting services are doing their first steps; they operate in legal vacuum. In July 2004, *Multichoice* launched *NOVA* Cyprus for the distribution of digital television through satellite. The public service *Cyprus telecommunications authority* (CYTA), launched in the course of 2004 its own service *MiVision* distributed by *Cytanet*, its internet platform. The public service *electricity authority of Cyprus* (EAC) and

Athena Satellite TV announced also plans for starting their services in 2005.

In the field of online services, the first to go online (1995) was *Logosnet*, owned also by the church of Cyprus. Other main operators are *Cytanet*, of the public service *Cyprus telecommunications authority* (CYTA), *Spidernet*, *Thunderworx*, *Avacomnet* and *Netway*.

No regulatory framework exists other than the *telecommunications and postal services law*, focusing on technical, financial and quality of service issues.

There are only isolated cases of **film production** in Cyprus and one can not speak about a film industry on the island.

Media regulation

Media regulation is a very recent practice in Cyprus. The *press law of 1989* was the first attempt to introduce a regulatory system inspired by contemporary democratic practices; it eventually replaced the respective law introduced during British rule, serving the needs of the colonial power to control the press¹¹. In the same spirit, the law regulating public screening of cinematographic works provided for the establishment of a “board of censors”. The *press law* provided for a regulatory framework based on a combined effort by public authorities and the

⁹ Dias Publishing House, Radio Proto and of Sigma TV appear to belong to different shareholders. On the company's web site, though, it is stated “*DIAS Publishing House, is Cyprus's largest and fastest growing print and electronic media company*” (www.dias.com.cy).

¹⁰ Relevant figures come from AGB-Cyprus.

¹¹ The law was introduced in 1935, by an authoritarian regime established following unrest by Greek Cypriots claiming Union with Greece in October 1931.

parliament on one hand and media professionals on the other. Less than one year later, authorities were called to deal with the broadcasting media. Following initiatives by municipal authorities¹² and the public, the government proposed a draft law on radio broadcasting, establishing an advisory committee that would deal with licensing procedures¹³. Less than two years later and two days only after the publication of the law allowing for the establishment of commercial television broadcasters, the church of Cyprus operated its television channel “*O Logos*”.

Under the circumstances, the aim of the new laws on radio and television was to create a legal framework. There was little or no time for taking into account concerns relating to its effectiveness or the independence of the media regulatory bodies.

These concerns were met in the *law on radio and television stations* of 1998, in the frame also of efforts to harmonisation with the TWFD. An independent authority was entrusted with the powers to regulate the broadcasting sector.

Constitutional law

Article 19 of the constitution guarantees freedom of expression. Its wording is almost identical to article 10 of the European Convention of Human Rights, with one exception; the condition that restrictions should be “necessary in a democratic society” is omitted. There is also a paragraph stipulating that seizure of newspapers or printed matter can only take place following a written permission by the attorney general and confirmed by a court decision within seventy two hours.

Article 171, provides for the obligation of the public service to broadcasting audio and vision programmes in both Greek and Turkish, the official languages of the Republic, respecting specific quotas.

Under the constitution, executive power is exercised by the council of ministers, save on issues where such power is expressly reserved by the constitution to the president and vice-president of the Republic and to the communal chambers¹⁴. The president appoints the independent officers of the state (attorney general, auditor general, accountant general, the members of the public service commission, the president and the judges of the supreme court and the heads of the security forces). The council of ministers appoints the board of directors of organizations of the broader public sector or independent bodies. In the respective laws is provided that the minister¹⁵ may give directions on issues of general policy aiming to serve the “*general interest of the Republic*”.

1. Broadcasting

The broadcasting landscape in Cyprus includes the following:

¹² “Pirate” Radio Broadcasts by the municipality of Nicosia put forward the claim for freeing the airwaves.

¹³ Law N. 120/1990, Official Gazette, 9.7.1990

¹⁴ Communal chambers were dissolved in 1964 and provisions about the vice-president are not in force.

¹⁵ The minister is the one responsible for matters in the sector of activities of such body.

- The public service broadcaster, the *Cyprus broadcasting corporation*, (CYBC) established during British rule and operating as a corporate body.
- Commercial broadcasters, established after 1990 (radio) and 1992 (television); they use terrestrial means for analogue transmission of their programmes.
- Broadcasting services provided via the internet or through digital, cable and satellite transmission; this type of services initially started in 2004.

The main regulatory framework for broadcasting is found in the *law on radio and television broadcasting of 1998* as amended in 2004. The law amended and consolidated the *laws on radio* (1990) and *television* (1992) and regulated issues only relating to commercial terrestrial broadcasting. New provisions introduced in 2004 made it possible to extend regulation to the public service CYBC and to broadcasters under the jurisdiction of Cyprus. There is a legal vacuum as to regulation of issues related to broadcasting services providers; work is underway by government departments, the *Cyprus radio and television authority* and other bodies for the elaboration of a new framework responding to the needs of the entire sector.

Under the *law on the Cyprus broadcasting corporation*, the public service broadcaster enjoys extensive autonomy. The amending law of 2004 curtailed this autonomy and imposes control on content, management of frequencies and on fulfilment of CYBC's obligations.

1.1. Regulatory framework

The laws of 1990 and 1992 on commercial broadcasting provided for a limited range of regulatory measures, leaving most issues under the power of the *council of ministers*. They provided for the need to introduce regulations on a wide range of issues. This was done in 2000, two years after the promulgation of the law on Radio and television broadcasting of 1998. The media operated for about ten years in an almost non-regulated environment.

The urgent need to harmonize the legislation with the *acquis communautaire*, a requirement for the participation of Cyprus in the Media programme, determined the content and the philosophy of the new law; the provisions of the TWFD were incorporated in it. This constituted an ideal source of reference in a country where standards, experience and know-how in broadcasting affairs were connected to the monopoly of the public service broadcaster.

The existence of separate legislation for the public broadcaster makes it necessary to promulgate parallel amending laws aiming at a common regulatory platform. The provisions of the Directive TWF are also incorporated in the law on the *Cyprus broadcasting corporation*.

Under the law on radio and television broadcasting, the parliament voted *normative administrative acts*, regulations that provide details on the implementation of the law. The regulations voted in 2000¹⁶ include provisions relating to applications and licensing, obligations in connection to content and rating of programmes and investigation and decision making procedures. Furthermore, *the journalists' code of ethics* and *the code on advertising*,

¹⁶ KΔΠ 10/2000, Official gazette 28 January 2000.

*telemarketing and sponsorship*¹⁷ are incorporated in this legal document with the consent of the respective professional unions.

The code on advertising, telemarketing and sponsorship is a set of administrative rules providing for the obligations of the broadcasters and the powers of the *Cyprus radio and television authority* in relation to the implementation of the code; it also sets the principles that should govern advertising and sponsorship, as well as special provisions in respect of advertisements of specific products and timing-duration of breaks.

The *regulations on radio and television stations of 2004*¹⁸ list the events of major importance.

The *code of journalistic ethics*, adopted in 1997 by media professionals,¹⁹ constitutes the charter guiding the work of the *commission of journalistic ethics* formed by media professionals. The code lists the fundamental principles that all journalists should respect.

Further to the above, in some cases, broadcasters adopt internal codes of conduct, especially in relation to obligations during electoral periods.

1.1.1. Legal provisions

The main policy objectives of *the law on radio and television stations (N. 7(I)/1998)* are the following:

- It sets the framework and the conditions for the establishment and operation of commercial broadcasters through a licensing system.
- It establishes an independent authority entrusted with media regulatory powers.
- It sets the rules that guarantee pluralism and avert concentrations.
- It aims at protecting the minors from harmful content.
- It aims at safeguarding the right of the viewers and ensuring access to the media.

The above are placed within the framework of harmonisation of the legislation with the *acquis communautaire*. This is done by incorporating in the law the provisions of the directive TWF.

The amending law 97(I)/2004²⁰ aims at unifying the regulatory system by entrusting the *Cyprus radio television authority* with powers relating to transfrontier broadcasts and the implementation of the provisions of TWFD.

¹⁷ The professionals of the advertising sector are in the process of drafting their own code of conduct, in cooperation with the association of their clients, the advertisers. *The Cyprus association of advertising agencies* has recently changed its statutes and name in order to accept as members more professionals of the communication sector; the new name is *Cyprus association of advertising and communication*.

¹⁸ K.Δ.Π. 254/2004, Official gazette 30 April 2004.

¹⁹ The union of journalists, the union of publishers of newspapers and magazines and the owners of broadcast media signed the code in May 1997 and the public service broadcaster joined six months later.

²⁰ N. 97(I)/2004, Official gazette 30 April 2004

The *law on Cyprus broadcasting corporation* aims at providing public service broadcasting by the corporation, governed by a board of directors. Implementation and enforcement of rules on broadcasting were different for the public service and the commercial broadcasters. The amending law 96(I)/2004²¹ is an attempt to solve this question on issues of content and compliance of the CYBC with its mission.

1.1.2. Administrative regulation/rules

Regulations under the law on radio and television stations of 1998

The regulatory authority has the power to issue circulars, instructions and recommendations, and to draft regulations. Regulations are presented to the parliament following their approval by the council of ministers.

The regulations on radio and television stations of 2000 interpret or elaborate further on the law on radio and television broadcasting. Among other issues, they aim at the following:

- Making detailed provisions that would enable implementation by the regulator.
- Setting procedures, technical and other standards and requirements for licensing.
- Elaborating on obligations on content and practices.
- Introducing measures for the protection of minors by defining a programme rating system.

Under rule 21(2), the broadcasters are obliged to form an ethics commission assigned with the task to “sustain programme standards”, as provided by the law and the regulations. The commission is also responsible for training and submitting quarterly reports to the regulator.

The regulations aim at ensuring fair examination of complaints, by defining a procedure where the rights to fair trial are respected.

Regulations under the law on the Cyprus broadcasting corporation (CYBC)

The *regulations on the Cyprus broadcasting corporation (code of journalistic ethics and advertising) of 2001*²², aim at aligning the corporation’s legal framework with the one in force for the other broadcasters. The regulations are almost identical with the sections relating to content in *the regulations on radio and broadcasting stations* (K.Δ.Π.10/2000) that govern the operation of the commercial broadcasters. Both documents incorporate *the code of journalistic ethics*, which was signed by media professionals in 1997, and *the code on advertising, telemarketing and sponsorship*.

A second document, the *regulations on public service broadcasting of 2003*²³ defines the criteria to which the Cyprus broadcasting corporation should respond in order to qualify for

²¹ N. 96(I)/2004, Official gazette 30 April 2004

²² K.Δ.Π. 561/2003, Official gazette, 11 July 2003

²³ K.Δ.Π. 616/2003, Official gazette, 25 July 2003

the characterization of public service broadcaster. The criteria are based on the need to respect specific quotas for each category of programmes, i.e. news and current affairs, educational and entertainment, in radio and television. Respect for these quotas enable the corporation to qualify for receiving public subsidies.

1.1.3. Other provisions

The code of journalistic ethics

The code of ethics is the product of the will of the media professionals to self-regulation; the adoption of the code in 1997 occurred at a time when the authorities failed to introduced any regulations or regulatory bodies and is founded on the conviction of media professionals that they do not need any state or other interference with media freedoms.

The code aims at defining the fundamental rules that should guide the work of journalists in all media, print and broadcasting; it entrusts the commission on journalistic ethics, a purely self-regulatory body, with the powers to monitor compliance with these rules.

The code is based on the obligation of journalists to inform the public, on the need to defend media freedoms and keep up with high professional standards and ethos.

Codes of conduct in electoral periods

These documents are drawn by broadcasters themselves (sometimes in consultation with political parties) in electoral periods. They provide for the rules that will be respected in the coverage of elections and the schedule of programmes in fulfilment of the obligation for coverage and fair access to the media. Not all broadcasters adopt codes and those who do it once do not necessarily follow is as a consistent practice over time.

1.2. Regulatory authorities/bodies

1.2.1. Authority/ies

Broadcasting – The Cyprus Radio and Television Authority

1.2.1.1. Legal basis

The Cyprus radio and television authority was established under article 3 of *the law on radio and television broadcasting* of 1998. It is an independent body, bound to respect the Regulations set for the functioning of public administration bodies. The chairman, vice chairman and five members of the authority are appointed by the council of ministers for a six year mandate. They meet at least once a week to examine complaints or examine other issues relating to their duties and functions.

1.2.1.2. Functions/competencies

The authority is entrusted with the powers to monitor compliance by broadcasters with the provisions of the broadcasting law and the terms set in their license. It exercises supervision on transfrontier broadcasts in connection to the provisions of the directive on TWF.

Supervision in respect of content and fulfillment of obligations extends to the public service CYBC.

Under article 3, *the radio and television authority* is entrusted with powers to:

- Grant broadcasting licenses in the public interest.
- Exercise control on ownership in order to avoid tendencies to oligopoly or monopoly.
- To safeguard the editorial and creative independence of those working in the broadcasting sector and avert any interference with their work,
- Examine cases of breach of the law relating to the protection of minors, incitement to hatred, to the provisions on sponsorship telemarketing and advertisements, and to other issues.

Under article 26, all broadcasters should respect programme standards of impartiality, pluralism, respect for human rights and human dignity and ensure access to the media by the public and its representatives.

The authority allocates frequencies according to a plan designed by the director of telecommunications of the ministry of communications and works and final approval by the council of ministers.

Enforcement

The authority has the power to impose sanctions for not compliance with the law. Sanctions may vary from warnings to administrative fines and suspension or withdrawal of a license.

Powers on the public service broadcaster

Under provisions introduced by the amending law 96(I)/2004 on the *Cyprus broadcasting corporation*, *the radio and television authority* has powers on the public service broadcaster. The authority

- examines fulfillment by the corporation of its obligations as public service broadcaster,
- investigates eventual breaches of the law,
- imposes sanctions for breaches of the law relating to issues of advertising, protection of minors, respect of quotas for European works and to broadcasts of events of major importance.

Investigation can be initiated by the authority or start following complaints by viewers.

On issues related to the *code on journalistic ethics* investigation can only start at the request of the *commission of journalistic ethics*²⁴

²⁴ About the commission, please see below.

A new clause in both the aforementioned amending laws, gave the authority the power to ask a court to order a broadcaster to stop or suspend an activity which is in breach of the law and eventually to publish the court's decision.

All decisions of the authority are executable and are only subject to judicial review by courts.

1.2.1.3. Organisation

The chairman, the vice-chairman and the other five members of the authority do not have full time status. They meet at least once a week. The authority has permanent specialised staff and can also employ consultants. It has its own budget and is financed through fees on license and on advertising revenues.

Under article 11 of the law of 1998, the authority establishes *an advisory committee* composed by representatives of ministries, local authorities, media professionals, trade unions, scientific organisations, academic institutions and other. The committee meets once per month; regulations voted by the parliament set the rules of its functioning.

1.2.2. Self- or Co-regulatory body /ies

The commission of journalistic ethics

1.2.2.1. Legal basis

The commission of journalistic ethics was established in 1997 under *the code of journalistic ethics* adopted by *the union of journalists, the association of newspaper publishers and the (commercial) broadcast media owners*. The establishment and operation of the commission are founded on the perception that state interference with issues of freedom of expression is an old-fashioned practice; regulation should be left to media professionals themselves.

1.2.2.2. Functions/competencies

This fully self-regulatory body examines complaints of the public against journalists or media for breach of the *code of journalistic ethics*. In exceptional cases investigation can start on the commission's own initiative. The commission decides whether there has been a breach of the journalistic code of ethics. It has no sanctioning power; the incriminated media are obliged to publish the decision.

1.2.2.3. Organisation

The three professional unions (*the union of journalists, the association of newspaper publishers and the broadcast media owners*) designate an independent chairman and appoint three members each from their own ranks. The ten members nominate other three non-media professionals of their choice. The chairman of the commission is a former judge and a UN human rights expert.

1.2.3. The commission on conduct of journalists - members of the union of journalists

The union of journalists has set an internal body, a commission that examines issues of journalistic conduct. The commission consists of three members of the union and an external person (as chair) with legal background. It examines issues in relation to the behaviour of journalists and breaches of the statutes of the union or the code of journalistic ethics. It meets very rarely; most of the issues raised are usually referred to the aforementioned commission of journalistic ethics, which deals with all media.

2. Press

2.1. Regulatory framework

2.1.1. Legal provisions

*The press law of 1989*²⁵ aims at regulating a wide spectrum of issues related to press freedoms, the publication and circulation of newspapers and the publishing sector. It also provides for the establishment of a *press council* and of a *press authority*.

The law was drafted following long consultations and cooperation between the authorities and professional unions.

The main policy objectives are the following:

- Safeguard the right of journalists to seek, obtain and disseminate information, both from public and private sources, as well as
- Establish the obligation of the authorities to provide access to information.
- Stipulate on the right of reply for all members of the public. A special clause provides for a right of reply of public servants and/or their service.

The law provides also for

- the licensing of press distribution agencies and kiosques,
- registration of presses and printing equipment imported to Cyprus and
- deposit of three copies of books printed in Cyprus.

2.1.2. Administrative regulation/rules

Not applicable

2.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

Not applicable

²⁵ N. 145/1989, Official Gazette, 11.8.1989

2.2. Regulatory authorities/bodies

2.2.1. Authority/ies - The Press Council and the Press Authority

2.2.1.1. Legal basis

Article 3 of *the press law* 145/1989 provides for the constitution of *the press council* and Art.24 provides for the establishment of *a press authority*. Both were the product of a common effort of the authorities and the print media professionals to (co)regulate the industry.

2.2.1.2. Functions/competencies

The press council was entrusted with powers to regulate issues of journalistic ethics. It was assigned the task to

- ensure respect for the freedom and independence of the press,
- defend the rights and interests of the press,
- regulate issues relevant to professional conduct of the press and the journalists,
- investigate complaints or initiate investigations in connection to the conduct of the press and the journalists,

A second body, *the press authority* was entrusted by law with the power of determining the ceiling price for newspapers and the commission received by distributors, as well as the licensing of the operation of distribution agencies.

2.2.1.3. Organisation of the Press Council and the Press Authority

The council of ministers appoints the chairman and the members of the press council for a three year mandate. The chairman should have a legal background with no relation with the press. *The association of publishers* and *the union of journalists* nominate three members each and political parties in parliament nominate one each.

The council of ministers appoints the nine-members of *the press authority*. Appointments are made on the basis of nominations by the union of newspapers publishers (the chairman and two members), the union of journalists (one), the association of printers and printing houses and representatives from government departments (five).

The chairman and the members of the council are appointed by the council of ministers the chairman should have a legal background with no connection to the press.

Operation costs were covered from the state budget and logistic support was provided by government departments.

In practice, the two bodies have never succeeded to operate properly. From the first couple of meetings, the professionals voiced their strong objections to a number of provisions included in the law. Their main objections were connected with the appointment of the chairman and the members of the two bodies by the government as well as the inclusion of party appointees in them. They considered that these constituted a crude interference with media freedoms and

independence. The chairman of the council continued to exercise his duties until the expiration of his mandate. In early 1993, the council of ministers decided not to appoint new members in either body. Sustained efforts between 1992 and 1997 to amend the law proved unsuccessful. The law remains in force but its main clauses are de facto invalidated.

3. Online Services

No regulation exists in the sector of online services

4. Film/Interactive Games (no legal instrument or other code exists on interactive games)

The law on the classification/rating of cinematographic works of 2002.²⁶

4.1. Regulatory framework

4.1.1. Legal provisions

The law on the classification of cinematographic films provides for the constitution of a board that classifies all cinematographic works destined for public screening in cinema halls or other public premises.

The 2002 law replaced the colonial law of 1935 (chapter 43) with the same title, providing for the constitution of a “*board of sensors*”.

The aim of the new law was to establish a new rating body and system for cinematographic works of any format and for display/advertising material. It provides that any police officer has the power to enter a premise at any time, without a court order and seize any film screened without authorization from the board of classification.

4.1.2. Administrative regulation/rules

The regulations on cinematographic works (rating of), adopted in 2003²⁷, aim at setting the rules and procedures of work of *the board of film rating* and the rating system. The rating criteria and other documents related to the work of the board are found in appendices.

The films are rated in four categories:

- (K) – Suitable for all ages.
- (12) – Not suitable for viewing by persons below 12 years old.
- (15) – Not suitable for viewing by persons below 15 years old.
- (18) – Not suitable for persons under 18 years old.

²⁶ N. 238/2002, Official Gazette, 31 December 2002

²⁷ K.Δ.Π. 561/2003, Official gazette, 11 July 2003

A fifth category (MK – Non rated) is reserved for films that can not be screened because of extreme racist, hard core pornographic, extreme sexually violent and other scenes offending human dignity or encouraging anti-democratic, anti-social behaviour.

The criteria retained relate to the language used, scenes with sexual acts, violence and use of drugs.

4.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

Not applicable.

4.2. Regulatory authorities/bodies

4.2.1. The board of rating of cinematographic works

4.2.1.1. Legal basis

Article 3 of the *law on the classification/rating of cinematographic works* provides for the establishment of a 30-member board from various sectors of the society. It provides for its composition and tasks as well as general rules on its functioning.

4.2.1.2. Functions/competencies

The board examines all films and display /advertising material destined for public screening and rates it according to specific criteria. No film can be screened if it does not bear a rating sign by the board. The board can decide not to attribute rating to a film.

4.2.1.3. Organisation (composition of the authority/members of the board, etc.)

The board for the classification of cinematographic films has 30 members from the public and private sectors appointed by the minister of interior. They represent government departments, other public bodies, professional and social groups. The director of the press and information office (the media service of the government) holds the chair of the board. Other members represent the ministry of education and culture, the *radio and television authority*, the welfare services, professional bodies in the film/production industry and associations of parents, consumers association, sociologists and psychologists.

The board can appoint five-member committees assigned with the task to rate films. The minimum number of members present for decision making is three.

4.2.2. Self- or co-regulatory body/ies

Not applicable

5. Summary

Regulation practice in broadcasting is relatively new. The legal framework mostly covers the commercial analogue television in respect of conforming to the law, incorporating the

provisions of the TWFD. Main policy issues are relating to the protection of minors and respect of the rights of the viewers.

The regulator is independent, with extensive powers for supervision and enforcement; the regulatory legal framework is not the same for the public broadcaster and it does not cover cable and satellite broadcasting.

In the press sector, the bodies established by the law of 1989 have never effectively functioned. The media professionals have set a self-regulatory system. They adopted a code of conduct and established a commission of media ethics with no enforcement or sanctioning powers.

In the film industry, a rating board is composed with representatives of many bodies/ organisations and headed by a public servant.

3.4. Czech Republic

Introduction

area: 78 886 square km, population**: 10,215,000 (September 2004)

number of households: 4,064,000 (“census” HH, i.e. independent economic units)

3,738,100 (“house” HH, i.e. more “census” HH living in a flat)

TV households*: 3,735,000

TV distribution in TVHH*: only terrestrial 71.8%, cable 19.3%, satellite 8.9%

TVHH connected to Internet**: 14.8 %

Internet users - % of individuals*: 30.0%

mobile telephone subscribers - % of individuals*: 71.7%

daily newspapers**: 96

weekly papers and magazines**: 92

bi-weekly and monthly magazines**: 722

data from* *Mediaresearch - Life Style Research 2003*, ** *Statistical Yearbook 2004*

The return of freedom of expression to the Czech society and the fast introduction of the market economy – these were two main elements that influenced media development in the Czech Republic after the political change in November 1989.

The rejection of the former totalitarian political system by Czech society was profound, and led to the long-lasting support for the concept of political and economic reform, in which the role of the state is to be as small as possible, and where free market forces are to govern society as a whole, including the mass media. That was the political climate in which the privatization of entire industries, including the media, took place.

In the course of two-three years the former centralized system of state media disappeared. All the Czech media are now in private hands. The only exceptions are the public broadcasting organizations *Český rozhlas* (Czech Radio), *Česká televize* (Czech television) and the news agency *ČTK* (Czech Press Agency), which are established by law, have a status of independent public corporations, and are controlled by the Parliament.

Print media - newspapers

The number of national daily newspapers is – with regard to the size of the Czech media market - rather high. All of them, with the exception of the former Communist Party daily *Rudé právo* (new name: *Právo*), are foreign owned.

Table 1 – Czech national newspapers in 2004 – average sold circulation

Name	Publisher	Owner	sold circulation Dec 2004x)
Blesk	Ringier ČR a.s.	Ringier Nederland B.V. – 100 percent	500,840
MF Dnes	MAFRA a. s.	Rheinisch-Bergische Verlagsgesellschaft – RBVG 74 percent, MaF a.s. 26 percent	311,609
Právo	Borgis a.s.	Zdeněk Porybný 91,4 percent small shareholders 8,6 percent	189,593
Lidové noviny	Lidové noviny a.s.	Pressinvest a.s. 96,93 percent (owned by the Rheinisch-Bergische Verlagsgesellschaft – RBVG) small shareholders 3,07 percent	70,593
Hospodářské noviny	Economia a.s.	HB-DJ Investments 77,5 percent ČTK 10,9 percent small shareholders 11,6 percent	66,024
Haló noviny	Futura a.s.	Central Committee of the Communist party KSČM (majority) + small shareholders	n.a. (estimation 30-40 000)
Sport	Čs.sport a.s.	Ringier ČR a.s. – 100 percent; the complete control was acquired at the end of 2003	65,044

x) Audit Bureau of Circulation ČR <http://www.abccr.cz>.

The characteristics of Czech national newspapers are: *Blesk (Flash)* - nationwide tabloid newspaper, *Mladá fronta Dnes* - a middle-brow daily of a center-right orientation, *Právo* - a center-left daily with political views close to those of the ruling Social Democratic Party, *Lidové noviny* - moderately right-of-center, trying to retain its reputation of a newspaper read by the "cultural elite", *Hospodářské noviny (The Economic Daily)* specializes in economic and business issues, *Sport* focuses fully on the sport events.

Besides national daily papers, about eighty regional and local papers are published in the Czech Republic, most of them by the publisher *Vltava-Labe-Press (VLP)*, owned by the German publishing house *Verlagsgruppe Passau*. *VLP* prints 51 regional newspapers in the Bohemia division, and 23 daily newspapers in the Moravia division. *VLP* prints also 17 weekly papers as supplements to a given regional daily, and 9 independent regional weeklies.

Table 2 – Regional dailies of the publishing house *Vltava-Labe-Press*

Name	average sold circulation, December 2004x)	readership in the 2004xx)
dailies South Moravia	43,616	115,000
dailies North Moravia	51,313	124,000
dailies Central Moravia	37,866	186,000
dailies Moravia Highlands	17,070	68,000
MORAVIA TOTAL	149,865	493,000
dailies East Bohemia	53,757	210,000
dailies North Bohemia	47,855	162,000
dailies West Bohemia	56,968	182,000
dailies South Bohemia	41,950	158,000
dailies Central Bohemia + Večerník Praha	63,492	145,000
BOHEMIA TOTAL	264,022	877,000
TOTAL	413,887	1,370,000

x) Audit Bureau of Circulation ČR <http://www.abccr.cz>.

xx) Media Projekt 2004 http://www.uvdt.cz/download.aspx?id_file=154.

The content production of *VLP* regional dailies is centralized. National news are uniform for all the *VLP* papers, whose total print run put them on the second place in the circulation chart, just after tabloid *Blesk* and ahead of the “quality paper” *MF Dnes*. The monopoly position of the *VLP* in regional press provoked an administrative procedure at the Office for the protection of competition in the nineties. The Office stopped the procedure with decision, according to which the relevant market of the daily press should be defined as a whole, and should not be divided into sub-markets of national and regional press.

If the relevant market is defined this way, then the *VLP* has the position of one of many competitors. A recent decision by the Office in a related media case has defined the publisher’s shares at the relevant market of the daily press in the following way: *VLP* 29 percent, *Mafra* 22 percent, *Ringier* 19 percent, *Borgis* 12 percent, *Lidové noviny* 5 percent, and others (*Economia*, *Haló noviny*, *Sport*) less than 5 percent.

With the exception of the communist *Haló noviny*, the daily press is independent of political parties and of any obvious particular interest groups. However, a slow but permanent decline of the daily papers circulation and the struggle for mass audience push media content toward “tabloidisation” or “boulevardisation” of Czech newspapers.

Print media - magazines

Also the magazine market is controlled by foreign investors. After 1989, foreign publishers mostly seized the opportunity to bring to the Czech magazine market clones of their home products (e.g. *Burda*, *Bravo*, *Tina*, *Readers Digest*, *Chip*, *Autotip* etc.).

Attempts to revive the respected news magazines (*Reportér*) or influential cultural magazines (*Literární noviny*) of the sixties, which perished after the Russian invasion in 1968, failed. While there is a plenty of lifestyle magazines for women, girls, family or home, only three or four magazines, launched after the Velvet Revolution, have some political ambition.

Respekt is the oldest one. It is a successor of an opposition samizdat paper *Informační servis* from 1989. It has a black and white newspaper format, which does not attract many advertisers. The publisher *R-PRESSE s.r.o.* is owned by Duke Karl Schwarzenberg, a Chancellor to the former Czech President, Václav Havel, whose investment to the unprofitable magazine with the circulation of about 18,000 sold copies is of a political nature: he wants to support an independent liberal paper, dedicated to the idea of civil society.

Contrary to *Respekt*, a weekly with a similar name, *Reflex*, launched by a group of Czech journalists in 1990, won the favor of readers and advertisers with its format, which stands on the borderline between a current affairs periodical and a “society” glossy. The magazine’s founder sold the weekly to *Ringier*. *Reflex* is not a typical news magazine, the political topics occupy a minor part of the magazine’s content. The average sold circulation varies between 50,000 and 55,000 copies.

The most popular Czech news magazine *Týden (Week)* with the format similar to the German weekly *Focus* sells about 50,000 copies. The publishing company *Mediacop* is owned by a Polish entrepreneur with Swiss citizenship Sebastian Pawlowski.

With the average circulation of 25,000 sold copies the *Ekonom* is the most popular economic periodical. The circulation data of his competitor, the weekly *Euro*, are contested by the claim, that *Euro* sells a large part of the 21,000 print run for discount prices. *Euro* is owned and subsidized by a mighty Czech financial group *PPF*.

Among the largest publishers at the magazine market are:

- Swiss company **Ringier** (*Blesk pro ženy* – Flash for women – 270,000, *Reflex* – 53,000, TV guides: *Týdeník televize* – 160,000, *TV Plus* – 120,000, *TV Revue* – 105,000, the magazine for teenager *ABC* – 58,000 etc.)
- Finnish publishing house **Sanoma** (family and lifestyle magazines *Týdeník Květy* – Weekly Flowers - 145,000, *Překvapení* – Surprise - 125,000, *Story* – 68,000, *Ring* – 42,000, women’s magazine *Vlasta* – 146,000, *Praktická žena* – Practical Woman – 78,000, *Vanessa* – 50,000, TV guide *TV Duel* – 70,000 etc.)
- German publisher **Bauer Verlag**, the owner of the *Europress Co.* (*Rytmus života* - Rhythm of Life – 280,000, *Chvilka pro tebe* – A Moment for You – 165,000, magazines for women and teenagers *Bravo* – 86,000, *Bravo Girl* – 76,000, *Žena a život* – Woman and Life – 65,000, *Claudia* – 195,000 etc.).

Other publishing companies are usually focusing on a particular segment of the magazine market. e.g. information technologies, computers (*Vogel Burda Communications*), car, real estate, construction business (*Springer Media*) etc.

Electronic media

There are four terrestrial nationwide television channels available: two public service channels *CT1*, *CT2* and two private commercial channels *TV Nova*, *TV Prima*. Besides, twelve local TV stations in the regions operate mainly as a local “window” program, sharing the frequencies with the overall frame of the *TV Prima* broadcast. Only two local stations, *TV Praha* and *TV Hradec Králové*, operate their own all-day frequencies. The data in Table 3 show that the dominant TV broadcaster in the Czech Republic is *TV Nova* with a viewership share between 40-50 percent.

Table 3 - Audience share of Czech TV channels in the years 1994-2004 – in %¹

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
TV NOVA	68,4	71,2	65,2	52,0	51,3	50,4	46,3	47,7	44,2	43,36	42,23
ČT1	24,2	20,6	24,9	27,9	26,7	25,2	23,8	21,5	21,2	22,07	21,21
ČT2	2,3	3,0	3,6	7,1	7,3	7,0	7,5	7,6	8,7	7,55	9,17
Prima TV	1,7	2,7	3,7	9,1	11,1	12,4	16,5	17,6	20,3	20,58	21,58
Others	3,4	2,5	2,6	3,8	3,6	5,0	5,8	5,6	5,6	6,44	5,81

The small audience (6 percent) share of other than four Czech terrestrial TV channels results from rather low penetration of cable and satellite TV, and from the fact, that the supply of Czech cable TV channel is not very large. Less than 20 percent of the Czech households are connected to the cable television. From nine percent of the satellite TV households about 7 per cent have a private dish (DTH), 2 percent are connected to a collective dish (SMATV).

The cable and satellite TV offers mainly the channels with a foreign content, which are localised by the Czech version (subtitles, voice-over) for the Czech public (*HBO*, *Hallmark*, *Eurosport*, *Discovery Channel*, *Animal Planet*, *Fox Kids*, *Romantika*, *Spektrum*).

Apart from five radio programs broadcasted by the public service broadcaster *Český rozhlas* (Czech Radio) there are 76 other radio stations, among them two – *Frekvence 1* and *Impuls* – with a nation-wide coverage. All the three national broadcasters top the chart of the most listened stations. All of them have nearly the same share of the listening public, between 10 and 12 percent. The rest of the audience share is dispersed among local stations, some of

¹ Source: Media Projekt 94-96, ATO TN Sofres TV Projekt 1997-2002, Mediaresearch 2003-4. In: Annual Reports of the Czech Broadcasting Council 1994-1997, www.czech-tv.cz, www.ato.cz.

which are interconnected into co-operating mini-networks (e.g. *Evropa 2*, *Radio Kiss*, *Hey Radio*).

Online services

The population of the Czech Republic, similarly to the other Central East European countries with the exception of Estonia and Slovenia, is still lagging behind developed Europe in use of Internet. According to the Statistical Yearbook 2004, only 601 000 Czech households were connected to Internet in the end of 2003, e.g. about 15 percent. However, about fifty percent of Czech population is using Internet regularly, mainly at their working places and in offices.

The most popular and most visited Internet services offering their content for public can be divided in two categories:

- the portals launched by Czech telecommunications companies (*quick.cz* – Český Telecom) or internet companies funded by international investors (*tiscali.cz*, *centrum.cz*, *atlas.cz*), and
- the portals operated by the traditional Czech media and publishing companies (e.g. *idnes.cz* – publishing house *Mafra*, *ihned.cz* – publishing house *Economia*, *ceskenoviny.cz* – subsidiary *NERIS* of the CTK wire agency).

Some of the Internet portals operate as a joint venture of both publishing and communications companies (e.g. the most visited portal *seznam.cz* with more than 300 million “page views” per month merged its internet business with internet pages of the daily *Právo*). It is very common that each media outlet operates its own web page with a main purpose to promote its own content and product. The same goes for public broadcasters *Český rozhlas* and *Česká televize*, whose Internet pages refer to broadcast activities only.

Film

After privatization of the Czech film industry in 1992, almost all film projects have been made by private producers. The number of movies produced by Czech producers fluctuates between 15 and 20 pictures in a year (e.g. in 2004 there were 21 Czech releases), what makes about 10 percent of all releases in a given year.

After a sharp decline in attendance which reached an all-time low in 1996 with less than one cinema attendance per citizen, the number of movie-goers since 2001 has been increasing, partly due to the building of dozens of multiplex cinema theaters in big cities.

Table 4 - Czech cinematography distribution²

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Film releases	145	165	151	131	167	173	150	158	164	173	196	208
showings (thds)	353	301	250	188	172	168	164	181	197	253	306	341
attendance (thds)	29898	21898	12870	9253	8999	9815	9252	8371	8719	10363	10693	12140
box-office (mil.Kc)	430	433	303	254	304	437	509	496	593	818	946	1084
Screens (est.)	1346	1200	1070	800	750	720	720	710	690	665	665	623
amg. them multiplexes					1	1	1	2	5	10	14	15
screens in multiplexes					8	8	8	22	40	94	128	137

Constitutional law

The constitutional order is made up of the constitution and all the constitutional acts. The constitutional law in the Czech Republic is formed by the Constitutional Act No. 1/1993 Coll. of the Czech National Council of 16th December 1992 as amended by Acts No. 347/1997 Coll., 300/2000 Coll., 395/2001, Coll. 448/2001 Coll. and 515/2002 Coll.

Under Article 3 of the Constitutional Act No. 1/1993 Coll., an integral component of the constitutional system of the Czech Republic is the Charter of Fundamental Rights and Freedoms - Constitutional Act about the Declaration of Fundamental Rights and Freedoms (No 2/1993 Coll., as amended by Constitutional Act No. 162/1998 Coll.). Under Article 112 of Chapter 8 of the Czech Constitution the Constitution, the Declaration of the Charter General Human Rights and Freedoms, and the Constitutional Acts adopted by the Czech Parliament after 6 July 1992 comprise the constitutional system of the Czech Republic. Under the Article 10 of the Constitution

“promulgated international agreements, the ratification of which has been approved by the Parliament and which are binding on the Czech Republic, shall constitute a part of the legal order; should an international agreement make provision contrary to a law, the international agreement shall be applied”.

This provision provides a legal basis for introduction of a co-regulatory, self-regulatory and compliance-control system as part of the media regulation, as such systems are envisaged by the respective provisions of the EU directives and in the European Council recommendations concerning the regulatory models in the sphere of media and in the new communication and information services.

² Source: Ministry of culture www.mkcr.cz.

The Charter of General Human Rights and Freedoms contains the catalogue of fundamental human rights and freedoms in line with Article 10 of the European Convention on Human Rights, and the relevant provisions on the media sector are contained in the Article 17 of the Charter

“Political Rights

Article 17

(1) Freedom of expression and the right to information are guaranteed.

(2) Everybody has the right to express freely his or her opinion by word, in writing, in the press, in pictures or in any other form, as well as freely to seek, receive and disseminate ideas and information irrespective of the frontiers of the State.

(3) Censorship is not permitted.

(4) The freedom of expression and the right to seek and disseminate information may be limited by law in the case of measures essential in a democratic society for protecting the rights and freedoms of others, the security of the State, public security, public health, and morality. “

The Charter also provides for a petition right and right to associate as an important part of the guaranteed exercise of the freedom of expression:

“Article 18

(1) The right of petition is guaranteed; everybody has the right to address himself or herself, or jointly with other individuals, organs of the State or of local self-government with requests, proposals and complaints in matters of public or other common interest.

Article 20

(1) The right to associate freely is guaranteed. Everybody has the right to associate with others in clubs, societies and other associations”

1. Broadcasting

1.1. Regulatory framework

1.1.1. Legal provisions

Article 79 of the Constitution stipulated that ministries and other administrative agencies and their jurisdiction may be established only by law. Under Article 8 the Act. No. 2/1969 Coll., on Establishment of Ministries and Other Central Governmental Agencies of the Czech Republic, as amended by the subsequent regulations, the Ministry of Culture is the central administrative Agency for issues in connection with the press, including publishing non-periodical press and other informational means and preparation of bills and legal regulations in the sphere of radio and television broadcasting, unless otherwise stipulated by a special law – i.e. by the Act No. 231/2001 Coll., on Radio and Television Broadcasting, as amended by the Act No. 274/2003 Coll. and Act No. 341/2004 Coll. and by the Act No. 40/1995 Coll., on the Regulation of Advertising, as amended by the Act No. 138/2002 Coll.

Under Article 18 of the Act. No. 2/1969 Coll., on Establishment of Ministries and other Central Governmental Agencies of the Czech Republic, as amended by the subsequent

regulations, the Ministry of Informatics, established on 1 January 2003 is the central administrative organ for information and communication technologies and for telecommunications.

The Ministry of Informatics is responsible for drafting legislation and policy related to telecommunications and laying down principles and guidelines for the regulation of the telecommunications market, and approves the frequency band allocation plan also for broadcasting services.

The Czech Telecommunications Office (ČTÚ) that performed state administration including regulation related to telecommunications issues, was part of the Ministry of Economy until 1996 and then of the Ministry of Transport and Communications. By 1 July 2000, as the new Telecommunications Act came into force (Act No. 151/2000 Coll.), it became an independent administrative body under the authority of the Government of the Czech Republic. Under the new Act No. 127/2005, on Electronic Communications and on Change in Some Related Acts (Electronic Communications Act), passed by the Parliamentary Chamber on February 22, 2005 which took effect as of May 1, 2005 (replacing the Act No. 151/2000 Coll., on Telecommunications and on Change in Other Acts, as amended) , the Czech Telecommunication Office has been abolished and it was replaced by a new regulatory body with the same name, i.e. the Czech Telecommunications Office. The new Czech Telecommunications office is an independent state administrative organ. A new collective governing body of the Office - Council of the Czech Telecommunications Office comprising of 5 Council Members . The members of the Council and its Chairman are appointed and recalled by the Government upon proposal of the Minister of Informatics. The term of office of Council members is 5 years. One member of the Council is appointed every year. The Chairman of the Council is appointed to his post for the period remaining to the end of his membership in the Council but not longer than 3 years.

The Office is entitled, under conditions specified by law, to impose by its decision special obligations on the natural person or legal entities performing communications activities, such obligations should be imposed outside the conditions specified in the general authorisation, and the Office shall do so upon consultation. Special obligations as referred to in above mean inter alia the obligations relating to the provision of universal service and the obligations concerning access to network and the obligations concerning the conditional access system.

So far, and until the Czech Telecommunications Office extends its competences also to networks of electronic communications used for public radio and TV broadcasting, if such networks are used by a significant number of end users as main means of radio and TV broadcasting reception, in public interest, i.e. to each electronic communications network used for public radio and TV broadcasting, must carry rules (as a programme content rules) for broadcasters and operators of retransmission systems are regulated by the Broadcasting Act. The must carry rules are part of the obligations of Licensed Broadcasters and Operators of Retransmission in the Cable System.

Under Article 54 of the Broadcasting Act there are two must carry rules:

Provision of Local Broadcasting and the Compulsory Minimum Programme Offer

(1) The licensed broadcaster in the cable system and the operator of retransmission in the cable system shall - if so requested by the municipality or voluntary association of municipalities - reserve one channel for an unpaid local information system serving exclusively for the purposes of the local community; without the consent of the licensed broadcaster in the cable system and the operator of retransmission a channel must not be used for advertising and teleshopping purposes.

(2) In providing the minimum programme offer, the operator of retransmission in the cable system shall ensure that the programme offer includes regional and non-encoded broadcasting of all nation-wide channels of statutory broadcasters and all nation-wide licensed broadcasters, including also local broadcasting on frequencies shared with a licensed nation-wide broadcaster, except programmes broadcast only in the digital manner.

(3) The statutory broadcaster, the nation-wide licensed broadcaster and the broadcaster of local broadcasting on frequencies shared with a licensed nation-wide broadcaster shall provide their programmes free of charge to the operator of retransmission. The operator of retransmission shall include such programmes free of charge within its minimum programme offer.

1.1.2. Administrative Regulations

The Act No. 231/2001 Coll. on Radio and Television Broadcasting as amended ("Broadcasting Act") repealed the Broadcasting Act (Act No. 468/1991 Coll. of 30 October 1991) and the Broadcasting Council Act (Act No. 103/1992 Coll. of 21 February 1992). The Broadcasting Council has no powers to initiate draft media legislation, it merely participates in the "preparation of opinions and proposals for participation in the development of principles for government policy of the Czech Republic with regard to broadcasting and to the concepts of its future development".

The *Broadcasting Council* is vested with the state administration functions such as supervision over fulfilment of legal regulations in the sphere of radio and television broadcasting and of the conditions stipulated in the decision on granting the license or in the decision on registration, granting, changing and withdrawing of licenses for the operation of radio and television broadcasting, granting, changing and cancelling decisions on registration to operate retransmission services, managing of records on broadcasters and operators of retransmission services and imposing sanctions to broadcasters including public service broadcasters.

The Council consists of 13 members appointed and recalled by the Prime Minister, based on the proposal made by the Parliament. The Broadcasting Council and the Office of the Broadcasting Council are financed from the state budget, which includes a separate chapter for the Council. The Office of the Broadcasting Council consists of 34 permanent employees and fulfils the tasks related to professional, organizational and technical support for the activities of the Broadcasting Council, it is a body servicing to the Council and its activities are financed from the budget of the Council. The function of Council's Office departments is regulated by internal Organizational Rules and Ethical Code of the Employees of the Council Office.

The two public service broadcasters, *Czech Television* (established by the Act No. 483/1991 Coll., on the Czech Television, as amended) and *Czech Radio* (established by the Act No.

484/1991 Coll., on the Czech Radio, as amended) have their own “internal” supervisory bodies - The *Council of Czech Television* and the *Council of Czech Radio*.

The *Council of Czech Television* consists of 15 members, the *Council of Czech Radio* consists of 9 members. All of them are (likewise the members of the Broadcasting Council) appointed and recalled by the Parliament. Their supervisory powers do not include state administration functions such as imposing administrative sanctions.

The competencies of the Councils include among others the appointment and dismissal of the General Directors of the Czech Television and of the Czech Radio respectively, approval of the balance and the closing balance sheets.

1.1.3. Other provisions, especially co-regulatory and self-regulatory measures, codes of conduct

On 2 July 2003, the First Chamber of the Czech Parliament approved a code for the public service broadcaster Czech Television which, in accordance with Article 8 (1c) of the Act No. 483/1991 Coll., on the Czech Television, as amended, had been drawn up by the Director General of the Czech Television and approved by the Council of the Czech Television. The *Czech Television Code* is designed to set out and establish the principles for the operation of public service television and thus become an effective instrument for ensuring that the objectives of public service television are fulfilled.

The code's provisions apply to Czech Television and its employees, including those engaged on a contractual basis. Breaches of the code are treated as disciplinary offences and may result in dismissal of the employee or individual contractor concerned.

According to the law and the Code, Czech Television plays a part in the process of the free formation of opinion and is thus under an obligation to the general public. Its programs must, in accordance with the relevant program category, help to provide comprehensive information and contribute to the free formation of individual and collective opinions. They must provide education, advice and entertainment and fulfil the cultural remit of television. They should contribute to social cohesion and take into account in an appropriate manner the whole spectrum of views present in society. They should therefore include programs of interest to society which, under purely economic considerations, would not normally be broadcast. Czech Television must also lay down quality standards. This part of the remit of public service television is developed further in the code, which is to serve as a reference point for decisions taken in relation to practical questions and problems.

The Code also establishes an Ethics Panel of the Czech Television, the members of which will be appointed by the Director General of Czech Television. Its tasks are to protect freedom of opinion and independence and to submit to the Council of the Czech Television reports on important programming issues, prepared on request of the Council of Czech Television and on request of the General Director of Czech Television.

An initiative of Czech advertising agencies, media and advertisers, led to the foundation of the *Council for Advertising* - (Rada pro reklamu - RPR) on 23 August 1994 according to the British Advertising Standards Authority pattern, the functioning structure of which has therein

been adopted. The RPR has 24 members: 7 professional associations such as the Association of Communications Agencies, Czech Association for Branded Products Association, Czech Publishers Association, Association of Czech Advertising Agencies and Marketing Communication, Czech Direct-Marketing Association, Association for Outdoors Advertising, Czech Forum for Responsible Drinking, public and private media, together with major companies from various industries.

The subject matter of the RPR activity is advertising in media both (broadcasting and non-broadcasting). Besides the General Assembly of all members, the RPR has three bodies: The Arbitration Committee, the Executive Committee and the Secretariat. The Secretariat deals with the everyday agenda of the RPR, sorts materials concerning particular complaints and prepares documents for the meetings of the General Assembly, the Arbitration and the Executive Committees. The Executive Committee consisting of 7 members is headed by the Executive Director who is responsible for the proper function of the RPR in between the General Assembly sessions. Members of the Executive Committee are the representatives of advertising agencies, media and advertisers.

The Arbitration Committee has an exclusive right to make decisions regarding complaints received by the RPR. The Committee also reviews submitted materials and the recommendations made by the Secretariat. The Arbitration Committee meets once a month, and among its 13 members are 2 lawyers, 2 advertising agencies representatives, 2 advertisers' representatives and 4 media representatives. The last members of the Arbitration Committee are a psychologist, a sexologist and the President of the RPR who presides at the Committee's meetings.

The Code of Advertising Practice was agreed and adopted by the General Assembly at the meeting of 2 November 1994. Divided into two parts, general and special, the Code contains general rules of advertising in the former, and 6 particular and most controversial areas in the latter. The last version of the Code dates of October 2003. *The Council for Advertising* is a member of the [European Advertising Standards Alliance](#) (EASA).

Under Article 8 paragraph 7 of the Act No. 40/1995 Coll., on the Regulation of Advertising, as amended by the Act No. 138/2002 Coll., the *Broadcasting Council* may (when deciding on the imposition of a sanction against entities acting in breach of the provisions on the regulation of advertising) request the expert opinion of the professional associations in the sphere of advertising. This gives the professional associations active in the sphere of advertising such as the *Council for Advertising* the possibility to intervene and thus indirectly enforce the self-regulation of advertising, adopted in their Code for Advertising.

2. Press

2.1. Regulatory framework

The basic legal norm, which regulates the periodical press, is the Act No. 46/2000, Coll. (The Act on Rights and Duties in Publishing the Periodical Press), on Rights and Obligations in Publishing of Periodical Press (Press Act). The Press Act was passed after a long negotiation between political parties only in 2000, ten years after the Velvet Revolution. The Press Act

has no connection or does not relate to any internet publishing activity. The Press Act 46/2000, Coll. pertains only to the printed media. The Act does not stipulate any content regulations or requirements.

Till March 2000, the old Press Act from the Communist era (No. 81/1966, Coll., on the Periodical Press and Other Information Media), still remained in force, with several amendments adopted in March 1990. The amendments of 1990 removed all the provisions, which had restrained private legal or natural person from publishing activities, and eliminated also all the articles, which could have been used as a censorship tool.

2.1.1. Legal provisions

The provisions of the new Press Act are strictly limited to the rights and obligation of publishers, there are no stipulations concerning the content of periodicals. All the periodical press shall be registered at the registry maintained by the Ministry of Culture. Anybody who intends to publish the periodical press must submit to the Ministry of Culture a written notification within 30 days before the start of a newspaper or a magazine.

2.1.2. Administrative regulation

Each copy of the periodical press shall contain the identification data of the publisher, who is also obliged to send “compulsory copies” to the libraries prescribed by law. The Act stipulates the right to reply for anybody offended by factual statement (not by opinion) published in the periodical press. The institute of “subsequent statement” is reserved for the persons involved in criminal proceedings, who are entitled for publishing of the final outcome of the proceeding, if the case has been published by the press earlier.

2.1.3. Other provisions

No other regulations are prescribed for the press, which must observe the general legal norm, which includes the Civil Code (protection of personality, Art.11-17) or Penal Code (e.g. Art.206 on “defamation”, or Art.260 on inciting national, racial, class or religious hatred).

2.2. Regulatory authorities

2.2.1. Authority, competencies

There is no regulatory authority for publishing of the periodical press laid down by the law in the Czech Republic. Municipal authority in the district, where a publisher has a seat, is authorized to penalize violation of law by publishers, e.g. either by not observing the duties of sending the compulsory copies to libraries, or by publishing a periodical without registration.

2.2.2. Self-regulation

The issue of press self-regulation has not been in the center-point of the attention of the Czech society for several years. The freedom of the press has had a priority in the turbulent post-revolutionary years and the public attitude to any kind of regulation was hostile.

The first codes of conducts emerged at the end of the nineties only. *The Union of Czech Journalists* (Syndikát novinářů ČR), the professional association of Czech journalists, set up the Ethical commission as an independent professional body of eleven members in 1998. The members of Ethical commission are volunteers from the media and university world approved by the Union board.

In the same year, the general meeting of the Union approved the Code of journalist's ethic, which is applicable till now. The Code replaced the similar document of the *International Federation of Journalists (IFJ)*, which the Union of Czech journalists applied as its own norm since 1990.

At the same time (October 1998) the weekly *Týden* published its own Code of ethic. In the meantime also the other print media adopted their own Codes of conduct, usually as an internal norm (e.g. wire agency ČTK, dailies *MF Dnes*, *Lidové noviny*, *Hospodářské noviny*).

3. Online Services

3.1. Regulatory framework

Publishing activities on the Internet are covered by general law only. In September 2004 the Czech legislation adopted the Act No. 480/2004 Coll., on some services of the information society, which implements the rules set by the Directive 2000/31/EC “on certain legal aspects of information society services, in particular electronic commerce”.

3.1.1. Legal provisions, administrative regulations

The provisions of this law apply mainly to the general responsibility of service providers for transmitted content, and to the unsolicited commercial communication. The Act is known as the “anti-spam law”.

3.2. Regulatory authorities

3.2.1. Authority, competencies

The responsibility for observing the rules promulgated by the anti-spam law is designated to the *Office for personal data protection* and to the boards of the regulated professions set up by particular acts, among them the Act No. 254/2000 Coll., on auditors, Act. No. 523/1992 Coll., on tax consultancy and the Chamber of Tax Advisors of the Czech Republic, Act No. 220/1991 Coll., on the Czech Medical Chamber, Czech Dental Chamber and Czech Pharmacists' Chamber, or Act. No. 85/1996 Coll., on the legal profession.

3.2.2. Self-regulation

The Czech Publisher Association (*Unie vydavatelů denního tisku*) established the special Section of Internet Periodical Publishers (*Sekce vydavatelů internetových titulů*) in November 2001. The “section on internet periodical publishers” is a part (a department, a sub-association) of the Czech Publishers Association (CPA). More than half of its 17 members are the big publishing houses, the CPA members, whose basic business consists of publishing the printed periodicals (newspapers and magazines, eg. *Economia*, *Ringier*, *Springer Media*, *Vltava Labe Press*, *Sanoma Magazines* etc.). The internet publishing is for them only an additional activity. Beside them, several members of the “internet section” are operating the internet portals only (*centrum.cz*, *atlas.cz*, *reality.cz*, CD-R server), however, in a close cooperation with some CPA member.

The Section adopted the Code of internet advertisement's ethic in March 2003. The reason of adopting of the “Code of internet advertisement's ethics” was to fill the gap in the legislation (the Act No. 40/1995, Coll., on advertisement regulation), which does not cover some specific peculiarity of the internet advertisement. The Code has only four sections concerning:

- the erotic advertisement,
- the deceiving (bluffing) advertisement,
- the hidden advertisement and
- the aggressive advertising formats.

4. Film/Interactive games

4.1. Regulatory framework – film

The Act No. 273/1993 Coll., on Some Conditions of Production, Dissemination and Archiving of Audiovisual Works, on Changes and Amendments of Certain Acts and other Provisions (further referred to as “Act on Cinematography”) contains some definitions related to activities in the audiovisual sector, obliges the Ministry of Culture to keep records of persons which obtained Trade License for activities defined by the Act on Cinematography, contains provisions for identification of audiovisual works and obliges makers and distributors of audiovisual works to establish and observe public availability of audiovisual works as regards protection of moral development of minors. The protection is specified in the article 4 of the Act called “The accessibility of audiovisual works to the public”. The clause 1 stipulates that

“Audiovisual works, whose content could endanger the moral development of minors, should be identified as to their accessibility by the limit of 15 or 18 years of age.”

The identification (assessment) is made by the producer together with the distributor of the audiovisual work. The movie theatres and the video rental shops are responsible for not distributing or selling the audiovisual work to the minors in accordance with the limit set up by producer and distributor. The Act does not specify criteria, according to which the age

limit shall be determined. The Article 4 refers only to the UN Convention on the Rights of the Child, that was adopted as a part of the Czech legislation in February 1991.

In addition, this act defines the National Film Archive as an organization established and subsidized by the Ministry of Culture and obliges makers of Czech audiovisual works to offer a copy of their audiovisual works.

The Ministry of Culture is the supervisory body for ensuring compliance with the provisions of the Act on Cinematography and may impose sanctions.

The Act No. 241/1992 Coll., on State Fund of the Czech Republic for Support and Development of the Czech Cinematography (further referred to as "Fund Act") created institutional basis for financial support of Czech cinematography. The Fund is administered by Ministry of Culture. The Council of the Fund, composed of independent personalities nominated by the Czech National Council at the proposal of the Minister of Culture decides on selective funding in the form of subsidies and repayable loans to creation of scripts, development, production, distribution, promotion and technical development.

4.2. Regulatory framework – interactive games

There is no specific law regulating the protection for minors in the field of interactive games in the Czech Republic. The definition of an audiovisual works in the above mentioned "Audiovisual Act 273/1993" does not apply to interactive games.

The Penal Code can be applied to the content of interactive games with regard to the paragraphs 198 (incitement of the racial hatred) 198a (incitement of the nationalistic hatred and threatening basic human rights and freedoms) and 205 (pornography).

5. Summary

The self- or co-regulatory systems are only being introduced in the media and communications legislation in the Czech Republic especially as a result of recent transposition of the EU Directives and European Council recommendations. A number of ethics codes has been adopted, both internally by the bodies concerned and also by professional associations especially in the sphere of advertising. Their scope of activities remains limited and the professional associations are only gradually developing. This is especially the case of professional associations in the sphere of providing commercial communications.

A more detailed description of the individual self- or co-regulatory and compliance-monitoring systems may be delivered in the second phase of the study.

3.5. Denmark

Introduction

The Danish Media Landscape

The demand side

The Danes spend on average about 6 hours daily on media, including radio, TV, Internet, newspapers, magazines etc. The majority of this time (90 %) is spent on TV and radio, but the time spent on the Internet and other interactive media is growing.

Almost all Danish households possess radio and television. Today, the majority of Danes, approximately 85 %, also have access to the Internet, either in the private households or at the workplace. About 50 % of the households and 80 % of all enterprises possess broadband Internet access. The common private purposes for using the Internet are to search for information and use online services (70 %), to communicate (65 %), e-commerce and banking (55 %) and contact to public authorities (43 %). The enterprises use the Internet for e-business and e-commerce purposes. E-commerce in Denmark mostly takes place business-to-business (86 % of all e-commerce) compared to business-to-consumer (14 %).

Although the sale of newspapers has decreased in recent years, more than 70 % of the adult population still read at least one newspaper a day. In 2004, 12,5 million movie tickets were sold. The sale of interactive games increased in 2004 with 20 % compared to 2003.

The supply side

The two national public service broadcasters, DR and TV2, who have an aggregate market share of approximately 70 %, dominate the television market. The rest is largely divided between broadcasters legally established outside Denmark who are transmitting programmes to Denmark with Danish content. The radio market is dominated by DR, who holds a market share of 70 %, while local commercial radio broadcasters hold the majority of the rest.

There are 17 nationwide newspapers in Denmark. Beyond this, there are a great number of special and local newspapers, magazines etc. The 5 market leaders in terms of readers are the nationwide newspapers Jyllands Posten, Politiken, Berlingske Tidende, B.T. and Ekstra Bladet.

There is a vast number of Internet Service Providers in Denmark. The market leader is the former telecom incumbent, TDC, with approx. 2/3 of the total Internet subscribers. Other significant ISP's are Telia, Tele2, Cybercity and Tiscali, each with 5-10 % of the market. In addition to the "traditional" Internet, the market for mobile data services (either on 2G or 3G mobile platforms) is in rapid growth in Denmark.

General provisions applicable to all media

Constitutional law

Provisions relevant to the media sector

The Danish Constitution of 1849 was last revised in 1953. The Constitution does not contain special provisions regarding the media sector or the protection of minors. However, it contains a brief catalogue of fundamental civil and political rights of which freedom of expression is of significant impact for the media.

Pursuant to § 77 of the Constitution everyone has the right to freedom of expression, subject to liability before the Courts. Also the media enjoy protection under § 77. The provision explicitly mentions printed, written and spoken expression, but it is widely accepted in legal theory and practice that expressions via all kinds of media, printed as well as electronic (including new media such as the Internet, cell phones etc.), are protected by § 77.

The protection under § 77 is, however, not unlimited. The provision does not protect freedom of expression in a substantial sense. It only provides protection against precautionary measures (censorship) that interfere with the right of the individual to express his or her opinion in public. Thus, when the expressions are first made, the one who made them can be held liable before the courts pursuant to ordinary statutes under Danish law.

In recent years the Danish Supreme Court has increasingly included Article 10 of the European Convention on Human Rights as a source of law in the interpretation of § 77. As a consequence, the scope of § 77 – which was previously regarded as rather narrow – has been broadened. There continues to be, however, no protection of freedom of expression in a substantive sense under Danish Law.

Organisation of the state and the public administration

Pursuant to § 3 of the Constitution, the legislative, executive and judicial power is distributed. The legislative power is vested in the Parliament together with the Government; the executive power is vested in the Government, and the judicial power is vested in the courts.

The Government is bound by the legality principle, according to which public authorities (ministries, agencies, municipalities etc.) can only act on the basis of an express statutory authority. Within the statutory framework the division of competences between different public authorities can be decided departmentally. Delegation of duties from a superior to an inferior authority is widely accepted without express statutory authority. Delegation of public authorities' duties to a *private party*, however, generally requires statutory authority.

The concept of legislation is traditionally used in the sense of generally applicable and binding rules that are enforceable before the courts. The competence to legislate is a key function of the Parliament or public authorities empowered by the Parliament. Consequently, on the delegation to a private party of the authority to legislate require express statutory authority under Danish Law. Statutes delegating legislative power to a private party are rare under Danish law.

Remarks concerning the concepts of “co-regulation” and “self-regulation”

It is important to note that the concepts of “co-regulation” or “self-regulation” are in no way clear under Danish law. Self-regulation is often (and in this report, too) understood as general rules established by private parties without the empowerment by the Parliament or any involvement whatsoever of public authorities with legislative power. Such rules are in themselves generally considered non-binding and non-enforceable before the courts.

Co-regulation is often (and in this report, too) understood as regulation resulting from a co-operation between a public authority with legislative power and private parties (e.g. traders and consumer’s associations). Under Danish law, co-regulatory measures normally have statutory authority. For instance, under the Marketing Practice Act the Consumer Ombudsman, subject to negotiations with relevant private parties, can prepare guidelines implicating the legal standard “good marketing practice”.

Ordinary statutes of general importance to the media sector

Besides the Constitution’s § 77, a number of provisions in ordinary statutes are of general importance to the media sector as a whole, regardless of the specific type of media (print or electronic). For example, the Marketing Practices Act (with appurtenant executive orders and guidelines issued by the Consumer Ombudsman) also applies to marketing measures in the media sector.

Pursuant to the Administration of Justice Act § 172 editors of mass media who give evidence before the courts are not obliged to disclose their sources. The Criminal Act contains general provisions which in specific cases can be of significant importance to the media, e.g. provisions regarding secrecy of the mails, telephone tapping, racist or blasphemous expressions, invasion of privacy, defamation and actions that threaten the security of the state. The Administrative Procedures Act and the Freedom of Information Act contain provisions regarding openness and access to documents within the public administration.

There is no specific regulation of media concentration under Danish law. The general merger control regulation can be applied in the media sector as in other sectors.

The Media Liability Act¹

In order to, inter alia, protect the freedom of speech, the Media Liability Act limits the number of persons who can be held liable for content on mass media. As a general rule, only the author, the editor and the publisher can be held liable. Further, pursuant to § 34 of the Act, both the content and conduct of mass media must be in conformity with sound press ethics. Cases regarding “sound press ethics” are heard by the Press Council, an administrative complaints board established under the Media Liability Act. Finally, the Media Liability Act contains provisions regarding the mass media’s obligation to publish a reply.

¹ Consolidated Act No 85/1998 on Media Liability.

1. Broadcasting

1.1. Regulatory framework

1.1.1. Legal provisions

The main regulatory framework for broadcasting in Denmark is found in the Radio and Television Broadcasting Act 2002² (as amended in 2003³).

From the 1920s to the mid 1980s radio and television broadcasting were politically considered a public good over which the state should exercise a significant amount of control, both in terms of access to the media and in terms of the programme content. Accordingly, broadcasting was by statute a state monopoly in Denmark, which lasted until 1988. During that time the Broadcasting Act was a brief act that established the state monopoly and regulated the institution holding the monopoly: the public service broadcaster (and publicly funded institution) Danmarks Radio (DR).

For various reasons, especially the growing competition from foreign radio and TV programmers whose programmes were transmitted to Denmark via cable and satellite, the Danish Broadcasting Act has been gradually liberalised from the late 1980s up to the present Act of 2002. The state monopoly has been repealed and the Danish market is open for competition. The license requirements have also been repealed, except where scarce frequency resources are needed. Advertisements are allowed, subject to restrictions exceeding the (minimum) requirements under EU's "Television without Frontiers Directive".⁴ Regardless of these liberalisations the Broadcasting Act still contains restrictions with regard to, inter alia, must carry provisions, advertisements and offensive content. Restrictions that are more extensive than content regulation on other media such as information society services (Internet content etc.).

Statutes other than the Broadcasting Act also contain rules on radio and television. For instance, the Copyright Act contains important provisions regarding the protection of radio and television programmes. The Media Liability Act also comprises radio and television.

Pursuant to the EU's recent legislative reforms of the electronic communications sector, in particular the 1999 Review and 2002 Telecoms Package, matters relating to broadcasting *infrastructure* and services concerning the mere *conveyance* of radio and television programmes (as opposed to the production of programmes) are today regulated by the Danish telecoms regulation.⁵ Furthermore, important legal issues regarding *digital/interactive television* are also regulated in the telecoms regulation following the EU telecoms harmonisation.

² Act no. 1052 of 17 December 2002.

³ Act no. 439 of 10 June 2003.

⁴ Council Directive 89/552 as amended by Directive 97/36/EC.

⁵ Cf. Consolidated Act No 661/2003 on Competitive Conditions and Consumer Interest in the Telecommunications Market.

Finally, provisions in generally applicable statutes, including the Act on Marketing Practices, are of relevance to the broadcasting media.

1.1.2. Administrative regulation/rules

The Minister of Culture issues a considerable number of executive orders in pursuance to the Broadcasting Act. These executive orders elaborate provisions in the Act. For instance, executive order no 194 of 20 March 2003 regarding advertisement elaborates provisions regarding advertisement and the protection of minors. Also, the Radio and Television Board has issued guidelines on matters covered by the Board's competence.

1.1.3. Other provisions: Co- or self-regulatory measures

The Danish Broadcasting regulation does not specifically authorise or encourage co- or self-regulatory measures (cf. the definition of these concepts in part 2.1.3 above) in relation to radio and television.⁶ A quasi co-regulatory measure follows from the Broadcasting Act § 12(2) and § 31(4). It stipulates that the public service broadcasters' public service obligations shall be specified in a contract with the Minister of Culture. In addition, in pursuance of the EU's 2002 Telecoms Package, the development and establishment of technical standards for electronic communication, including radio and television, are in general subject to self-regulation.⁷

1.2. Regulatory authorities/bodies

The Ministry of Culture generally administers the Broadcasting Act. However, the programme enterprises' compliance with the Broadcasting Act, including the rules on advertising, is supervised by the Radio and Television Board, an independent public body under the Minister of Culture. Local radio and TV programme enterprises' compliance with the Act is supervised by locally established Radio and Television Boards.

The Press Council, an independent public tribunal, deals with complaints under the Media Liability Act.

The Ministry of Culture administers the Copyright Act, including the provisions regarding radio and television programmes.

⁶ As regards protection of minors and human dignity in relation to the content of audiovisual and information services, the European Council in a recommendation from 1998 (98/560/EC, OJ L 270/1998, p. 48) recommended the use of co- or self-regulatory measures in developing codes of conducts in the Member States.

⁷ Cf. Directive 2002/21/EC, Article 17 and recital 30.

2. Press

2.1. Regulatory framework

2.1.1. Legal provisions

It is a fundamental democratic principle that the press shall be independent of the State. Consequently, Danish law contains no legal restrictions on the press in terms of authorisations or other kinds of sector specific regulation of the press. The Constitution § 77 and the European Human Rights Convention Art.10 regarding freedom of speech like other media, protect the press, cf. point 2.1 above. Likewise, the general provisions in the ordinary statutes mentioned under point 2.2 are applicable to the press.

2.1.2. Administrative regulation/rules

A number of elaborative executive orders, guidelines etc. are issued in pursuance of the general statutes mentioned under 2.2 and 2.3 None of these executive orders deal specifically with the press but apply to all media as well as other sectors. For instance, the Consumer Ombudsman has issued generally applicable guidelines regarding “Children, Young Ones and Marketing” (April 2002).

2.1.3. Other provisions: Co- or self-regulatory measures

When deciding cases regarding sound press ethics the Press Council applies the “guidelines on sound press ethics”, which were drafted by the Danish Newspaper Publisher’s Association, a private association of newspaper traders.

2.2. Regulatory authorities/bodies

The Office of the Prime Minister administers matters regarding the press.

As mentioned, the Press Council handles complaints regarding sound press ethics and the right to reply.

3. Online Services

3.1. Regulatory framework

3.1.1. Legal provisions

As opposed to broadcasting services there is no sector specific regulation of online services in Denmark. Matters relating to Internet *infrastructure* and the mere *conveyance* of Internet services are – as are other kinds of electronic communication network and services – regulated in the telecoms regulation (cf. the comments under part 3.1.2 above regarding the transposition of EU’s 2002 Telecoms Package).

As regards *content* regulation of online services Denmark – in line with the EU as a whole – is reluctant to regulate the content side apart from general applicable rules set forth in, inter alia, criminal, copyright and consumer protection statutes. The political considerations behind the reluctance to regulate online content are partly the view that online services basically shall

be able to develop on the free market without regulatory restrictions and partly that the borderless nature of the Internet, together with the rapid technological speed with which online services develop, demand international regulatory initiatives rather than national.

Consequently, the Danish regulation of online services rests on the principle that online services are regulated by the general legislation with the interpretations and modifications that the virtual nature of online services renders. Where specific regulation has been adopted, it has essentially been a consequence of EU legislation. Thus, all EU directives directly or indirectly concerned with online services have been transposed into Danish law, including the E-commerce Directive, the Distant Selling Directive, the Distant Marketing of Consumer Financial Services Directive, the Infosoc Directive, the Directive on Protection of Personal Data, the Electronic Money Directive and the Directive on Electronic Signatures.

3.1.2. Administrative regulation/rules

A considerable number of executive orders are issued in pursuance of the transposition into Danish law of the various directives mentioned above.

The Danish Consumer Ombudsman, together with the other Nordic Consumer Ombudsmen, has established guidelines for good practice on the Internet (October 2002).

3.1.3. Other provisions: Co- or self-regulatory measures

The Consumer Ombudsman – upon negotiations with the telecommunications industry – has issued guidelines for good marketing practice in the telecommunications sector (2004).

The organisation and administration of the Danish part of the Internet is delegated from ICANN to the Danish Internet Forum (DIFO), which, as ICANN itself, rests on self-regulation.⁸

In addition, a Danish “seal” arrangement, whereby Danish e-commerce websites can be provided with a seal if they comply with a set of rules for good practice on the Internet has been established as a self-regulatory measure.⁹

As regard online content specifically developed for mobile phones, the Telecommunication Industries Association in Denmark has established a “regulatory framework” on a self-regulatory basis.

According to the E-commerce Directive,¹⁰ Article 16, Member States and the Commission shall encourage the drawing up of codes of conducts in order to implement the Directive’s Art.5-15 regarding general information requirements, commercial communication and liability of intermediary service providers. Denmark has not found it necessary to explicitly transpose Article 16 into Danish law, but it is underlined in the explanatory notes to the

⁸ See for detailed information www.difo.dk. In connection with DIFO an appeals body (deciding complaints over DIFO’s decisions) also has been established on a self-regulatory basis.

⁹ Cf. www.e-maerket.dk.

¹⁰ Directive 2000/31/EC.

transposing act that Denmark will encourage the drawing up of codes of conducts on a national level and on the EU level by supporting the Commission's eConfidence Group.¹¹

3.2. Regulatory authorities/bodies

As a consequence of the Danish approach to regulation of online services, whereby the general rules and regulations that apply to "physical" services also apply to "virtual" services, a variety of regulatory authorities in Denmark have competence within the field of online services depending on the specific legal question at hand. These authorities generally have statutory competence to issue injunctions and impose fines.

There are, however, certain authorities that take a particular central position. These authorities include, inter alia, the National IT and Telecom Agency (which is competent in infrastructure matters), the Danish Consumer Ombudsman/The Consumer Complaints Board (competent with respect to consumer protection regulation and general marketing practice) and the Danish Data Protection Agency (competent in relation to the Act on Protection of Personal Data).

4. Film/Interactive Games

4.1. Regulatory framework

4.1.1. Legal provisions

4.1.1.1. Films

The Danish regulation on film consists of Act No 186/1997 on Film (with subsequent amendments). The purpose of the Act is to encourage the art of filmmaking, film culture and cinema culture in Denmark, and to protect minors from harmful film content. The Act applies to all kinds of film, including films on video (but exclusive of television programmes). Apart from the few provisions mentioned below, the Act does not apply to multimedia productions such as interactive games.

The encouragement of Danish film production etc. under the Act is carried out by The Danish Film Institute, a public authority appointed by the Minister of Culture. The Institute can, inter alia, render financial support to the production etc. of films covered by the act. The protection of minors is carried out by provisions in the Film Act, which require marking and age classification of films. These provisions are administered by "Medierådet for Børn og Unge" (the Media Council for Children and Young Ones), a public institution appointed by the Minister of Culture. The Media Council also advises parents on the suitability of films as well as advises the Minister on general film issues.

¹¹ Cf. the comments above regarding Council Recommendation 98/560 concerning the use of co- or self-regulation to protect minors and human dignity in relation to the content of audiovisual and information services.

4.1.1.2. Interactive Games

Under the Film Act the Film Institute can finance multimedia productions such as interactive games. Likewise, the Media Council's advisory function can also cover multimedia productions. Beyond this the Film Act does not apply to multimedia productions such as interactive games. Thus, there is no sector specific regulation on interactive games under Danish law. However, the Act on certain Games, Lotteries and Bets,¹² which is part of the tax legislation, includes provisions that in general prohibit anyone, apart from the publicly owned "Dansk Tipstjeneste A/S" from providing games etc., including online games, to the public.

4.1.2. Administrative regulations/rules

In pursuance of the Film Act two executive orders have been issued, specifying matters regarding The Film Institute and the Media Council.

4.1.3. Co- or self-regulatory measures

The Film Act does not contain provisions regarding co- or self-regulatory measures.

4.2. Regulatory authorities/bodies

The Ministry of Culture administers the Film Act. As described, The Film Institute and The Media Council carry out most of the functions under the act. The Ministry of Taxation administers the Act on certain Games, Lotteries and Bets.

5. Summary

The media regulatory system in Denmark consists of a variety of rules in all levels of sources of law: the Constitution, EU-regulation, ordinary statutes, executive orders, guidelines etc. Furthermore, the media regulatory framework consists of both sector specific regulation and general regulation. The regulatory system reflects the different political objectives behind the regulation of each type of media.

Radio and TV are primarily regulated in the Broadcasting Act. However, radio and TV infrastructure are, like electronic communications infrastructure in general, regulated in the telecoms regulation. There is no sector specific regulation regarding the press. Thus, the press, like other media, is regulated by general rules of importance to the media, including the Constitutional right to freedom of expression, the statutory right to protect sources, relevant provisions in the Criminal Act and the Media Liability Act, as well as general statutes such as the Marketing Practices Act and the Copyright Act.

It is a political objective to regulate the Internet as little as possible. Consequently, there is very little sector specific regulation of online services under Danish law. Online services are basically treated as any other services and thus are subject to the general rules and provisions under Danish law. Where specific regulation exists, it is normally based on EU regulation.

¹² Consolidated Act No 1077/2003.

Film is regulated under the Film Act, which act contains provisions regarding, inter alia, protection of minors from harmful content and the rendering of financial support to the film business. A few of the provisions in the Film Act apply to interactive games. Apart from this, there is no sector specific regulation of interactive games. Thus, the general statutes under Danish law apply.

In a number of areas co- or self-regulatory measures supplement statutory regulation under the Danish media regulatory framework. Such measures are most common in relation to Online Services.

Many – different – regulatory authorities, depending on the media and issue in question, administer and control the different media.

3.6. Estonia

Introduction

Estonia has a population of 1.37 million.¹ The official language of the country is Estonian, spoken by approximately 950 000 inhabitants. Russian is the main minority language spoken in Estonia.

Currently, Estonia has one public TV broadcaster Eesti Televisioon (ETV)² and two commercial TV broadcasters: TV 3³ and Kanal 2⁴. The two private national TV broadcasters are members of the Association of Estonian Broadcasters. One local TV broadcasting operator licence has been issued. Internet television is under development, some of the own production of ETV is available at www.itv.ee and some of the programmes of the commercial broadcasters are available at www.tv.ee. 79 licenses have been issued for cable TV operators, two of them are national and some of the cable operators produce their own programmes.

The state-owned Eesti Raadio (ER)⁵ has four radio channels covering almost the whole country: Vikerraadio (mainly talk radio), Raadio 2 (targeting younger population), Raadio 4 (broadcasts only in Russian and minority languages) and Klassikaraadio (broadcasts classical music). There are several private local and regional radio channels; some of them cover most of the Estonian territory.

The printed media market offers 5 national daily newspapers: Postimees (circulation 64 000) and Eesti Päevaleht (35 000), the national daily business newspaper Äripäev (20 200) and Russian newspapers Molodjzh Estonii (10 000) and Estonia (6000). The largest weekly newspapers are Eesti Ekspress (42 200) and the rural weekly Maaleht (42 900). The national tabloid market is covered by SL Õhtuleht (65 000) and its Russian alternative Vesti Dnya (6500).⁶

Two media companies dominate the Estonian media market: Eesti Meedia⁷ (owned 92.5% by the Norwegian Schibsted and the Ekspress Group).⁸ Eesti Meedia is the largest media corporation in Estonia, it owns the the national daily Postimees, half of the the national tabloid SL Ohtuleht, the TV cchannel Kanal 2, half of the Ajakirjade Kirjastus Magazines Publishing Company and has ownership in some local and regional newspapers. The Ekspress Group owns the largest weekly newspaper Eesti Ekspress, half of the national daily

¹ 2000 Population and Housing Census. III. Place of Birth and Migration, www.stat.ee.

² www.etv.ee.

³ www.tv3.ee.

⁴ www.kanal2.ee.

⁵ www.er.ee.

⁶ Harro-Loit, Halliki: The Baltic and Norwegian Journalism Market, p. 96 in The Baltic Media World, edited by Richard Bærug, Riga 2005.

⁷ www.eestimeedia.ee.

⁸ www.egrupp.ee.

Eesti Päevaleht, half of the Ajakirjade Kirjastus Magazines Publishing Company, half of the national tabloid SL Ohtuleht, the free paper City Paper, 95% of Printall printing plant, half of the distribution company Ekspress Post and has ownership interests in a magazine wholesale company and a mobile operator.

Some other large players are the Bonnier Group that owns the business daily Äripäev; Modern Times Group owns TV3; the Metromedia International Radio Group through its Trio Group and Mediainvest Holding both own several radio stations.

The principle of independence of media is crystallised in the Constitution (passed on 22 June 1992).⁹ During the process of regaining of independence, censorship and political control over media were quickly abolished in the early 1990-ies. All daily newspapers are in private ownership and the State does not subsidise the media sector. Apart from the principles stated in the Constitution, there is no law regulating media in general. The Broadcasting Act regulates public radio and TV broadcasting and the Advertising Act contains provisions relevant to all media. The relevant EC regulation applies since Estonia's accession to the EU on 1 May 2004.

Constitutional law

The supreme legislative organ of Estonia is Riigikogu, elected by the people. The official head of state is the President. The executive power is vested in the Government headed by the Prime Minister.

Laws can only be initiated by members of the Riigikogu, the Government or the President. Laws are passed by the Riigikogu and proclaimed by the President. Secondary legislation is passed by the Government. There is no mechanism in the Constitution that would allow the State organs to pass any of their regulative powers on to private parties. Neither is there anything that would enable private parties to pass regulation that could be applicable to non-contracting third parties. However, there is nothing in the Constitution that would restrict the right of private parties to enter into self-regulation arrangements.

The Constitution provides that everybody has the right to get public information without limits. The Constitution protects personality and privacy and the honour and good name of a person. Every person has the right to sue anyone who has violated his/her rights.

The principles of freedom of expression and prohibition of censorship are stated in Article 45 of the Constitution:

Everyone has the right to freely disseminate ideas, opinions, beliefs and other information by word, print, picture or other means. This right may be restricted by law to protect public order, morals, and the rights and freedoms, health, honour and good name of others. This right may also be restricted by law for state and local government public servants, to protect a state or business secret or information received in confidence, which has become known to them by reason of their office, and the family and private life of others, as well as in the interests of justice.

There is no censorship.

⁹ Translation of the Constitution is available at www.legaltext.ee.

Other horizontally applicable provisions

Advertising Act

The Advertising Act was passed on 11 June 1997 and came into force on 1 January 1998. It has since been subject to several amendments. The provisions of the Act apply to all media. The Act provides the definition of advertising establishes general requirements for advertising, restrictions on advertising and their extent, and special conditions for advertising, supervision over advertising and establishes liability for violation of the Act.

Article 2 of the Act defines advertising as information which is made public for the purpose of increasing the sale of products or services, promoting an event or idea, or achieving other desired results in other areas and which an advertiser disseminates for a fee or other consideration. According to Article 3 the content, design and presentation of advertising shall be such that, given ordinary attention by the public, it is recognised as advertising.

Article 4 of the Act prohibits misleading advertising. i.e. advertising which in any way, including its presentation, deceives or is likely to deceive the public, or which, for those reasons, injures or may injure a competitor. Article 5 prohibits the use of offensive advertising, i.e. advertising that is contrary to good morals and customs, calls on people to act unlawfully or to violate prevailing standards of decency, or if it contains such activities. An advertisement is considered offensive in particular if the advertisement presents, incites or endorses discrimination on the grounds of nationality, race, colour, sex, age, language, origin, religion, political or other opinion, and financial or social status or other circumstances; calls on people to behave violently or incites violent behaviour in order to achieve an objective or in choosing the manner in which to achieve an objective; degrades lawful behaviour or directly or indirectly justifies violation of the law as a means of achieving an objective; plays on superstition, fear or sympathy; contains any direct statement or visual presentation regarding a sexual act, inappropriate nudity or socially unacceptable sexual behaviour; or presents false information concerning other persons, their products or services, or other facts.

Article 9 regulates advertising directed at children. Such advertising shall not exploit the natural credulity or lack of experience of children and shall not suggest that possession of a product, use of a service or achievement of some other objective intended by the advertisement will give the child an advantage over other children of the same age or that the lack thereof would have the opposite effect; advertising shall not incite children to behave or act in a manner which has or may have the effect of bringing children into unsafe conditions; it shall not include any direct appeal to children to demand the product or service being advertised from other persons; it shall not create feelings of inferiority in children or incite them to act in an aggressive manner. In the production of advertising directed at children and in the use of children in advertising, their unique physical and mental state resulting from their age shall be considered.

The Act also contains provisions on degrading advertising, the use of a persons name, image or property, surreptitious advertising and comparative advertising. Specific provisions apply to advertisement of alcohol, tobacco and medicinal products, health care services, financial

services, gambling, biologic products, weapons and ammunition and dangerous products. Advertising of prostitution is explicitly prohibited.

Act to Regulate Dissemination of Works which Contain Pornography or Promote Violence or Cruelty

The Act was passed on 16 December 1997 and entered into force on 1 May 1998. The Act applies to all types of works, among those audiovisual and printed works. Article 1(1) of the Act prohibits dissemination and exhibition of works which contain pornography or promote violence or cruelty to minors. Article 1(3) of the Act prohibits all broadcasting of such content.

According to Article 2, works which contain pornography or promote violence or cruelty may only be exhibited in specialised places of business. Specialised places of business shall not be located in the proximity of schools or child care institutions (Art 5(1)). Shops, cinemas, video theatres or premises of other places of business which are licensed to disseminate or exhibit works which contain pornography or promote violence or cruelty, shall not allow access to minors. Also advertising of such works is only allowed inside the premises of such specialised places of business (Art 6).

According to Article 3, if dissemination of works which contain pornography or promote violence or cruelty, takes place outside specialised places of business, such works shall not be displayed in a visible place and they shall be offered in a manner which prevents examination of the works by minors. This Article applies for example to shops, newsstands and the like.

According to Article 7(2) of the Act the content of a work is determined by the disseminating undertaking prior to dissemination or exhibition of the work. If the content of a work is ambiguous, the undertaking has the right to request a review of the work and determination of its content by the expert committee on works, operating under the Ministry of Culture (Art 8(1)). Upon dissemination and exhibition of works which are being reviewed by the expert committee, it shall be presumed that such works contain pornography or promote violence or cruelty (Art 7(2)). Once a work has been reviewed by the expert committee, the content of the work shall be considered as determined in all cases by the decision of the expert committee, except if the Minister of Culture reverses the decision of the expert committee (Art 7(3)).

The expert committee operates within the Ministry of Culture. The Committee consists of up to 10 members, including a chairman, all nominated by the Minister of Culture. The Committee comprises representatives of the Ministry of Culture, educational and cultural institutions, health protection and law enforcement agencies, artistic associations, health protection associations and other associations of people who disseminate and exhibit works. The function of the expert committee is to determine the content of works belonging to all media sectors upon request.

The composition and rules of procedure of the expert committee are prescribed in Decree No 69 of the Minister of Culture, passed on 3 May 2001.

The Committee convenes whenever there is a work submitted to it for review. The Committee can either review cases on formal meetings or pass decisions by telephone or by exchanging

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e-mails. The meeting has quorum if at least 5 members are represented. Decisions are passed by single majority, but at least 3 members have to vote for the decision. The members must pass their vote personally. The Committee may invite experts to participate in its meetings. Also the party, who was requested review of a work, may be given an opportunity to be present on the meeting.

The expert committee passes a decision within 30 days of receiving the request (Art 10(1)). The decision can be appealed to the Ministry of Culture and shall be reviewed within 15 days (Art 11(2)). The decisions of the Committee are published within two weeks of passing in at least one national newspaper.

Enforcement of the provisions of the Act is carried out by the police and the Ministry of Culture. Violations can result in fines, revocation of the licence.

1. Broadcasting

1.1. Regulatory framework

The Estonian broadcasting sector is regulated by the Broadcasting Act of 19 May 1994. The Act entered into force on 15 June 1994 and has since been amended numerous times. Part of the Act is applicable to all broadcasters established in Estonia, while one part regulates the public service television and radio.

Broadcasting is defined in Article 2 of the Act and means the transmission over the air (including that by satellite) or via a cable network, in unencoded or encoded form, of radio or television programme services intended for reception by the public with commonly used receivers. According to Article 5, the term Broadcaster (a radio or television broadcaster) means an undertaking, a non-profit association, a foundation or a legal person in public law which has editorial responsibility for the composition of one or several programme services and which broadcasts the programmes or has them broadcast.

Broadcasting in Estonia is an activity subject to a broadcasting licence, except for the two public service broadcasters that are subject to separate regulation under the Broadcasting Act. Violation of the Broadcasting Act and the individual licence conditions may lead to fines and revocations of the licence.

1.1.1. Legal provisions

Principles of Broadcasting Activities

Chapter 2 of the Broadcasting Act states the principles of broadcasting activities, such as freedom of activity, political balance of transmissions, protection of sources of information, the freedom of reception and transmission, the right of reply, guarantee of morals and legality, protection of minors, protection of copyright, etc. The general principles of broadcasting activities prescribed by the Broadcasting Act (1994) apply to all radio and television broadcasters that are established in Estonia and certain restrictions can also be applied to transmissions originating from foreign states.

According to Article 6 (1), broadcasters have the right to freely decide on the content of their programmes and programme services in compliance with the law and the conditions of the broadcasting licence. Article 6(2) states that the restriction of the freedom of creation guaranteed by law can be punished under administrative or criminal procedure. According to Article 6(3), in matters before a court, the court may prohibit the transmission of a certain programme or a part thereof on the basis and pursuant to the procedure prescribed by law.

Article 9 prohibits broadcasters from transmitting programmes the content of which is immoral or in conflict with the Constitution or laws. No guidelines exist as to what is to be considered immoral content and it would remain to be decided on case by case basis. Content in conflict with the Constitution or the laws would among others prohibit content falling under the prohibitions of the Act to Regulate Dissemination of Works which Contain Pornography or Promote Violence or Cruelty, the Advertising Act and the Penal Code.

Television programmes and programme services which are likely to impair the physical, mental or moral development of minors may only be transmitted if it is ensured, either by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission of such programmes or programme services will not be able to receive them. In addition, it shall be ensured that when such programmes are transmitted in unencoded form, they are preceded by a corresponding acoustic warning or identified by the presence of a visual symbol throughout their duration.

Article 7¹ of the Act prohibits the restriction of reception and retransmission of radio and television programmes and programme services originating from foreign states. However, temporary restrictions may be imposed in accordance with the requirements of international agreements, if a television programme or programme service originating from a foreign state manifestly and gravely infringes the generally recognised moral and ethical broadcasting principles to the extent which is likely to impair the physical, mental or moral development of minors; is likely to incite hatred on grounds of race, sex, religion or nationality; or involves pornography or gratuitous violence.

With regard to television programmes originating from the members states of the European Union or states party to the European Convention on Transfrontier Television, restrictions may be imposed only if: during the year preceding the potential imposition of restrictions, the television broadcaster has infringed the requirements specified in this section on at least two prior occasions; a competent Estonian body has notified the television broadcaster and a competent body of the European Union of the infringements and of the measures it intends to take should any such infringement occur again; consultations with a competent Estonian body and a competent body of the European Union have not produced an amicable settlement within 15 days of the notification, and the alleged infringement persists.

Article 7¹(4) states that television programmes and programme services from foreign states, which are likely to impair the physical, mental or moral development of minors may only be transmitted if it is ensured, either by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission of such programmes or programme services will not be able to receive them. In addition, according to section (5) it shall be ensured that

when such programmes are transmitted in unencoded form, they are preceded by a corresponding acoustic warning or clearly identifiable visual symbol.

Chapter 3 of the Act regulates advertising, teleshopping and sponsorship. The provisions are specific to the broadcasting sector and complement the Advertising Act of 11 June 1997 that applies to all media in general. The public service broadcasting organisations are prohibited from advertising, teleshopping and receiving sponsorship.

Public Service Broadcasting

Chapter 5 of the Act regulates the public service television and radio broadcasters Eesti Televisioon and Eesti Raadio. Both organisations are legal persons in public law and their activities are regulated by the Broadcasting Act and their own statutes passed by the Broadcasting Council in accordance with the Act.

According to Article 25 of the Broadcasting Act the functions of Eesti Televisioon and Eesti Raadio are to:

- 1) Advance and promote Estonian national culture, and record, preserve and introduce its greatest achievements;
- 2) Present the greatest achievements of world culture to the public;
- 3) Create and transmit multifaceted and balanced programme services at high journalistic, artistic and technical levels;
- 4) Satisfy the information needs of all sections of the population, including minorities;
- 5) Create primarily informational, cultural, educational and entertainment programmes.

According to Article 26 section 1 of the Act, the programmes of the ETV and ER shall facilitate:

- 1) the preservation and development of the Estonian nation, language and culture;
- 2) the strengthening of Estonian statehood;
- 3) the advancement of Estonia's international reputation.

According to Art 26(2), the programmes and programme services of ETV and ER shall influence everyone to respect human dignity and observe laws, considering the moral, political and religious beliefs of different sections of the population.

1.1.2. Administrative regulation/rules

All relevant regulation is to be found in the Broadcasting Act. Only broadcasting frequencies and the broadcasting licence form are prescribed in secondary legislation.

1.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

The Code of Ethics of the Estonian Press was introduced in December 1997 by the Estonian Newspaper Association, the Association of Estonian Broadcasters and the Estonian Press

Council. The Code of Ethics is a non-binding instrument relevant to all media. It contains provisions on the independence of journalists, treatment of sources of information, editorial guidelines, right of reply and advertising (full text of the code is attached to this document).

Direct reference to the obligation on the broadcasting organisations to follow codes of conduct is made in Art 13(2) of the Broadcasting Act. This provision provides that an executive producer shall ensure the compliance of transmitted programmes and programme services with the requirements of the Broadcasting Act and with fair practices of the press and the observance of the principle of freedom of speech.

1.2. Regulatory authorities/bodies

1.2.1. Authority/ies

Ministry of Culture

The Ministry of Culture is entrusted with the duty to issue, suspend or revoke broadcasting licences and exercise control over the fulfilment of the Broadcasting Act and broadcasting licence conditions.

According to Article 40 of the Broadcasting Act, the Ministry of Culture shall decide on and publish the types, number and other conditions of broadcasting licences to be issued and the terms for the submission of applications for a licence in at least one national daily newspaper; establish the standard licence application forms; review the applications submitted on time and decide to issue or refuse to issue a broadcasting licence or not to review the application.

Article 42 of the Broadcasting Act prescribes that the officials of the Media Division of the Ministry of Culture shall exercise supervision over compliance with the requirements of the Act, as well as the conditions relating to the programme service and with the term for commencement of the broadcasting activity. The officials of the Communications Board shall also exercise supervision over compliance with the technical conditions of a broadcasting licence.

Officials exercising supervision have the right to obtain recordings of programmes of broadcasters, if necessary; issue a mandatory precept to a broadcaster upon the violation of the Broadcasting Act or of the conditions of a broadcasting licence; and make a proposal to the Minister of Culture to suspend or revoke a broadcasting licence.

The Broadcasting Council

The Broadcasting Council is the highest organ of the public service broadcasting organisations, Eesti Televisioon and Eesti Raadio. It consists of nine members appointed by the Riigikogu, five of whom are from among the members of the Riigikogu and four members from among recognised specialist in fields relating for the performance of public broadcasting functions.

The Council exercises supervision over the performance of the public broadcasting functions deriving from the Broadcasting Act. The Council can decide the number of programme

services transmitted by Eesti Raadio and Eesti Televisioon, approve the statutes of Eesti Raadio and Eesti Televisioon; approve the policies and development plans of Eesti Raadio and Eesti Televisioon, exercise supervision over implementation of the policies and development plans of the two public service broadcasters. The Council is also vested with a number of financial and administrative powers regarding for example budget, employment contracts etc.

1.2.2. Self- or Co-regulatory body/ies

Most of the private broadcasting organisations are members of the Association of Estonian Broadcasters, representing over 90 percent of the turnover of all private stations. It is a non-profit organisation and non-governmental institution set up to protect the interests of radio and TV broadcasters. It has 19 members, two TV organisations, fifteen radio organisations, and two video production companies, which pay monthly fees.

The Association participated in the formation of the Code of Ethics of the Estonian Press in 1997.

The Association of Estonian Broadcasters and the public service broadcasters, Eesti Televisioon and Eesti Raadio, used to be members of the Estonian Press Council, a non-profit organisation founded to be a self-regulatory body for those who recognize it and also provide an expert opinion about media quality for the general public. The broadcasting organisations resigned their membership in the Press Council in 2001. The Press Council can, however, examine complaints about mass media from the aspect of good conduct and publish its non-binding expert opinion on its internet page. It is extremely seldom that the Press Council manages to have any condemning judgement published in the media.

The Association of Estonian Broadcasters does itself not regulate the conduct of its members and has no mechanism to deal with complaints from the public.

Neither private broadcasting organisations nor the public service television broadcaster Eesti Televisioon can be subjected to the Code of Ethics or to the self-regulatory mechanisms of the Estonian Press Council unless they are willing to abide by them voluntarily.

The public services radio broadcaster, Eesti Raadio, made a statement on 8 February 2005, subjecting itself to the Code of Ethics and the self-regulatory mechanism of another non-profit organisation, the Newspaper Association's Press Council of Estonia (Pressinõukogu, founded in 2002). Eesti Raadio has agreed to broadcast any decisions condemning its behaviour in the same programme where the breach took place.

2. Press

Soon after independence was re-established in 1991, the Parliament tried to pass a press law but due to active objection from publishers and journalists the draft never became a law. The absence of a press law does not mean there are no rules to regulate the media sphere. Several laws influence the operation of the media in different ways.

2.1. Regulatory framework

2.1.1. Legal provisions

Personality and privacy are protected by the Constitution and every person has the right to sue anyone who has violated his/her rights. But there is no sufficient court practice to make the rulings predictable. The Estonian law courts abstain from judging moral damages, intimating that determination of the value of moral damage in financial terms is rather complex. Thus, in Estonia it is quite difficult to re-establish one's rights in case of harm caused by media.

Cases regarding civil liability are covered by the Law of Obligations Act of 26 September 2001 (came into force 1 July 2002).

§ 1046. Unlawfulness of damaging personality rights

(1) *The defamation of a person, inter alia by passing undue judgement, by the unjustified use of the name or image of the person, or by breaching the inviolability of the private life or another personality right of the person is unlawful unless otherwise provided by law. Upon the establishment of unlawfulness, the type of violation, the reason and motive for the violation and the gravity of the violation relative to the aim pursued thereby shall be taken into consideration.*

(2) *The violation of a personality right is not unlawful if the violation is justified considering other legal rights protected by law and the rights of third parties or public interests. In such case, unlawfulness shall be established based on the comparative assessment of different legal rights and interests protected by law.*

§ 1047. Unlawfulness of disclosure of incorrect information

(1) *The violation of personality rights or interference with the economic or professional activities of a person by way of disclosure of incorrect information or by the incomplete or misleading disclosure of factual information concerning the person or the activities of the person is unlawful unless the person who discloses such information proves that, upon the disclosure thereof, the person was not aware and was not required to be aware that such information was incorrect or incomplete.*

(2) *The disclosure of defamatory facts concerning a person or facts which may adversely affect the economic situation of a person is deemed to be unlawful unless the person who discloses such facts proves that the facts are true.*

(3) *Regardless of the provisions of subsections (1) and (2) of this section, the disclosure of information or facts is not deemed to be unlawful if the person who discloses the information or facts or the person to whom such facts are disclosed has legitimate interest in the disclosure and if the person who discloses the information has checked the information or facts with a thoroughness which corresponds to the gravity of the potential violation.*

(4) *In the case of the disclosure of incorrect information, the victim may demand that the person who disclosed such information refute the information or publish a correction at the person's expense regardless of whether the disclosure of the information was unlawful or not.*

In cases of defamation of persons enjoying international immunity, representatives of the state authority, the court, or the judge, the new Penal Code stipulates certain penalties.

The Public Information Act that was passed on 15 November 2000 and came into force on 1 January 2001 regulates the right to gain access to public information held by state or municipal authorities, legal persons in public law and legal persons in private law or natural persons if they perform public duties pursuant to law.

2.1.2. Administrative regulation/rules

Not applicable

2.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

The Code of Ethics of the Estonian Press is applicable (see subsection 1.1.3. above)

The national daily business newspaper Äripäev has also its own Code of Ethics that goes more in detail regarding business ethics. The Code has been made part of the newspaper's employment contracts.

2.2. Regulatory authorities/bodies

2.2.1. Authority/ies

Not applicable

2.2.2. Self- or co-regulatory body/ies

The Estonian Press Council

The Estonian Press Council (Avaliku Sõna Nõukogu) was set up by the Estonian Newspaper Association in 1991. The model was taken from Finland.

In April 1997, several media organizations decided to reorganize Estonian Press Council on a wider basis, and a non-profit organization was founded on the grounds of private agreement, made by the Newspaper Association, the Association of Broadcasters, the Journalists' Union, the Union of Media Educators and the Consumers' Union. At present, also the Network of Estonian Nonprofit Organizations, the Estonian Council of Churches and a NGO called Media Watch have become the members of the non-profit organisation.

In November-December 2001, Estonian Press Council incurred a cataclysm, both organizational and conceptual. As a result, the operations were temporarily cancelled for 5 months and the Newspaper Association resigned membership in the organization, followed by the Association of Estonian Broadcasters and the public service broadcasting organisations.

The Estonian Press Council continues to be a self-regulatory body for those who recognize it and also provides an expert opinion about media quality for the general public.

The Estonian Press Council is an organ of the non-profit organisation Avalik Sõna (Public Word).

The aims of the Estonian Press Council are to protect press freedom, to examine complaints about mass media from the aspect of good conduct and to support the development of journalists' professional skills (including perception of ethics) and adherence to the good tradition of journalism.

The Estonia Press Council defines itself as a media watch organisation that handles complaints from the public and gives expert opinions on its own initiative.

Organisation

The non-profit organisation Avalik Sõna running the Press Council has 5 member organisations. Every member-organization delegates 1-3 representatives to the Press Council.

The total number of members is limited to 17, of which 7 need to represent non-media organizations. At present, there are 10 members in The Press Council.

Press Council of Estonia

The Press Council of Estonia (Pressinõukogu) is a voluntary body of press self-regulation to handle complaints from the public about material published in the press. The Council provides the public with a possibility to find solutions to disagreements with the press without the need to go to court.

The Press Council was set up in 2002 by the Estonian Newspaper Association after the Association had resigned from the Estonian Press Council (Avaliku Sõna Nõukogu). The Press Council of Estonia claims to have replaced the Estonian Press Council in disputes regarding newspapers.

In April 2003, the main online news portals agreed to stick to the standards set by the Press Council regarding journalistic content of these sites. At the same time also magazines subjected themselves to the Code of Ethics.

The Press Council of Estonia is a part of the non-profit organisation Estonian Newspaper Association.

The Press Council of Estonia discusses complaints about material published in the press and which have been published no later than three months ago.

Organisation

The Press Council has nine members, including five from the media sector and four lay members from the non-media sectors.

Conclusions

The fact that there are two self-regulatory mechanisms in Estonia to in fact follow the same Code of Ethics, does not speak for any strong mechanism for enforcing self-regulation. While one claims to be competent to address complaints regarding newspapers and the other claims to be a self-regulatory organisation for all media, it can be in fact concluded that both are equally competent to handle any complaints against press that are placed before them. The two organisations have not agreed upon their respective competences and the mere fact that there exist two organisations to handle similar complaints diminishes the respect for their decisions.

3. Online Services

The sector is almost entirely subject to self-regulation. The news portals and newspaper online editions have self-regulation in place on the level of their own operation: notice and take down.

The major internet service provider that operate news portals stated in December 2002 that they recognize the Press Council of Estonia (Pressinõukogu) as the media's self-regulatory body to handle complaints from the public. The portals also said they recognize the Code of

Ethics. In April 2003 the Press Council of Estonia and internet news portals signed an agreement under which the Press Council agreed to handle complaints regarding the journalistic content of these sites. News portals, which were not attached to traditional newspapers, agreed to conform to the Code of Ethics and undertake the obligation to honour the Press Council's rulings on them. As newspaper web sites were already within the bounds of the Press Council, it was considered a logical next step to start accepting complaints from the public also about news portals which are not linked to a traditional newspaper.

The Information Society Services Act

The Information Society Services Act was adopted on 14 April 2004 and came into force on 1 May 2004. The Act transposes the e-commerce directive 2000/31.

4. Film

The Estonian Film Foundation

The Estonian Film Foundation (EFF)¹⁰ was established in 1997 by the Government of Estonia as a private legal institution with the task of financing Estonian film production establishing and developing international film contacts promoting Estonian films at home and abroad, supporting the training of Estonian filmmakers and audiovisual professionals creating and maintaining Estonian film databases. EFF is financed from the state budget. The EFF budget for 2005 is 44,5 million EEK (€ 2.85 million) to be used for financing the national film production, including features, shorts, animation, and documentaries. The EFF operates under the auspices of the Estonian Ministry of Culture.

Estonian Film Foundation represents Estonia at international film festivals, markets and organisations. Estonia is a member of MEDIA Plus and European Audiovisual Observatory. As of January 2004, Estonia also joined Eurimages.

The Cultural Endowment of Estonia

The Cultural Endowment of Estonia¹¹ is a legal person in public law that is to support the arts, folk culture, physical fitness and sport and the construction and renovation of cultural buildings by the accumulation of funds and distribution thereof for specific purposes.

The Cultural Endowment of Estonia supports projects which promote, introduce and popularise the arts and sport, artistic associations, research related to culture and sport, and to further the development of the arts, folk culture, physical fitness and sport. The organisation also gives grants to audiovisual arts.

The Cultural Endowment of Estonia is regulated by the Cultural Endowment of Estonia Act of 1 June 1994.

¹⁰ www.efsa.ee.

¹¹ www.kulka.ee.

5. Summary

The self-regulatory mechanism of the Estonian media is based on the same Code of Ethics. It is at the moment applied to complaints handled by two different Press Councils of two separate non-profit organisations. The competences of these two councils overlap and the respect for their opinions is likely to be weakened because of this split. At the best, the Councils can demand that their condemning opinions must be published in the same media where the breach took place. The Councils have no enforcement mechanism for their decisions and they do not award damages.

However, since its foundation in 2002, the younger of the two Councils has gained new members who voluntarily subject themselves to its self-regulatory mechanism.

The Code of Ethics is not very detailed and the responsibility to make the right ethical decision rests often with the journalists. This can uncomfortably often lead to identification of persons, also minors in media, especially on some police reports on private TV broadcasting channels that make no attempts to hide the image or identity of the persons involved in humiliating situations. These broadcasters have not subjected themselves to any self-regulative mechanisms. The fact that the ethical standards are low and self-regulation mechanisms work unsatisfactorily may speak for a need for stronger public regulation co-regulation efforts.

APPENDIX

The code of ethics for the Estonian press

1. General provisions

1.1. Freedom of communication is the basic premise for a working democratic society, and the free press the means and prerequisite for attaining it.

1.2. The press and other media shall serve the right of the public to receive true, fair and comprehensive information. The critical observation of the implementation of political and economic power is the main obligation of the press.

1.3. Provided it remains within the limits of the law, the free press and other media may not be restricted or obstructed in the gathering and publication of information.

1.4. A journalist shall be responsible for his or her own statements and work. Media organizations shall undertake to prevent the publication of inaccurate, distorted or misleading information.

1.5. The reputation of any individual shall not be unduly harmed without there being sufficient evidence that the information regarding that person is in the public interest.

1.6. Individuals in possession of political and economic power and information important to the public shall be considered as public figures; and their activities shall be subject to closer scrutiny and criticism. The media shall also consider as public figures individuals who earn their living through publicly promoting their persona or their work.

2. Independence

2.1. Journalists shall not accept posts, bribes, or other inducements which may cause a conflict of interest in connection with their journalistic activity and which may compromise their credibility.

2.2. Journalists working with financial and economic information shall not distribute it privately or use it in their personal interests.

2.3. Journalists may not work for an institution whose activities they cover.

2.4. Editorial staff members may not be obliged by their employer to write or perform any like activity contradicting their personal convictions.

3. Sources

3.1. When conducting interviews, journalists must always identify themselves and the media outlet they represent. It is also recommended that the journalist specify the intended use of the information being gathered.

3.2. Journalists may not take advantage of people lacking experience in relating to the media. The possible consequences of their statements shall be explained prior to the conversation.

3.3. Journalists must strictly keep any promises made to their sources and must avoid making promises they may not be able to keep.

3.4. Media outlets have a moral obligation to safeguard the identity of confidential sources of information.

3.5. The editors shall, especially in the case of controversial materials, confirm the accuracy of the information and the reliability of the sources. The editors shall also verify the accuracy of all significant facts if the author of the material to be disseminated is not a member of the regular editorial staff.

3.6. Minors shall be interviewed, as a general rule, only in the presence of or with the consent of the parent or guardian. Exceptions can be made to this rule if the interview is intended to protect the interests of the child or if the child is already under close public attention.

3.7. A journalist shall use honest means of obtaining audio or video recordings and information, with the exception of cases where the public has a right to know information that cannot be obtained in an honest way.

4. Editorial guidelines

4.1. News, opinion and speculation shall be clearly distinguishable. News material shall be based on verifiable factual evidence.

4.2. In the case of materials concerning a controversy, the journalist shall hear all sides of the conflict.

4.3. It is not recommended to emphasize nationality, race, religious or political persuasion and gender, unless it has news value.

4.4. The media shall not treat any individual as a criminal prior to a court sentence to that effect.

The news value of a suicide or attempted suicide is to be questioned rigorously.

4.6. Information and speculation about an individual's mental or physical health shall not be disseminated unless the individual is willing or the information is in the public interest.

4.7. As a rule, child custody battles should not be covered.

4.8. When covering crime, court cases and accidents, the journalist shall consider whether the identification of the parties involved is necessary and what suffering it may cause to them. Victims and juvenile offenders shall not be identified as a general rule.

4.9. Materials violating the privacy of an individual can only be disseminated if public interest outweighs the right to privacy.

4.10. Care should be taken in the use of quotes, photographs, audio and video materials in a context different from the original. Editing likely to mislead, as well as distortion of sound shall be identified by a corresponding subtitle or announcement.

4.11. Photographs, captions, headlines, leads and broadcast lead-ins may not mislead the audience.

The content, context and intended time of release of materials submitted by an outside contributor should not be altered without the author's knowledge and consent.

5. Right of reply

5.1. Individuals subjected to serious accusations should be offered an opportunity for immediate rebuttal in the same edition or programme.

5.2. The objection should correct any factual errors and misquotations. The space/time taken up by the objection may not exceed the space/time for the offending statement. The objection shall be published immediately and prominently, without any editorial comment.

5.3. A correction shall be issued in the event of any inaccuracies.

6. Advertising

6.1. Advertisements and promotional materials shall be clearly differentiated from editorial material.

6.2. Journalists and regular outside contributors should not air commercials within their programme, or write promotional articles under their own name in the same publication.

6.3. A product or trademark shall be mentioned or displayed in news and other editorial material only if relevant and justified.

6.4. In the case of consumer-oriented journalistic material, the audience must be informed how the selection of the products was made and how the products were tested.

3.7. Finland

Introduction

A short presentation of the regulatory system of Finland's media is included in most general reports on the Finnish media landscape, for example by Marina Österlund-Karinkanta in *Internationales Handbuch Medien 2004/2005* (Hans-Bredow Institut für Medienforschung an der Universität Hamburg. Nomos Verlagsgesellschaft, Baden-Baden 2004) and in *The Euromedia Handbook: The Media in Europe* (edited by Mary Kelly, Gianpietro Mazzoleni and Denis McQuail. Third edition, Sage Publications, London 2004). A semi-official one by Jyrki Jyrkiäinen at <http://virtual.finland.fi/netcomm/news/showarticle.asp?intNWSAID=27113> has the following summary of the Finnish system, under subtitle "Lightweight regulation":

Quotes to be intended! The basic tools in Finnish media policy are legislation, public subsidy, taxation and reductions in fees.

The Ministry of Transport and Communications oversees telecommunications, the operating licences for local radio and television and the press subsidy system. The Ministry of Education promotes the content production for TV, video and motion pictures, copyright matters, education, archiving, and research. The Finnish Communications Regulatory Authority (FICORA) inspects technical infrastructures, equipment, frequencies and technical licences. The Government grants operating licences for local radio and television. The Government also decides the fee for the annual television licence for viewers.

For the print press there has been in various forms a public subsidy system since the 1970s. Government subsidies to the print press as well as for cultural and opinion papers, and to political party publications, are granted according to a proposal made by a state committee. There is no special legislation on media concentration in Finland.

Another overview of the Finnish media landscape (by Minna Aslama and Kaarle Nordenstreng for *Media Between Culture and Commerce*, edited by Els Debens. Intellect Books, Bristol, forthcoming in 2005) gives the following summary of the regulatory and institutional arrangements:

In Finland, the basic objective of media policy is freedom of speech. The principle, designated as 'freedom of expression', is included in the Constitution of Finland (revised in 2000) and in the Act on the Exercise of Freedom of Expression in Mass Media, which provides medium-neutral regulation of freedom of speech (revised in 2004). The current goals, however, emphasize the support for an efficiently functioning market. The present government program (June 2003), under the heading 'The policy on information society and communications', sets as goals to boost competitiveness and productivity. Another aim is to maintain Finland's position as one of the world's leading producers and users of information and communications technology. More citizen-focused aims are to promote social and regional equality,

and to improve citizens' well-being and quality of life through effective utilisation of information and communications technologies. The new Communications Market Act (2003) – covering all communication networks from mobile to digital terrestrial broadcasting networks – aims at securing that networks and services are available to all telecommunication operators and users throughout the country, and that they are technologically advanced, of high quality, reliable, safe and inexpensive.

Finland is included also in the new media law portal of the Nordic Information Centre for Media and Communication Research (Nordicom) at <http://www.nordicmedia.info/en/index.html>.

The concept of *co-regulation* is not quite clear notwithstanding what is proposed in such EU documents as *European Governance, White Paper*, Brussels, 25.7.2001 COM(2001) 428 final, http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001_0428en01.pdf. Therefore this country report remains somewhat vague regarding different domains of regulation.

Nevertheless, the Finnish tradition of involving organised interest groups, especially industrial employers and employees, in lawmaking and public administration, can be seen as a built-in system of co-regulation also in the media field. Although there are few specific mechanisms for co-regulation, the corporatist system of preparing and monitoring legislation as well as organizing public administration in Finland meets the idea of co-regulation in a general sense.

The Finnish legislation system takes market actors and citizen groups into account in several ways:

1. Committees appointed by the Government
 - very usual way to prepare drafts for legislation
 - committee members represent different actors and civic groups
2. Opinions and proposals
 - different interest groups are invited to give their comments on a plan or draft
3. Hearings by the Parliament
 - In Parliament motions and proposals go through several Select Committees which can hear experts from different interest groups. “These include officials as well as representatives of government agencies, organizations and other interest groups which the matter concerns.” (<http://www.parliament.fi/>> presentation > Parliament as a legislative body > Handling of matters in committee)

In the Media and Communications sector the Ministry of Transport and Communications also uses task forces to prepare modifications for statutes. In these cases interest groups are invited to participate or to give their opinions.

For Copyright matters Government appoints Copyright Council. The Council is composed of representatives of the major right holders and users of protected works. The chair, vice-chair

and at least one member represent other interested parties. http://www.minedu.fi/minedu/copyright/copyright_council.html.

The present country report is divided into the four media sectors designated in the project grid, in addition to which advertising is included as a fifth “medium”. Relevant legislation available in English is listed in Appendix.

Constitutional Law

The first three sections of the Constitution define the political system of Finland as a republican parliamentary democracy based on the principles of popular sovereignty and representative government, with the Parliament as the supreme organ of the state. The status of the highest state organs and their general fields of competence have been defined in section 3 in accordance with the customary three-way separation of powers.

Basic rights and liberties are stipulated in chapter 2 which lists the fundamental values of individual freedom, democratic participation and personal security. The most significant changes, in comparison with the older provisions, relate to the extension of the application of the basic rights and liberties to all persons within the scope of the Finnish legal system, regardless of citizenship, and to the inclusion of economic, social and cultural rights in the Constitution. One of the nearly 20 sections is the following:

Section 12 – Freedom of expression and right of access to information

Everyone has the freedom of expression. Freedom of expression entails the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. More detailed provisions on the exercise of the freedom of expression are laid down by an Act. Provisions on restrictions relating to pictorial programmes that are necessary for the protection of children may be laid down by an Act.

Documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by an Act. Everyone has the right of access to public documents and recordings.

Act on the Exercise of Freedom of Expression in Mass Media

Complementing the above mentioned section of the Constitution is the *Act on the Exercise of Freedom of Expression in Mass Media (460/2003)*. It contains more detailed provisions on the exercise, in the media, of the freedom of expression enshrined in the Constitution. In the application of the Act, interference with the activities of the media shall be legitimate only in so far as it is unavoidable, taking due note of the importance of the freedom of expression in a democracy subject to the rule of law.

One of the main aims of the new law is to regulate all media regardless their technology. Here are some examples of the regulations in the law:

Responsibilities

- Publisher must name a responsible editor for the publication
 - The responsible editor must be over 15 and not insolvent

- The publication must carry notice on the identity of the publisher and the responsible editor; everybody is entitled to get the information on identity of responsible editor
- Responsible editor can be fined for publishing information that breaks Finnish laws

Corrections

- If an individual can see himself as having been insulted by a message in the publication, he has the right to get an answer posted in the same publication
- Individuals and organizations have the right to get false information posted about them in the publication corrected
- The correction or answer must be posted without cost and delay
- The responsible editor must help in the technical implementation of the answer or correction if required

Anonymity

- Publisher has the right to keep source of a message anonymous

1. Broadcasting

1.1. Regulatory framework

1.1.1. Legal provisions

The operations of the Finnish Broadcasting Company (the public service broadcasting system designated as “YLE”) are regulated in the Act on the Finnish Broadcasting Company (Act No. 1380/1993), which came into effect on 1 January 1994. The financing of YLE is regulated by the Act on the State Television and Radio Fund (Act No. 745/1998).

Private radio and television operations over the air are regulated by separate legislation. Private, non-public service broadcasting can be pursued only by those who have been granted an operating licence under this legislation. This legislation was given on 9 October 1998, and is comprised of the Act on Television and Radio Operations (Act No. 744/1998) and certain technical amendments to the Act on Telecommunications Administration and the Copyright Act (Acts No. 747/1998 and 748/1998). In November 2001 a new Radio Act was approved and came into force on 1 January 2002.

Changes have been made in many of these acts in two stages related to the reform of the whole legislation concerning the communication market.

On 1 July 2002 the first phase of the reform entered into force through changes in the Telecommunications Market Act, in the Act on Television and Radio Operations, in the Act on the State Television and Radio Fund, in the Act on the Finnish Broadcasting Company and in the Act on Communications Administration. The changes included, among others, the regulation concerning digital television and radio distribution as well as the percentage of

transmission time required to be reserved for programmes produced by independent production companies; it was increased from 10% to 15%.

On 25 July 2003 the second phase of the reform came into effect. The new Communications Market Act (Act No. 393/2003) replaced the Telecommunications Market Act and changes were made in the Act on the amendment of the Act on Television and Radio Operations, the Act on the amendment of the Act on the State Television and Radio Fund and the Act on the amendment of the Act on the Finnish Broadcasting Company. With these changes the EU regulatory framework for all electronic communication is implemented in Finnish legislation. Also the must carry rules were altered and transferred to the Communications Market Act. They oblige cable television networks to transmit without charge YLE's transmissions (including ancillary and supplementary services related to these programmes) and the nationwide channels of MTV Finland and Channel Four Finland. For the commercial companies the must carry only covers service advertisements and services that form part of the programmes. In Finland the digital television actors have agreed to use the MHP (Multimedia Home Platform) standard in accordance with the view of the Ministry of Transport and Communications. Accordingly they have agreed upon a joint superteletext standard. The responsibility for the Electronic Programme Guide lies according to the Communications Market Act with the administrator of the multiplexes i.e. Digita (and is not covered by the must carry obligation). The actors have agreed to use a common EPG-standard.

1.1.2. Administrative regulation/rules

1.1.3. Other provisions, especially co-regulatory or self regulatory measures, codes of conduct, etc.

The Act on the Exercise of Freedom of Expression in Mass Media (460/2003) demands that every broadcaster shall designate responsible editor for a programme "to direct and supervise editorial work, to decide on the contents of a periodical, network publication or program, and to see to the other tasks assigned to him or her by this Act".

YLE has adopted (by the Administrative Council) "Programme Regulations" which set guidelines for all of its radio and television programmes.

Finnish television channels (the public service YLE as well as commercial MTV3 and Nelonen) agreed in the summer of 2004 to classify television content as a safeguard for children. They also agreed to transmit material potentially harmful for children at times when children are not expected to watch television: K-11 (under 11 years) after 17.00 o'clock, K-15 after 21.00 and K-18 after 23.00. These restrictions are shown before each classified programme.

1.2. Regulatory authorities/bodies

1.2.1. Authority/ies

The activities of the holders of operating licences are supervised by the Ministry of Transport and Communications and its subordinate, the Finnish Communications Regulatory Authority (previously the Telecommunications Administration Centre). Supervision with respect to the ethical principles of advertising, teleshopping spots, and the protection of children, is carried out by the Consumer Ombudsman.

Finnish Communication Regulatory Authority FICORA is a general administrative authority for issues concerning electronic communications and information society services. Its mission is to promote development of the information society in Finland. The specific duty of the

Authority is to safeguard the functionality and efficiency of the communications markets in order to ensure that consumers have access to competitive and technically advanced communications services that are both of good quality and affordable.

The Authority is an agency under the Ministry of Transport and Communications.

FICORA's mandate regarding broadcasting include control of the use of radio frequencies. FICORA monitors television and radio programmes to ensure their compliance with the statutory requirements on European works, advertising and sponsorship. It takes care of television fee administration (television user register, invoicing, inspections). FICORA covers the costs of its operations with the fees it collects. Most of the revenue come from radio transmitter licence fees, telecommunications network numbering fees, postal operation supervision fees and Internet domain fees. The television fees and licence fees for carrying on television operations are passed on to the State Television Radio Fund. FICORA also submits an annual report on the public duties of the Finnish Broadcasting Company YLE to the Government. This report is based on the report YLE is obliged to give annually to FICORA.

1.2.2. Self- or Co-regulatory body/ies

Council for Mass Media in Finland (see <http://www.jsn.fi/eng_default.asp>) has been established to cultivate responsible freedom in regard to the mass media as well as provide support for good journalistic practice. Those who have signed the basic agreement of the Council commit themselves to observe this agreement and to exert influence to the effect that their members and those in their service shall function in a manner befitting this contract. Both Press and Broadcast Media are included through:

Finnish Association of Magazines and Periodicals

Finnish Association of Local Periodicals

Finnish Association of Radio and Television Journalists

Finnish Newspapers Association

Union of Journalists in Finland

Finnish Broadcasting Company

MTV Oy Ltd ("MTV3" Finnish Commercial TV)

Association of Finnish Broadcasters

Oy Ruutunelonen Ab ("Channel Four" Finnish Commercial TV)

Finnish Urban Press Association

2. Press

2.1. Regulatory framework

2.1.1. Legal provisions

The Act on the Exercise of Freedom of Expression in Mass Media (460/2003) contains more detailed provisions on the exercise, in the media, of the freedom of expression enshrined in the Constitution.

In the application of this Act, interference with the activities of the media shall be legitimate only in so far as it is unavoidable, taking due note of the importance of the freedom of expression in a democracy subject to the rule of law.

2.1.2. Administrative regulation/rules

State subsidies to the press are the main instrument to counter the trend of newspaper disappearing from the market, i.e., to maintain pluralism and diversity in the print media. The main forms of subsidy used are classified as selective and non-selective. Non-selective forms include reduced or subsidised transportation rates for all newspapers (subscribed, not free advertising papers), mainly through the public postal service, as well as tax exemptions – applied to all papers regardless of their political orientation or circulation. This form accounted for majority of the financial subvention to the printed press until the 1980s, but lately it has been reduced to a marginal share. Selective forms, on the other hand, mean direct support to certain papers, typically party organs according to their political weight measured by the number of seats in Parliament. In the cultural field, so-called opinion papers have a separate selective assistance program through which the state wishes to encourage pluralism, but the financial volume and media policy importance of this form is much smaller than the ‘political’ form. Presently selective subsidies are used to pay a good deal of costs of the main party organs, but since they are relatively small by size, the state subsidies represent just 1-2 percent of the total press economy.

In 2005, the amount of selective subsidies for purposes of lowering newspaper transport, delivery and other costs is 5,8 million EUR. Party subsidies are granted to the organs of political parties represented in Parliament and to the County of Åland to support information and communications. Amounting to a total of EUR 7,7 million in 2005, the sum of subsidies is divided among the political parties on the basis of their relative strength in Parliament.

In addition, the Ministry of Education grants subsidies for cultural press with 0,8 million EUR in 2005.

2.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

Guidelines for good journalistic practice

New version of the “Guidelines for good journalistic practice” entered into force in January 2005. This code of conduct is drafted and formally adopted by the Union of Journalists in Finland. However, in practice the code is recognised throughout the media field, including all relevant media houses. The code is the backbone for the adjudications of the Council for Mass Media in Finland (see 1.2.2). (The former version of the code is in English at http://www.jsn.fi/info.asp?sivuid=eng_guidelines.)

2.2. Regulatory authorities/bodies

2.2.1. Authority/ies

2.2.2. Self- or Co-regulatory body/ies

Council for Mass Media in Finland, see above 1.2.2.

3. Online services

3.1. Regulatory framework

3.1.1. Legal provisions

Again, the principal legal provision regulating also online services in Finland is the law "Application of Freedom of Speech in Mass Media" (460/2003). One of the main aims of the new law is to regulate all media regardless of the

technology it uses. Thus, the law put traditional media like printed newspapers, and new media, like online publications on the same line.

However, the law is driven by the traditional publication and publisher ideology in that it regulates first and foremost institutional publications, regardless of its media. For instance, the law defines web publication as a periodic publication created from materials collected by the publisher and targeted to the public at large. Individual web-pages and community discussion sites, etc. fall in the scope of the law only if the contents are clearly criminal. In addition, it has been surmised that even discussion fora of online newspapers do not fall within the regulation of this law as long as the publisher does not edit the messages in fora.

Here are some examples of the regulations in the law with special regard to online communication:

Responsibilities

- All published materials must be stored for 21 days
- Everybody has the right to get the stored information if they feel false
- Information has been posted about them or they wish to post a correction

Corrections

- If an individual can see himself as having been insulted by a message in the publication, he has the right to get an answer posted in the same publication

Anonymity

- Administrator of servers the publication resides on must provide all identification information on a message to Finnish authorities if required

Other relevant laws include:

- Act on the Protection of Privacy in Electronic Communications
- Domain Name Act 2003
- Communications Market Act 2003
- Act on Electronic Signatures 2003
- Act on Communications Administration 2001
- Decree on Communications Administration 2001
- Act on the Protection of Privacy and Data Security in Telecommunications 1999

3.1.2. Administrative regulation/rules

There are several administrative regulations that further specify and expand media laws, and are applicable also on online media. These rules deal with, for example, copyright issues.

3.1.3. Other provisions, especially co-regulatory or self regulatory measures, codes of conduct, etc.

Guidelines for good journalistic practice apply also on online journalistic media

3.2. Regulatory authorities/bodies

Finnish Communication Regulatory Authority FICORA (see 1.2.1.)

3.2.2. Self- or Co-regulatory bodies

a) Council for Mass Media in Finland

See 1.2.2.

b) Copyright Council

The Finnish Government appoints a Copyright Council every three years to assist the Ministry of Education in copyright matters and to issue opinions on the application of the Copyright Act. The Council is composed of representatives of the major right holders and users of protected works. The chair, vice-chair and at least one member represent other interested parties. Anyone can request an opinion from the Copyright Council - e.g. private

persons, business enterprises, organisations, the police, administrators and courts of law, whether or not they have personal interests involved.

c) Kuvasto (the copyright organisation of visual artists)

Legal basis: Copyright Act 1961, Copyright Decree 1995

Functions/competencies: Looks after the rights to visual works (photographs excluded).

Organisation: Represents visual artists.

d) Information Society Council

The Information Society Council is a negotiation body for steering the development of the information society and for co-ordinating co-operation between administrative branches and between administration, organisations and business life.

4. Film/Interactive games

4.1. Regulatory framework

4.1.1. Legal provisions

The legal framework is provided by:

- the Act on the Classification of Audiovisual Programs (775/2000)
- the Penal Code §17–20 of Chapter 17 (Crimes Against Public Order)

There has been a law on film control and a government office for film control in Finland since 1946, but since 2001 there is no film censorship in the strong sense of the word. There is no legal authority to order bans or cuts to audiovisual programmes in preventive control.

Classification for age limits: The legal authority to limit the freedom of speech is restricted to giving age categories only. The legal basis for this limitation to the basic right of the freedom of speech is §12 of the Constitution (2000): provisions on restrictions relating to pictorial programmes that are necessary for the protection of children may be laid down by an Act.

The age categories are: General audience (no restrictions, "permitted") and Restricted ("forbidden", in Finnish "kielletty" designated by "K") with four age limits: K7, K11, K15, and K18. A person two years younger may attend in the company of an adult when the programme is labeled K7, K11, or K15. An age limitation may be given when a programme is likely to have a detrimental effect on the development of children through its violent, sexual, shocking or other comparable content.

Programmes are classified for public exhibition (in cinemas etc.) and for distribution for private consumption (VHS, DVD, programming-on-demand). This law does not concern television programming and interactive programs that can be downloaded from the web.

Programmes free from preventive inspection: There is no general duty of preventive inspection of audiovisual programmes in Finland since 2001. Yet programs which are offered

for adults only (age label 18) need to be registered. For instance, in 2004, over 22.000 hard core pornographic programmes were registered.

There is no legal duty for preventive inspection of interactive programmes such as computer games. However, the distributor has to provide them with age recommendations.

Programmes from large categories such as cooking, travel, science, education, etc. need to be registered only.

General duty to register programmes: Each audiovisual program that is offered for public exhibition and professionally for private consumption (VHS, DVD, computer game, etc.) has to be registered.

Preliminary inspection by discretion: If the suspicion of content harmful to children arises, the Finnish Board of Film Classification may order the programme for inspection even in categories generally exempted. By mutual consent with the distributor there is the option of preliminary inspection for defining age limits for computer games etc.

Restrictions of content by general law: The Penal Code, Chapter 17, sanctions the dissemination of depictions of brutal violence (§ 17) and images offending sexual decency (§ 18 – sexually offending images involving children, violence, or animals). There are a number of other abuses of the freedom of speech concerning protection of basic rights of dignity, religion, race, ethnicity, etc., formulated by law. They are not grounds for preventive control of audiovisual programmes. The Finnish Board of Film Classification is, however, the authority often consulted by the prosecution in criminal cases involving audiovisual programs.

4.1.2. Administrative regulation/rules

- Decree on the Classification of Audiovisual Programmes (822/2000) by the Government
- Decree on the Finnish Board of Film Classification (1086/2004) by the Government, and
- Decree on the Basis for Payments for the Measures Taken by the Finnish Board of Film Classification and the Finnish Appeal Board of Film Classification (858/2000) by the Ministry of Education

4.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

The Finnish television channels the Finnish Broadcasting Company (YLE TV1, YLE TV2, etc.), MTV3, and Nelonen agreed to start in the summer of 2004 a sharpened practice to classify television content as a safeguard for children. They also agreed to transmit material potentially harmful for children at times when children are not expected to watch television: K11 after 17.00, K15 after 21.00, and K18 after 23.00.

4.2. Regulatory authorities/bodies

4.2.1. Authority/ies

- Act on the Finnish Board of Film Classification (776/2000)
- to classify programs for viewers under 18 years
- to register programs exempt from classification

The organ for the control of audiovisual programs is the Finnish Board of Film Classification (Valtion elokuvatarkastamo).

There is also an Appeal Board for Film Classification (Valtion elokuvalautakunta). On its decisions appeals may be addressed to the Supreme Court of Administration (Korkein hallinto-oikeus).

4.2.2. Self- or Co-regulatory bodies

There are none for the moment.

5. Advertising

5.1. Regulatory framework

5.1.1. Legal provisions

- Consumer Protection Act 38/1978 (pdf)
- Decree on the indication of the prices in marketing consumer products (1359/1999)
- Product liability act (694/1990)
- Act on television and radio operations (744/1998)
- Insurance contracts act (543/1994)

5.2.1. Regulatory authorities/bodies

5.2.1. Authority/ies

Consumer Agency & Ombudsman

The Consumer Ombudsman issues practical guidelines concerning marketing methods in certain sectors. The guidelines are based on rulings of the Market Court and of the Consumer Ombudsman and/or on discussions with organizations in the specific sector concerned. List of guidelines available in English:

- Minors, marketing and purchases (pdf),
- Price expressions as a marketing method (pdf),
- Promotional games (pdf, summary),

- Statutory liability for lack of conformity and guarantee in the sale of consumer goods (pdf),
- The use of environmentally oriented claims in marketing (pdf).

5.2.2. Self- or Co-regulatory body/ies

Market Court

The Market Court is a special court hearing cases that have been subjected to its jurisdiction by:

- 1) the Act on Competition Restrictions;
- 2) the Public Procurement Act;
- 3) the Act on Certain Proceedings before the Market Court; and
- 4) other legislation.

The activity of the Market Court is conducted by a Chief Judge. The Market Court also comprises four Market Court Judges and a sufficient number of case-handlers, i.e., Market Court Referendaires (Legal Secretaries).

Both legally qualified members and part-time expert members participate in the hearing of cases. In the spring of 2002, the Council of State assigned 16 expert members to the Market Court for a term of four years. The expert members hold a suitable Master's degree and are familiar with competition law, procurement, economics, business life, financial affairs, consumer protection or marketing.

At the Market Court, one legally qualified member can give a ruling if an appeal, petition or claim in a case has been withdrawn or the case is dismissed or dropped without considering the merits. Otherwise, three legally qualified members constitute a quorum. Competition cases are dealt with by legally qualified members together with a minimum of one or a maximum of three expert members. From one to three expert members can also take part in hearing market law and public procurement cases if the nature of the case requires it.

However, if the case-law in a case to be decided is well established, two legally qualified members will constitute a quorum of the Market Court.

Whenever a case may be of significance in principle as regards application of a law or if a ruling were to depart from earlier case-law, the Chief Judge can refer the case for consideration before a larger panel of members (a reinforced hearing). The case is then considered by four legally qualified members and a maximum of four expert members.

In competition and public procurement cases, the procedure is governed by the provisions of the Act on Competition Restrictions and the Public Procurement Act together with the provisions of the Administrative Judicial Procedure Act. As a rule, the proceedings are conducted in writing. Nevertheless, the Market Court can hold an oral hearing if necessary in order to clarify the case. Market Court rulings in competition and public procurement cases are subject to appeal to the Supreme Administrative Court.

In market law cases, the procedure is governed by the provisions of the Act on Certain Proceedings before the Market Court and the Code of Judicial Procedure. As a rule, written preparation is followed by an oral preparatory hearing and then by an oral main hearing. Market Court rulings in market law cases may be appealed to the Supreme Court if the latter grants leave to appeal.

Council of Ethics in Advertising

The Council of Ethics in Advertising in Finland issues statements on whether or not an advertisement can be considered ethically acceptable in view of the ICC International Code of Advertising Practice and other corresponding codes and guidelines. The Council may also develop the principles of ethics in advertising.

The Council does not issue statements on whether or not an advertisement or advertising practice is against the law.

The Council shall have a chairman, a vice-chairman, and a minimum of four and a maximum of six members. The Central Chamber of Commerce appoints the members for a three-year term and elects the chairman and vice-chairman amongst the members. The Central Chamber of Commerce appoints four members in accordance with a proposition by the Advertising Council.

The chairman and at least one member shall have the university degree of Master of Laws. One of the members shall be an expert in equality issues.

Consumers and entrepreneurs, as well as organizations and authorities that work with issues related to advertising, may request a statement from the Council. The Council may take up an advertisement at its own initiative for a particularly good reason.

The Council decides whether or not to take up a request. It deals with requests that can be deemed to have public significance.

The Council gives its statement in writing, one copy for each party and one copy for the archives of the Council. The Council may decide not to issue a statement, for a specified reason. The reasons underlying such a decision must be stated.

The Council does not disclose any trade secrets that were revealed during the proceedings.

The Council members are bound by a confidentiality clause regarding any trade secrets that may come to their knowledge during the proceedings.

Statements issued by the Council are public unless otherwise decided.

There are no fees on the proceedings unless the Council decides, due to the extent of the case, to charge a fee for a case where the request for a statement comes from an entrepreneur, who must be informed thereof in advance.

APPENDIX

Main legislation can be found in English in <http://www.finlex.fi/en/laki/kaannokset/>

The Finnish Constitution (731/1999) <http://www.om.fi/21910.htm>

Act on the Exercise of Freedom of Expression in Mass Media (460/2003)

Act on the Openness of Government Activities (621/1999)

Act on the Protection of Privacy in Electronic Communications (516/2004)

Communications Market Act (393/2003)

Act on Television and Radio Operations (744/1998)

Government Decree on Television and Radio Operations (698/2003)

Act on the Finnish Broadcasting Company Ltd (1380/1993)

Act on the State Television and Radio Fund (745/1998)

Act on the Market Court (1527/2001)

Radio Act (1015 /2001)

New Copyright Law is in Parliament under discussion (Government proposal HE 28/2004, not in English)

Copyright administration is in Ministry of Education <http://www.minedu.fi/minedu/copyright/index.html>

Act on the Finnish Board of Film Classification (776/2000)

Act on the Classification of Audiovisual Programmes (775/2000)

Decree on the Finnish Board of Film Classification (823/2000)

Government Decree on the Classification of Audiovisual Programmes (822/2000)

Act on Consumer Agency (1056/1998, not in English)

Information on Consumer Agency: http://www.kuluttajavirasto.fi/user_nf/default.asp?site=36&tmf=0&lmf=0&id=0

Information on Consumer Ombudsman

http://www.kuluttaja-asiamies.fi/user_nf/default.asp?site=36&tmf=0&lmf=0&id=0

Also

Domain Name Act (228/2003)

Act on Provision of Information Society Services (458/2002)

Act on Communications Administration (625/2001)

Film Promotion Act (28/2000)

Film Promotion Decree (121/2000)

Act on Discretionary Government Transfers 688/2001 on which Decree on press subsidies (1481/2001, not in English) is based

3.8. France

Introduction

General remarks

Opinion surveys done annually since 1987 show considerable distrust for the media on the part of the public. This is partly due to the corruption, propaganda, partisan distortion, incompetence that have marred French news media since they were granted freedom in 1881. In order to curb media abuses of freedom, and to affirm their right to proper media, the French rely on regulation ¹. Whenever a problem emerges, they will try to solve it by law, even though freedom of expression may suffer. Nowadays, self-regulation is practised more, but still very little, less than in similar nations. Co-regulation ² is almost unknown.

Policy objectives

- The ostensible aim of all French legislation is to ensure the coexistence of media freedom with other fundamental rights (like human dignity or public order) and the co-existence of freedom of enterprise with the pluralism and quality of media that are needed for democracy.
- Another aim of legislation is to protect and promote the national culture, at the expense of freedom of trade. That is called the *cultural exception*, particularly in the fields of broadcasting and the cinema.
- Secondly, legislation aims at protecting professional journalists so that they can insure their services to the public properly.

Media regulatory systems in France ³

The French press was granted full freedom in 1789 by the Revolution, but soon lost it as various authoritarian regimes succeeded one another until 1871. Only then, at the beginning of the Third republic, did it definitely recover its liberty, thanks to the *General press act* of 1881, often amended since but still valid. That strict law, however, could not protect the press from corruption and control by economic forces. Hence an enduring public distrust towards the news media – in spite of clear improvement after World war two. By that time, most French people read provincial newspapers for the local news and, more and more, magazines – and they listened to radio, then later watched television newscasts.

As elsewhere in Europe, broadcasting was from the outset tightly controlled but until World war two a private commercial radio system was tolerated. After the war, a strict monopoly

¹ By far the best source of information on French media law is Emmanuel Derieux' *Droit de la communication*, Paris, LGDJ, 4th ed. 2003.

² In the sense of regulation carried out jointly by State authorities and the media.

³ Apart from books and advertising, which have been added, it seems that some media sectors or sub-sectors are not covered by the draft, like wireservices and other providers of material.

was imposed. Commercial stations did broadcast to the French public from just over the border but, except for Radio Luxembourg, they too were controlled by the French government. The monopoly was terminated in 1982 by a social-democratic government under the pressure of both new technology (FM) and the public.

The major media

In the television field, the public networks *France 2*, *France 3*, *France 5* and (bi-national) *Arte*; the major commercial over-the-air networks: *TF1*, *M6* and (pay-channel) *Canal Plus*, together with 6 digital networks (beginning in April 2005), and with dozens of cable/satellite channels, French and foreign, dealing with news, sports, series, movies, cartoons etc.

As regards radio, the non-commercial Radio-France manages national networks (*France-Inter*, *France Info*, *France Bleu*, *France Musiques*, *France Culture*) and about 60 regional stations. Also part of the State-owned system: *RFI* (international) and *RFO* (broadcasting in overseas territories). About 1200 FM stations operate most of which are commercial, specialised and fed by some 14 networks (*NRJ*, *RTL*, *Europe 1*, *Sky Rock*, *Nostalgie* etc.). Other local non-profit stations belong to associations.

Daily newspapers. In Paris are published *Le Monde* (345 000), *Le Figaro*, *Libération*, *Le Parisien*, *L'Equipe* (sports), *La Croix*, *l'Humanité* and four others - to which must be added the recent give-away *20 Minutes* and *Metro* (read by 2 million people). In the provinces, about 60 regional dailies, like *Ouest-France* (760 000, largest circulation in the country), *Sud-Ouest*, *La Voix du Nord*: nine out of 10 people reading a daily read a regional newspaper. With less than 150 dailies sold per 1000 inhabitants, France ranks around 27th in the world.

But the French are among the greatest magazine readers (about 1300 sold for 1000 inhabitants): some ten weekly newsmagazines (*Nouvel Observateur*, *l'Express*, *Le Point*, *Paris-Match*); many television magazines (*Télé7jours*); women's magazines, weekly (*Femme actuelle*, *Elle*) and monthly (*Prima*, *Marie-Claire*); sports and youth magazines.

The major press groups are *Socpresse* (Dassault), *Hachette Filipacchi Médias* (Lagardère), followed by *Le Monde*, *Amaury*, *Bayard* etc.

Constitutional law

The French are well-known for two traditions: the attachment they have for the central State and for codified Law – together with the inevitable reactions: anarchism and the contempt for regulation.

The 1789 *Declaration of the rights of men and of citizens* states that:

“The free communication of thoughts and opinions is one the most precious human rights: hence every citizen may speak, write, print freely, but will answer for abuse of that freedom in cases determined by Law. (Art.11)”

The Declaration is posited as a political foundation in the Preamble to the latest Constitution (1958, amended since 17 times). In 1984, the Constitutional court made it clear that the right belonged to all citizens, not just to media and newspeople.

The Declaration is set as a preamble to the Constitution, together with the preamble to the 1946 Constitution which adds to it a list of "political, economic and social principles", affirming the equality of women; the rights of asylum seekers; the right to work, unionise, strike, participate in the management of the enterprise one works for; also the rights, especially of children, mothers, old people, of the poor and the sick, to health, livelihood and leisure; and lastly the rights of children to education and culture .

No passage in the Constitution itself refers in any way to media. However, Title XV acknowledges the transfer of some legislative competence to the European union. Hence French media are now subject to European law as it is gradually integrated into French law. Decisions of French courts can be appealed to the *Court of justice of the European communities* in Luxembourg. And plaintiffs can also turn to the *European Court of Human Rights* in Strasbourg.

In 1978, a new juridical concept appeared, the independent regulatory authority , part of the State, but independent from the Executive. It is in charge of a crucial sector like the protection of human rights. The first was the *Commission nationale de l'informatique et des libertés* (CNIL) created to protect individuals from cyber-violation of their rights. The CSA, which supervises broadcasting (see infra), is such an authority.

Legislation

There is no formal code of media law: regulations concerning media are to be found in all traditional branches of Law (civil, criminal, etc.).

Restrictions to Freedom of Speech

The *1881 Press act*, supplemented by various laws (often integrated into the Penal code) and interpreted in case-law , determines the press offences mentioned by Art.11 of the *1789 Declaration*. Originally meant for print publications, it now applies to all media. The 1881 Act establishes special rules for the prosecution of such offences to the advantage of defendants.

- Libel and insult, dealt with in Art.29 of the 1881 Act. The offence is diversely defined according to who is the victim.
- Racism (libel and provocation to discrimination): *loi Gayssot* of 13 July ,1990.
- Invasion of privacy: France has one of the strictest laws (17 July, 1970) to protect privacy and the right to one's own image. In serious cases, a court can enjoin publication.
- Pornography: the laws of 1949 and 1975 were extremely strict. The revised Penal code of 1994 is no longer concerned with offending public morality (*outrage aux bonnes mœurs*), but very much with protecting minors.
- Presumption of innocence : people accused of a crime should not be treated as if guilty (law of January 1993).

- Secrecy is to be kept about ongoing police investigations (*secret de l'instruction*) - but that rule is commonly violated.

The right of reply. It was in France that it was first established by law, in 1822. It was preserved in the 1881 Act. Its Art.13⁴ entitles any person or institution, whenever he/she/it is mentioned in the press, to reply even if he/she/it has not been in any way attacked - and even if a possible error has already been corrected. In the case of broadcasting, the right only dates back to 1982 and only in case of an attack. Some accuse that right of being an act of expropriation at the expense of the press. In practice, it is difficult to use it.

Copyright. The 1992 *Code de la propriété intellectuelle* has codified the provisions of 1957 and 1985 laws in accordance with international agreements. The French concept, in the European tradition, strives to protect the moral rights of the author (as opposed to the Anglo-Saxon notion of *copyright*).

1. Broadcasting

1.1. Regulatory framework

Broadcasting was freed from State monopoly by the *Broadcasting act* of 29 July, 1982 (voted by a leftwing majority), further liberalised by that of 30 September, 1986 (voted by a rightwing majority) – a law often amended since, esp. in January 1989. The system now consists of (see supra):

- a State-owned public sector for television and for radio – plus two institutions: INA (archives, research, training) and TDF (distribution).
- A private sector, mainly commercial, for television and for radio.

Both are closely regulated, partly for technical reasons of course, but mainly because an unregulated market is rightly considered incapable of providing the needed freedom and "public service". The latter phrase covers pluralism of opinion, democracy, national security, the French culture (incl. language), the audiovisual industry etc. For instance, 60% of the films shown by over-the-air television networks in prime time must be European works and 40% French. Private radio stations must include 40% francophone songs in their musical programs.

Commercial radio or television firms are required, not only to get a licence, but, like press firms, also to be transparent as to ownership and organisation. A complex system of limitations aims at restricting foreign participation and, mainly, concentration of power over different media, within broadcasting or within a given company.

Advertising

Advertising and sponsoring provide just about all the revenue of commercial television and, paradoxically, a third of the budget of public television. Hence it is highly and very diversely

⁴ Article 12 gives public officials a (rarely used) right of correction: they could, on the front page of a periodical, rectify errors and use double the space of the original report on their activities.

regulated. The March 27, 1992 executive order requires that ads respect truth and human dignity, be not racist, sexist, violent, not offend religious or political convictions, etc. No political advertising is permitted. Besides, not anyone can advertise on the air: after brand name ads were allowed in 1968, some firms still were forbidden from advertising there (supermarkets, producers of books, movies, periodicals), largely to protect the provincial press. Such prohibitions are gradually being relaxed, under European pressure. Other obligations: ads must be identified as such. No commercial break may interrupt a film on public channels; normally only one on commercial channels; no more than 6 minutes of ads are allowed per hour on average, etc.

Generally speaking, in the name of public health and safety, for the protection of the consumer, the *Code de la consommation* (Law of 26 July, 1993) regulates what kind of advertising is, and is not, permitted, whatever the vehicle, notably targeting misleading ads. Comparative advertising was almost impossible until 1992: since 2001 it is allowed.

The *Loi Sapin* in 1993 imposed transparency in dealings between advertisers, advertising agencies and media. The *Loi Evin* (10 January, 1991) prohibited advertising for tobacco products. Advertising for alcoholic beverages, medicines and firearms is restricted or prohibited.

Self-regulation. The *Bureau de vérification de la publicité* (BVP) was set up in 1953 by the industry (with input from media and consumer associations) to draft codes of ethics and filter ads for media that subscribe to it. Most media are free not to use its advice, but television outlets legally may only use ads vetted by the BVP: that may be considered as an early form of co-regulation. The BVP also monitors the media and denounces abuses.

1.2. Regulatory authorities/bodies

Broadcasting, public and commercial, is still to a large extent under the control of Parliament and government. For instance, Parliament every year sets the viewer's fee that largely finances public broadcasting and decides the distribution of that revenue among its branches. The government remains in charge of regulating cable. Both have a say as regards programming.

That said, broadcasting is supervised by one central institution, the *Conseil supérieur de l'audiovisuel* (CSA, 1989): an independent administrative authority (see supra), created under a different name by the 1982 Act. It is assisted by CTRs (*Comités techniques radiophoniques*) which deal with private radio stations.

The CSA has nine unremovable members, appointed for a non-renewable term of six years, three each by the President of the Republic, by the Speaker of the House and by the President of the Senate. It oversees over-the-air, cable and (most) satellite radio and television:

- it manages the spectrum,
- it sets rules for all broadcasters, almost the same for both types,
- it issues licences to commercial broadcasters for a fixed number of years, after approving the candidate's aims and commitments (*cahier des charges*),

- it appoints the heads of the public broadcasting services,
- it monitors the airwaves to check compliance with its rules and with all *cahiers des charges* – and also considers complaints from private individuals or professionals or the authorities.
- Depending on the violation, it can make its criticism public, impose a fine, suspend a licence, shorten its duration, even withdraw it.

Self- regulatory bodies

Starting in 1998, public television has provided itself with three independent ombudsmen (*médiateurs*) one for the general programming of *France Television*, one each for the news services of television channels *France 2* and *France 3*. Appointed for three years, they report to the president of the group. Besides, *Radio France Internationale* has one and also *Radio France* since 2002. There was no legal obligation for those appointments, as there is in Switzerland.. The ombudsmen field complaints from viewers and listeners and have a weekly program in which to report the major cases.

Media Accountability Systems.

Mainly to avoid legislation, all media do practise self-regulation, establish rules for themselves but they have proved not to be terribly interested in enforcement.

Media accountability differs from self-regulation in that media users are involved, i.e. the people who own freedom of speech and press. Journalists being in charge of a public service, they must discover what information people need and want. Then they must provide it. Then they must check with the public whether they have done it satisfactorily. The tools to insure such accountability are *media accountability systems* (M*A*S) ⁵, none governmental, all using only external moral pressure. They are extremely diverse but all have the same purpose: to make news media serve the public better – and most involve the public in some way.

Among European news media, the French may be the least keen on accountability – as they are on self-regulation. France is, with Greece, the one country where a press council has never been even seriously considered. There is only one newspaper ombudsman and no true journalism review . The email addresses of journalists are rarely published, for public feedback. Media-funded foundations that encourage training and research do not exist. Ethics courses in J-schools are almost unknown. Consumer defence reviews show no interest in media.

That said, the following M*A*S have an influence on, hence to some extent contribute to regulate, the mainstream media:

- Reciprocal monitoring and criticism, as done on media pages in many periodicals or the *Arrêt sur image* program on (public) television channel France 5.

⁵ See a list of 80 M*A*S on www.presscouncils.org in the Media Accountability Systems section.

- Books criticising media attitudes (e.g. *L'Omerta française* ⁶) or individual media (e.g. *La Face cachée du Monde* ⁷): book firms show far more courage than magazine or newspaper publishers.
- The weekly *Canard Enchaîné* (approx. 600 000 copies) criticizes mainstream media and publishes what they are afraid to.
- More and more numerous are blogs that attack one or more media - but they have nothing like the impact they have in the US.
- Citizen associations, mainly radical like *Acrimed*, *Pieds dans le Paf*, *Observatoire français des médias* – use the Web, publications and conferences.
- Non-profit research done by universities, within the CNRS ⁸, or by NGOs, sometimes with State funding.
- The existence of such public service media as Arte – or largely available foreign media such as CNN.

2. The Printed Press

2.1. Regulatory framework

The *General Law on the Press of 1881*, often amended, still regulates the print media. It affirms press freedom and makes minimal requirements before publication:

- whoever wants to publish a periodical need only declare it,
- each copy must bear the name/address of the printer and name of the editor,
- sample copies must be deposited with various institutions.

However, the Act does not just provide for sanctions *after* violations – but also for pre-publication State intervention, like the (seldom used) right of the police to seize or prohibit a publication so as to preserve public order; to avoid serious violations of the rights of persons; and in exceptional circumstances (state of emergency, state of siege)⁹. Moreover:

- the sale of a foreign publication can be prohibited by the Minister of the interior and all copies confiscated, which is contrary to international, esp. European, agreements ¹⁰.
- A law of July 16, 1949, makes publications meant for children/adolescents subject to stricter pre-publication formalities. And any publication likely to have a noxious

⁶ By Sophie Coignard & Alexandre Wickham, Paris, Albin Michel, 1999.

⁷ By Pierre Péan et Philippe Cohen, Paris, 1001 Nuits, 2003.

⁸ National Centre for Scientific Research.

⁹ Quite a few seizures took place during the Algerian war.

¹⁰ as affirmed by the European Court of Human Rights in a judgement of July 17, 2001.

influence on young people (pornographic, violent, racist, pro-drugs) can be prohibited from selling to under-18s and from advertising in any way¹¹.

Press companies are subject to a special legal status aimed mainly at insuring transparency as to ownership, independence from foreign influence, and diversity by avoiding excessive concentration (e.g. no one is to control over 30% of the daily press). Foreign ownership is restricted.

The press needs to be made available to all through distribution. The law of 2 April, 1947 lets publishers free to distribute their publication (which few can do) – and it provides that group distribution will be done by (non-profit) cooperatives. In fact, 49% of the NMPP, the central distributor, now belongs to the huge commercial conglomerate Hachette.

A special form of regulation comes in the shape of financial assistance, whose purpose is to assist a vital public service, to maintain a plurality of publications and to keep their prices low. The list of beneficiaries is determined by a *Commission paritaire des publications*, half of whose seats go to publishers and half to the State, with the purpose of insuring unbiased attribution. The help comes in the form of tax breaks (see *Code général des impôts* – Tax Code): exoneration or low rates (esp. VAT). And of special postal, train and airline rates. And of special subsidies given small national or provincial newspapers that receive little advertising revenue.

The print media are not subject to any specific regulatory authorities. Violations of the media laws are dealt with by regular courts, some of which specialize in press cases, like the *Tribunal de grande instance* in Nanterre (92).

Journalists are often confused with media yet they are professionals whose interests are not necessarily those of the commercial firm that employs them. Whether they work for print or electronic media, French Law protects rather than restricts them.

There is no educational or other requirement to enter the profession, yet it has acquired a special status. A union, the *Syndicat national des journalistes* (SNJ), born in 1918, fought hard to obtain a collective contract from the publishers – and finally won it from Parliament in 1935: a law on the status of journalists, which turned them into a special category of workers. Newspeople, among other things, benefit from the *conscience clause*¹². And also enjoy a special ID card delivered by a *Card commission* to journalists, defined as people drawing the major part of their income from work for a news medium. Only in 1982 was it acknowledged by law that broadcast news people were as much journalists as their colleagues in the print media.

The *Convention collective nationale de travail des journalistes* of 1 November, 1976 (redrafted on 27 October, 1987) regulates the relationship between publishers and

¹¹ The same is applied to audiovisual products by a law of June 17, 1998.

¹² Which enables him/her to resign from a medium if it is sold or changes its orientation, yet receive the same benefits as in a case of redundancy.

professionals. It deals with their right to unionise, their copyright, working hours, vacations, retirement, conflicts, dismissal, etc.¹³

To be noted is that long before, in 1918, the SNJ drafted one of the first press codes of ethics (revised in 1938).

Protection of sources

The 1918 SNJ code and the 1938 IFJ code claimed the journalist's right to professional secrecy. French courts tended to protect the journalists against having to reveal their sources of information. The law of 4 January, 1993 now gives them some protection against police searches and allows them if asked to refuse to reveal their sources. However, in spite of Art.10 of the *European Convention for the Protection of Human Rights*, that privilege is still uncertain ¹⁴.

Media accountability systems

Codes have become more numerous in recent years, after a number of scandals at the turn of the 1990s. The provincial daily press gave itself a charter, and the provincial weeklies too, and the association of news agencies, and quite a few individual papers. *Le style du Monde* was published in 2002 which includes a chapter on ethics. However, the numerous unions of journalists seem unable to agree on drafting a common code – or the publishers unwilling to cooperate on one with the unions.

Just one daily newspaper, *Le Monde*, has a mediator (i.e. ombudsman), since 1994. The same quality daily is also among the few media to have an efficient *société des rédacteurs*, a registered company of journalists who demand to have a say in the policy of the medium, efficient because it own over 30% of the capital. *Le Monde* also has a *société de lecteurs* : its 13 000 reader-members owns over 10% of shares and can also exert an influence.

Common M*A*S. On the other hand, M*A*S that were inexistent or rare before, have become such a normal part of the media landscape as to be un-noticeable, like correction boxes, letters to the editor (mainly in magazines, and not yet in the provincial press), media pages and blogs, university level education for journalists, readership surveys, regular meetings of actors in social communication, etc..

3. Online Services

Internet matters are controlled by both the CSA (see supra) and the *Autorité de régulation des télécoms* (ART). Legislation is being discussed to clarify responsibilities and to introduce into French law the 2002 European directives on electronic communication. Also involved is an AAI, the *Commission nationale de l'informatique et des libertés* (CNIL), a protector of

¹³ See the text on www.presscouncils.org in the Codes of Ethics section.

¹⁴ Police searches at two publications (*L'Equipe* and *Le Point*) in early 2005 created an uproar.

privacy and other human rights against cyber-abuse, created by a 6 January, 1978 law and bound by the European directives of 1995 and 2002.

It was the Internet that prompted the Conseil d'Etat (supreme administrative court), in a 1998 report to the Prime Minister, to introduce the concept of co-regulation, a combination of traditional regulation and self-regulation initiated by media protagonists and associations – which has not been unanimously welcome ¹⁵.

All national laws (concerning copyright, privacy, pedophilia, libel, racism etc.) apply to that medium but the problem is to enforce them because of the essentially international character of the Web – and the difficulty to trace originators.

An association, the *Forum des droits sur l'Internet*, was created in 2000, with government support, which works within the *European internet co-regulation network*. It aims to stimulate debate, answer FAQ, and help Web users, (a Net ombudsman was appointed in 2004).

4. Film

The film industry and its professionals are very tightly supervised – in order, paradoxically, to protect their freedom. That State control, say its advocates, accounts for the vitality of the French cinema. But it is also criticised for effects contrary to its purpose – and for being at variance with European directives.

The *Code de l'industrie cinématographique* (December 1946, often amended and supplemented) set up the *Centre National de la Cinématographie* (CNC) whose approval is needed to set up shop and for every phase of film-making, distribution, exploitation, export. Major collaborators on a film must hold a professional ID card, whose deliverance by the CNC requires possession of a degree or extensive experience.

On the other hand, the State (executive order of June 16, 1959) heavily subsidises the industry, by grants, low taxes, advances on future box-office receipts (money coming from taxes on cinema ticket sales) and incitement to investors.

It also protects the industry (Law of 29 July, 1982) by setting delays before a film can be shown on television or recorded versions can be sold. Over-the-air television networks can only show a certain number of films per year and none on certain days and at certain times. As mentioned supra, of the films shown in prime time, 60% must be European works, 40% French.

Besides, the Minister of culture, advised by a *Commission de classification* (Executive order of 23 February, 1990), delivers a *visa d'exploitation* by which is allowed to be shown to all

¹⁵ The so-called co-regulation, the representativeness and legitimacy of whose participants are doubtful, if not suspicious, seems to serve mainly as a means of influence over the public authorities used by a few pressure groups aiming at preventing any change or making sure that decisions made are favourable to them – such is the opinion of an eminent French media law professor.

publics / to the over-12/ over-16 / over-18 – but exploitation can be prohibited. Whatever the ranking, local authorities can also ban a film.

Pornography. A law of 30 December, 1975 sets porn (and hyper-violent) movies in a special category. They do not get any subsidy, are more heavily taxed and can only be shown in specialized theatres. Actually now they are mostly sold as cassettes and DVDs by mail order or on the Internet.

The law of 17 June, 1998 makes it a crime to let under-18s have any access to X-rated movies. Scrambled (Canal plus) and satellite pay-channels, however, regularly show hard-core films after midnight and soft-core after 22.00. Tolerance is now great for explicit depiction of sex in all media.

5. Books

The book industry is free of restrictions to its freedom (and the beneficiary of no subsidy apart from a low VAT, 5.5%). The only restriction aims at maintaining creativeness and diversity by protecting small publishers and bookshops from the supermarkets' focus on best-sellers: the maximum discount on the price of books is 5% (Law of 10 August, 1981), with few exceptions.

3.9. Germany

Constitutional basis

Basic Rights

The basic rights of communication are laid down in Art.5 (1) of the German Constitution (*Grundgesetz*, henceforth “GG”), which quotes:

“Everyone shall have the right to freely express and disseminate one’s opinion in form of speech, writing and pictures, and to freely inform oneself by using generally accessible sources. Freedom of press and freedom of reporting by means of broadcast and by using films are guaranteed. There shall be no censorship.”

While the right to express one’s opinion and informing oneself is first of all seen as a “classical” civil right, the German Constitutional Court (*Bundesverfassungsgericht*, “BVerfG”) interprets the freedom of mass media communication, especially by means of broadcasting, according to a different underlying concept. According to the Court’s point of view, Art.5 (1) sentence 2 of the GG containing the freedom of media is not merely a subjective right, but also an objective guarantee, which states the obligation for the lawmaker to ensure freedom of public communication (BVerfGE 7, 198 (204 f.); 57, 295 (319 f.)). The lawmakers have to guarantee that a free and open process of forming public and individual opinion is given. This includes further objectives like guaranteeing variety and diversity, and the fair chance of participating in public communication. However, the lawmakers have to fulfil this task without interfering with the journalistic autonomy of the media. Mass media communication has to function without any state interference (see Hoffmann-Riem, *Regulating Media*, New York 1996, p. 119 +). In order to fulfil these slightly paradoxical constitutional requirements the lawmakers use structural and procedural instruments for broadcasting regulation.

There is a special German broadcasting regulation (less “liberal”, compared to press or film) which derives from the conviction that broadcasting plays a special role in public communication, being suggestive, current and having a spread-effect (BVerfGE 90, 60 (87)), and the risk of market failures. There is a debate going on between constitutional lawyers in Germany whether – when it comes to digitalisation – these assumptions for broadcasting are no longer valid, or, the other way round, whether the arguments given by the constitutional court can be applied to new media services as well.

However, due to these special constitutional requirements the role of the German Constitutional Court shall not be underestimated regarding the structuring of the German broadcasting system over the last 50 years. Several landmark-decisions have had an exceptional influence on the lawmaking process.¹

¹ BVerfGE 12, 205 - 1. Rundfunkentscheidung (Deutschland-Fernsehen); BVerfGE 31, 314 - 2. Rundfunkentscheidung (Umsatzsteuer); BVerfGE 57, 295 - 3. Rundfunkentscheidung (FRAG); BVerfGE 73, 118 - 4. Rundfunkentscheidung (Niedersachsen-Urteil); BVerfGE 74, 297 - 5. Rundfunkentscheidung; BVerfGE 83, 238 - 6. Rundfunkentscheidung (Nordrhein-Westfalen-Urteil); BVerfGE 87, 181 - 7.

In contrast to broadcasting, the press has not been heavily regulated. With regard to the press the German Constitutional Court pointed out that historical developments had resulted in a certain equilibrium in such way that the guarantee of comprehensive information and formation of opinion through the press today might be satisfied by ensuring the status quo (BVerfGE 57, 295 (323)).

Legislative Competence

Germany is a federal republic consisting of 16 states (*Bundesländer*). Therefore, legislative power is shared between the Federation and the states. According to Art. 70 (1) of the GG, the states hold the legislative competence unless the constitution provides a legislative competence for the Federal State. There is a Federal state competence for telecommunications, for combatting economical concentration, and in respect to several other subjects, which can be of importance when media regulation is concerned. However, the competence to ensure the functioning of the media system lies in the hand of the states. Especially when it comes to the regulation of technical services, e.g. conditional access, the system of legislative competences can easily lead to conflicts between federal and state governments.

Broadcasting is regulated by state laws which have been harmonised by the Interstate Treaty on Broadcasting (*Rundfunkstaatsvertrag*, “RStV”, adopted on 31 August 1991, last amended 1 April 2005). There are specific media laws or interstate treaties for public broadcasters.²

A service is defined as broadcasting by the interstate treaty on broadcasting, if it is intended to be received by the general public, transmitted by means of telecommunications and if it is characterised by a so-called presentation (*Darbietung*). If a service does not have the feature of a presentation it is classified as a Media Service, e.g. teleshopping and most of the internet services are seen as Media Services.

As far as the press is concerned, Art. 75 (1) No. 2 of the GG determines that the Federation shall have power to enact provisions on “the general legal relations of the press” as a framework for legislation by the different states. However, the Federation did not make use of this right until today and, therefore, the states enacted their own press laws³. Regarding Film the Federation is restricted to financial aid.

1. Broadcasting

The basis for development of the German media system was set after World War II when the Allies in-licensed newspapers and established public broadcasting. Especially the British Broadcasting Corporation (BBC) served as a model for German public broadcasters, which

Rundfunkentscheidung (Rundfunkfinanzierung); BVerfGE 90, 60 - 8. Rundfunkentscheidung (Rundfunkgebühren); see the compilation of links at <<http://www.ikmrecht.de/lehre/bverfge/index.html>>.

² E.g. the Act for the public broadcaster WDR in North Rhine-Westphalia <http://www.wdr.de/unternehmen/media/wdr_gesetz_e.pdf> (available in English).

³ The press-laws of all 16 states are available on the internet at <<http://www.presserecht.de/gesetze.html>>.

were set up in different states, or as one single broadcaster jointly for several states⁴. Later on, these public broadcasters formed a kind of network, the ARD⁵. In 1963, a nation-wide TV broadcaster, the ZDF⁶, was established by a treaty between the states. Each public broadcaster represented in the ARD offers several radio programmes for its respective home state(s). Besides these, there is a German international broadcaster, the Deutsche Welle.⁷

Broadcasting services have been offered by private entrepreneurs since 1984. Nowadays, cabled TV-households have a choice of approximately 33 TV channels, public and private ones.

55,6 % of all German households receive analogue programmes via cable, 4,4 % make use of terrestrial transmission and 39,9 % via satellite; there are 4.7 million households receiving digital television, 57,4 % via satellite (see Media Perspektiven, Basisdaten 2004, p. 6). So far, 52,6 % of all Germans use online-services, 49,4% of all German households have access to the internet (see van Eimeren/Gerhard/Frees, Media Perspektiven 2004, p. 350 (351), and Media Perspektiven, Basisdaten 2004, p. 88).

Public Broadcasting

In the so-called dual system – a broadcasting order in which public and private broadcasters co-exist – public broadcasters shall fulfil a special function according to the Constitutional Court. As the Court supposes that economically driven private broadcasting tends to seek mass appeal and disregards minority interests, a basic provision (*Grundversorgung*) has to be offered by public broadcasters. According to the Court, the above-mentioned deficits of private broadcasting are acceptable as long as public broadcasters ensure basic provision (BVerfGE 73, 118 (157 f.)). However, private broadcasters are not prohibited from ensuring this basic provision either, on the other hand, public broadcasters are not restricted to offering basic provision. How the tasks of public broadcasters are to be described and specified is one of the main points of debate in German media policy.

In order to enable the public service broadcasters to fulfil their tasks the states have to guarantee the necessary funding. Households having a broadcasting receiver are obliged to pay broadcasting fees (see sec. 2 (2) Rundfunkgebührenstaatsvertrag). The amount to be paid is defined in a complex process in which an independent expert commission (*Kommission zur Ermittlung des Finanzbedarfs der öffentlich-rechtlichen Rundfunkanstalten*, “KEF”⁸) is

⁴ Bavaria: <<http://www.br-online.de>>; Hesse: <<http://www.hr-online.de>>; Saxony; Saxony-Anhalt; Thuringia: <<http://www.mdr.de>>; Hamburg; Lower Saxony; Mecklenburg-West Pomerania; Schleswig-Holstein: <<http://www.ndr.de>>; Brandenburg: <<http://www.orb.de>>; Bremen: <<http://www.radiobremen.de>>; Saarland: <<http://www.sr-online.de>>; Berlin: <<http://www.sfb.de>>; Baden-Württemberg; Rhineland-Palatinate: <<http://www.swr.de>> North Rhine-Westphalia: <<http://www.wdr.de>>.

⁵ *Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland*, <<http://www.ard.de>>.

⁶ *Zweites Deutsches Fernsehen*, <<http://www.zdf.de>>.

⁷ <<http://dw-world.de>>.

⁸ <<http://www.kef-online.de>>.

involved. The KEF has to scrutinise the plans of public broadcasters in view of efficient use of money. Besides the broadcasting fees as a primary source of funding, the public broadcasters are permitted to earn money by means of advertising and sponsoring. There are advertising restrictions for public broadcasters which, in the first line, attempt to prevent these broadcasters from predominantly using economically driven programming. For example, public broadcasters are not allowed to broadcast advertisements after 8 pm.

One feature characterising public broadcasters are the internal supervisory bodies (*Rundfunkräte*, ZDF: *Fernsehrat*), in which so-called socially relevant groups, like trade unions, employers associations, churches, environmentalist groups, are represented. It is the task of these bodies to monitor the legal requirements and ensure that diversity in programming, i.e. representing the manifold opinions to be found in society itself, is achieved. Besides that, each state government provides a legal supervision with limited power. The head of the public broadcasters, the director (*Intendant*) is elected by the respective internal body.

Since 1999, the public broadcasters which are members of the ARD and the ZDF were given permission to use digital transmission, to offer programme guides and bundle programmes (sec. 19 RStV). Furthermore, they are allowed to offer so-called programme-aligned online-services (sec. 11 (1) second sentence RStV). The following text focuses on private broadcasting.

Private Broadcasting

Private entities require a licence for broadcasting.⁹ The process of licensing is structured by the state media laws, and, for nation-wide television, the Interstate Treaty on Broadcasting. State Media Authorities are responsible for regulating private broadcasting services.¹⁰ They are not part of the state administration, but independent agencies; therefore, they have internal bodies consisting of representatives of socially relevant groups (like the internal supervisory councils of the public broadcasters, see above), or they are made up of experts. The administrative director of the authority prepares and carries out the decisions taken by the internal body.

State Media Authorities can use several instruments as sanctions, starting off with the formal remark that there has been a breach of licence conditions or of legal requirements by the broadcaster, prohibiting any further breaches of the requirements, fines, and, as an ultimate means, the revocation of the licence. However, the broadcasting regulation in Germany is

⁹ Sec. 20 (3) RStV stipulates an exception for forms of narrowcasting.

¹⁰ Baden-Württemberg: <<http://www.lfk.de>>; Bavaria: <<http://www.blm.de>>; Berlin / Brandenburg: <<http://www.mabb.de>>; Bremen: <<http://www.bremische-landesmedienanstalt.de>>; Hamburg: <<http://www.ham-online.de>>; Hesse: <<http://www.lpr-hessen.de>>; Mecklenburg-West Pomerania: <<http://www.lrz-mv.de>>; Lower Saxony: <<http://www.nlm.de>>; North Rhine-Westphalia: <<http://www.lfm-nrw.de>>; Rhineland-Palatinate: <<http://www.lpr-online.de>>; Saarland: <<http://www.lmsaar.de>>; Saxony: <<http://www.slm-online.de>>; Saxony-Anhalt: <<http://www.msa-online.de>>; Schleswig-Holstein: <<http://www.ulr.de>>; Thuringia: <<http://www.tlm.de>>.

facing general problems, which can be observed in other countries as well, concerning the effective implementation of the rules. Additionally, German broadcasting regulation has to cope with the federal system, which enables broadcasters, to some extent, to choose a State Media Authority, which has led to a kind of “forum shopping”.

In order to evade the regulatory problems, the State Media Authorities have tried to establish informal instruments of regulation, the so-called “regulation by raising eyebrows”, i.e. co-operating with the broadcasters, and furthering public awareness of problems of the broadcasting systems and stimulating research in this area.

The State Media Authorities have formed a nation-wide association which organises working groups on different subjects.¹¹

When it comes to the different objectives covered by this study, the regulatory system can be described as follows in the next sections.

Advertising

Regulatory Framework

Broadcasters have to respect general and special rules on advertising and sponsoring.

The common rules are described below (see 6.).

The legal basis for advertising in German radio and television is the Interstate Treaty on Broadcasting. Most of the German advertising rules for broadcasting are a word-by-word incorporation of European requirements (Art.10-12 of the Television Without Frontiers directive). This includes the rule that advertising shall be readily recognisable as such and kept quite separate from other parts of the programme service by optical and/or acoustic means. Also, according to the German constitution, advertising and programming have to be distinguishable for recipients. Further rules deal with the interruption of programmes by advertising and the proportion of transmission time devoted to advertising. Apart from these advertising restrictions, the Interstate Treaty on Broadcasting allows forms of split-screen advertising (sec.7 (4) RStV) and virtual advertising, as long as virtual advertisements replace real existing ones (e.g. in football stadiums; cf. sec. 7 (6) RStV).

In addition, the RStV empowers the State Media Authorities to pass joint guidelines on the implementation of the advertising regulations (Sec. 46 RStV). They have made use of this competence by enacting the joint guidelines (*Gemeinsame Richtlinien der Landesmedienanstalten für die Werbung, zur Durchführung der Trennung von Werbung und Programm und für das Sponsoring*). There is a guideline “for radio”¹² and a second one “for

¹¹ Association of State Media Authorities (*Arbeitsgemeinschaft der Landesmedienanstalten*, “ALM”, see <<http://www.alm.de>> providing some information in English).

¹² Adopted on 26 January 1993, amended on 10 February 2000, available on the internet at <<http://www.alm.de/bibliothek/riliwerb2-hf.htm>>.

television”¹³. The guidelines concretise the rules of the RStV.¹⁴ In addition, they determine that advertising must not be misleading, it must not damage the interests of consumers and must not promote forms of conduct that endanger the health or safety of consumers or the protection of the environment.

Before the interstate treaty on protection of minors in the media (*Jugendmedienschutzstaatsvertrag*, “JMStV”, see below 2.2.2.1.) came into force, these guidelines stated that as far as the content of advertising was concerned the guidelines (*Verhaltensregeln*) of the self-regulatory body „Deutscher Werberat“ (see below 6.3.) on advertising for alcoholic drinks applied. Under the JMStV, it is explicitly stated that advertising for alcoholic drinks must not address children and adolescents and must not show children and adolescents drinking alcohol (sec. 6 (5)).

According to sec. 22 (1) of the *Gesetz über den Verkehr mit Lebensmitteln, Tabakerzeugnissen, kosmetischen Mitteln und sonstigen Bedarfsgegenständen* of 1974, advertising for tobacco products in radio and television is prohibited.

Regulatory Authorities/Bodies

When it comes to the specific advertising rules laid down in the RStV and the JMStV, the State Media Authorities are responsible for supervision (for their organisation and competences see above 2.2.). The self-regulatory organisation *Deutscher Werberat* has established guidelines with regard to all media including broadcasting (see below 6.3.).

Protection of Minors

Regulatory Framework

In spring 2002, the prime ministers of the states and the federal government agreed on basic terms for the amendment of the laws for protecting minors in the field of media. The common aim was to develop a coherent framework for the protection of minors as far as broadcasting and electronic media services are concerned. Formerly, the substantial regulation as well as the competence of the supervisory bodies had been particularly disjoint.

At state level, the interstate treaty on protection of minors in the media has been enacted. The JMStV lays down rules for the providers of broadcasting and so-called telemedia. First of all, there is illegal content quoted in the JMStV, i.e. first and foremost content which violates the penalty law (e.g. pornography as laid down in sec. 184 Criminal Law (*Strafgesetzbuch*, “StGB”), so-called glorification of violence as laid down in sec. 131 StGB). Besides that, providers of broadcasting and telemedia have to make sure that content that is likely to impair the development of minors is not accessible for minors of the respective age. Providers can meet these requirements by observing a time-shade-regulation or by “other means”, such as

¹³ Adopted on 26 January 1993, amended on 10 February 2000, available on the internet at <<http://www.alm.de/index2.htm>>.

¹⁴ For instance, guideline No. 2 (1) implements the above mentioned rule about advertising for alcoholic beverages.

access-blocking software, for instance. Whoever is offering television for more than one German state is required to name an appointee which is responsible for the protection of minors. The same is true for providers of telemedia, which offer the service on a commercial basis; however, small providers are not required to do so.

According to the JMStV, the new body KJM (see below 2.2.2.2..) and the State Media Authorities have to establish guidelines. The State Media Authorities have done so by enacting a “Satzung zur Gewährleistung des Jugendschutzes in digital verbreiteten Programmen des privaten Fernsehens” (25 November 2003) which contains requirements for digital television encoding. The KJM has also drafted guidelines: *Gemeinsame Richtlinien der Landesmedienanstalten zur Gewährleistung des Schutzes der Menschenwürde und des Jugendschutzes*. The draft concretises the provisions of the JMStV.

Regulatory Authorities/Bodies

According to the JMStV, supervision of broadcasters and providers of telemedia is the responsibility of the State Media Authorities. For services provided for more than one state a special body has been established: the Commission for the Protection of Minors in Electronic Media (*Kommission für Jugendmedienschutz*, “KJM”). The KJM consists of six directors of State Media Authorities and six experts appointed by the federal government and the governments of the states.

Self- or Co-Regulatory Bodies

Self-regulatory bodies play an important role as well. The task of self-regulatory bodies is to classify content and to ensure the enforcement of rules. Furthermore, self-regulatory bodies may grant exemptions to the watershed regulation for the broadcasting of films which received a rating by the self-regulatory body for film, FSK, under the *Jugendschutzgesetz* (see below 5.1.) a long time ago. As responsibility for the effective protection of minors devolves on the states, instruments exist to regulate self-regulation, the most important being that self-regulatory bodies need certification. According to sec. 19 (3) of the JMStV certification is granted if:

- the independence and competence of the members of the control committees are ensured
- adequate funding is guaranteed by a number of providers
- guidelines for the decisions of the committees have been worked out in such a way that in practice effective protection of minors is ensured
- procedural rules have been worked out on the extent of examination, on the obligation on the participating providers to submit relevant content to the self-regulatory body, on sanctions and on the revision of decisions (organisations responsible for the protection of minors must be given the chance to request a revision)
- it is ensured that providers are heard before a decision is made, the reasons for the decision are given in writing and are disclosed to interested persons

- a body responsible for dealing with complaints has been established

Certification may be granted for four years, but can be renewed. The KJM may revoke certification if the self-regulatory body does not act in accordance with legal requirements.

Where certified self-regulatory bodies exist, the powers of state regulatory bodies are limited: sec. 20 of the JMStV stipulates that as long as providers act in accordance with the judgements of self-regulatory bodies and those bodies act within the scope of their discretionary power, state authorities are not allowed to impose sanctions on the providers. However, the State Media Authorities are empowered to enact statutes and guidelines for the protection of minors which the self-regulatory bodies have to take into account.

The licensing of self-regulatory bodies also affects organisations covered by the federal *Jugendschutzgesetz* (see below 5.1). Material rated by a licensed self-regulatory body may not be classified as harmful to children (Indizierung) by the *Bundesprüfstelle* (“BPS”) except by decision of the KJM.

For television, the self-regulatory body *Freiwillige Selbstkontrolle Fernsehen* (“FSF”) gained a licence.

Quality, Ethics, Diversity of Private Media

Apart from criteria known from general trade law, such as reliability of the applicant, the licensing process is designed to guarantee that a maximum of diversity is achieved, or that at least the effect of compelling influence on public opinion is prevented. Some state media laws quote different additional requirements.

In the so-called dual system, due to the constitutional propositions, the commercial pillar is not completely free of programme-related requirements. One can find programme guidelines in the Interstate Treaty on Broadcasting (sec. 2a and 41 RStV), and in the state media laws, which state that general channels have to ensure at least a minimum of diversity; all programmes have to be orientated at specific common-shared values like the dignity of mankind or global peaceful co-existence. These programme requirements are formally regarded as strict legal obligations, however, in practice they serve mainly as orientation points for debates on media quality.

The quota for European productions laid down in Art.4 of the EU Television Without Frontiers directive is mandatory for German broadcasters according to sec. 6 RStV.

To prevent compelling influence in the area of nation-wide television programmes a special regulation has been laid out in the Interstate Treaty on Broadcasting (sec. 26 pp. RStV).¹⁵ There is a threshold of 30 % of the viewer market share; having more than this share is regarded as compelling influence on public opinion. Activities of companies on other markets related to the broadcasting market are taken into account if their market share exceeds 25 %. All programmes are added to a company’s viewer market share if the company is related to

¹⁵ Besides that, the General Antitrust Law (*Gesetz gegen Wettbewerbsbeschränkungen*, GWB) is applicable on media companies as well.

the broadcaster in a way defined by the RStV. To judge the influence a company has on public opinion is within the responsibility of an expert commission (*Kommission zur Ermittlung der Konzentration im Medienbereich*, “KEK”¹⁶). Under certain circumstances the body of directors of the State Media Authorities (*Konferenz der Direktoren der Landesmedienanstalten*, “KDLM”) can overrule the decision of the KEK.¹⁷

The licensing procedure, including conditions under which a licence can be revoked, is laid down in the different state media laws. Even nation-wide broadcasters have to apply for a licence in one of the German states and are thereafter supervised by the respective State Media Authority, which has licenced the programme. Aside from this fact, state-wide broadcasting (television and radio) is regulated in accordance with the state media laws in its entirety. Some of them have adopted the ownership-rules of the I; others still follow the old model of multiple ownership restrictions.

Annex: Access, Standard Setting

In Germany, regulation of the technical part of telecommunication lies within the purview of the Federal government. The general framework is laid out in the Telecommunications Act (*Telekommunikationsgesetz*, “TKG”); the responsible regulatory body is the Regulatory Authority for Telecommunication and Mail (*Regulierungsbehörde für Telekommunikation und Post*, “RegTP”). Frequency management is part of the regulation laid out in the TKG. Another point of major importance for the broadcasting sector is that carriers (especially broadcasting cable providers), which have considerable market power, are subject to specific regulatory procedures such as price regulation. The RegTP is responsible for terrestrial frequencies, defining, in carrying out international agreements, the spectrum which is usable for broadcasting and for planning, in co-operation with the State Media Authorities, the network structure. Whether a frequency can be used by public broadcasters and private broadcasters is decided according to procedures laid down in state regulation.

Unlike, for example, the situation in the United States of America, the cable operators in Germany were formerly just seen as service providers transmitting the broadcasting signals. Thus, State Media Authorities have been empowered, backed by state media laws, to define according to legal criteria at hand, the programmes which have to be carried by a cable operator. In some states, the system still applies to analogue cable systems and to radio programming. Sec. 52 RStV lays down a must-carry-model as regards digital cable systems. The law designates a number of programmes which every digital cable operator must carry: Some programmes of the public broadcasters, local channels, so-called open-channels¹⁸. Another part of the capacity of the cable has to be allocated according to criteria laid down by law, such as diversity of programming. The remaining capacity can be used by the cable operator without any specific legal obligations. The new model serves both, the objectives of

¹⁶ <<http://www.kek-online.de>>.

¹⁷ See Securing Diversity of Opinion Against Media Concentration: Summary of the Report 2000, available at <<http://www.kek-online.de/kek/download/mk-bericht/summary.zip>>.

¹⁸ Publicly funded channels to which anybody has access to cast his self-produced programmes.

broadcasting regulation and the possibility for cable operators to use the cable making use of their own business models (e.g. broadband internet, telephony and so on).

Furthermore, the provides regulation for services with relevance to broadcasting, such as conditional access systems, programme guides and programme-bundling (sec. 53 RStV). Conditional access services have to be offered on non-discriminatory basis, and under fair and reasonable conditions to stay in line with the European directives 2002/21/EG, 2002/22/EG and 2002/19/EG. The same applies to basic programme guides which can give access to all services offered on a platform. Services, which have considerable market potential as far as bundling of programmes is concerned, must abstain from discriminatory practices. Interfaces have to comply with European standards, and have to be state-of-the-Art. Whether the application programming interface standard (European standard: multimedia home platform, MHP) meets these requirements has created significant reason for legal debates.

Companies offering these kinds of services have to file an application at the respective State Media Authority in charge, which then registers these services if they comply with legal requirements. The State Media Authority is given the power to decree special regulation as far as these services are concerned.

In 2005, sec. 53 RStV will be amended.

2. Press

When it comes to newspapers in Germany, regional and nationwide papers can be distinguished. Examples for the latter are “Frankfurter Allgemeine Zeitung”, “Süddeutsche Zeitung” or “Die Welt” and the magazines “Der Spiegel” or “Focus”. “Die Welt” belongs to one of the five major German groups in the newspaper business, Axel Springer AG. Axel Springer AG also publishes the most popular German daily, the tabloid “Bild”. Approximately one fifth of the newspapers sold each day belong to Springer.

The second largest German newspaper publisher, the WAZ Zeitungsgruppe, is heavily involved in the German regional newspaper market, and together with its activities in Austria and South-Eastern Europe, it constitutes Europe’s largest publisher of regional newspapers.

Advertising

The press laws contain the rule that commercial publication has to be recognizable. Breaking this rule constitutes an administrative offence; however, there is no specific regulatory authority. Additionally, if publishers breach this provision competitors may take legal action.

Protection of Minors

In press laws, there are no provisions concerning the protection of minors. However, the *Jugendschutzgesetz* (see below 5.1) covers printed publications. Additionally, the guidelines of the self-regulatory body *Deutscher Presserat* (Pressekodex, see below 3.3.2.) states that protection of minors has to be considered. Details of the work of the *Deutsche Presserat* are described in the next chapter.

2.1. Regulatory Framework

2.1.1. Legal Provisions

Legal provisions for the press can be found in the press laws of the states. However, Saarland enacted a new media law in 2002¹⁹ which contains provisions for all media including press and broadcasting²⁰.

There is no regulation in order to combat predominant influence on public opinion by means of press (apart from cross-ownership-rules in broadcasting laws). However, the threshold level for the German antitrust authority (*Bundeskartellamt*) to intervene is reduced for publishers. Due to the difficult economic situation of the German press, in 2005 the Federal Parliament (*Bundestag*) adopted a draft to amend the provisions contained in the Act against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen*, “GWB”)²¹ relating to the press, which aims at facilitating mergers of press companies. According to this draft, newspapers would be allowed to co-operate in the ads sector without any additional conditions.²²

2.1.3. Other provisions/Self-Regulatory Codes

Since 1973, a press code exists in Germany (*Pressekodex*)²³. The basic idea for the creation of the press code was to give fundamental guidelines for ethics regarding reporting for newspaper and magazine journalists and publishers²⁴. These rules, which have been continually expanded and updated, aim at aiding journalists in their work. The most important ambition of the press code is to encourage journalists to adhere to the values of respect for truth, human dignity and truthful information for the general public. The first clause of the *Pressekodex* declares these standards to be the “highest commandments of the press”. In addition to this, the code obliges journalists to practise balanced campaign reporting, to provide a plurality of opinion, to provide accurate and full information, to respect the *Redaktionsgeheimnis* (editorial information may not be disclosed to third parties) and to refrain from reporting practices driven by sensationalism, particularly regarding violence and brutality. For instance, Guideline 11.1 states: “A report is inappropriately sensational if the person it covers is reduced to an object, to a mere thing.”

¹⁹ “Saarländisches Mediengesetz” (SMG), adopted on 27 February 2002.

²⁰ § 2 para. 1 S. 1 SMG. Recently, also Rhineland-Palatinate followed this new regulatory approach, s. *IRIS* 2005-3:9 available at the internet at <http://www.obs.coe.int/oea_publ/iris>.

²¹ “Entwurf eines Siebenten Gesetzes zur Änderung des Gesetzes gegen Wettbewerbsbeschränkungen” dated of 12 August 2004, adopted on 11 March 2005, however, the approval of the Federal Council (“*Bundesrat*”) is still necessary. The draft is available on the internet at <<http://dip.bundestag.de/btd/15/036/1503640.pdf>>.

²² § 31 GWB-E.

²³ The *Pressekodex* was resolved by the German Press Council (“*Presserat*”) and the press-alliances on 12 December 1973, last amended on 20 June 2001.

²⁴ The 16 clauses of the *Pressekodex* and concretising Guidelines to each clause are available on the internet at <www.djv.de/downloads/pressekodex.pdf>.

2.2. Regulatory Authorities/Bodies

As far as the press is concerned, there are no special state regulatory authorities in Germany. The responsible authority under the GWB is the German antitrust authority (*Bundeskartellamt*).

2.2.2. Self- or Co-Regulatory Bodies

Under the press code, the responsible self-regulatory organisation is the German Press Council (*Presserat*)²⁵, founded in 1956²⁶. The Press Council's main task consists of examining complaints by readers about individual newspapers, magazines or press services and, in justified cases, voicing disapproval and issuing public reprimands. In addition, the Press Council ensures the protection of the freedom of the press.

2.2.2.1. Legal basis

The regulatory basis of the Press Council is sec. 7 of the statute of an agency, which ensures the Council's judicial, financial and the personnel decisions. The agency is called *Trägerverein des Deutschen Presserats e.V.*²⁷, an incorporated society in terms of the German Civil Code²⁸.

2.2.2.2. Function/competencies

The German Press Council is not a judicial body, therefore, its decisions are not legally binding. Nevertheless, they are important not only for the publishers, editors and journalists of the newspapers or magazines directly involved but also for other publications, as the Council may issue a comment, a statement of disapproval, a non-public or a public reprimand. The latter obliges the publisher to publicise the Council's findings along with the facts of the case²⁹. Everyone has the right to complain, the Press Council decides on the basis of the *Pressekodex*.³⁰

2.2.2.3. Organisation

The German Press Council consists of 28 members³¹, seven persons each come from those four organisations, who built the agency *Trägerverein des Deutschen Presserats e.V.* and represent their journalists and publishers in the public (*Bundesverband Deutscher Zeitungsverleger e.V.*, BDZV, *Verband Deutscher Zeitschriftenverleger e.V.* (VDZ),

²⁵ More information on the Press Council's homepage <www.presserat.de>.

²⁶ Available on the internet at <<http://www.presserat.de/25.html>>.

²⁷ Available on the internet at <<http://www.presserat.de/Satzung.satzung.0.html>>.

²⁸ §§ 21 ff. BGB.

²⁹ Guideline 16.1 of the *Pressekodex*.

³⁰ The complaints procedure is contained in the “*Beschwerdeordnung des Deutschen Presserats*“ (adopted on 25 February 1985, last amended 21 September 2004) and available on the internet at <<http://www.presserat.de/beschwerdeordnung.html>>.

³¹ § 7 para. 1 S. 2 of the statute.

Deutscher Journalisten-Verband e.V. (DJV), Deutsche Journalistinnen- und Journalisten-Union (dju))³². All 28 members of the Council meet twice a year and elect six members each for the two chambers of the board, which are responsible for handling general complaints (*Allgemeiner Beschwerdeausschuss*)³³ of readers and issuing public reprimands.

2.3. Annex: Data-Protection in Editorial Departments

As journalists work with information about citizens, they collect names, photos and other identification data. After publishing the article, they archive these personal data – usually by electronic data processing. However, in Germany this data processing may come into conflict with the Federal Data Protection Act³⁴. To guarantee a minimum standard of data protection in the media and to implement the requirements of Art.9³⁵ of the Directive 95/46/EC³⁶, the Federal legislator, therefore, adopted a provision which governs the “collection, processing and use of personal data by the media”.³⁷

Due to this federal law, the states have to ensure in their legislation that the press and its auxiliary enterprises collect, process and use personal data exclusively for their own journalistic-editorial or literary purposes³⁸. Therefore, the state press laws refer to the provisions of the federal *Bundesdatenschutzgesetz* (“BDSG”) to assure data confidentiality.

In addition, the press has to respect personal rights when publishing personal data: In recital No. 37 of Directive 95/46/EC it is determined that “the processing of personal data for purposes of journalism should qualify for exemption from the requirements of certain provisions of this Directive in so far as this is necessary to reconcile the fundamental rights of individuals”³⁹. As there are no regulatory state authorities in Germany as far as the press is concerned, voluntary self-control was opted for to ensure these rights. In accordance with this, the German Press Council adapted a separate board of complaints concerning data protection

³² § 2 para 1 Nr. 1-4 of the statute.

³³ A graphic illustration of the organisation is available on the internet at <<http://www.presserat.de/organisation.20.0.html>>.

³⁴ “*Bundesdatenschutzgesetz*” = BDSG, adopted on 20 December 1990, amended on 1 January 2003. A German and an English version of the BDSG are available on the internet at <http://www.bfd.bund.de/information/bdsg_eng.pdf>.

³⁵ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995, available on the internet at <http://europa.eu.int/comm/internal_market/privacy/docs/95-46-ce/dir1995-46_part1_en.pdf>.

³⁶ According to recital number 17 of the Directive 95/46/EC “The principles of the Directive are to apply in a restricted manner according to the provisions laid down in Article 9 as far as the processing of sound and image data carried out for purposes of journalism is concerned”.

³⁷ “*Gesetz zur Änderung des Bundesdatenschutzgesetzes und anderer Gesetze*”, adopted on 18 May 2001. Basically § 41 para. 1 BDSG was changed by this law.

³⁸ This legislation results from the above mentioned fact, that the Federation only enacts provisions on “the general legal relations of the press” as a framework for Land legislation.

³⁹ In addition, Art.27 para. 1 of the Directive 95/46/EC determines, that the “Member States shall encourage the drawing up of codes of conduct intended to contribute to the proper implementation of the national provisions adopted by the Member States”.

(*Beschwerdeausschuss für Redaktionsdatenschutz*)⁴⁰, which deals with requests of affected citizens and issues public reprimands. Furthermore, the Press Council amended some rules of the *Pressekodex*⁴¹, for instance Art.8, which now determines that the press respects the right to informational self-determination. In addition, Art.3 now states that published news reports or assertions – especially those concerning personal data – subsequently found to be incorrect must be promptly and appropriately corrected by the publication concerned.⁴²

3. Online-Services

3.1. Regulatory framework

3.1.1.1. Legal provisions

Rules for new services, mainly internet services, can be found in the Tele Services Act (*Teledienstegesetz*, “TDG”) at federal level and the Media Services Interstate Treaty (*Mediendienstestaatsvertrag*, “MDStV”) at state level. For Tele Services and Media Services (*Teledienste* and *Mediendienste*) there is no licensing or registration obligation whatsoever. However, the Interstate Treaty on Broadcasting states in sec. 20 (2) (the so-called transition rule) that providers of such media services which are regarded as broadcasting have to apply for a licence as well.

Advertising

Besides the provisions for all media (see below 6.), providers of online-services have to follow special rules within the TDG and the MDStV according to which commercial communication has to be clearly identifiable as such. In the MDStV it is also laid down that advertising has to be separated from other content. The provision of sec. 13 (1) MDStV determines that the use of subliminal techniques within the media service is forbidden. In addition, the rules of sec. 13 (2) and (3) MDStV refer to provisions of the RStV. Under the MDStV, supervision lies within the responsibility of the authority that each respective state has appointed. In some states this is the Media Authority, in other states administrative bodies (*Regierungspräsidium*, *Senatskanzlei*, *Bezirksregierung*) have been appointed.

Protection of Minors

Online-services have been integrated into the system described above. According to the JMStV, pornography and material classified by the federal *Bundesprüfstelle* as harmful to children (as long as it is not prohibited by the Criminal Code) may be provided by means of so-called “telemedia” (Tele Services and Media Services) if the provider ensures that it can only be accessed by adults. Just like broadcasters, providers of online-services have to make

⁴⁰ The organisation of this board of complaints is the same as described in 2.2.1.3., it also has 6 members.

⁴¹ The amended Press Codex is available on the internet at <<http://www.presserat.de/137.html>>, the new passages concerning the data-protection are underlined.

⁴² This corresponds to recital No. 37 which determines, that “the supervisory authority responsible for this sector should also be provided with certain ex-post powers”.

sure that content that is likely to impair the development of minors is not accessible for minors of the relevant age. Providers of online-services can meet the stipulated requirements by using access-blocking software or rating and filtering software. This software has to be certified by the KJM.

Sec. 20 JMStV stipulates that as long as providers act in accordance with the judgements of self-regulatory bodies and those bodies act within the scope of their discretionary power, State Media Authorities are not allowed to impose sanctions on the providers. For online-services, the self-regulatory body *Freiwillige Selbstkontrolle Multimedia-Diensteanbieter* (“FSM”) has gained a certification by the KJM.

Quality, Ethics, Diversity of Private Media

In the TDG and the MDStV, there are no specific provisions concerning quality, ethics and diversity. However, the German Press Council (see above 3.3.2) is responsible for editorial content of online-services as long as it is identical with newspapers or journals.

4. Film/Interactive Games

There are no special provisions for advertising, quality and ethics. In order to promote diversity, state aid for film production plays an important role. When it comes to the protection of minors the following provisions apply.

4.1. Regulatory Framework

4.1.1. Legal provisions

As mentioned above, the Prime Ministers of the states and the Federal Government agreed on basic terms for the amendment of the legal framework for protection of minors in the field of media in 2002. At the federal level, the Act for the Protection of Minors in the Media (*Jugendschutzgesetz*, “JuSchG”) was enacted. Aside from other matters, access to films and video games is covered by this act. Under this Act a federal board (*Bundesprüfstelle*) was made responsible for classification of all media except broadcasting and telemedia. If these media have been classified as harmful to children (*jugendgefährdend*), children’s access has to be prevented. This is why material that has been classified as harmful to minors must not be shown in public (e.g. in cinemas).

4.2. Regulatory Authorities/Bodies

As mentioned above, the *Bundesprüfstelle* classifies content as harmful to children. In addition, administrative authorities (*oberste Jugendschutzbehörden*) are responsible for age classification (suitable for all children and adolescents, over 6 years, 12 years, 16 years or not suitable for children and adolescents).

4.2.2. Self- or Co-Regulatory Bodies

However, the *Jugendschutzgesetz* states that the administrative authorities can agree that age classification – beyond the classification as harmful to children – is carried out by self-

regulatory bodies founded and funded by trade associations. In this agreement it can be decided that classifications of self-regulatory bodies are seen as classifications by the administrative authorities (*oberste Landesbehörden*) unless an administrative body comes to a differing decision.

Thus, age classification is in fact carried out by the self-regulatory bodies *Freiwillige Selbstkontrolle der Filmwirtschaft* (“FSK”) and *Unterhaltungssoftware Selbstkontrolle* (“USK”).

5. Advertising

As there are advertising rules applicable for all media, these rules will be described here separately.

5.1. Regulatory Framework

5.1.1. Legal Provisions

Germany’s recently amended Unfair Competition Act (*Gesetz gegen den unlauteren Wettbewerb*, “UWG”, adopted 7 June 1909, last amended 15 July 2004)⁴³ gives retailers further scope for creative customer acquisition and retention strategies. The most important provisions in the UWG as far as advertising is concerned, are:

- misleading advertising,
- comparative advertising,
- telephone marketing,

Besides the Unfair Competition Act, the German Medical Care Advertising Law⁴⁴ (*Gesetz über die Werbung auf dem Gebiete des Heilwesens (Heilmittelwerbe-gesetz*, “HeilMWERBG”), last amended 30 July 2004)⁴⁵ regulates advertising especially for medical products, methods and treatments⁴⁶.

Other important provisions on advertising are to find in the German Law on Foodstuffs and Articles of Daily Use (*Gesetz ueber den Verkehr mit Lebensmitteln, Tabakerzeugnissen, kosmetischen Mitteln und sonstigen Bedarfsgegenständen (Lebensmittel- und Bedarfsgegenstände-gesetz*, “LMBG”), adopted on 9 September 1997, last amended on 13 May 2004)⁴⁷. Due to this law misleading advertisement for foodstuffs (sec. 17 (1) No. 5 LMBG) and cosmetics (sec. 27 (1) LMBG) is prohibited.

⁴³ Available on the internet at <<http://transpatent.com/gesetze/uwg.html>>.

⁴⁴ The Medical Care Advertising Law implements the Directives 55/97/EC and 28/92/EC.

⁴⁵ Available on the internet at <<http://www.physio.de/zulassung/heilmittelwerbe-gesetz.htm>>.

⁴⁶ Due to the provision of sec. 17 HeilMWERBG the Unfair Competition Act remains unaffected.

⁴⁷ Available on the internet at <<http://www.mlur.brandenburg.de/v/lbsvet/TEILC/C1.PDF>>.

5.1.3. Self-Regulatory Codes

The self-regulatory body German Advertising Council (see below 6.3.) decides on the basis of several voluntary Rules of Conduct (*Freiwillige Verhaltensregeln des Deutschen Werberats*).

An important example is the rule about advertising for alcoholic beverages (*Verhaltensregeln des Deutschen Werberats über die kommerzielle Kommunikation für alkoholhaltige Getränke*): This rule takes into account the provisions in the Television without Frontiers Directive 89/552/EEC (adopted on 3 October 1989, amended by the Directive 97/36/EC). According to Art.15 of the Directive 89/552/EEC and the rules of conduct, advertising for alcoholic beverages is generally permissible. However, advertising may not encourage excessive consumption of alcoholic beverages and such consumption must not be depicted as being worthy of imitation or as being harmless. Young people, competitive sports persons or drivers must not be depicted drinking alcohol and they must not be called on to drink. It is not permitted to make statements that point to an enhancement of physical performance or create the impression that the consumption of alcohol contributes towards success. Advertising may not place emphasis on high alcoholic content as being a positive quality.

Another guideline ensures the protection of children.

5.2. Regulatory Authorities/Bodies

Besides the State Media Authorities and the authorities appointed by the states under the Mediendienstestaatsvertrag that are only responsible for the specific regulations on advertising of the Rundfunkstaatsvertrag and the Mediendienstestaatsvertrag, there are no state authorities responsible for advertising regulation. If someone breaches the provisions described above, competitors may sue her or him.

5.2.2. Self-Regulation Bodies

The German Advertising Federation (*Zentralverband der deutschen Wirtschaft* (“ZAW”)) is to ensure, by means of self-regulation, the conditions for the smooth functioning of the advertising business and to promote best practise in advertising, in both form and substance, so as to prevent abuses and malpractice. It currently has 40 member associations (advertisers, media, advertising agencies and industries dependent on advertising).

To make this possible, two self-regulation organisations are principally responsible for regulating advertising: The German Advertising Council (*Deutscher Werberat*) deals with issues of taste and decency, while the Centre for Combatting Unfair Competition (*Zentrale zur Bekämpfung unlauteren Wettbewerbs e.V.* (“WBZ”)) is responsible for issues of misleading advertising and unfair competition.

The German Advertising Council consists of 13 members: 10 members come from the ZAW, representing the four constituent groups of the ZAW: Four represent advertisers, three represent the media, two are from agencies and one from an advertising-dependent profession. In addition, there are three co-opted members from within the advertising industry.

The German Advertising Council handles both competitor and consumer complaints. Complaints alleging misleadingness or unfair competition are transferred to the head quarters.

If the complaint deals with taste and decency issues, the Secretariat of the German Advertising Council decides whether it is admissible. If it considers the complaint to be manifestly not well-founded, the Secretariat will reject it. Complainants can appeal against the Secretariat's rejection of a complaint. In this case or if the Secretariat regards the complaint as substantial, the advertiser or agency is invited to comment on the issue. At this stage, the advertiser may offer to withdraw or amend the advertisement. If the advertiser or agency disputes the complaint, the case is considered by all members of the German Advertising Council and an opinion is issued, usually in writing. Decisions are taken by simple majority of the votes. The ruling is communicated to the advertiser, agency or media concerned and to the complainant.⁴⁸

Each party can appeal against a ruling. Appeals must be made in writing to the German Advertising Council. The decision procedure on appeal is the same as that for the initial complaint.

In case of refusal to amend or withdraw an advertisement criticised by the German Advertising Council it will publish its decision as a public reprimand.

6. Conclusions

Regardless of efforts to form a coherent regulatory framework for media, the German standing to some extent still forms a regulatory patchwork. This mainly derives from the federalist structure of the legal system.

There are some fields where state and non-state regulation can be found. This is the case with the protection of minors in the area of broadcasting and online media (the regulation of which has changed recently) and film. When it comes to advertising regulation there are activities from state- and non-state actors as well. Due to constitutional reasons aspects of journalistic quality are primarily subject to non-state-regulation; merely for broadcasting some aspects of quality are addressed by state laws as well.

⁴⁸ A graphical presentation of the functioning of the DW is available on the internet at http://www.interverband.com/dbview/owa/assmenu.homepage?tid=69392&fcid=4293&from_home=/werberat.

3.10. Greece

Introduction

Market overview

The written press

In 2004 in Greece there were a total of 88 newspapers (9 of these were morning, 15 evening, 22 Sunday and 17 weekly newspapers). There were also 19 sport and 6 financial newspapers. In terms of circulation, Sunday newspapers accounted for 51.2% of the market, followed by evening newspapers (17.5%), sport (15.7%), weekly (9.1%), morning (6.3%) and financial (0.1%). Total newspaper sale figures show a continued decline since the early 1990s, when private television was allowed. For example, in 1989 the total newspaper sales figure was 2.6 million, whereas in 2004 this declined to 2.0 million. Despite this the press is the second most important source of information for Greeks (behind television). However, it is highly concentrated in the hands of a few publishers (*Lambrakis publishing group*, *Bobolas publishing group*, *Tegopoulos publishing group*, *Alafouzou publishing group*, *Apogevmatini publishing group*, and *Press institution S.A.*). As we shall see below most of these publishers have also diversified to broadcasting. Furthermore, most of these publishers own magazines. In 2004 sales of magazines reached 43,000 thousand copies, with specialised magazines in the lead (26%), followed by TV magazines (22%) and women magazines (13%) (see European media landscape, available at: <http://www.ejc.nl/jr/emland/greece.html>).

Broadcasting

Television

Since the restoration of democracy in 1974, television has become a very important medium of information and entertainment. But it was the liberalisation of the market and the entry of private channels in 1990 that established television's dominance. Similarly to other European markets, broadcasting liberalisation in Greece started with radio. In 1986 the conservative mayors of Athens, Thessaloniki and Piraeus (all belonging to the opposition *New Democracy* party) set up the first non-state radio stations in their respective municipalities, thus breaking the state monopoly. The government responded with Law 1730 of 1987 which allowed private radio stations and opened the way for the liberalisation of television. Television liberalisation took place in 1990 and was the result of political pressure (once again from the *New Democracy* party which in June 1989 had formed a coalition government with the left), but also strong pressure from publishers who wanted a stake in the emerging audiovisual market. The first channels that went on air were *Mega Channel* (in autumn 1989) and *Antenna TV* (in January 1990). These channels broadcasted without a licence until 1993, when Law 2173/1993 was finally passed allowing the entry of private television. The National Council for Radio and Television (NCRTV) was also set up in 1989 to supervise the broadcasting sector.

Since the early 1990s private television has been expanding rapidly. In 2004 there were:

- Seven TV channels with national coverage (*Mega Channel*, *Antenna TV*, *Alpha*, *Alter*, *Star*, *902 Aristera sta FM*, and *Macedonia TV*) funded by advertising
- Three TV channels with regional coverage (*Tele Asty*, *TV Cosmopolis*, and *Municipal Television Salonica TV*) funded by advertising
- Three pay-TV channels (*Filmnet*, *Supersport* and *Kids TV*) funded by monthly subscription
- Three public channels (*ET-1*, *NET* and *ET-3*), funded by a combination of licence fee and advertising.

In 2004 there were also about 160 local channels with negligible audience share.

Audience share

In terms of audience share, *Antenna TV* and *Mega Channel* are the main players with 21% and 16.3% respective audience shares in the first half of 2004, followed by *Alpha* (13%), *Alter* (12.2%) and *Star* (11.6%) (see AGB Hellas, 2004). *Mega Channel* is owned by *Tiletypos S.A.*, a consortium of the major publishers in Greece, while *Antenna TV* is owned by *Ant1 TV S.A.*, a company also active in recording, publishing and radio. Public broadcaster *ERT*'s combined share in the first half of 2004 was about 15%, up from 11.5% in 2000. This increase was mainly due to internal reorganisation of the public broadcaster which had seen its audience and advertising shares reaching bottom levels in previous years.

Advertising expenditure

In terms of advertising expenditure *Antenna TV* and *Mega Channel* once again get the lion share with 222 million Euros and 193 million Euros respectively in 2003, followed by *Alpha* (106 million Euros), *Star* (101 million Euros) and *Alter* (61 million Euros). Public broadcaster *ERT* had a combined 34 million Euros expenditure in 2003 (see Media Services, 2004).

Subscription television

Concerning analogue pay-TV, since 1994 *Multichoice Hellas*, a subsidiary of *Netmed Hellas*, which is controlled by multinational company *NetMed BV*, has been providing three satellite TV services to Greek viewers: *Filmnet* (films), *Supersport* (sport) and *KTV* (children programming). Within the framework of Law 2644 from 1998, which covered all subscription radio and television services, *Multichoice Hellas* launched the digital satellite service *Nova*. Following the collapse of its rival *Alpha digital synthesis* in 2002 (mainly because of overbidding for football rights), *Nova* remains the only digital pay-TV operator in Greece (Iosifidis, Steemers and Wheeler, 2005).

Cable and satellite television

Cable and satellite television are underdeveloped in Greece due both to poor infrastructure and the wide availability of free-to-view terrestrial channels. Combined with the availability of satellite channels like *CNN* and *MTV* offered free of charge via public broadcaster *ERT*, the

abundance of free terrestrial channels have offered wide choice to Greek viewers without having to pay extra and have thus discouraged them from taking up subscription services (Iosifidis, 2000).

Radio

Regarding radio, it is considered an important source of information and entertainment. In 2004 there were about 1,200 local private radio stations across Greece, but only 36 had a licence to broadcast. Most of these stations are entertainment-oriented and a substantial minority offer news and information. Greek broadcaster *ERT* operates seven radio stations with national coverage and 19 regional ones, with an emphasis on information (see Hellenic Audiovisual Institute, 2003).

Online services

Greece shows good progress towards developing online services (see OECD report in the online regulatory section below) and promoting the information society. The operational programmes *Information society and Competitiveness*, funded by the 3rd community support framework of the European Union, aim at promoting competitiveness and improve business support networks for companies, encourage start-ups and provide enhanced access to finance. In 2004 there were 8 Internet service providers (ISPs) with *Otenet*, *Forthnet* and *Hellas on Line* by far the biggest servers. In 2004 internet adaptation was 1.7 million, representing a 15.3% penetration, up from 10% in 2001 (see <http://www.internetworldstats.com/europa.htm>). However, the country is still well behind the rest of Europe as few companies opt to use the internet as a platform for their communication requirements. Although competition between ISPs contributes to the lowering of prices, a marketing presence on the internet nevertheless constitutes an expensive exercise for many Greek companies. This is reflected in the small number of leased lines that ISPs have managed to secure. Thus electronic commerce (e-commerce) is proceeding at an experimental level, with many Greek firms arguing that there are few benefits but considerable costs in exploring the capabilities of the international network (see <http://strategis.ic.gc.ca/epic/internet/inimr-ri.nsf/en/gr126208e.html>).

Film

Since the mid-1970s, the Greek film industry has suffered under the impact of television and the commercial success of Hollywood films. The *Greek film centre* was inaugurated in 1970, largely to bolster independent Greek filmmakers. In 1982, the then minister of culture Melina Mercouri undertook the promotion of Greek films. Today, many Greek filmmakers benefit from the centre's co-production programme and script-writing fund. It remains the primary producer of new films in Greece. The *Thessaloniki film festival*, founded in 1960, was an important boost for the domestic film industry, bestowing valuable awards. It remains the main annual cinematic event in Greece. In 1981, the running of the festival was taken over by the Ministry of Culture, and in 1992 it became an international event.

Constitutional law

Freedom of expression

Freedom of expression of citizens is dealt with in Article 14 of the Greek constitution, which states that

“every person may express and propagate her/his thoughts orally, in writing and through the press in compliance with the Laws of the State. The press is free. Censorship and all other preventive measures are prohibited. The seizure of newspapers and other publications before or after circulation is prohibited”.

Art.14 further specifies the procedure concerning seizure of publications where the courts must be informed within 24 hours. Art.14 para. 5, as amended in 2001, also refers to the right of reply to inaccuracies published or broadcast by the media. Art.14 para. 9 outlines the obligations of media outlets to register ownership status and information regarding the financing of the outlet (transparency), and refers directly to the prohibition of concentration of ownership. It calls for further rules that would enforce the disclosure of the ownership status and the financial condition of shareholders. The measures and restrictions necessary for fully ensuring transparency and plurality in the provision of information are specified by Law. Art.1 para.17 of Law 2328 of 1995 stipulates that the National Council for Radio and Television (NCRTV) can request information concerning the organisation and financing of broadcasting channels.

However, Art.15 states that

“the protective provisions for the press are not applicable to films, sound recording, radio, television or any other similar medium for the transmission of speech or images. Radio and television shall be under the direct control of the state”.

The control and imposition of administrative sanctions are under the exclusive competence of the NCRT, which is an independent authority, as specified by Law (Art.15, paras. 1-2).

Freedom of information

Article 10(3) of the Greek constitution provides for a limited right of access to documents, requiring at least a response of authorities to requests. A code of administrative practice was adopted in 1999 and provides citizens with the right to access administrative documents issued by government agencies. Under the previous legislative framework (Art.16 of Law 1599/1986) on the relations between the citizens and the state, it was necessary for the person seeking information to show a specific legal interest in the documents. Under the new legislation the applicant must show a “special legitimate interest” in order to obtain documents. The authorities must reply within one month and there are financial charges attached to the receipt of documents. Certain documents of a secret nature may not be made available. Such documents are those relating to national defence, public order and taxation, or those relevant to discussions of the council of ministers, or those which could harm judicial, military or administrative investigations of criminal or administrative offences (EIM, 2004).

Regulatory Bodies

The Greek National Council for Radio and Television (NCRTV), which was set up by Law 1866 of 1989 and amended by Law 2683 of 2000, has an advisory role but also exercises government supervision of the radio and television sectors

The National Committee of Electronic Means of Communication (EEHME) monitors quality of public and private services and reports to the NCRTV

The representative supervisory Assembly of Viewers and Listeners (ASKE) is a consultative body which exercises control over programs and ads

The National Telecommunications and Posts Committee (EETT) oversees the telecommunications and online services.

Self regulation and codes of conduct

- Regarding self regulation of the Greek media (broadcasting and the press), relevant is the code of ethics of Greek journalists, which was agreed in 1988 by the five major journalists' unions. Also, as stipulated by Law 2863/2000, the holders of operating licences for free-to-air radio and television stations, along with the *Greek association of advertising companies* and the *Greek advertising federation*, drew up the Greek advertising and communication code governing the content, presentation and promotion of adverts by the licence holders
- In the film sector there exists a Greek Film Classification Board.
- In terms of online services, and following an initiative from the EETT in November 1999, there exists a Greek self regulating organisation for Internet content, named *Safenet*, and a hotline named *Safeline*.

1. Broadcasting

1.1. Regulatory framework

Law 1730 of 1987 (as amended by Laws 1866 of 1989 and 2173 of 1993) set up the legal conditions for the award of private radio licences. The monopoly of the public broadcaster *ERT* was retained at national level. Furthermore *ERT* has retained monopoly rights over the use of the medium and short wave bands. Law 1866 of 1989 stated that

“the licences are inalienable and granted to two distinct categories of users: (a) to individuals, companies or municipal authorities which seek to provide varied and wide-ranging, essentially professional services; and (b) to individuals with some knowledge of radio technology who wish to set up an amateur service, connecting individuals within a given territory sharing a particular interest”.

It took a further two years for the break up of public television monopoly, and just as for radio, private broadcasting was to be permitted solely at the local level. Thus *ERT* retained its monopoly over national broadcasting. The national television and radio monopoly of *ERT* is confirmed by Art.2 (para. 2) of Law 1730 of 1987. According to the legal framework of Law 1866 of 1989, local television licences are granted by joint decision of the ministers of

presidency, interior, finance and transportation-communications. The prior opinion of the National Council for Radio and Television (NCRTV) must be sought before allocation.

Eventually Law 2173 of 1993 allowed the entry of national TV stations. However, it is Law 2328 of 1995 which covers the legal status of private TV and radio today. It comprises 4 chapters and 12 articles covering the following points: Art.1 deals with the status of operating licences of private television stations. Those stations that hold the licence are expected to protect the public interest and the quality of their programming, to give out impartial information and news and to ensure the principles of pluralism are adhered to. The stations are also obliged to uphold the technical standards of their broadcasts. This status affects all stations, whether national, regional or local, and all forms of distribution, whether terrestrial, cable or satellite, clear or encoded.

Art.2 provides for the procedure for granting licences. A station that wants to obtain a licence will have had to invest at least 450,000 Euros and offer good quality programmes. These two criteria are duly weighed up. Art.3 lays down a series of highly detailed general rules and standards for advertising. Art.4 provides for civil and penal penalties for failure to comply with the standards and duties as laid down by the law. Art.5 outlines transitional regulations concerning those stations that hold a licence. Art.6 lays down the standards and procedure for granting licences for the setting-up of private radio stations. Art.7 provides criteria governing the granting of private radio licences. Art.8 lays down standards for advertising on private radio. Art.9 lays down advertising standards for public audiovisual services. Art.10 provides for the rights of producers of audiovisual works. Art.11 lays down the status of audio-visual market research organisations. Art.12 provides for standards of transparency with respect to advertising companies.

Law 2644/1998 governing pay-services on radio and television came into force in October 1998. This law applies to any service to which public access is subject to the conditions (for example, possession of a decoder, payment of a subscription) laid down by the authorisation-holder, whatever the mode (analogue or digital) or route (terrestrial, satellite or cable) of broadcasting. Art.2 of the law contains rules intended to avoid abuse of a dominant position in the audiovisual sector in broad terms, including both pay-television and free reception. Any authorisation-holder (which must have the form of a public limited company with registered shares) may apply for an additional authorisation using a different route, but may neither hold an authorisation for free-to-air television nor operate in more than two media categories (television, radio, press).

Broadcasting ownership rules

- Law 2328/1995 states that every physical or legal person and his/her relatives up to the forth degree may participate in one only company and with only up to 25% of its capital. Law 2644 of 1998 stipulates that every physical or legal person may participate in only up to 40% of the capital of a pay-TV or pay-per-view broadcasting medium
- Regarding cross-media ownership restrictions, a physical or legal person cannot participate in more than two media sectors (TV, radio or the press)

- Regarding foreign ownership, the participation of foreigners (non-EU) in the share holding of broadcasting channels is limited to 25% of the capital.

Law 2328/1995 also provides for transparency concerning media owners who undertake state contracts and stipulates that

“the capacity of the owner, partner, or main shareholder of a media enterprise is incompatible with the capacity of owner, partner, or main shareholder of an enterprise that undertakes towards the public administration or towards a legal entity of the wider public sector to carry out works or supplies or to provide services. This includes the activities of all types of related persons, such as spouses, relatives, financially dependent persons or companies”.

The main shareholder is defined as a physical or legal person that has a state of 5% or over of the media enterprise. Currently there is an ongoing debate concerning the decrease of this figure beyond which a person cannot undertake public/state contracts to 1% (from 5%), but this has raised concerns from EC officials as it may distort competition in the Internal Market.

Incorporation of the TWF directive

Quotas for European works

The quota provisions of the TWF directive were originally incorporated into the Greek legal system by Art.3 of the Presidential Decree 236/92. This was replaced by the Presidential Decree 100/2000 in order to adapt national legislation to the provisions of the amended TWF directive 97/36/EC. The Greek legislation adopted mainly the provisions of the directive. Definitions such as “transmission time”, “majority proportion” or “European works” are identical to those mentioned in the directive.

Quotas for independent producers

The Greek legislator resembled the wording of the TWF directive. Art.10 (para. 7) of the Presidential Decree 100/2000 states that “broadcasters shall reserve at least 10% of their annual transmission time, excluding the time devoted to news, sports events, games, advertising, and teleshopping, for European works created by producers who are independent of broadcasters, according to Art.10 of Law 2328/1995”. Pay-TV broadcasters have the same obligation, according to Art.10 para. 5 of Law 2644/1998.

Additional provisions set by national legislation

Art.3 (para. 18) of Law 2328/1995 states that free-to-air channels should reserve more than 25% of their transmission time, excluding the time devoted to news, sport, games, advertising, and teletext services, for works originally produced in the Greek language. Art.10, para. 3 of Law 2644 sets the same provision for pay-TV channels.

The Ministry of Press and Mass Media is responsible for the monitoring and application of the above provisions.

Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

The code of ethics of Greek journalists, which was agreed in 1988 by the five major journalists' unions, applies to both broadcasting and the press.

The Code of Ethics briefly states that:

- Journalism is a function
- Truth and its presentation constitute the main concern of the journalist
- The journalist defends everywhere and always the freedom of the press, the free and undisturbed propagation of ideas and news, as well as the right to opposition
- The religious convictions, the institutions, the manners and customs of nations, peoples and races, as well as citizens' private and family life are respected and inviolable
- The primary task of the journalist is the protection of people's liberties and democracy, as well as the advancement of social and state institutions
- Respect for national and popular values and the protection of people's interests should inspire the journalists in the practice of their function
- The journalists while practicing their function reject any intervention aimed at concealing or distorting the truth
- The access to sources of news is free and undisturbed for the journalist, who is not obliged to reveal his information sources
- The function of journalism may not be practiced for self-seeking purposes

The journalists do not accept any advantage, benefit or promise of benefit offered in exchange for the restriction of the independence of their opinion while practicing their function.

There is also a code of conduct for news and other political programmes, which was ratified by the presidential decree 77/2003 in March 2003: The Presidential Decree 77/2003, published on 28 March 2003, ratified a new code of conduct for news and other political programmes drafted by the National Council for Radio and Television (ESR). This code of conduct was drawn up in accordance with the procedure set out in Article 3(15) of Law 2328/1995. The new code of conduct applies to all radio and television broadcasts, both unencrypted (free-to-air) and encrypted (subscription) services. It regulates specific issues relating to the presentation of news bulletins, reporting on legal proceedings, the protection of the presumption of innocence of the accused, as well as the protection of minors, especially when children or adolescents are involved in criminal acts or accidents. Special concern is demonstrated for the protection of private life and of the rights of individuals who participate in radio and television programmes and talk shows. According to the new rules of conduct for news reports and political programmes, the broadcasting of information acquired through illegal telephone bugging, secret microphones or cameras is forbidden. It is also explicitly

stipulated that the broadcasting media are bound to respect and not to transmit aggravating comments regarding the refusal of an individual to participate in a news programme.

Law 2863/2000, published in the Hellenic government official gazette A, 262/29 November 2000, provides for self-regulation mechanisms by instituting self-regulatory bodies in respect of radio and television services. Under law, holders of authorisations (both encrypted and unencrypted broadcasting channels) must conclude multi-lateral contracts in which their parties define the rules and ethical principles governing the programmes broadcast. There must be at least two parties to the contract; other radio and television bodies may be invited to sign subsequently. Failure to conclude or sign a self-regulation contract would constitute a violation of the legislation in force and result in the national council for radio and television (NCRTV) withdrawing or suspending the corresponding authorisation. The ethical rules provided for in the self-regulation contracts may under no circumstances be contrary to the legislation in force.

- The NCRTV, in consultation with the *National Federation of the Reporters' Associations*, advertising agencies, and public and private broadcasters, developed the code of conduct for news and other political programs for journalists working for broadcast media. The code was ratified by the Presidential Decree 77/2003 in March 2003
- The Greek advertising and communication code was drawn up by EDEE (Hellenic association of advertising and communication agencies) and SDE (Hellenic advertisers' association) along with licensed radio and television stations in response to article 2 (chapter b) ('self-regulation and self-control bodies') of Greek Law 2863/2000. The code applies to all forms of advertising of all kinds of products and services as well as to all forms of commercial and public communication. The code specifies the rules of professional etiquette and ethics which must be observed in relation to citizens-consumers by all parties involved in advertising – that is, advertisers, advertising agencies, and advertising media, as well as by all parties involved in demanding or supplying the above mentioned forms of communication.
- The TV Audience Research Control Committee (TV A.R.C.C.), which is composed of representatives from the advertising and broadcasting industry, controls and audits the television audience measurement system.

1.2. Regulatory authorities

Responsible for enforcing media legislation is the Greek National Council for Radio and Television (NCRTV), which was set up by Law 1866 of 1989 and amended by Law 2683 of 2000. The NCRTV allocates radio and TV licences and is responsible for imposing fines. It ensures freedom of expression and media pluralism, ensures the quality of radio and TV programmes, and oversees journalism ethics in broadcasting.

Functions/competences

The NCRTV only plays a consultative role since the final decision of granting broadcasting licences rests with the Ministry of the Press and the Mass Media. The NCRTV is responsible for implementing regulation initiated by the Ministry of the Press and the Mass Media.

The task of ensuring compliance with the rules contained in the self-regulation contracts is entrusted to the internal ethical committees designated by the contracting parties themselves. In the event of violation of the rules contained in the contracts, the ethical committees may impose moral penalties, e.g., the obligation to broadcast messages or special programmes, etc. Failure to abide by the decisions of the committee imposing such penalties would constitute a violation of the legislation in force, thereby incurring the penalties provided for by law, which are imposed by the NCRTV. The internal ethical committees may also be entrusted with the power to investigate complaints and ensure exercise of the right of correction on the part of natural or legal persons whose honour or reputation has been damaged or whose strictly personal rights have been infringed.

Organisation of NCRTV

The NCRTV is a seven-member body, consisting of a president, a vice-president and five members, all appointed by the Greek Parliament.

Other regulatory bodies

- The National Committee of Electronic Means of Communication (EEHME), which monitors the quality of public and private services and reports to the NCRTV
- The representative supervisory Assembly of Viewers and Listeners (ASKE) is a consultative body which exercises control over programs and ads.

Self or co-regulatory bodies

- The *National Federation of the Reporters' Associations* which, in consultation with the NCRTV, advertising agencies, and public and private broadcasters, developed the code of conduct for news and other political programs for journalists working for broadcast media
- The five major journalists' unions, which in 1988 set up the code of ethics of Greek journalists
- The *Greek Association of Advertising Companies* and the *Greek Advertising Federation*, which drew up the Greek advertising and communication code governing the content, presentation and promotion of adverts.
- The EDEE (Greek Association of Advertising Communications Agencies), together with SDE (Greek Advertisers' Association) have developed the Greek Advertising and Communication Code. The Code contains advertising rules on: basic principles; decency; honesty; social responsibility; truthful presentation; comparisons; testimonials; denigration; protection of privacy; exploitation of goodwill; imitation; identification of advertisements; safety; children and young people; responsibility;

scope; substantiation. The Code also sets out its scope, requirements for compliance with the self-regulatory body and implementation. It does not cover the Internet

- The TV Audience Research Control Committee (TV A.R.C.C.), which is composed of representatives from: the *union of Hellenic advertisers*, the *union of Hellenic advertising agencies*, the public broadcaster *ERT*, the major commercial broadcasters, and the *association of Hellenic market and opinion research companies*. It controls and audits the television audience measurement system.

2. Press

2.1. Regulatory framework

As in most European countries the press industry in Greece is subject to minimal regulation. The principles of freedom of expression and freedom of information prevail.

Press ownership provisions

Law 2328/1995 states that every physical or legal person and his/her relatives up to the forth degree may be holders or participate in:

- Up to two daily political newspapers (morning or afternoon) published in Athens, Piraeus or Thessaloniki
- One daily financial paper and one daily sports paper published in Athens, Piraeus or Thessaloniki
- Two non-daily provincial newspapers published in different regions
- One Sunday publication

Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

See section on broadcasting above.

2.2. Regulatory bodies

Similarly to broadcasting, the Ministry of the Press and the Mass Media regulates the press sector. The NCRTV has an advisory role.

Self or co-regulatory bodies

See section on broadcasting above.

3. Online Services

3.1. Regulatory framework

As mentioned above, internet penetration in Greece remains still relatively low. Regulatory reforms concerning online services began later than in many countries, but Greece has now launched itself on the road to market liberalisation. Good progress has been made, particularly

in such areas as telecommunications, the tax system and public administration. According to a report published by the OECD, regulatory reform in Greece (available at: http://www.oecd.org/document/24/0,2340,en_2649_201185_1916184_1_1_1_1,00.html), the economy's benefits of the regulatory reform may be as high as 9-11% of GDP if reforms are sustained over several years.

The report notes that:

- In the telecommunications sector, services and prices have improved after reform
- Modernisation of the tax system has improved transparency and tax revenues, although major reform is needed to establish a level playing field for enterprises and to simplify the tax code Reducing red tape and regulatory uncertainties for firms is underway, and formalities are being visibly reduced. This should boost entrepreneurship and investment
- The Greek government has launched a series of reforms to improve the efficiency and effectiveness of its public administration. The culture of the Greek public administration is moving away from legalism and formalism to focus on service to citizens
- Nevertheless, as the OECD report observes, poor regulatory practices still reduce economic growth and job creation in Greece. Moreover, although most Greeks will benefit from regulatory reform, the resistance of many protected groups to a needed change is hard to overcome. The major challenges now are to systematically unwind the extensive state involvement in the economy and to ensure the sustainability of strong growth at low inflation by establishing regulatory policy regimes and institutions that support investment, innovation, and vigorous competition (see OECD 2001).

Internet lawⁱ

The liberalisation of telecommunications and the setting up of alternative network infrastructures raised the issue of internet regulation. Legal questions came to fore concerning intellectual property, trademark law and domain names, illicit and harmful content, privacy protection, data protection, liability of service providers, internet crime, and e-commerce.

Intellectual property

Greece has signed and ratified the IPR international treaties (Berne convention, universal copyright convention etc.). Therefore its legal regime on intellectual property is in line with most signatories. Copyright legislation is applicable against unauthorised copying of copyright works (web pages, databases, computer software, multimedia products) which appear on the internet. The above intellectual works combine and contain text, graphics, audio, video and computer programs. The Hellenic copyright Act (Law 2121/93), which implements the EU directive of 14 May 1991 on software protection, applies on computer software. According to the Act, computer programs are protected if they are original; proprietary rights on software products belong to the employer unless otherwise provided by

contract; the rightholder's distribution right is exhausted after the first sale in the EU; protection is granted for the life of the author and for fifty years after death.

Trademark law and domain names

The relationship between trademark law and domain names in Greece has not been sufficiently addressed by legal commentators. A trade name is the name which a merchant uses in his commercial activities. Normally, if the merchant is a natural person, his trade name will coincide with his name as a citizen (first name and family name). Trade names and distinctive titles of natural persons and legal entities are protected by virtue of Arts. 13 and 14 of Law 146/1914 on unfair competition together with trademark legislation (Law 2239/1994 as amended by presidential decree 353/1998). Protection is granted provided the name is registered as trademark at a special department of the ministry of development by following a simplified registration procedure which controls the existence of a former registration of a similar product or service. Trademarks can be used as keywords in internet searches to retrieve URL addresses. They can also be registered as domain names. The registration of Internet names under the .gr domain is monitored by the telecommunications regulator EETT.

Illicit and harmful content

Greece participates actively to the European initiatives for combating illegal and harmful content on the internet (child pornography, content which incites hatred on grounds of race, sex, religion, nationality or ethnic origin). Several provisions in audiovisual and consumer law can be applied for protecting citizens and especially minors against materials which are detrimental to human dignity, such as material that is obscene, contrary to sound morals or indecent. Moreover, the civil code contains provisions which protect rights on personality (Arts. 57-59). Furthermore, in the general criminal law or in specific enactments thereof there are many provisions which may be used to enforce the prohibition on producing, distributing, importing and advertising such material.

Privacy protection

The protection of privacy in Greece has traditionally been considered a fundamental human right. Greek law, jurisprudence and legal theory traditionally accept that the right to privacy is a derivative of a broader right to personality. According to Greek law, the latter is an absolute, autonomous, non transferable “composite” or “framework right” since it also includes several particular dependent rights such as right to respect of honor, reputation, personal integrity and professional image. Furthermore, Greece has signed and ratified the European convention for the protection of human rights and fundamental freedoms of 4 November 1950 and its protocols. Finally, the constitution of 1975 contains a set of fundamental rules covering privacy and the broader right to personality, such as Art.2 para. 1 (respect of human value), Art.5 para. 1 (free development of personality), Art.7 para. 2 (respect of human dignity), para. 9 (protection of home and family life), and para. 19 (secrecy of correspondence). Those fundamental rights are reflected in several civil and penal law provisions.

Data protection

The Greek data protection legislation is in line with the 1981 Convention of the Council of Europe as well as with the relevant European directives. Laws 2472/1997 and 2774/1999, which implement the above measures, are also applicable on the internet.

The Data Protection Authority, which is an administrative body set up by Law 2472/1997, is active in this field. It has issued several decisions concerning the commerce of personal data on administrative and direct marketing purposes, the use of religious data, the billing procedures applied by telecommunications operators for subscriber anonymity etc. In the same direction Law 2246/1994 (the Telecommunications Act) and its implementing regulations, also introduce the telecommunications operators' obligation to guarantee secrecy of communications and data transmitted over their networks.

Internet crime

Notwithstanding the civil law issues, the use of the internet could give rise to criminal liability (hacking, libel or slander). Dissemination of any information through the internet that offends, shocks or even insults an individual may entail custodial or pecuniary penalties for the infringers. According to the Criminal Code an offence should be an act, which is illegal, imputable to the offender and punishable under the law. Arts. 361- 365 of the Criminal Code on defamation and libel may be invoked in order to establish a criminal offence committed against a person through the internet. The above provisions have been added to Art.370 of Law 1805/1988 incriminating forgery.

3.2. Regulatory bodies

The National Telecommunications and Post Commission (EETT) supervises and regulates the telecommunications as well as the postal services market. It was established in 1992 by Act 2075 and commenced operations in summer 1995. EETT's supervising and regulatory role was further enforced by Act 2867/2000. EETT's institutional purpose is to promote the development of the two sectors, to ensure the proper operation of the relevant market in the context of sound competition and to provide for the protection of the interests of the end-users. EETT is an independent self- funded decision-making body.

Structure

EETT is a nine-member body, selected by the parliament's president committee and appointed by the Minister of Transportation and Communications. EETT members enjoy absolute independence in the performance of their duties.

Responsibilities

The needs for an effective, flexible and skilled administration, arising from the liberalised market, are met in the new Act 2867/2000, under which EETT's supervising and regulatory role was enforced. The Act's objective is to ensure the proper operation and development of telecommunications, by providing for the protection of the end-users, the provision of universal service as well as the protection of personal data.

Self or co-regulatory bodies

So far in Greece no umbrella association of internet service providers (ISPs) has been set up and no code of conduct by the ISPs has been drawn up. However, a non-profit organisation, known as the *Greek self-regulating organisation for internet content*, *Safenet* for short, has been in operation since November 1999, following an initiative from the EETT. *Safenet*'s aim is to promote self-regulation arrangements for safer use of the internet through combating illegal and offensive content on the internet. An additional objective is to raise awareness of issues regarding illegal and harmful content. *Safenet* (www.safenet.gr) was founded and supported by several Greek organisations such as the three largest Greek ISPs (Otenet, Forthnet, Hellas-on-Line), the *Greek national research network*, the *Greek association of internet users*, and a large Greek consumers association (*Ekpizo*). It operates the hotline safeline (www.safeline.gr), whose primary concern is the combating of any type of illegal content dealing with (child) pornography, racism, online gambling, etc. Apart from operating the hotline, safenet ensures compliance with the rules and regulations of the European network of hotlines *inhope*, it participates in organised events, and ensures close cooperation between parties.

The urgent need to control and restrict the flow of illegal content on the internet (child pornography, illegal acts with minors as victims) led to the creation in Greece of an initial hotline called *Safeline*, which has been in operation since March 2003.

Other initiatives taken by public authorities to raise public awareness include: the websites of the Public Order Ministry and the Greek police headquarters, which contain guidelines informing parents on the ways to protect their children from negative internet content. In addition, the Attica Security Directorate's sub-directorate for protection of minors has used the mass media to inform parents and guardians about the measures that need to be taken and on filtering methods to prevent minors from accessing unsuitable and harmful programmes. Furthermore, back in 1999 the Education and Religious Affairs Ministry set up the Greek school network to help protect pupils from exposure to harmful internet content.

Concerning the control of online chat-groups, the Greek police have set up a special police unit which surfs the Internet and keeps an eye on them.

Concerning the right of reply in the online media industry, use is made of the general provisions in the Greek Civil Code governing protection from offences against the person and the related penal provisions governing simple and defamatory advertising.

4. Film/Interactive games

4.1. Regulatory framework

The film sector is under the auspices of Law 1597 of 1986, which provides for “the protection and development of the art of film and the support of Greek cinema” and of Presidential Decree 113/98.

Similarly to other European countries, in Greece there exists a film classification system with the purpose of verifying that all film, video and DVD available meet acceptable community

standards and assisting parents in making an informed and responsible entertainment choice for their families. A rating sticker is affixed to all approved film/video/DVD products indicating the classification. This is as follows: U (universal); PG (parental guidance); 12 (12 years old or over); 15 (adult accompaniment); 18 (restricted).

Video games

Greece participates in the pan-European age-ratings system, *PEGI*, which stands for *Pan-European games information*. The scheme has two parts:

- An age rating in one of five categories (3+, 7+, 12+, 16+ and 18+)
- Symbols placed on packaging as a warning that the game contains one or more of the following elements: discrimination, drugs, fear, bad language, sex and violence.

It is worth noting that in the past Law 3037 of 2002 forbade electronic gaming with electronic mechanisms from public and private places. The reason given for the introduction of the Law was that Greek authorities found it impossible to police the content of games and therefore the physical health and sound mind of consumers. However, the games law was dropped following opposition from the European Commission, which argued that the law hindered free movement of goods and provision of services.

Regulatory bodies

- Ministry of Culture
- Greek Film Classification Board, established in 1986 by Law 1597/86 with a duty to classify all film/video products that is for sale or rental across Greece. It is a 19-member board that is supervised by the ministry of culture and subsidized by the state.

This board operates in the context of the Greek film centre, which is a corporation that belongs to the broader public sector and is supervised by the ministry of culture and subsidised by the state. The specific duties of the classification board are to give classifications to films, videos and DVD titles.

Self or co-regulatory bodies

See relevant section of broadcasting.

5. Summary

It seems that the Greek regulatory regime for the audiovisual media and the press provides for adequate rules to deal with legal issues that may arise and is largely in line with EU regulation. However, media owners frequently find a way to overcome regulatory barriers in order to pursue their own goals. This is evident when it comes to ownership regulation. Despite strict media and cross-media ownership rules, media concentration levels in Greece are high as publishers have moved to broadcasting and vice versa. In addition, Greek law disposes an adequate set of rules to deal with internet regulation. Nevertheless, the international dimension of the internet and the constant technological evolution requires

international co-operation and coordination in order to promote the use of the internet while safeguarding individual rights.

In terms of self or co-regulatory mechanisms again it seems that Greece has various provisions that may provide a valuable alternative to governmental regulation. In the case of the audiovisual media and the press relevant is the code of ethics of Greek journalists, the code of conduct for news and other political programmes, the Greek advertising and communication code governing the content, presentation and promotion of adverts. In terms of online services, the Greek self regulating organisation for Internet content, named *Safenet*, and the hotline named *Safeline* help to combat issues arising from the rapid development of the internet and the liberalisation of the telecommunications services. However, as newly-established initiatives it is still early days to assess their effectiveness.

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3.11. Hungary

Introduction

The system of media regulation of Hungary is characterised by its novelty. The institutions of the legislative framework were created overwhelmingly following the 1989-1990 transition to democracy, the Hungarian media system has been shaped to its present form during the 15 years passed since this date. In this sense the regulatory framework for the Hungarian media is still at the phase of development and this should be born in mind throughout the evaluation of its institutions.

As to the media landscape of Hungary the following characteristics are worth noting:

The Hungarian broadcasting market is based on the duality of public service and commercial broadcasters.

The two public service television companies provide three national channels¹. As regards commercial broadcasting, there are two terrestrial programmes with nationwide area of reception: the *RTL Klub* which is provided by the *Magyar RTL Rt.* and *TV2* provided by *MTM-SBS Rt.* Currently there are also 15 satellite broadcasters operating under Hungarian jurisdiction². They provide mostly thematic programmes that are typically redistributed by cable networks. The presence of foreign channels such as Eurosport or National Geographic Channel complemented with Hungarian dubbing is also significant in this segment. According to a study of the Eurostat³ the average daily TV viewing time in Hungary is 250 minutes per citizen. By this figure Hungary is the third among the EC countries.

Regarding radio there are three national programmes of the *Magyar Rádió Rt.* the public service broadcaster. On the commercial side there are two national⁴ programmes. There are also numerous local and regional radio stations in Hungary.

As to press there are approx. 10 national, 22 regional dailies, approx. 300 monthlies and about 400 other periodicals are present on the Hungarian market⁵. Many of the publishers are undertakings of international companies such as the Ringier-group, WAZ, Sanoma, Bertelsmann AG., MTG, and Axel-Springer.

The general trends regarding newspapers show decline in the case of political dailies that can be partially explained by the growing market share of tabloid press and the increasing amount of online news consumption.

¹ The *Magyar Televízió Rt.* operates the programmes *M1* and *M2*. *M1* is a terrestrial channel, *M2* is a free to air programme distributed via satellite. The *Duna Televízió Rt.* provides the programme of *Duna TV*, dedicated primarily to Hungarians living outside the borders of the country.

² The list of these broadcasters is available at <http://www.ortt.hu/nyilvantartas/muholdas.xls> in a form of an extract from the official registry kept by the ORTT.

³ EUROSTAT: Cinema, TV, and radio in the EU (Data 1980 – 2002).

⁴ *Danubius Rádió, Sláger Rádió.*

⁵ The explanatory part of decision Vj-059-2003.

The most dynamic segment of the audiovisual industry is the sector of on-line services. The overall percentage of Hungarian households with Internet-access was 13% by the end of the first half of 2004. The development of the internet-market is characterised by the rapid growth in the proportion of households with broadband access within the total number of Internet-users. In the first quarter of 2004 the share of broadband connections (ADSL and cable) was 34.5% within the total number of households having Internet-access⁶.

Constitutional law

Act No. XX. of 1949. on the *Constitution of Hungary (Constitution)* declares:

- the freedom of expression⁷;
- the freedom of the press⁸;
- the protection of human dignity⁹ and privacy¹⁰;
- the right of the child to protection and care needed to his/her proper physical, mental and moral development¹¹.

These provisions of the *Constitution* are in accordance with the corresponding international agreements, in particular with the *European Convention on Human Rights*.

The Hungarian constitutional law is characterised by the high number of legislative subjects that can only be regulated by acts adopted with qualified majority of votes in the *Parliament*. The basic questions of press and media are also subjects of legislation requiring two-thirds majority. This feature makes the framework of the Hungarian media regulation extremely rigid and hard to amend.

The provisions of the *Constitution* related to media have been interpreted by the *Constitutional Court* several times. In its most important decisions the forum gave guidance in the following questions:

- the balance between freedom of expression and right to privacy, especially in the case of public officials¹²;
- the necessity and means of the institutional and financial independence of the public service broadcasters¹³;

⁶ The data is displayed on the website of the Internet-access provider Axelero Rt. under the URL <http://www.axelero.hu/axelero/20041109intenziv.html>.

⁷ Constitution 61. §. (1).

⁸ Constitution 61. §. (2).

⁹ Constitution 54. §. (1).

¹⁰ Constitution 59. §. (1).

¹¹ Constitution 67. §. (1).

¹² See decisions of the Constitutional Court No. 36/1994. (VI.24.); 34/2004. (IX. 28.).

¹³ See decisions of the Constitutional Court No. 37/1992. (VI.10.); No. 47/1994. (X.21.); No. 31/1995. (V.25.); 22/1999. (VI.30.).

- the right of reply¹⁴;
- the balance between freedom of expression and the right to the healthy environment in case of advertising tobacco products¹⁵.

In its decisions the *Court* – inter alia - emphasised that freedom of expression is a right of the individual citizen on one hand, but on the other it creates the obligation of the state to create and maintain the necessary preconditions for democratic public debates.

According to the consequent practice followed by the *Constitutional Court* the state regulation must be provided almost exclusively by means of legislation. Along this principle the court declared general interpretations of law by state authorities taken without explicit permission of law null and void in several cases¹⁶.

Concerning the pursuit of public policy goals in relation to entrusting private bodies with such tasks in the case of the media there are no definite guidances in the *Constitutional Court's*¹⁷ practice. This is also marked by the fact that – apart from a study¹⁸ published by the *National Radio and Television Commission (ORTT)* in 2002 outlining a co-regulatory framework for internet content regulation – there is no official concept paper publicly available that would provide approaches to the question of co- and self-regulation.

1. Broadcasting

1.1. Regulatory framework

1.1.1. Legal provisions

The rules governing broadcasting activities in Hungary have been set out by *Act No. I. of 1996. on radio and television broadcasting (Broadcasting Act)*. This act - being the first covering this subject - had no predecessor in the Hungarian law. The *Broadcasting Act* entered into force on 1st March 1996. Since this date it has been amended in a significant extent only once by *Act No. XX. of 2002*. This amendment served exclusively the purpose of alignment with the rules of *directive 89/552/EEC “Television Without Frontiers” (TWF Directive)*.

It can be drawn as a conclusion that the structure of the *Broadcasting Act* and its basic legal institutions have remained untouched since its approval. The reason of this is the extreme political sensitivity of the issue in the country and the special constitutional requirement of the two-thirds majority in case of legislation concerning broadcasting as indicated above.

¹⁴ See decision of the Constitutional Court No. 57/2001. (XII.5.).

¹⁵ See decision of the Constitutional Court No. 37/2000.(X.31.).

¹⁶ Decisions of the Constitutional Court No. 60/1992. (XI.17.); 6/2004 (III.24.); 45/2001. (XI.17.); 37/2001. (X.11.); 2/2005. (II.10.).

¹⁷ www.mkab.hu.

¹⁸ “Principles of content regulation for public electronic communications”, 7th of March 2002., www.ortt.hu/tanulmányok/koncepcio_angol_20020905.doc.

The *Broadcasting Act* is a comprehensive single act covering all the special legal aspects of broadcasting activities. The issues addressed by the act can be summarised as follows:

Declaration of the principles¹⁹ such as the freedom of broadcasting and reception. Beside this the act declares the exclusive *responsibility* of the broadcaster for the content of its programme. The act also defines basic journalistic requirements in case of news services.

The *TWF Directive* has been implemented to the Hungarian law by the *Broadcasting Act*. Therefore a significant part of the act reflects directly to the rules of this directive. The implementation took place by different legislative methods subject by subject. The scope of the act²⁰ has been defined with almost word by word transposition of the jurisdiction rules of the directive. In case of advertising and sponsorship²¹ the act takes a slightly more detailed approach than the directive. Concerning protection of minors²² the *Broadcasting Act* outlines a detailed set of rules.

The licensing²³ and registering of broadcasters²⁴. It should be noted that Hungarian broadcasters using cable and/or satellite networks exclusively are subject of only registration²⁵. The licensing regime set out by the act is to be applied only in case of terrestrial broadcasters.

The description of the legal aspects of public service broadcasting in their entirety. In this respect the law outlines the organisational structure²⁶ of the three Hungarian public service broadcasters²⁷, their supervisory bodies²⁸ and their financing²⁹.

The composition, functions and financing of the *National Radio and Television Commission (Országos Rádió és Televízió Testület; ORTT)*, the regulatory authority for the broadcast media³⁰.

Specific ownership restrictions. The purpose of these provisions is the exclusion of political influence over broadcasters³¹. On the other hand another set of these rules are aimed at the

¹⁹ *Broadcasting Act* 3. § - 5. §.

²⁰ *Broadcasting Act* 1/A. § - 1/B. §.

²¹ *Broadcasting Act* 10. § - 19. §.

²² *Broadcasting Act* 5/A. § - 5/F. §.

²³ *Broadcasting Act* 90. § - 107. §. To licensing please see paragraphs 1.1.2. and 1.2.1.2.

²⁴ *Broadcasting Act* 113. §.

²⁵ Concerning registration, also see paragraph 1.2.1.2.

²⁶ *Broadcasting Act* 53. § - 76. §.

²⁷ *Magyar Rádió Rt.; Magyar Televízió Rt.; Duna Televízió Rt.*

²⁸ *Broadcasting Act* 53. § - 63. §.

²⁹ *Broadcasting Act* 64. § - 76. §.

³⁰ *Broadcasting Act* 31. § - 52/A§.

³¹ *Broadcasting Act* 86. § - 87. §.

prevention of media concentration³². Programme delivery platforms and print media are also considered in this respect.

Rules concerning programme distribution. The *Broadcasting Act* covers a wide range of issues falling under the scope of the telecommunications legislation of the *European Communities*. Questions of operating satellite up-link³³ or cable programme distribution systems³⁴ are addressed here.

The act also contains the so-called “Must-carry” rules³⁵. In this respect programme service distributors – i.e. the cable operators – are obliged to distribute all the programmes of the public service broadcasters available at their respective head-ends. These programmes shall be distributed in the basic – or where it exists in the so-called lifeline – package without charging any additional fee to the consumer. The economic details of this distribution are also specified briefly by the act. Furthermore, cable operators are also subject of the obligation to conclude contract for programme distribution with local broadcasters up to 10% of their capacity but for at least 3 channels. A similar additional obligation for the same capacity exists in relation with national and regional broadcasters either.

1.1.2. Administrative regulation/rules

The Hungarian broadcasting regulation is based overwhelmingly on legislative acts. Other forms of regulation have only secondary significance in this respect. Concerning administrative rules the following shall be recalled:

The *Broadcasting Act* stipulates³⁶ that the list of major events - corresponding among others to Article 3a of the *TWF Directive* – shall be drawn up by a decree of the Government. The act requires the consent of the *ORTT* to this decree and the regulatory authority also has the possibility – but not the obligation - to hold a public hearing³⁷ on the issue.

It should be noted that the list of major events has not been drawn up yet.

In case of the protection of minors the rules of the *Broadcasting Act* are based on the idea of rating and labelling programmes. The act requires the *ORTT*³⁸ to publish sufficiently detailed guidelines³⁹ to enable broadcasters to carry out their corresponding rating and marking tasks properly.

³² *Broadcasting Act* 122. § - 127. §.

³³ *Broadcasting Act* 114/A. §.

³⁴ *Broadcasting Act* 115. § - 121. §.

³⁵ *Broadcasting Act* 117. §, 118. § (3) – (6).

³⁶ *Broadcasting Act* 9/A. § (2).

³⁷ *Broadcasting Act* 9/A. § (5).

³⁸ *Broadcasting Act* 5/F. §.

³⁹ *Decision 1494/2002. (X.17.) of the ORTT.*

Despite their clear regulatory role these guidelines cannot be qualified as rules in the legal sense, since – according to an explicit provision⁴⁰ of the *Broadcasting Act* – they oblige only the *ORTT* but lack the formal binding force as far as broadcasters are concerned. Therefore they influence the practice of broadcasters only indirectly.

The necessity of this rather complicated solution originates in the fact that the *ORTT* – as indicated among the constitutional premises of the regulatory framework - has no formal regulatory powers under the Hungarian legal system. This can be regarded the only case when the *ORTT* has a clear entrustment by the act necessary to issue such official guidelines.

Another important set of rules is fixed in the broadcasting contracts of the terrestrial broadcasters. These contracts⁴¹ signed between the individual broadcasters and the *ORTT* play more or less the same role as broadcasting licences in other European countries.

The broadcasting contracts define the special requirements to be met with by the concerned broadcaster in the tendering process for the given frequency. The obligations set out in the contracts can be enforced by means of civil law.

1.1.3. Other provisions (especially co-regulatory or self regulatory measures, codes of conduct, etc.)

The Hungarian public service broadcasters are required⁴² to adopt their own codes on carrying out their public service duties (*Közszolgálati Műsorszolgáltatási Szabályzat, KMSZ*)⁴³. These codes – products of a kind of institutional self-regulation – are subjects of approval by the *ORTT*.

It should be noted that these codes are not playing such a substantial role in the work of Hungarian public service broadcasters that can be experienced - for example - in the case of the British BBC.

1.2. Regulatory authorities/bodies

The Hungarian broadcasting sector is supervised by a single independent regulatory authority, the *ORTT*⁴⁴. Beside the courts the *ORTT* is the only competent organ of the state when questions related to programme content arise. The authority delivers yearly reports on its activities to the Parliament.

1.2.1. Authority/ies

The National Radio and Television Commission (*ORTT*)

⁴⁰ *Broadcasting Act* 5/F. §.

⁴¹ *Broadcasting Act* 90. §.

⁴² *Broadcasting Act* 29. §.

⁴³ The *KMSZ* of Magyar Rádió Rt. is available at: www.mrka.hu/text/kmsz.php. The other two documents have not been published on the WWW.

⁴⁴ www.ortt.hu.

1.2.1.1. Legal basis

The legal basis for the activities of the *ORTT* is provided exclusively by the *Broadcasting Act*. The corresponding chapter of the act⁴⁵ stipulates detailed rules on the composition, the organisation, the functions and competencies, and the financing of the authority.

Within the framework provided by the law the *ORTT* is free to define its own rules of procedures (*Ügyrend*)⁴⁶, which have to be published in the official journal (*Magyar Közlöny*).

1.2.1.2. Functions/competencies

The functions of the *ORTT* can be assorted by distinguishing three major groups of tasks:

Functions related to the entering of broadcasters into the market. Concerning terrestrial frequencies available for broadcasting purposes the *ORTT* publishes a call for a tender. Following the evaluation of the bids the *ORTT* authorises the winning applicant to carry out broadcasting activity by concluding a contract with it. It should be noted that allocating frequency for broadcasting is the task of the *National communications authority (Nemzeti Hírközlési Hatóság, NHH)*, the telecoms regulator.

The *ORTT* also keeps the official record of cable and/or satellite broadcasters under Hungarian jurisdiction. In this respect the authority does not have any discretionary powers, and can only refuse the entry of a broadcaster into the record in case of non compliance with the rules of the *Broadcasting Act*.

Supervising of broadcasters, sanctioning. The monitoring of broadcasters' compliance with their obligations laid down in the *Broadcasting Act* and their commitments undertaken in the broadcasting contracts is also a major role for the *ORTT*. This is carried out primarily by the institution's own monitoring unit. The broadcasters are also obliged to provide the authority with any data requested.

In case of violation of the rules of the act the *ORTT* can apply a range of sanctions⁴⁷ comprising of official warning, financial remedies, temporary suspension of the broadcast, and termination of the broadcasting contract. It should be noted that since the foundation of the *ORTT* in 1996 the latter sanction has never been imposed.

The supervising activity of the *ORTT* is subject of judicial review.

Managing the *Broadcasting Fund*. The *Broadcasting Fund* plays a central role in financing Hungarian media. Its budget is defined yearly by the *Parliament* in a separate act⁴⁸. Its gross sum for 2005 have been determined at 32.148.000.000 HUF (approx. 130.000.000. Euro). The main incomes of the fund are the broadcasting fee due to be paid annually by the broadcasters, the fines and other financial remedies imposed by the *ORTT*, and the licence fee income which has been substituted by a direct state subsidy since 2002.

⁴⁵ *Broadcasting Act*, Chapter III., 31. § - 52/A§.

⁴⁶ www.ortt.hu/ortt_ugyrend_040514.doc.

⁴⁷ *Broadcasting Act* 112. §.

⁴⁸ *Act No. CXVII of 2004 on the budget of the National Radio and Television Commission for the year 2005*.

The main role of the *Broadcasting Fund* is financing public service broadcasting. The resources of the fund are also used for supporting development of transmission networks and –to a limited extent - audiovisual production.

As indicated earlier, the *ORTT* does not have the power to adopt regulations, guidelines or other internal rules obliging broadcasters. This means that the regulatory role of the authority prevails only indirectly, via its decisions made case by case.

General opinions concerning particular issues – i.e. certain problematic questions of advertising and sponsorship - published by the *ORTT* are also available⁴⁹. However, this practice has been found unconstitutional by the *Constitutional Court* in a recent judgement related to a guideline adopted by the regulatory authority concerning the definition of the area of reception of programme distribution networks⁵⁰. In this decision the court expressed that such guidelines are jeopardising legal certainty, since they might mislead the parties concerned by creating the false impression of having any legally binding force.

The *Broadcasting Act* also grants the opportunity for the *ORTT* to take part in forming the audiovisual policy of the *Parliament* and the *Government* by submitting proposals.

1.2.1.3. Organisation

The *ORTT* as a commission is composed of members elected by the *Parliament* for a 4 years term of office. Each member is nominated by a parliamentary faction; therefore the actual number of the members depends on how many political parties are represented in the *Parliament*. The chairperson of the commission is nominated jointly by the prime minister and the president of the republic. Currently the *ORTT* has five members including its president.

The *Broadcasting Act* aims at creating all the necessary preconditions to the independence of the members. Following their appointment they are subjects of strict rules of incompatibility, and they can be dismissed only in exceptional cases.

The activity of the *ORTT* as a commission is aided by an office of 126 civil servants. The director general of the office is appointed by the chairperson of the commission. It should be recalled that the office has only a preparatory role since every single decision of the *ORTT* is made at the level of the commission. Based on the same considerations a separate staff of 45 employees of the *Broadcasting Fund* prepares and follows the implementation of the commission's decisions related to the allocation of the fund's resources.

The role of the *ORTT's Complaints Committee (Panaszbizottság)* is also to be noted. This body is designated to consider the complaints related to the impartiality of information provided concerning especially in news and current affairs programmes. The members of the *Complaints Committee* are appointed by the *ORTT*, which also enacts its rules of procedure. The decisions of the *Complaints Committee* can be challenged at the *ORTT*. Otherwise the

⁴⁹ www.ortt.hu/elvi_allasfoglalasok.htm.

⁵⁰ *Decision of the Constitutional Court No. 2/2005. (II.10.).*

Complaints Committee is independent, and sometimes takes entirely different approaches in judging cases to those of the regulatory authority.

1.2.2. Self- or Co-regulatory bodies

Presently there is no self- or co-regulatory body for the broadcast media in Hungary. However broadcasting is also covered by the activity of journalistic and advertising self-regulatory organisations.

2. Press

2.1. Regulatory framework

2.1.1. Legal provisions

The basement of the legal framework concerning press is provided by *Act No. II. of 1986 on the press (Press Act)*. This short act has been amended several times since it entered into force. The *Press Act*:

- defines the press as a tool serving the right of the citizen to be informed⁵¹;
- stipulates the obligation of public institutions to give adequate and truthful information to the press⁵²;
- describes the role of the founder of a press organisation, the publisher and the journalist⁵³;
- defines the obligations and rights of the journalist (i.e.: the obligation to carry out his work with proper prudence, the obligation to verify carefully the truth of the information intended to be published, the right to ask anybody for information, or his/her right not to disclose his/her sources)⁵⁴;
- obliges publishers to be entered into the official registry kept by the *Ministry of National Cultural Heritage*, and defines the corresponding rules in details⁵⁵;
- provides the rules of keeping the official registry of journals⁵⁶.
- lays down the obligation to publish imprint and defines the content of it⁵⁷;
- defines the responsibility of the editor in chief or its equivalent⁵⁸.

⁵¹ *Press Act* 2. § (1).

⁵² *Press Act* 4. §.

⁵³ *Press Act* 7. § - 11. §.

⁵⁴ *Press Act* 11. §.

⁵⁵ *Press Act* 12. § - 15. §.

⁵⁶ *Press Act* 12. § - 15. §, to registry please also see 4.2.

⁵⁷ *Press Act* 16. §.

⁵⁸ *Press Act* 18. § - 19. §.

The *Press Act* is complemented by a decree of the *Council of Ministers* (as the government of Hungary used to be called before 1989) on the detailed rules concerning its implementation⁵⁹.

Attention shall be paid to *Act No. IV. of 1959. on the Civil Code (Civil Code)*⁶⁰ and to *Act No. III. of 1952. on Civil Procedure*⁶¹ since these define the rules of rectification. Rectification can be requested by any person concerned in a case when incorrect factual information had been provided by the press. If the press organisation refuses to rectify, the court has the power to oblige it to do so.

Press activities are also subject of legislation concerning the protection of reputation and privacy of the individual⁶², and of provisions of *Act No. IV. of 1978 on the Penal Code* concerning libel and defamation⁶³.

2.1.2. Administrative regulation/rules

The decree of the *Council of Ministers* on the implementation of the *Press Act* has already been referred to above.

The rules for rectification provided by the *Civil Code* and in the *Act on Civil Procedure* are also interpreted by the *Civil College of the Supreme Court*⁶⁴. These general interpretations produce no formal legal obligations, but they are followed by the courts in the practice.

2.1.3. Other provisions (especially co-regulatory or self regulatory measures, codes of conduct, etc.)

Among self regulatory initiatives in issues of journalism the *Code of Journalistic Ethics (Újságírói Etikai Kódex)*⁶⁵ shall be recalled. The code - enacted by the *Association of Hungarian Journalists (Magyar Újságírók Országos Szövetsége, MÚOSz)*⁶⁶ – provides guidance in questions of

- the protection of human rights, the prohibition of incitement to hatred, protection of human dignity;
- the obligation of providing truthful and conscientious information;
- the prohibition of plagiarism and other abuses;
- ethics of providing information, collegial behaviour.

⁵⁹ Decree of the Council of Ministers No. 12/1986. (IV.22.) on the implementation of Act No. II. of 1986. on the press.

⁶⁰ Civil Code 79. §.

⁶¹ Civil Procedure 342. § - 346. §.

⁶² Civil Code 75. § - 85. §.

⁶³ Penal Code 179. § - 180. §.

⁶⁴ PK 13, PK 14, PK 15.

⁶⁵ www.muosz.hu/cgi-bin/index.php?dir=muosz&file=etikai.

⁶⁶ www.muosz.hu.

The scope of the code extends to journalists working in print, broadcast and on-line media.

2.2. Regulatory authorities/bodies

Based on the corresponding rules of the *Press Act* the official registry of journals is kept by the *Ministry of National Cultural Heritage*⁶⁷. It should be noted that the act poses only formal criteria for the application for entering into the registry, and this can only be refused by the ministry in cases of non compliance with the act⁶⁸.

In questions of journalism the practice of the courts have the most significant influence on the press. The procedure of rectification is also pursued by the competent civil courts.

2.2.2. Self- or Co-regulatory bodies

In issues of journalism the *Committee of Ethics of the Association of Hungarian Journalists (Magyar Újságírók Országos Szövetségének (MÚOSz) Etikai Bizottsága)* acts as a self-regulatory body.

According to the statute of the MÚOSz the federation itself is financed by “*the dues paid by the members, the revenues of the federation’s enterprises and by other incomes*”⁶⁹. In practical terms the backbone of financing is the source of the dues. Concerning the share of the two other elements in the total income of the MÚOSz there is no data publicly available.

2.2.2.1. Legal basis

The MÚOSz carries out its tasks on the basis of general rules on associations as set out in *Act No. II. of 1989 on the right of assembly* and in the *Civil Code*.

2.2.2.2. Functions/competencies

The *Code of Journalistic Ethics* of the MÚOSz defines the *Committee of Ethics* as an arbitration court of professional honour, with the aim to reconcile parties and to achieve public recompensation above all⁷⁰.

The *Committee of Ethics* proceeds in alleged violations of the *Code of Journalistic Ethics*. The procedure of this committee is initiated upon a complaint. The code empowers the committee to open inquiry even in cases of journalists who are not members to the MÚOSz. When breach of the *Code of Journalistic Ethics* is stated, the committee may impose a scale of sanctions defined in the code extending from four grades of warnings to temporary suspension of membership in the MÚOSz or exclusion from the association. The commission publicises its decisions.

⁶⁷ www.nkom.hu.

⁶⁸ *Press Act* 12. § - 15. §.

⁶⁹ *Statute (Alapszabály) of the MÚOSz* 23. § 1.

⁷⁰ Questions of procedure and sanctions are dealt with in 10.§ of the *Code of Journalistic Ethics*.

2.2.2.3. Organisation

The *Committee of Ethics* is composed of 25 members elected by secret voting by the general assembly of *MÚOSz*.

3. Online services

3.1. Regulatory framework

3.1.1. Legal provisions

In case of on-line media services *Act No. CVIII. Of 2001 on certain legal aspects of electronic commerce services and information society services (E-commerce Act)* shall be recalled. The rules of the act generally reflect to the corresponding provisions of the *Directive on electronic commerce*⁷¹ of the community law. The main relevant features of the act are:

- the declaration of the principle of excluding prior authorisation;
- definition of general information to be provided;
- rules on liability of intermediary service providers, the “*notice and take down*” procedure in cases of copyright violations;
- special provisions concerning unsolicited commercial communication.

The main role of the *E-commerce Act* is to provide the necessary regulatory background in order to make the existing legal instruments of the Hungarian law – such as the *Copyright Act*, the *Advertising Act*, or the *Civil Code* – applicable to on-line services as well.

It shall also be noted that the rules set out in the *Civil Code* for rectification formally extend only to print and broadcast media. However there are precedents in the practice of the lower level courts applying this institution to on-line media as well.

3.1.2. Administrative regulation/rules

Concerning the content of on-line media services no administrative rules can be found in the Hungarian legal system.

3.1.3. Other provisions (especially co-regulatory or self regulatory measures, codes of conduct, etc.)

A self-regulatory initiative concerning on-line content is the *Code of Content Provision (Tartalomszolgáltatási Kódex)* enacted by the *Hungarian Content Providers' Association (Magyar Tartalomszolgáltatók Egyesülete)* in 2001⁷². It was last reviewed in July 2003.

The code addresses – inter alia - the following issues:

⁷¹ 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 (“*Directive on electronic commerce*”).

⁷² Available at: www.mte.hu/text/text2/doc/text21012101011/mte_kodex_2003_egyseges.htm.

- the distinctions between editorial content, paid content and user generated content;
- the extent of the liability of the content provider;
- questions of copyright;
- data protection;
- integrity of contents;
- on-line advertising;
- archiving on-line content;
- commitment to make existing filtering softwares available for users in order to promote protection of minors.

The annexes of the code comprise:

- a code of ethics related to editorial content on journalistic principles of on-line news provision;
- a code on data protection;
- model principles for moderation of services;
- rules of procedure of the ad-hoc committee safeguarding the *Code of Content Provision*.

3.2. Regulatory authorities/bodies

The telecommunications aspects of providing on-line services fall under the competence of the *National Telecommunications Authority (Nemzeti Hírközlési Hatóság, NHH)*. Relevant to other matters procedures before the courts may be initiated.

With the exception of the courts presently there is no authority dealing with matters related to on-line content in Hungary.

3.2.2. Self regulatory body

The Hungarian Content Providers' Association

The role of self-regulation in Hungary is played by a body called *Hungarian Content Providers' Association (Magyarországi Tartalomszolgáltatók Egyesülete, MTE)*. This association was formed by the greatest content providers of the country.

3.2.2.1. Legal Basis

The *E-commerce Act* – as amended recently in 2003⁷³ - declares that the state acknowledges the work of self-regulatory organisations in the context of on-line services. The act states that:

⁷³ Act No. XCVII of 2003 on the amendment of act No. CVIII. of 2001 on certain legal aspects of electronic commerce services and information society services.

“In a manner defined in a separate law and while respecting their independence, the state supports the self-regulation activity – mentioned in article (1) - of these associations in order to:

- a) make available the codes of ethics in an electronic way, in Hungarian and in the official languages of the member states of the EEA (European Economic Area) as well, for those concerned who are residents of one of the member states of the EEA;
- b) operate alternative dispute resolutions in an electronic manner;
- c) inform the concerned of the codes of ethics, of the experiences of their application, and of their effect to e-commerce, in co-operation with the minister of informatics and communications – and in case the relevant service reaches any member state of the EEA, with the *European Commission* as well.”⁷⁴

It shall be noted that the separate act referred to in the text has not been enacted yet, and there is no public knowledge as to related preparatory works being carried on.

3.2.2.2. Functions/competencies

The *MTE*’s work covers two fields. On one hand the organisation acts as a representative of the content providers’ interests, on the other it acts as a genuine self-regulatory forum. In this role it:

- enacts the *Code of Content Provision*;
- enacts recommendations for the industry in certain questions⁷⁵, and
- proceeds in the protection of the code.

Concerning the latter the rules of procedure approved by the association also contain the possibility of asking the organisation for a preliminary qualification in relation with a given content.

3.2.2.3. Organisation

The *MTE* as an association enacts and amends its Code of Content Provision by the decision of its general assembly of members.

The procedure pursued in case of an alleged violation of the code is carried out by an ad-hoc committee of the association. The decision of the ad-hoc committee can be challenged before the chairperson of the association.

⁷⁴ *E-commerce Act 15/A. § (2).*

⁷⁵ See for example: „*Recommendation for the members of MTE and for other content providers on their tasks concerning opinions appearing at forums on the Internet, the dispute in the media about this topic, and the relevant regulatory initiatives*” or “*Recommendation for the members of MTE and for other content providers concerning the amendment of the regulation on advertising sexual services*”.

4. Film/Interactive games

4.1. Regulatory framework

4.1.1. Legal provisions

Regarding film the regulatory framework is provided by *Act No. II. of 2004. on motion picture (Motion Picture Act)*. The act serves above all the purpose of defining a support system for the Hungarian motion picture culture and motion picture industry, by introducing – *inter alia* – a tax incentive system. The objectives of the act have been defined as follows:

- "a) increasing the number of Hungarian films and films produced with Hungarian participation,*
- b) making the production and financing of films easier to plan,*
- c) ensuring that films are completed and reach the audience,*
- d) creating an appropriate proportion of normative and selective subsidy components,*
- e) mobilisation of own resources found in the industry and promoting investments into the motion picture industry,*
- f) preserving the existing values of Hungarian film culture beyond the borders and supporting the creation of new values."*⁷⁶

Beside these purposes the act also stipulates that in order to ensure the healthy intellectual and spiritual development of minors, films to be marketed in Hungary must be classified. The classification detailed by the act is identical to the classification scheme drawn up by the broadcasting act.

Concerning interactive games there are no legal provisions in the Hungarian law.

4.1.2. Administrative regulation/rules

The minister of national cultural heritage is empowered to enact the set of ministerial decrees containing the detailed rules necessary to implement the general provisions of the act. Two of such ministerial decrees have been enacted so far:

- *decree of the minister of national cultural heritage and the minister of finance No. 14/2004. (VI.9) on the organisation, acting and procedures of the National Film Office;*
- *decree No. 24/2004. (XII.8.) on – inter alia – the labelling of films defining age limits.*

A third decree on the utilisation of the national film estate is also expected to be enacted in the near future. The importance of this decree is underlined by the fact that in the pre 1989. era film production took place principally within the premises of state owned film studios.

4.1.3. Other provisions (especially co-regulatory or self regulatory measures, codes of conduct, etc.)

No other provision of self- or co-regulatory nature is present in the Hungarian legal system concerning films and interactive games.

⁷⁶ Motion Picture Act 6.§.

4.2. Regulatory authorities/bodies

The administrative tasks related to the film sector are carried out by the *National Film Office (Nemzeti Filmiroda)*⁷⁷, a separate institution working under the direction and the supervision of the *Ministry of National Cultural Heritage*.

4.2.1. Authority/ies

The *National Film Office*

4.2.1.1. Legal basis

The provisions defining the legal status and the procedures of the *Film Office* has been laid down in the *Motion Picture Act* and the accompanying ministerial decree indicated above.

4.2.1.2. Functions/competencies

The main task of the *Film Office* is to keep the official registry of market players, industrial organisations and other participants of the Hungarian film industry. The office also keeps the registry of motion pictures produced, distributed (in VHS or DVD form) and screened in movie theatres in the country. Enterprises and companies producing motion pictures or film distributors requesting state subsidies are only in the position to acquire it in case they are registered at the *Film Office*. The office also oversees the legitimacy of tax exemptions after private funds invested in Hungarian film productions.

4.2.1.3. Organisation

The *Film Office* is led by its director appointed by the minister of national cultural heritage for a fixed term of five years. The staff of the office is composed of 13 civil servants.

The tasks related to registration and to the assessment of tax relief available for film production is carried out by the administrative body of the office.

The *Film Office* also operates a separate *Rating Committee* and a *Film Profession Committee*. The *Rating Committee* classifies all films that are for movie distribution or VHS and DVD publishing into five different categories in order to protect the under aged children and also for the notification of parents and schools. The *Film Profession Committee* decides upon the “art” classification of movies to be distributed.

4.2.2. Self- or Co-regulatory bodies

There are several associations⁷⁸ of the motion picture industry in Hungary. However, the main role of these organisations is to act as distributors and coordinators of financial support and as partner- organisations of the state. Questions such as protection of minors or taste and decency are not addressed within their framework, therefore – beside their importance for the

⁷⁷ www.nemzetifilmiroda.hu.

⁷⁸ Magyar Filmunió (www.filmunio.hu), Motion Picture Public Foundation of Hungary (www.mmka.hu).

film industry at large - in this sense these professional organisations do not fulfil a self-regulatory role.

5. Advertising

5.1. Regulatory framework

5.1.1. Legal provisions

Law of advertising can also be identified as a relatively separate field of media regulation. In this respect the basic act is *Act No. LVIII. of 1997 on commercial advertising activities (Advertising Act)*. This is complemented by *Act No. XCVI. of 2001* aimed at the protection of the Hungarian language in connection with – *inter alia* - advertising.

The overall policy objectives of the advertising regulation – provided by these two acts - can be identified as follows:

- the protection of minors and human dignity;
- the protection of the environment;
- the protection of minors and public morale by special regulation concerning products of sexual nature;
- the protection of health by special regulation provided for advertising medicines, medical treatments, alcoholic beverages and by banning advertising tobacco products;
- the protection of consumers against surreptitious or misleading advertisements.

It should be noted that *Act LVII. of 1996 on the prohibition of unfair and restrictive market practices (Competition Act)* is also to be applied to advertising activities from a consumer protection point of view.

5.1.2. Administrative regulation/rules

Beside the general regulatory framework special rules for advertising can also be found in acts and decrees governing certain services or activities. Such special advertising rules have been enacted in

- *decree No. 64/2003. of the Minister of health, family and social affairs* concerning advertising medicinal products and medical treatment;
- *decree No. 40/2001. of the Minister of health* concerning advertising of cosmetics;
- *Act No. CXX. of 2001 on capital market* concerning advertising of securities⁷⁹.

Government decree No. 218/1999. (XII.28.) on certain offences also establishes provisions that declare the illicit advertising of sex-related products or presenting advertisement depicting gratuitous violence an offence that can be sanctioned with a fine⁸⁰.

⁷⁹ The list is not exhaustive, it contains only relevant examples.

⁸⁰ *Government decree No. 218/1999. (XII.28.)* 1. §.

5.1.3. Other provisions (especially co-regulatory or self regulatory measures, codes of conduct, etc.)

Concerning matters of advertising the *Hungarian Code of Advertising Ethics*⁸¹ is the relevant code of conduct. The first version of this code was enacted in 1981. The present text of the code was finalised following the latest comprehensive amendment of the *Advertising Act* in 2001. The code is generally accepted by market players and forms the basis for both advertising self-regulatory organisations in Hungary. The content of the code – *inter alia* - extends to:

- principles, such as the legality, fairness and truthfulness of advertising, the social responsibility of the advertisers, the protection of the reputation of the advertising industry⁸²;
- special rules for avoiding misleading advertising and for comparative advertising⁸³;
- the requirement of the identification of advertisements as such⁸⁴;
- protection of privacy⁸⁵;
- protection of minors⁸⁶;
- rules of liability⁸⁷.

Beside the *Code of Advertising Ethics* several provisions of other industrial self-regulatory codes deal with questions of commercial communications⁸⁸.

5.2. Regulatory authorities/bodies

Regulating advertising activities falls into the competence of a multiplicity of authorities in Hungary.

- The rules of the *Advertising Act* and other special advertising rules are enforced basically within the general framework of consumer protection by the *General Inspectorate for Consumer Protection (Fogyasztóvédelmi Főfelügyelőség)*⁸⁹.
- The prohibition of misleading advertising and the rules of comparative advertisements⁹⁰ are enforced by the *Competition Authority*⁹¹;

⁸¹ http://www.mrsz.hu/index.php?set_lang=en;cheater_code=0fs24bsh2us2ti2ejdlflvp4q2.

⁸² *Advertising Act* 3 §.

⁸³ *Advertising Act* 4. §, 5. §, 8. §, 9. §.

⁸⁴ *Advertising Act* 6. §.

⁸⁵ *Advertising Act* 10. §.

⁸⁶ *Advertising Act* 11. §.

⁸⁷ *Advertising Act* 13. §.

⁸⁸ For example: the *Code of Ethics of advertising at public places* („Közterületi reklámberendezések elhelyezésére vonatkozó etikai kódex”) that is available at www.mkrsz.hu/defframe.asp.

⁸⁹ www.fvf.hu

⁹⁰ *Competition Act* 6.§, 8-10.§ *Advertising Act* 7. §; 7/A. §.

- Advertising on radio and television falls into the competence of the *ORTT*;
- The *minister of economic affairs and transport* is entitled to grant exception from the general ban of advertising tobacco products in case of motor races of worldwide importance (i.e. Formula-1 races in practice)⁹². The procedure of granting this exemption is defined in a decree of the minister⁹³.

5.2.1. The General Inspectorate for Consumer Protection

The Inspectorate is an authority of the central state administration subordinated to the *Government*, operating under the direction of the *Minister of Economic Affairs and Transport*.

5.2.1.1. Legal basis

The organisation, functions and competencies of the *Inspectorate* are described in *Act No. CLV. of 1997. on consumer protection (Consumer Protection Act)*. Within the framework outlined by the act, *decree 89/1998. (V.8.) of the Government* is also to be applied in these questions. The rules of procedure to be followed in case of advertising are outlined by the *Advertising Act*⁹⁴.

5.2.1.2. Functions/competencies

From the aspect of this study the role of the *Inspectorate* is to safeguard the *Advertising Act*. However, these tasks are carried out by the authority beside other functions of consumer protection.

In cases of violations of the *Advertising Act* the *Inspectorate* may:

- order to stop pursuing the illicit advertising activity⁹⁵ and
- impose a fine⁹⁶.

Fines imposed on broadcasters shall be paid to the *Broadcasting Fund*⁹⁷.

The decisions of the *Inspectorate* are subjects of judicial review.

5.2.1.3. Organisation

The *Inspectorate* is an authority with territorial offices in the capital and in each county. The director of the authority is appointed by and reports to the minister of economic affairs and

⁹¹ www.gvh.hu

⁹² *Act No. I of 2001. on the amendment of act No. LVIII. of 1997 on commercial advertising activities*, 16. §

⁹³ *Decree of the Minister of Economy No. 16/2001. (VI.25.) GM on the procedure of granting an exemption from the ban of advertising tobacco products.*

⁹⁴ *Advertising Act* 15.§ - 20.§.

⁹⁵ *Advertising Act* 18.§ (1) a,b.

⁹⁶ *Advertising Act* 18.§ (2).

⁹⁷ *Advertising Act* 18.§ (4).

transport. It is also the minister's responsibility to approve the *Statute of Organisation and Procedures of the Inspectorate*.

5.2.2. Self- or Co-regulatory bodies

Concerning advertising matters there are two self-regulatory bodies:

- the *Hungarian Advertising Association (Magyar Reklámszövetség, MRSz)* founded in 1975, and
- the *Hungarian Advertising Self-regulatory Board (Önszabályozó Reklám Testület, ÖRT)* founded in 1996.

5.2.2.1. Legal basis

The *Advertising Act* also contains a reference recognising the importance of self-regulation. However this commitment was made in the preamble of the act, therefore it construes no formal legal consequences. This results that these organisations do not enjoy any special status in the legal sense.

5.2.2.2. Functions/competencies

The *Hungarian Advertising Self-regulatory Board* and the *Committee of Advertising Ethics* - functioning as a subordinate body of the *Hungarian Advertising Association* - have jointly enacted the *Code of Advertising Ethics*. Both self-regulatory associations are committed to safeguard the provisions of this code of conduct. In the practice often advertisers themselves turn well in advance to these *fora* in order to have their opinion in cases that might prove problematic. It shall be mentioned that these preliminary decisions in the case of the *Hungarian Advertising Self-regulatory Board* are public only in cases when they are not followed, i.e. the breach of the code of conduct has actually happened.

Another role of these organisations is to take part in the legislative processes related to advertising. They also provide assistance in enacting codes of conducts for special industrial self-regulation in connection with questions of commercial communications. It is important to note, that the membership of these two associations generally covers the whole advertising sector of Hungary.

5.2.2.3. Organisation

Self-regulatory organisations for the advertising sector act independently from the state, apart from their consultative role in the legislation there are no other formal links between them and the state administration.

The *Hungarian Advertising Self-regulatory Board* brings its decisions via ad-hoc committees. The procedure of these ad-hoc committees is subject to separate code of procedure⁹⁸.

⁹⁸ www.ort.hu.

The *Hungarian Advertising Association* brought into life a separate permanent body - the *Committee of Advertising Ethics* – for this purpose. This also has its own rules of procedure. The *Committee of Advertising Ethics* is aided by a monitoring unit of the association.

6. Summary

The Hungarian media regulation is characterised mainly by the traditional command and control approach taken by the state expressed by means of legislation. Apart from decrees of the government and of the ministers in charge there are almost no general measures that can be identified at the administrative level. This phenomenon is the direct consequence of the national constitutional approach that allows issuing general norms basically only in the form of legislation. This feature of the Hungarian media regulation is exceptionally obvious in the broadcasting sector where no co-regulatory or self-regulatory organisation can be identified as being of major importance.

In other fields of regulation – in the case of on-line services and advertising – the basic laws contain references to existing self-regulatory mechanisms. These are taken in a declaratory manner establishing no formal obligation of state institutions to carry out actual duties related to self-regulatory bodies and mechanisms. Since effective co-regulatory systems require clear definition of the role of the state with reference to detailed and actual tasks related to the efforts taken by industry players, this feature can be qualified in practical terms as the lack of co-regulation.

Concerning self-regulation in Hungary the positive example of the advertising professional organisations shall be noted. In this respect it shall be emphasised that the advertising industry had been able to enact a single code of conduct for the entire industry despite the duplication of self-regulatory bodies.

3.12. Ireland

Introduction

The Irish broadcasting market in terms of regulation can be divided, broadly, into three groups:

- RTÉ (radio and television), the public service broadcaster
- Commercial television broadcaster, TV3, and national, regional and local commercial radio stations
- Cable and MMDS* companies, NTL and Chorus.

*[Note: MMDS refers to a Multipoint Microwave Distribution System, used instead of cable in less populated areas.]

RTÉ operates 2 television channels and 3 radio channels. These channels, as well as the Irish-language television station (TG4) and Irish-language radio station (Raidió na Gaeltachta), are regulated by the RTÉ Authority (see further below). The national commercial television station (TV3), the national commercial radio station (Today FM), 1 special interest station (Anna Livia, a Dublin-centred information and lifestyle station), 18 community/ community of interest stations, 6 hospital/ institutional stations and 18 temporary radio services are licensed by the Broadcasting Commission of Ireland (BCI – see further below). The regulator of the broadcasting and telecommunications infrastructure, including cable and MMDS and management of the radio spectrum, but not content, is the Commission for Communications Regulation (ComReg – see further below).

As Ireland shares a common language with its closest neighbour, the UK, and Northern Ireland remains part of the UK, the British television channels, BBC, ITV, BSkyB, etc., are significant players in the Irish market. Indeed, Sky now has a dedicated Irish television news service and advertising windows broadcast only in Ireland. RTÉ and TV3 are also available on the Sky platform.

- All broadcasters carry advertising
- RTÉ has dual funding: licence fee and advertising
- All broadcasters within the State are subject to content regulation.

There are 12 national newspapers and 6 British newspaper titles with Irish editions (e.g. the *Irish Sun*, the *Irish Mirror*). The former are full members of the publishers organisation, the National Newspapers of Ireland (NNI, www.nni.ie) and the latter are associate members. The regional newspapers association comprises 38 companies representing 53 titles. Most were formerly family-owned but in recent years a number of them have been acquired by larger Irish and UK companies, such as the (Irish) Examiner newspaper group and Scottish Radio Holdings. The periodical publishers association (PPA, www.ppa.ie) represents 46 titles, 5% of which are sold by subscription, 95% in retail outlets.

There are 18 Internet service providers, including the telephone companies and NTL, the cable company. They are members of the Internet Service Providers Association of Ireland (www.ispai.ie). (See further below.)

Constitutional law

The Irish Constitution of 1937 guarantees freedom of expression (Article 40.6.1i) and specifically refers to the media. The section guarantees the right of citizens to express freely their convictions and opinions, subject to public order and morality. In the case of the media, “the State shall endeavour to ensure that organs of public opinion, such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of Government policy, shall not be used to undermine public order or morality or the authority of the State.” The section also provides that the “publication or utterance of blasphemous, seditious or indecent matter is an offence which shall be punishable in accordance with law.” Among the other rights protected by the Constitution that impinge on the media are the right to good name (Article 40.3.1) and the right to a fair trial (Article 38). The courts have also held that among the unenumerated (unspecified) rights protected by the Constitution are the right to communicate and the right to privacy.

Under the Constitution, the Oireachtas (that is, the Parliament, which comprises the President and two Houses, i.e. the Dáil and the Seanad) shall be the sole law-making body for the State. The power to delegate, therefore, must be conveyed by a statute passed by the Oireachtas. Delegated legislation takes the form of statutory instruments (S.I.s), which are often ministerial orders or regulations. The regulatory bodies in the broadcasting and film and video spheres are statutory bodies, whose composition, powers and duties are set out in legislation. In the case of the printed press, there is no press law as such and no statutory regulatory bodies, although the current Minister for Justice has indicated that he will bring forward a new defamation bill shortly, which will include provision for a statutorily recognised press council.

While the status and rights of the family are recognised in Article 41 of the Constitution, there is no specific reference to children, except in the context of education (Article 42). Protection of children and young persons in various spheres is included in general legislation and common law rules. Protections specific to certain media are detailed in the sections below. Public service broadcasting is not specifically mentioned in the Constitution. Indeed, at the time the Constitution came into force, 1937, television broadcasting had not yet begun and there was only one licensed radio station, Radio Éireann, operating in Ireland, which was the public service broadcaster.

1. Broadcasting

RTÉ, the public service broadcaster, was established under the Broadcasting Authority Act 1960. The Authority referred to in the title of the Act is the RTÉ Authority, the body comprising a chairman and 9 members appointed by government, which is charged with control and management of broadcasting operated by RTÉ. The RTÉ Authority is therefore the regulator for RTÉ broadcasting services. The 1960 Act, as amended in 1976, sets out the

statutory obligations of broadcasters, including obligations in relation to the range and quality of programmes, standards of objectivity and impartiality in news reporting, fairness in current affairs programmes, advertising, privacy, taste and decency. The amending Act of 1976 also established the Broadcasting Complaints Commission (BCC) to hear complaints from the public of any breaches of those statutory obligations.

In relation to commercial or independent broadcasting, the Radio and Television Act 1988 established the Independent Radio and Television Commission (IRTC) as the licensor and regulator. It also set out the composition, powers and duties of the IRTC. The IRTC, for instance, was required, in granting licences, to have regard to pluralism and diversity. Furthermore, the Act imposed on commercial broadcasters much the same obligations as had been imposed on RTÉ, in relation to programme standards, advertising, etc. There were some differences of detail, for example in relation to the overall amount of advertising and quantity of news. The remit of the Broadcasting Complaints Commission (BCC) was extended to allow it to cover complaints of breaches of their statutory obligations by the commercial stations. The Broadcasting Act 1990 introduced a form of right of reply as mandated by the Television without Frontiers Directive, insofar as it provided that persons whose honour or reputation has been attacked in a television programme may complain to the BCC and, if the complaint is upheld in whole or in part, the offending station must broadcast that finding at an appropriate time.

The Broadcasting Act 2001, which generally updated broadcasting law and paved the way for the introduction of digital broadcasting, changed the name of the regulatory authority for the commercial sector from the IRTC to the Broadcasting Commission of Ireland (BCI). The powers and duties of the BCI were increased to include digital and new services. Specific duties imposed on the BCI by the Act included the drafting of codes in relation to children's advertising, taste and decency, access provision for deaf and blind persons, electronic programme guides (EPGs). The Act also gave the BCI certain powers over RTÉ in the technical and licensing of new services. As such, it marked the first move towards the formation of an overarching regulator for the broadcasting sector. The 2001 Act also extended the remit of the Broadcasting Complaints Commission to cover digital and the new services envisaged by the Act. Since it was now to have a much more extensive role than its original one, the BCC's physical presence, staff and facilities were also enhanced.

Following a recommendation of the Forum on Broadcasting, established by the Government in 2002, new legislation is expected to be introduced in the not too distant future to provide for a single overarching regulator for the whole sector, to be called the Broadcasting Authority of Ireland (BAI).

The Communications Act 2002 established the Commission for Communications Regulation (ComReg), which is the body that regulates the infrastructure of communications, including broadcasting. It deals with frequency allocations and cable and satellite delivery, for example. It implements the EU common regulatory framework for electronic communications networks and services, including making SMP designations, as it did in 2004 in the case of RTÉ's

transmission operating company. Although stated in the legislation to be independent, it can be subject to policy directions from the Minister for Communications.

The Competition Authority also plays a role in respect of mergers and acquisitions in the broadcasting, as in other, sectors. There are special procedures laid down in sections 22 and 23 of the Competition Act 2002 to deal with media mergers. They include a scheme for the Competition Authority to make a determination and then refer it to the Minister for Enterprise, Trade and Employment.

Some legislation dealing with content, such as the Prohibition on Incitement to Hatred Act 1989, extends to word and images not only in broadcasting but in the other media also.

1.1. Regulatory framework

1.1.1. Legal provisions

The relevant legal provisions governing programme standards in RTÉ are set out in s.18 of the Broadcasting Authority Act 1960, as amended by s.3 of the Broadcasting Authority (Amendment) Act 1976. The section provides for standards of objectivity and impartiality in news reporting, fairness in current affairs programmes, advertising, privacy, taste and decency.

The relevant legal provisions governing programme standards in the commercial sector are contained in s.9 of the Radio and Television Act 1988. They are broadly similar to those applicable to RTÉ.

In addition, the Broadcasting Act 2001, s.19 required the BCI to draft codes in relation to children's advertising; advertising, sponsorship and teleshopping; EPGs; access provision for deaf and blind persons; portrayal of violence and sexual conduct, etc., which will apply to all broadcasters in the State. The section stipulated that the children's code was to take priority. Following wide-ranging research and a consultation process, which included consultation with children themselves, the code became operational on 1 January 2005. The code on access provision was launched on 28 February 2005 (available at www.bci.ie). The next task for the BCI is to update the current code of standards in advertising and sponsorship, which dates from 1995, with a minor updating in 1999 to take account of the revised Television without Frontiers Directive of 1997. The updated code extends to teleshopping.

In relation to pluralism and diversity, the relevant provisions are sections 6 and 14 of the Radio and Television Act 1988, which set out certain criteria to be taken into account in awarding contracts and in considering assignments and change of ownership. In addition, sections 11, 38 and 41 of the Broadcasting Act 2001 set out general obligations in relation to numbers and categories of services, as well as local content contracts and cable and MMD content contracts. The legislation therefore imposes an obligation on the BCI to ensure pluralism and diversity and provides some guidance as to how that obligation is to be fulfilled. It is then left to the BCI to develop a policy on pluralism and diversity. The BCI's original policy was mainly concerned with cross-ownership and was based on maximum percentages that print media, for example, could hold in radio stations. As the sector

developed, the BCI revised its policy. It did so in 2001, following a research process which examined the statutory framework, the current stage of development of the sector and developments and models in other European countries and at EU level, as well as consultation with industry players and the wider public (Ownership and control policy, available at www.bci.ie). The policy is undergoing further review beginning March 2005.

As far as ethics are concerned, the BCI issues guidelines (for example, guidelines on coverage of elections and referenda) as well as drafting practices and procedures for special or exceptional programme content (for example, in 1999 TV3, the national commercial television station signalled its intention to show, late at night with pre-screening warnings, a made-for-television version of the violent film *Natural Born Killers*. The cinema version of the film had earlier been banned by the film censor (see further below) and the then Minister for Justice threatened to seek an injunction in the courts to prevent TV3 showing the film. The BCI, which had already drafted practices and procedures to deal with certain programme content, drafted new practices and procedures to deal with exceptional content such as this film.)

The BCC, which was established under section 4 of the Broadcasting Authority (Amendment) Act 1976, and had its remit extended by the 1988 and 2001 Acts (above), handles complaints from members of the public arising from all of the above obligations in respect of programme standards.

1.1.2. Administrative regulation/rules

The regulatory bodies instanced above have statutory powers to make rules and regulations within their statutory remit. The current code of advertising, dating from 1995, was drafted by the Minister for Communications in consultation with the regulatory bodies, in accordance with the Broadcasting Act 1990. It was implemented by means of statutory instrument. It will be replaced by a new code to be drafted by the BCI in consultation with the sector and wider public.

1.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

The codes of conduct mentioned above set out the detailed rules to be applied. The legislation requires the BCI to draft these codes and gives some general guidance or indicates certain factors or objectives to be taken into account. The BCI then engages in a period of research, followed by a public consultation process, initiated by publication of a notice in the national newspapers and on the BCI's website. The results of the consultation process are made public and a draft code is circulated. The circulation of the draft code is required by the legislation. Following responses to the draft code, the code is then finalised and a date is set for its commencement. All of the above stages are effected via the BCI's website (www.bci.ie) and can be accessed there. A similar process is adopted in the preparation of policy statements, for example, the policy on ownership and control (pluralism and diversity).

The RTÉ Authority issues guidelines for programme makers on the various statutory obligations and the guidelines are updated periodically. It also decided a few years ago to

remove advertising from around programmes directed at pre-school children. Another protection for children is the use of on-screen icons to warn on programme content. The icons indicate suitability of content under several classifications, such as “Ch” (children) and “YA” (Young Adult).

The BCI also issues guidelines and statements of practice and procedure. As a licensor, it issues guidelines to broadcasting contractors on issues such as pluralism and diversity, and as a monitoring body it issues guidelines on issues such as appropriate methods of election reporting, coverage of referenda, etc. and other issues as they arise. Decisions of the RTÉ Authority and the BCI can be judicially reviewed, for example the refusal to accept certain advertisements, as in *Murphy v IRTC*, which went to the Irish High and Supreme Courts and then to Strasbourg (*Murphy v Ireland* (ECHR, 10 July 2003)).

The process to be adopted by the Broadcasting Complaints Commission for inviting, handling and responding to complaints from the public is set out in the Broadcasting Authority (Amendment) Act 1976, as amended by the Radio and Television Act 1988 and the Broadcasting Act 2001. Publication of the details and findings of the Commission takes place on a quarterly basis on the Commission’s website (www.bcc.ie).

While there are codes dealing exclusively with broadcast advertising (see above), the Advertising Standards Authority of Ireland (ASAI), a self-regulatory body established and financed by the advertising industry, operates codes that apply to all forms of advertising, including broadcast advertising.

1.2. Regulatory authorities/bodies

1.2.1. Authority/ies

The regulatory bodies are the RTÉ Authority, the Broadcasting Commission of Ireland (BCI), the Broadcasting Complaints Commission (BCC) and the Commission for Communications Regulation (ComReg). The Competition Authority also has a role in the field of media mergers and acquisitions.

1.2.1.1. Legal basis

The legal basis for the RTÉ Authority is the Broadcasting Authority Act 1960, as amended in 1976. The legal basis for the BCI (formerly the IRTC) is the Radio and Television Act 1988, as amended by the Broadcasting Act 2001. The legal basis for the BCC is the Broadcasting Authority (Amendment) Act 1976, as amended by the Radio and Television Act 1988 and the Broadcasting Act 2001. The legal basis for ComReg is the Communications Regulation Act 2002. The legal basis for the Competition Authority’s role in the field of media mergers and acquisitions is the Competition Act 2002.

1.2.1.2. Functions/competencies

The RTÉ Authority is a corporate body required to maintain a national television and sound broadcasting service. It must ensure that its broadcasting services maintain their public service character in terms of range and type of programming, having regard to languages,

culture, respect for human dignity, etc. The Minister for Communications retains residual powers in this regard and can, in consultation with the Authority, make orders in relation to categories of programmes but not manner or editorial matters (2001 Act).

The BCI is a corporate body established as licensor for the commercial broadcasting sector, for digital broadcasting and new services. It is also the regulator for those sectors and has a monitoring function, ensuring that licensed stations meet the conditions of the licence, as set out in their contract. The BCI is empowered by the 2001 Act to enter into cable and satellite content contracts, EPG contracts, etc.

The BCC is an independent statutory body that handles complaints from the public concerning broadcast content, including advertising.

ComReg is a statutory body responsible for the regulation of the electronic communications sector (i.e. telecommunications, radio-communications and broadcasting transmission.) It is a three-person commission, which manages the spectrum and allocates frequencies. It is the licensing/authorising body for the delivery of all communications, including cable and satellite broadcasting, in the State.

The Competition Authority has a wide role in matters of competition generally. It has a particular role in assessing the competition implications of mergers and acquisitions in the media, including broadcasting.

1.2.1.3. Organisation

The main organisational structures of the above bodies are set out in the respective legislation.

The RTÉ Authority comprises no fewer than 7 and no more than 9 members appointed by government and presided over by a chairperson. It appoints a Director General to act as chief executive officer. It has all the contractual and other powers necessary to maintain a national television and sound broadcasting service. Its powers are set out in legislation.

The BCI comprises a chairman, who is legally qualified, and 9 part-time members, who are part-time and appointed for a 5-year term by the Minister for Communications and are assisted by a permanent secretariat. The Commission meets regularly to decide policy.

The BCC consists of a chairman, who is legally qualified, and 9 members, who are part-time and appointed by the Minister for Communications for a five-year term. The Commission meets regularly and issues its decisions on a quarterly basis (see www.bcc.ie).

ComReg consists of a chairman and two members. It operates as a collegiate body taking decisions collectively, although on a day-to-day basis one commissioner takes primary responsibility of innovation, one for competition matters and one for consumer affairs (www.comreg.ie).

1.2.2. Self- or Co-regulatory body/ies

The Advertising Standards Authority of Ireland (ASAI) is a self-regulatory body, comprising the advertising companies and agencies in the State. It was set up by the advertising industry

and is financed by it. It regulates all forms of advertising, including broadcast advertising. It adjudicates complaints of breaches of its codes in the interests of consumers (www.asai.ie).

2. Press

2.1. Regulatory framework

2.1.1. Legal provisions

There are no specific press laws, although certain provisions of laws of general applicability make specific reference to the press and sometimes indicate special defences in the case of the press. The press is subject to the general laws of defamation, contempt of court, etc. The Defamation Act 1961 contains a privilege for fair and accurate contemporaneous reports of court cases by newspapers and broadcasters. A new defamation bill to be introduced shortly is expected to contain provisions recognising and authorising a press council.

2.1.2. Administrative regulation/rules

There is no specific press regulation, but some media-wide regulation (e.g. mergers and acquisitions, etc.) and general regulation (e.g. regarding below-cost selling, advertising, data protection) applies. The Data Protection (Amendment) Act 2003 contains specific provisions in relation to journalists.

2.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

Since 1989 the national newspapers have operated to varying degrees a system of in-house readers' representatives to handle complaints from members of the public and to respond where appropriate via the publication of corrections and clarifications. Editorial guidelines on specific issues, e.g. dealing with situations of privacy or grief, are issued periodically in-house in some newspapers. In 1997, the National Newspapers of Ireland umbrella group (NNI) issued a code of privacy based on best practice in other countries, including Australia and the UK. In 1998 it issued a facts sheet for its member newspapers on the Freedom of Information Act 1997. For a number of years it has been engaged in the development of a scheme for a self-regulatory/ independent press council. NNI has been an active member of the Alliance of Independent Press Councils of Europe (AIPCE) since the latter's inception. Recently, together with the representative bodies of the regional newspapers, magazines and British newspapers circulating in Ireland and the National Union of Journalists (NUJ), which represents the vast majority of journalists in Ireland and the UK, NNI has submitted to the Minister for Justice, Equality and Law Reform, a scheme for the operation of an independent press council and ombudsman based on the Swedish model. A code of practice has been drafted to form part of that scheme.

2.2. Regulatory authorities/bodies

2.2.1. Authority/ies

At present there are no regulatory authorities in the case of the press, although a press council and ombudsman, operating on the basis of a code of practice, are expected to be formed in the near future.

2.2.1.1. Legal basis

The press council and ombudsman will be given statutory recognition in a new defamation bill to be brought before the Houses of the Oireachtas in the coming weeks or months. They will not, however, be statutory bodies as such, in that the members will not be appointed by government and it is expected that they will operate on the basis of a code of practice elaborated by the industry.

2.2.1.2. Functions/competencies

The function of the press council will be to handle complaints from members of the public that the code of practice has been breached. The details are not yet known.

2.2.1.3. Organisation (composition of the authority/members of the board, etc.)

Details not yet made public.

2.2.2. Self- or co-regulatory body/ies

Press council and press ombudsman, referred to above.

NNI, the umbrella organisation representing the publishers of the national titles has *inter alia* issued codes and guidelines, as have individual newspapers. The British editions of the British media circulating in Ireland are subject to the UK Press Complaints Commission. The NUJ is the main journalists' trade union. It has its own code of conduct, which covers journalistic ethics and practices. The regional newspapers and magazine publishers have their own representative bodies.

2.2.2.1. Legal basis

2.2.2.2. Functions/competencies

For the proposed press council and ombudsman, see above. NNI is an umbrella organisation representing the publishers of the national newspapers in matters of marketing, advertising, etc. For many years it has had a press freedom committee, which has made representations to Government on legal developments (copyright, competition law, etc.), law reform issues (it has campaigned for reform of the defamation laws in particular), and sought rights of audience for the press in court cases where reporting has been curtailed or media rights restricted.

2.2.2.3. Organisation (composition of the authority/members of the board, etc.)

Not yet known.

3. Online Services

3.1. Regulatory framework

3.1.1. Legal provisions

The main piece of legislation governing online content is the Child Trafficking and Pornography Act 1998. While of much broader application, applying in essence to all media, it is particularly relevant to online services.

3.1.2. Administrative regulation/rules

3.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

The Internet Service Providers Association of Ireland (www.ispai.ie) was established by the Internet Service Providers in 1998 and is funded by the industry on a cost-sharing basis. Along with the EU it funds the hotline launched at the end of 1999 to enable members of the public to report complaints of child pornography in particular but also other harmful Internet content (www.hotline.ie). In 2002 it published its first code of practice and ethics, drawn up in association with the Internet Advisory Board, which was established by government. When complaints are received the hotline service endeavours to trace the material concerned and if located on a server in Ireland, issues a notice to the Internet Service Provider to remove the material. It also informs the police. If the material is located in another State that is a member of the INHOPE association, the hotline service hands the matter over to the service in that State.

The Internet Advisory Board (www.iab.ie) was set up in March 2000 on foot of a recommendation in the 1998 Government report on the Illegal and Harmful Use of the Internet (report available at www.justice.ie). It is not a statutory body. It comprises a chairman, a manager and 16 members drawn from a wide cross-section of society. Its purpose is to ensure that the system of self-regulation (ISPAI and hotline) works in practice and to monitor developments in this area. It assists the industry in producing codes of practice and promotes awareness of potential dangers for children. It conducts research, for example on children and their use of the new media.

The Advertising Standards Authority of Ireland (ASAI) – see above – handles complaints in relation to all kinds of advertising, including Internet advertising. Regtel, an independent non-profit company, founded in 1995 and financed by a levy placed on the industry, regulates the content and promotion of all premium telecommunications services through the operation of a code of practice, with which all providers of those services must comply. Regtel sets standards, monitors compliance with the code and handles complaints.

3.2. Regulatory authorities/bodies

3.2.1. Authority/ies

The primary regulator in this field is the Commission for Communications Regulation (ComReg) – see above. The Child Trafficking and Pornography Act 1998 creates a number of offences which are to be tried in courts of law. The remainder of the regulatory scheme is self-regulatory.

3.2.1.1. Legal basis

ComReg, the successor of the Office of the Telecommunications Regulator (ODTR), was established under the Communications Regulation Act 2002.

3.2.1.2. Functions/competencies

See under section “Broadcasting” above.

3.2.1.3. Organisation (composition of the authority/members of the board, etc.)

See under para. 1.2.1.3. above.

3.2.2. Self- or co-regulatory body/ies

The Internet Service Providers Association of Ireland, Internet Advisory Board, Hotline, ASAI, Regtel – see above.

3.2.2.1. Legal basis

3.2.2.2. Functions/competencies

The hotline receives and handles complaints from members of the public about online content. The overall scheme is one of liaison with the police authorities and with self-regulatory groups in other countries through INHOPE (www.inhope.org)

3.2.2.3. Organisation (composition of the authority/members of the board, etc.)

See above.

4. Film/Interactive Games

4.1. Regulatory framework

4.1.1. Legal provisions

The principal legislation governing films is the Censorship of Films Acts 1923-1992. The Acts establish the office of film censor and the Censorship of Films Appeal Board. The role of the censor is to provide a certificate for public showing of films. The grounds for refusal of a certificate are set out in the 1923 Act. They include a finding that a film is in whole or in part indecent or obscene or blasphemous, or would tend to inculcate principles contrary to public morality or would otherwise be subversive of public morality. An amending Act of

1925 extended the certification system to advertising material, while an amending Act of 1970 limited a ban (i.e. the refusal of a certificate) to 7 years. The Video Recordings Act 1989-1992 extended the role of the film censor and appeal board to cover videos also. A supply certificate enabling a video to be made available to the public can be refused if it would be likely to cause viewers to commit crime, or would be likely to stir up hatred, or would tend by reason of the inclusion in it of obscene or indecent matter, to deprave or corrupt persons who might view it, or if it depicts acts of gross violence or cruelty (including mutilation and torture) towards humans or animals. The Act sets out a classification system, containing five categories, intended to indicate the suitability of the video for children and young persons. They are amended periodically by means of statutory instruments (S.I.s). They are not binding in nature and are intended merely as guidance to parents.

Video games are expressly excluded from the licensing and certification system contained in the Video Recordings Act and a certificate need not be sought unless a video game contains matter that might ground refusal of a certificate. Video games are subject to labelling and age classifications (see below).

4.1.2. Administrative regulation/rules

Apart from the certification process, the film censor issues age classifications in respect of films. These are updated periodically. The censor has launched a website (www.ifco.ie) and his practice now is to list every film passed by his office and indicate the level of sex, violence or bad language in them. The same applies to film posters and trailers. On occasion he may pass a film accompanied by a caution, for example that the film contains scenes of explicit violence that some viewers may find disturbing. The caution must be carried on all advertising for the film also. In such a case he issues a statement explaining the reasons for his decision. In addition, he has power to commission research, as he did in 2004 in relation to parents' views on film classification, which led to changes in the categories in the age classification system. Video games are also accorded age classifications. A voluntary system was agreed with distributors in 2000. The ELSPA rating and labelling system was adopted. The distributors recommended to their members that all games rated in the categories "over 15" or "over 18" should be submitted to the film censor for classification and certification.

4.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

Age classifications and guidelines to parents are issued by the film censor. In the case of videos, age classifications are set out in the legislation and amended from time to time by means of S.I.s (see above).

4.2. Regulatory authorities/bodies

4.2.1. Authority/ies

The primary regulators in this field are the film censor and censorship of films appeal board.

4.2.1.1. Legal basis

The Censorship of Films Acts and Video Recordings Acts (see above).

4.2.1.2. Functions/competencies

Certification and age classification (see above). The appeal board has power to affirm, reverse or vary the censor's decision and can itself grant a certificate.

4.2.1.3. Organisation (composition of the authority/members of the board, etc.)

There is a single film censor, a deputy, and a number of assistant censors. The appeal board consists of nine members. Appointments are made by government.

5. Summary

Regulation of broadcasting, film and video is provided by statute, which also establishes the regulatory bodies. In the case of the printed press, there is no specific statute. Instead, the general laws apply. Regulation to date has been mainly in-house self-regulation but the current Minister for Justice intends bringing in legislation that will give statutory recognition to a press council, which will operate on the basis of a code of practice. On-line media are regulated by means of a system of self-regulation, comprising an industry body and code, an advisory board and hotline.

3.13. Italy

Introduction

The Italian media markets are regulated by a complex and variegated bulk of sources of law. The basic principles (freedom of expression, freedom of private communications, freedom of private economic initiative) are enshrined in the Italian Constitution of 1948 (see below), but also in the European Convention on Human Rights (1950) and the European Treaties. Both these external sources hold the rank of primary sources according to article 117 of the Italian Constitution.

The Constitution also requires that the actual regulation of any single media sectors must be determined by Parliamentary statutes (*riserva di legge*). As a consequence, specific rules concerning single media sectors are included in a number of acts, whose compatibility with the Constitution is controlled *ex post* by the Constitutional Court.

As to the broadcasting sector, Italy has a dual system including a strong public (Rai-Radio televisione italiana) and some private operators.

In 2003, the market shares of broadcasting companies (both free and pay tv) were as follows (source: AGCOM):

- Rai - 39,5%
- RTI (Mediaset) - 34,3%
- Sky Italia - 12,2%
- Gruppo La 7 (TIM) - 1.6%
- Others - 5,5%

Rai started its transmissions in 1954 and maintained its monopoly until the late '70s, when private competitors entered the market first at the local level, then at the national one. The first statute which expressly permitted national private broadcasting dates 1990 (Law n. 223 of August 6th, 1990). Nowadays, the Mediaset group holds a dominant position in the private sector.

The broadcasting sector has developed in a rather confused fashion, characterised by a continuing tension between Constitutional Court decisions and legislative choices. According to the first, the pluralistic principle was not respected by the Parliamentary acts which permitted a single group to hold a dominant position in the private sector, in particular controlling three national analogic channels. The trend of the next years will be a progressive switch from the analogue to the digital system of television broadcasting, with the increase of the number of channels available to operators.

The press market has of course a longer story. Freedom of press is firmly enshrined in the Italian Constitution and in a series of statutes adopted afterwards. Today the notion of "editorial product" is rather large, including not only the written press, but also digital products diffused by electronic systems (law n. 62/2001). The press market is characterised

by a rather large number of operators both in the daily press and in the magazines markets. Main operators are Mondadori (Fininvest group), Editoriale Espresso (publishing newspapers as la Repubblica and magazines as L'Espresso). RCS (publishing the first newspaper by number of readers, Il Corriere della Sera).

As to the distribution of economic resources between the two main sectors (press and tv), the Italian scenario is quite different from other European States. As a matter of fact, Tv broadcasters control 54,3% of the total investment in the whole media market, whereas press operators (magazines and newspapers) hold a minor share (37,8%). Other sectors hold minimal shares (Radio: 4,3%; Cinema: 1,1%; external advertising, 2.5%) - Source: Nielsen Media Research.

Other media sectors are present in the Italian markets, but their regulation is not object of hard law in terms of protection of pluralism.

Constitutional law

The basic constitutional principle of freedom of expression is codified in Article 21 of the Italian Constitution. It contains a first paragraph dedicated to the right:

"Everybody has the right to manifest his or her own thought freely with the word, the writing and every other mean of diffusion".

The following paragraphs are all dedicated (only) to the press. This is due to the necessity, felt by the writers of the text, to avoid any possible loss of liberty as happened during the Fascist regime:

"The press cannot be subject to authorisations or censorship.

It can be preceded to sequestration only for motivated action of the judicial authority in the case of crimes, for which the law on the press expressly authorises it, or in the case of violation of the norms that the same law prescribes for the indication of the responsible.

In such cases, when there is absolute urgency and the timely intervention of the judicial authority is not possible, the sequestration of the periodic press can be performed from official of judicial police who must immediately, and not ever over twenty-four hours, do declaration to the judicial authority. If this one doesn't confirm it in the following twenty-four hours, the sequestration is intended revoked and deprived of every effect.

The law can establish, with norms of general character that are made public the means of financing of the periodic press".

Finally, the last paragraphs intend to avoid publications and other public spectacles which offend morality. This is generally interpreted as referred to the protection of minors, and applied to any media including television and radio broadcasting. In addition, Art.31, par. 2, of the Constitution states that the Republic

"protects the maternity, the infancy and the youth favouring the necessary institutes to such purpose".

No specific reference may be found in the Constitution to the Broadcasting system. The Constitutional Court, in a series of judgements, stated that a correct interpretation of Article 21 requires the protection of pluralism in the broadcasting sector. This principle is considered "ineludible" and has served as a parameter of legitimacy of Italian legislation on media (see Decisions 420/1994 and 466/2002).

No reference in Constitution also to public broadcasting. As to private initiatives, Art.41 provides that:

"The private economic initiative is free. It cannot be done in contrast to the social utility or in way to bring damage to the safety, to the liberty, to the human dignity".

This provision, together with the pluralistic principle in Article 21, served as the legal basis for the imposition and rules to broadcasters concerning access to the markets. This must be authorised by the administrative authority according to the general interest. The same Constitutional provisions permit content requirements to media operators.

1. Broadcasting

1.1. Regulatory framework

1.1.1. Legal provisions

The regulation of broadcasting market derives from several Parliamentary acts and Governmental decrees. The basic acts is Law n. 223 of 1990, Law n. 249 of 1997 instituting the Authority for the guarantees in Communications (Agcom), Law n. 112 of 2004, which provides with a new system of protection of pluralism and rules on the protection of minors. Advertising provisions are mainly included in Law n. 223 of 1990, Law n. 327 of 1991 executing the Strasbourg Convention on Transfrontier Television and Law n. 122 of 1998. Legislative Decree n. 74 of 1992 prohibits misleading advertising.

1.1.2. Administrative regulation/rules

Both the Ministry of Communications and the AGCOM hold the power of adopting administrative decrees concerning broadcasting. As to advertising, Decree n. 425 of 1991 is dedicated to advertising of tobacco and alcoholic products. Decree n. 581 of 1993 concerns sponsorship and teleshopping. AGCOM Regulation n. 538/01/CSP of 26th July, 2001, provides for detailed rules on the insertion of advertising in television programs.

1.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

- The Institute for Advertising Self-Regulation acts according to a Statute freely accepted by media operators.
- In the context of political campaigns Law n. 28 of 2000, as modified, provides for a co-regulatory system concerning the use of transmission time for messages from political parties.
- With regards to the protection of children in television programmes, the main private and public tv operators have signed a *Self-Regulatory TV and Children Code of Conduct* approved on 29 November 2002. According to art. 10 of Law n. 112 of 2004, broadcasters television stations *must* observe the provisions laid down in the Code.

- Finally, a Self - Regulation Code, concerning Tv sales, is in force since 2002. The Code's most significant innovation lies in a Surveillance Committee, a joint organisation made up of six representatives of television corporates either national and local or public and private, and of six delegates of both institutions and Regional Communications Committees (Corecom). This Code embodies a reliable auto - obligation for every broadcasting station transmitting sales and ads sales: its non - observance only involves a public negative appraisal of the behaviour of the operator violating the Code.

1.2. Regulatory authorities/bodies

1.2.1. Authority/ies

The Communications Regulatory Authority (Agcom) is an independent authority whose activity covers traditional and innovative media markets. The Communications Regulatory Authority is a "convergent" authority, since the Law attributed to Agcom a series of functions extending from telecommunications to audiovisuals and publishing. In this context, only competencies related to radio and television broadcasting are taken into account.

1.2.1.1. Legal basis

Agcom was established by Law n. 249 of 31 July 1997.

1.2.1.2. Functions/competencies

Agcom acts as a "guarantor" of proper functioning of the media markets. The two main tasks assigned to it by Law n.° 249 are to ensure equitable conditions for fair market competition and to protect individual fundamental rights.

According to the Law, Agcom holds the following main competencies in the media markets:

- rationalisation of resources in audiovisuals; application of antitrust rules in the field of communications, inquiries on dominant positions;
- organisation of the Registry of Communication Operators.
- control on quality and distribution of services and products, including advertising;
- fostering and safeguarding political, social and economic pluralism in broadcasting;
- protection of copyright of audio-visual and software products, by means of a Unit against piracy;

Violations of norms are punished by the Authority through economic sanctions, which vary according to the actual provisions. The specific sanctions are provided by the law, as in the case of infringement of advertising rules (Art.31, Law n. 223/1990), of rules concerning the protection of minors (Law n. 112 of 2004) or of rules concerning pluralism (Art.2, par. 7, Law n. 249 of 1997). In the latter case, the Authority can also impose other, more concrete measures such as obliging operators holding a dominant position to reduce market shares.

1.2.1.3. Organisation

Bodies of the Authority are: the President, the Commission for infrastructures and networks, the Commission for services and products, the Council. The President is designated by the Prime Minister, but the designation requires approval by the competent Parliamentary Committee with positive vote of at least 2/3 of its members. So in practice both the majority and the opposition in Parliament must accept the designation of the President. The other eight members are elected by the Parliament, four by the majority and four by the opposition).

Each Commission is a collegiate body, composed of the President and four Commissioners.

The Council is composed of the President and all Commissioners.

The Authority is financed by State resources and by contributes by the media operators.

1.2.2. Self- or Co-regulatory body/ies

The Institute for Advertising Self-Regulation (*Istituto dell'Autodisciplina pubblicitaria*) acts in the advertising field. The Institute main task is to make sure that all advertising be honest, truthful and proper and carried out as a service for the information of consumers.

1.2.2.1. Legal basis

Membership of the Institute is strictly on a voluntary basis. It has no legal basis and functions according to a Statute. It holds legal personality and is financed by the members.

1.2.2.2. Functions/competencies

The Istituto dell'Autodisciplina Pubblicitaria, as set out in its own Statute, is a non-profit organisation.

Amongst its main responsibilities are the formulation and updating of the rules of the Code of Self-Regulation (Codice di autodisciplina pubblicitaria), which was first published in 1966 and updated several times. The latest edition entered into force on July 2004. The rules contained in the Code define the behaviour to which the advertising industry must conform (so called Rules of Behaviour). These apply with reference to any advertising message whatever the medium or product/service offered. As to the content of the rules, they concern inter alia: the principle of loyalty in advertising, the prohibition for advertising to be misleading, the obligation to demonstrate the truthfulness of the messages and identification of advertising, the prohibition to exploit fear and credulity, for messages to be vulgar, violent or indecent, the respect of moral, civil, political convictions and religious beliefs besides the respect for dignity and the human being. The Code also enshrines a prohibition to imitate, confuse, or exploit the notoriety of others, prohibition to denigrate different companies or products, while it allows indirect comparison.

1.2.2.3. Organisation

The activities within the system of Advertising Self-Regulation are carried out by two organs: the Review Board (*Comitato di controllo*) and the Jury (*Giuri*). These are backed by a Secretariat, responsible for the organisation in general and for first screening.

On request of an interested party, the Review Board can provide an advice on items of advertising submitted to it as to their conformity with the rules of the Code. The Review Board may demand changes to be made to items of advertising which it considers to be in contrast with the Code and it may issue desist orders. In dealing with more complex cases it may revert the matter to the Jury either *motu proprio* or in support of complaints received (from individual citizens, associations, Public Bodies).

The Jury, consisting of 9 to 15 members, designated by the Istituto and chosen from among academics, professionals and information experts, independent from the advertising industry, examines the material submitted and issues adjudications in accordance with the Code.

As to the effect of these decisions, signatory associations commit themselves to observe the rules of the Code and its Regulations and to have them accepted by their members, to make the decision of the Jury adequately known, and to adopt appropriate measures regarding those members who do not comply with or use to break the decisions of the Jury.

In case of violation of the Code, the decisions of the Jury contains an order to desist, whose (very rare) non observance has no further sanctions. The Jury may decide to publish its decisions on press organs.

2. Press

2.1. Regulatory framework

2.1.1. Legal provisions

The press sector received a first general regulation with law n. 47 of 1948, dedicated to the abolition of any administrative requirement for new press initiatives. Publishers must only register their publication before the competent Tribunal. The same law introduced a right of reply and the crime of libel. As to the latter, the director of the publication (newspaper, magazine) is objectively liable for the content of the published articles, together with the author of the article.

Law n. 416 of 1987 (modified by Law n. 67 of 1987) introduced for the first time general rules on press activities in the interest of the public. It required *inter alia* transparency of property and imposed some pro-pluralism rules which are still in force. This acts aims at avoiding the formation of dominant positions by imposing for any operator in the newspapers market a threshold of 20% of the copies distributed in the Italian territory. Other antitrust rules concern advertising concessionaires.

No specific legal provisions concern the protection of minors in the press. In any event, general rules in the penal code apply in case of indecent publications.

As to the amount of advertising, the law imposes no specific threshold. Law n. 416 of 1981, as modified by Law n. 62 of 2001, provides for the loss of some indirect public funds if the number of pages annually dedicated to advertising is more that 45% of the total amount of pages.

The content of advertising in the press is subject to few statutory provisions. The general rule of Decree n. 50 of 1992 applies also to misleading and comparative advertising in the press. A law of 1962 prohibits any direct or indirect advertisements of tobacco products.

2.1.2. Administrative regulation/rules

Subjects operating in the press sector are required to register in the general *Registro degli operatori della comunicazione* (ROC) according to law n. 249 of 1997.

2.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

Press publications, as well as television and radio broadcasting, may be subject to the general self-regulatory system of the IAP/Institute for Advertising Self-Regulation) (see above).

2.2. Regulatory authorities/bodies

2.2.1. Authority/ies

2.2.1.1. Legal basis

The only Authority holding competencies in the press sector is the above mentioned AGCOM. The legal basis for its intervention is again Law n. 249 of 1997

2.2.1.2. Functions/competencies

AGCOM guarantees transparency in the control of companies operating in the press market. According to Law n. 416 of 1981, as modified, it also controls the respect of the antitrust thresholds specifically dedicated to the press market.

2.2.1.3. Organisation (composition of the authority/members of the board, etc.)

See above.

2.2.2. Self- or co-regulatory body/ies

2.2.2.1. Legal basis

The IAP/Institute for Advertising Self-Regulation functions according to consent form the operators (publishers, advertising agencies).

2.2.2.2. Functions/competencies

As to advertising, including that directed to minors, the IAP/Institute for Advertising Self-Regulation holds in the press market the same competencies as in the broadcasting market.

2.2.2.3. Organisation (composition of the authority/members of the board, etc.)

See above.

3. Online Services

On 23rd November 2003 a Self – Regulation Code of Conduct “ Internet and Children” was signed with the auspices of the Ministry of Communications. It concerns subjects operating on the web and works on a complete voluntary basis. It creates no legal obligations, since the participation of the Ministry is only a political declaration.

The Code aims at protecting minors from unlawful or harmful content which can prove detrimental to his or her psychic or moral integrity.

More in particular, according to its Preamble, the Code aims to:

- a) Direct adults, children and families towards a correct and attentive use of the Internet, bearing in mind the needs of children;
- b) Provide appropriate protection against the risk of minors coming into contact with content that is unlawful or harmful for their development;
- c) Give minors, in accordance with national and international law, equal opportunities for accessing the resources of information technology, and promote secure access to the same;
- d) Protect the child’s right to privacy and ensure correct processing of personal data;
- e) Collaborate fully, in accordance with current legislation, with the competent authorities in the prevention, restriction and repression of cyber-crime, especially with regard to the exploitation of children through prostitution, pornography and sexual tourism on the Internet;
- f) Facilitate the protection of minors, in accordance with article 9 of the Legislative Decree of 9 April 2003, no. 70 (Implementation of Directive 2000/31/EC concerning certain legal aspects of the services offered by the information society, especially electronic commerce, in the internal market), from the potential risks of unsolicited commercial information, and the exploitation of the vulnerability of children, as referred to in article 130 of the Legislative Decree of 30 June 2003, no. 196 concerning unwanted information;
- g) Propagate the contents of the self-regulation code to operators and families.

Article 1 of the Code qualifies as potential "Adherent" any subject conducting Internet business activities, even when this does not directly involve commercial considerations for clients and users, agreeing to accept the Code either directly or through an association.

According to Article 2, as to membership, the Code applies to all operators that underwrite it either directly or through an association of operators.

As to the obligations of the Members, the voluntary adherence to the Self-Regulation Code entails a commitment to:

- accept integrally the contents of the code itself and, in particular, to accept the surveillance activities and sanctions therein;

- adapt the contractual conditions of the services provided to the provisions of the present code.

Article 3 includes the *Instruments for the protection of minors*, one of which is combating on-line pornography and paedophilia: the Adherent, in accordance with current laws regarding use of personal data, agrees to keep the User's IP number for accessing content publication functions, even if hosted free of charge. The Adherent will take any necessary steps to further collaboration with the competent authorities, and in particular the Post and Communications Police, to help identify the assignees of network resources utilised for the publication of contents hosted on his or her servers, as emerging from their respective contracts or equivalent documents, within, and no later than, three working days after receiving notification from the authorities in question.

As to responsibilities, the Code provides in Article 5 for different rules according to the nature of the operators: access providers, Housing/hosting providers, Content Provider, Internet Point Administrators.

With regard to supervision on the application of the Code, a Guarantee Committee, as referred to in article 6, is responsible for supervising the correct application of the Code. The Committee is made up of eleven experts appointed by a ministerial decree issued by the Minister for Communications, namely:

- four representatives of the Adherents, designated by the signatory associations;
- two members, including the Committee President, representing the Ministry for Communications;
- two members representing the Presidency of the Council of Ministers – Department of Innovation and technology;
- three members designated by the associations for the protection of minors and the National Users Council.

The Ministry for Communications provide secretarial assistance to the Committee. Appointments, including that of the president, have a three-year duration.

4. Film-Interactive Games

The distribution of films in Italy is substantially free of legislative measures. A decision on the rating of films for the protection of minors can determine limits to access to theatres. Decisions are taken by Commissions operating at the Ministry of Cultural Affairs and created by a Ministerial Decree of 19 February 2001 implementing Law 30 May 1995, n. 203.

Any of the eight Commissions is made up of nine members: the President (a Professor of Law) two Representatives of producers and distributors, two representatives of parents' associations, two experts of cinema, one psychologist.

The Commissions may declare with binding effects whether the diffusion of the film should meet some limitations, namely access to theatres is possible only for adults or to people over 14 years of age. The decision is communicated to the distributors of the given movie, which

may ask for review within 20 days or accept cuts to fit the movie for any public. If the appeal is accepted, the Commission modifies its rating. Against the final decision of the Commission the distributor may appeal to the Administrative Tribunal or in last resort to the Council of State.

3.14. Latvia

Introduction

The media law in Latvia started to develop in the beginning of 1990-ies, when Latvia regained its independence in 1991. The development of media law in general can be characterised by establishment of the legal basis to guarantee the freedom of expression and to exclude any possible intervention or censorship by the public authorities. The guarantee of independence of means of mass communication and the liberalisation or even exclusion of any public control over mass media to mark a steady move away from Soviet-type censorship are the peculiarities, which should be taken into account, when viewing the media law and policies of Latvia against the historical and socio-economical background. This has led to the situation, where the magazines and newspapers are published in the environment without almost any public regulation at all. Thus the written media to the great extent rely on the self-regulation. Quite the opposite is the situation with the radio and television, where different regulatory policies and institutions exist, except for information society services.

The regulatory framework for the regulation of media has not got a very long history. It began just with the adoption of the Law “On the press and other mass media” (1990), which is still applicable and has not changed much since that. Regulation of audiovisual market began in 1992, when the first law on the regulation of electronic mass media was adopted. The advertising in general is being regulated by Advertising Law, which was adopted in conformity with the EU requirements in 2000. However, already before the formal legally binding provisions the non-governmental Latvian Advertising Association adopted its first Code of Ethics in 1998, which provided for legally non-binding rules with respect to all kinds of advertising, including press and broadcasters. It was re-adopted in 2001.

It should be noted that the audiovisual market had been very liberal from the very beginning of its regulation. There has not existed any censorship for the provision of broadcasting services, nor there has existed any direct or indirect restrictions for the production and distribution of audiovisual works in Latvia.

More rapid development and integration within the European market began since 1995 with the adoption of the present Radio and television law. It has been subsequently amended several times. The *Ministry of Culture* took the initiative together with the *National radio and television council* and the *European Integration Bureau* to align the Radio and television law with the EC Directive “Television without frontiers”. The parliament adopted the final amendments (concerning definitions of European works and detailed jurisdiction criteria as well as access to events of major importance) to the Latvian Radio and television law in February 2001. This allowed for the provisional closure of the "Culture and Audiovisual" chapter in the negotiations for the accession to the EU. The alignment of legislation was also a precondition to participate in the Community programme MEDIA Plus, which Latvia joined in 2002. The Law thus incorporated the general principles and rules of EC directive, e. g., the

European works quota, the rules on the content and permissible amount of the daily and hourly transmission time devoted to advertising (including the ban on tobacco advertising, the surreptitious advertising and advertising, which may impair the interests of children), the use of exclusive rights and the broadcasting of the events of major importance to the public, the right of reply etc.

General Media landscape

There are about 2,3 billion inhabitants in Latvia: 58% of them are Latvian origin, about 29,2% Russian origin, and the remaining 12,8% constitute inhabitants having Byelorussian, Ukrainian, Polish, Lithuanian and others. It is a peculiarity of the Latvia's population that the ethnic origin plays an important role for the determination of the target auditorium of the particular media. The media market in Latvia is thus characterised by two different information spaces – one for Latvian speaking and other for Russian speaking auditorium.¹ This is true both for written and audiovisual media market. This distinction has produced an extra constraint on the development of media market, for which being as small in size for both linguistic groups, the additional pressure is put on the accumulation of the auditorium and consequently an adequate revenue.

Meanwhile it has to be taken into account that the estimates of the purchasing power standard (e. g. differences in price levels are eliminated, making a comparison of the volume of GDP possible) in 2004 constitute 8,890 euros per inhabitant.

Magazines and Newspapers

The “top ten” newspapers taking into account their revenue earned last year includes:

- 1) *Diena* (the daily newspaper, Latvian)
- 2) *Vestji Segodnja* (the daily newspaper, Russian)
- 3) *Latvijas Avize* (the daily newspaper, Latvian)
- 4) *Dienas Bizness* (newspaper on business issues, Latvian)
- 5) *Rigas Santims* (advertising, Latvian)
- 6) *Chas* (the daily newspaper, Russian)
- 7) *TV Programme*
- 8) *Reklama* (advertising, Russian)
- 9) *Bizness and Baltija* (newspaper on business issues, Russian)
- 10) *Neatkarīga Rita Avize* (the daily newspaper, Latvian)

¹ Nagla Ilze, Kehre Anita, Media ownership and its impact on media independence and ownership, 2004, see at <http://www.seenpm.org/index>.

The tree largest *dailies* in terms of circulation at the end of 2003 were *Diena* (65 000), *Latvijas Avize* (former *Lauku Avize*) (57 550) and *Neatkarīga Rita Avize* (36 000).² Thus we may conclude that despite the fact that share of Latvian and Russian speaking readers in the media market is pretty similar, the Latvian newspapers are more competitive in terms of their publishing amount.

The “top ten” magazines taking into account their revenue earned last year includes:

- 1) *Privata dzīve* (weekly, Latvian)
- 2) *Ieva* (weekly, Latvian)
- 3) *Lublju!* (Russian)
- 4) *Sestdiena* (weekly, Latvian)
- 5) *Rīgas Vilni+* (weekly, Latvian)
- 6) *Lilit* (Russian)
- 7) *Cosmopolitan* (monthly, Latvian)
- 8) *Santa* (monthly, Latvian)
- 9) *Izklāide* (weekly, Latvian)
- 10) *Komersant Baltic* (Russian)

To sum up the Latvia's national media market for written press is divided between three daily newspapers in Latvian, five in Russian, a number of evening tabloids (*Vakara ziņas*, *Rīgas balss*) and in Russian (*Vechernaya Riga*), as well as business and sports press.

The ownership rights in written media

The written media ownership may be looked at partly from the perspective of the mass privatisation process, which took place in the beginning of 1990-ies. Since 1992 all written press in Latvia has been owned by private owners. The privatisation also affected the first daily newspaper “*Diena*”, which was established by the first Government of the renewed Republic of Latvia in 1990. However it was privatised in 1992, and the joint stock company (JSC) with 153 shareholders, including employees of the company and the Swedish daily “*Expressen*”, has been established. However the privatisation of the state owned largest printing facility “*Preses nams*” took place much later – in 1998. Another example of a delayed privatisation was the national news agency *Leta*, which was privatised only in 1997, which actually allowed the emergence of the pan-Baltic news agency *Baltic News Service* (BNS) in early 1990-ies. With respect to the press distribution networks, the JSC “*Diena*” established its own subscription centre in 1994 as a response to dissatisfying service of existing subscription system run by State JSC “*Latvijas Pasts*”. It soon gained a significant market share. The largest state newsstand network “*Preses apvienība*” was put up for

² The data provided by the Latvian news agency *Leta* (2003).

privatisation only in 2000 and was acquired (85%) by the *Narvessen Baltija*, LTD, owned by Norwegian company.

Currently the largest daily newspaper in Latvian – *Diena*, is published by JSC *Diena*, in which 63% of shares belong the Swedish media company *Tidnings AB Marieberg International*, belonging to *Bonnier Group*. *Diena* is also the 100 % owner of shares in a regional newspaper “*Zemgales Zinas*” and a newspaper “*Novaja gazeta*” (published in Russian). Until 1 December 2003 the present “*Latvijas Avize*” was a newspaper published three times a week and called “*Lauku Avize*”. Its only shareholder Viesturs Serdāns, the Chairman of the newspaper’s managing board, inherited from the predecessor of the JSC “*Lauku Avize*” both the concept of the newspaper to write about the rural concerns, which managed to keep it on track for many years, when competing mostly with regional and local press, as well as its subscribers. The third biggest daily newspaper “*Neatkarīga rīta avīze*” is published by JSC *Mediju Nams*, which belongs to the Latvian oil transshipment company, JSC “*Ventspils Nafta*” (90, 23 %) and JSC “*Preses Nams*” (9, 77%), which is also owned by *Ventspils Nafta*. To sum up the Latvian national press market is concentrated in the hands of two major publishers – the Swedish media concern, *Bonnier Group* and companies associated with the *Ventspils* (the third largest port City) political economic group. The Swedish media concern together with *Bonnier Group* directly or indirectly owns about one third of all regional newspapers. *Bonnier Group* is an example of both horizontal concentration by having interests in significant part of regional newspapers, as well as vertical concentration, owing printing facilities and distribution and subscription companies.

Broadcasters

Latvia's TV market of more than 2 millions viewers is dominated by 3 main broadcasters: *Latvian Television* - the national public TV broadcaster operating two channels, commercial channels *TV3 Latvia*, *LNT* and *TV 5 Rīga* (the regional TV for the City of Rīga). Another player, which comes into the Latvian broadcasting market is TV channel *TV 3+ Baltics*, which is operated by the *Viasat Broadcasting* under the jurisdiction of UK, but broadcasting exclusively to Latvia. Furthermore, there are 37 cable TV and cable radio companies and 1 satellite television broadcaster – *Pirmais Baltijas kanāls (First Baltic Channel)*, which is under the jurisdiction of Latvia, but covering all three Baltic States.³

In the beginning of 1990-ies dozens of new commercial radio and television stations appeared on the market, but their number fell dramatically after the introduction of the 1995 Radio and Television Law. At the moment there are 30 registered radio broadcasters (including 3 national radio broadcasters) and 27 television broadcasters (including 2 national broadcasters).

Latvian Radio (*Latvijas Radio*), the public service radio broadcaster, has the largest audience and it provides informative and analytical programs, news and different kinds of music. It offers four national-wide channels with the aim to cover the national remit as provided by the

³ <http://www.nrtp.lv> (08.05.2004).

Law and according to the annual priorities according to the contract concluded for the term of 5 years between the Latvian Radio and *National radio and television council*. In addition the 5th programme – radio “*Naba*”, was created as an alternative students programme, which is made by the independent producers and transmitted on a channel reserved for the transmission of the plenary meetings of the Parliament (the Saeima) on Thursdays.

The public service TV broadcaster, *Latvian Television* (Latvijas Televizija), which celebrated its 50-ies anniversary in November 2004, operates two channels – *LTV 1* and *LTV 7* covering the major part of the territory of Latvia. Both channels have similar programming policies regarding advertising. The difference between those two channels is that the second channel (*LTV 7*) carries about 20 per cent of programming in the national minority languages, and it is devoted more to the entertainment with the particular emphasis on broadcasts for youth and children, and sports.

The audience share (daily reach): TV broadcasters (in 2004)⁴

<i>Channel</i>	<i>Nov.-Dec 2004 (%)</i>	<i>Dec. – Jan. 2004 (%)</i>	<i>Index</i>
LNT	48,6	49,2	101
LTV 1	39,7	40,3	102
LTV 7	30,9	32,3	105
TV 3	42,4	44,0	104
PBK	23,2	24,4	105
TV 5	17,6	18,8	107
3+	12,8	14,1	110

⁴ Data provided by the Media House, September 2004.

The “Top 10” Radio: weekly reach⁵

<i>Channel</i>	<i>2004 Spring (%)</i>	<i>2004 Summer (%)</i>	<i>2004 Autumn (%)</i>	<i>2005 Winter (%)</i>
Latvijas Radio 2	31,0	30,7	34,9	33,9
Latvijas Radio 1	20,0	21,3	20,3	20,6
Radio SWH	18,0	19,7	22,6	22,0
Star FM	16,0	16,0	15,1	18,1
European Hit Radio	12,0	15,8	14,7	14,4
Latvijas Radio 4 (in Russian)	12,0	12,9	12,6	14,0
SWH + (in Russian)	12,0	12,9	12,1	13,5
Radio 100 FM (in Russian)	9,0	11,2	9,5	10,5
Radio Mix FM (in Russian)	7,0	10,2	10,2	11,3
Radio Skonto	8,0	9,1	11,3	11,4

The Ownership rights in national broadcasters⁶

The ownership rights in the two largest competing commercial broadcasters in Latvia – *LNT* and *TV3 Latvia* with the 25 per cent and 15 per cent market share accordingly are owned by foreign multinationals. Until mid 2003 it was said that *LNT* was directly and indirectly owned by Polish television concern *Polsat* (60%) and by three private individuals – Janis Azis (14%), Haralds Apogs and Edvins Inkens, both having an indirect ownership (26%) through *Bete, LTD*. According to the information provided by the Company Register in summer 2003 the shares owned by *Bete, LTD* were sold to *Baltic Media Holding* b.v. (*BMH*) registered in Netherlands. There even was a speculation that the *BMH* represents the interest of *Rupert Murdoch's News Corporation*, which owns about 33% of *Polsat*, which means that *Polsat* might actually have even greater influence in *LNT*.

The second largest TV broadcaster *TV 3 Latvia* is owned by Swedish media concern, *Modern Times Group* (100%). It does also run the channel *3+ Baltics*, licenced under the UK jurisdiction, but broadcasting exclusively to Latvia. Another peculiarity is that it actually

⁵ Ibid.

⁶ The majority data used for this chapter is taken from research of Nagla Ilze, Kehre Anita, Media ownership and its impact on media independence and ownership, 2004, see at <http://www.seenpm.org/index>.

broadcasts exclusively in Russian with the pro-Russia programming concept, and it does have a serious impact on the advertising market, as the channel actually sells its advertising time in Baltics (advertises targeting the Latvian auditorium).

The three biggest commercial radio broadcasters in terms of audience share are *Radio SWH* (9%), *SWH+* (8%, broadcasting in Russian) and *Star FM* (5%). The programmes of the first two channels are produced by *JSC Radio SWH*, which is owned by private individuals represented in company's management (Zigmars Liepins (35%), Guntars Krumins (8,5%) and Janis Sipkevics (6,5%)), and by largest Latvian commercial TV broadcaster – *LNT*, which owns the rest of shares 50%. The third most popular radio station *Star FM* belongs to the *Modern Times Group* (100%), which also owns *TV 3*.

Advertising market

According to the data provided by the *BMF/TNS* the turnover of media advertising market was 23.9 billion Latvian LVL (e. g. 16,73 billion Euros) in the first half of 2004. That is 19% growth comparing to the first half of 2003. In overall the prognosis for the whole year 2004 is the increase by 10 per cent comparing to the last year.

The share of different media types for the year 2004 (the data provided for the first half of 2004 and the prognosis for the year 2004):

- 1) Newspapers 30% (prognosis 30%)
- 2) Magazines 14% (prognosis 15%)
- 3) TV 36% (prognosis 35%)
- 4) Radio 11% (prognosis 11%)
- 5) Outdoor media 6% (prognosis 6%)
- 6) Internet 2% (prognosis 2%)
- 7) Cinema 1% (prognosis 1%)

The biggest increase of the advertising share for the first half of 2004 vs. first half of 2003 was from the internet – 68%, outdoor media – 45% and magazines – 36%. However it is expected that advertising market on the internet will increase even more steadily in the near future.

Constitutional law

General information on the governmental system.

Being one of the oldest Constitutions in force in Eastern Europe the Constitution of the Republic of Latvia (*Satversme*) (1922)⁷ includes very comprehensive clauses that set out the general principles for the governance of the state and the legislative order. It also includes the chapter on the protection of basic freedoms and human rights, which in fact has not been

⁷ The English translation of the Constitution can be found at <http://www.ttc.lv/New/lv/tulkojumi/E0013.doc>.

included in the Constitution (*Satversme*) originally, but was added to it in 1998. Before that they were guaranteed by a special Constitutional law on the freedoms and rights of people and citizens (1991).

According to the Constitution of Latvia the legislative powers belong to the Parliament (the Saeima), which has the right to adopt binding laws. In addition also the Cabinet of Ministers may adopt regulations, but only in a strictly provided areas of competency as set out by the respective law. These are actually the only national legislative acts, which are widely applicable and are binding to private parties.

The basic principles of institutional system are set out by the Constitution as well. Art.58 says:

“The administrative institutions of the State shall be under the authority of the Cabinet.”

It means that all the governmental bodies shall be either named directly by the Constitution (like the Parliament, the Cabinet of Ministers, President and the State Audit Office), or they should go into the structure of the governmental institutions under the Cabinet of Ministers. The discussions are still taking place on the legal status of *National radio and television council*, which is the main administrative body for the regulation of media content (though only electronic media). As it is not mentioned by the Constitution legally it should be within the structure of the Cabinet of Ministers subject to Art.58. It had been argued already back in 1995 that it would then seriously impair its independence as the regulatory body of media. However, its status has not changed since that and it has remained outside the normal structure of the governmental institutions. Thus it is also argued that it does function in contradiction with the basic Constitutional law.

It should also be noted that the legal status of *National radio and television council* has not changed after the adoption of the State administration structure law⁸, which actually supplements and specifies the basic Constitutional law, and though not named as such it may still be attributable to the general constitution law. The State administration structure law does specify the system of public administration in Latvia. Art.6 specifically states that:

“State administration shall be organised in a single hierarchical system. No institution or administrative official may remain outside this system”.

Thus all the central governmental institutions, the subordinate bodies, inspections and other regulatory bodies should be established according to the provisions of this law or subject to the provisions of the special laws. It is thus also the case with the *National radio and television council* (and few other bodies), which is not subject to the general public administration system as set out by the Constitution and the State administration structure law, but is governed by the provisions of a special law (Radio and television law).

Apart from other things the State administration structure law states that the overall function of planning and approval of the policy and strategic development of the sector should remain with the central governmental institutions. The law, however, does provide for the possibility

⁸ The translation of the law can be found at: <http://www.ttc.lv/New/lv/tulkojumi/E0380.doc>.

to delegate certain administrative tasks to the private bodies, if the governmental institution sees it more effective for the regulation of particular subject matter (Art.41). For this purpose the special administrative agreements should be concluded.

Freedom of expression and the right of reply.

As Latvia is a party to the European Human Rights Convention, and thus it has to abide Art.10 of the Convention, that guarantees the freedom of expression and freedom to receive and impart information. This freedom and rights is one of the fundamental constitutional principles as declared by the Constitution, where Art.100 reads as follows:

“Everyone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express their views. Censorship is prohibited.”

Additionally Art.104 of the Constitution guarantees the right of any person to apply to the governmental institutions and local authorities with the request for information in the state language. According to the law the governmental institutions and local authorities have to reply within 15 days.

In addition Art.1 of the law “On the press and other mass media”, that in fact entered into force in 1991, which is before the Constitution became fully applicable again in 1993, refers specifically to the “freedom of press”. In particular, it states that

“Any individual, groups of individuals, public institutions and all kinds of commercial entities or institutions has the right to freely express their views, opinions, disseminate announcements in press and other mass media, as well as receive information with the help of press or other mass media on any issue of interest to this person or on the life of the society in general.”

This Art.1 also prohibits censorship and monopolisation of press and any other mass media. Art.4 prohibits any interference with the work of the mass media on any grounds, including the political. Besides the law also guarantees the rights of mass media to receive information from the public institutions and non-governmental institutions (Art.5), but at the same time it obliges the mass media to recall any information or news published or communicated to the public, which are untruthful or mistaken. Ch. IV of the law describes the rights and obligations of the journalists.

With respect to the programmes disseminated by radio or television Art.17 of the Radio and television law (1995) states that

“The broadcaster should ensure that facts and events are fairly, objectively and comprehensively reflected in broadcasts, in accordance with the generally accepted principles of journalism and ethics. Commentary shall be separated from news, moreover the name of the author of the commentary shall be indicated”.

The objective of this provision is to ensure that the information disseminated by the electronic mass media shall not be misrepresented and would be presented objectively according to the principles of ethics and high professional standards of the journalists.

1. Broadcasting

1.1. Regulatory framework

The rules governing the work of journalists and broadcasters are primarily provided by the law and the Regulations of the Cabinet of Ministers. Though not strictly legally binding there also exist general professional codes, which may be described as a means of self-regulation for journalists and broadcasters.

1.1.1. Legal provisions

The general broadcasting principles and the programming rules for both public and commercial broadcasters (radio and television) are governed by the Radio and television law (1995)⁹. The law thus incorporates the principles and rules as set out by the of EC directive “Television without frontiers”, and in particular the European works quota, the rules on the content and permissible amount of the daily and hourly transmission time devoted to advertising (including the ban on tobacco advertising, the surreptitious advertising and advertising, which may impair the mental and physical development of children), the use of exclusive rights and the broadcasting of the events of major importance to the public, the prohibition to demonstrate in the visual programmes of television the pornography, the watershed (10 p.m.)¹⁰ for the broadcasts and audiovisual works, which may impair the mental and psychological development of children, and the right to reply. Latvia is also a party to the European Convention on transfrontier television and its additional protocol. The Radio and television law also provides for the licensing of broadcasters that is ensured by organising an open competition (Chapter II of the Law) for granting the terrestrial frequencies for radio communications. Licensing of cable operators and satellite broadcasters is done by more formal registration procedure though they also are subject to a special license.

The Radio and television law, as well as Advertising Law (2000)¹¹ provide for the general rules of content with respect to advertisements published and/or included in the broadcasts of radio and television. According to the Art.12 of Advertising law it is also a responsibility of a publisher or a broadcaster not to publish or include in its programmes the advertisements, which are prohibited (e. g. tobacco or alcohol, as well as surreptitious advertisement in the case of radio and television) or which do contradict with the requirements as set out by the law, if he or she knew or had to know that such advertisement is illegal. Besides according to the Radio and television law it is the sole responsibility of the broadcaster for infringing the restrictions on the amount of advertising to be inserted in the respective programme, as well as for any break of rules on the content of advertising subject to the Radio and television law.

Radio and television law also provides for the operation of public service broadcasters – Latvian Radio and Latvian Television, by setting out their legal status and their main tasks, e. g. the implementation of the national remit as provided by the Law: (a) the free distribution of

⁹ See <http://www.nrtp.lv/en/normdok.php>.

¹⁰ There is a draft proposal for the amendment to the law to extend this time till 11 p.m.

¹¹ The translation of the law may be found at: <http://www.ttc.lv/New/lv/tulkojumi/E0048.doc>.

comprehensive information about events in Latvia and in foreign countries, (b) the development of Latvian language and the promotion of culture, (c) the reflection of the activities of the Parliament (*the Saeima*), the President, the government (*the Cabinet of Ministers*) and the local governments, (d) the need of society for the educational broadcasts, as well as religious, cultural, scientific, entertainment, children, sports and other broadcasts, (e) the promotion of broadcasts concerning the life and culture of ethnic minorities living in Latvia, and (f) pre-election campaigning opportunities in accordance with special laws.

Apart from that the provisions of the Law the special Regulations of the Cabinet of Ministers were adopted in 2004 on the implementation of the provisions of the Art.3a of Television without Frontiers Directive on the broadcasting of events of major importance to the public. By these Regulations the list of major events for the Latvian public has been approved, but it has not yet been notified to the European Commission and other Member States.

Several other horizontal laws apply to the regulation of the broadcasting sector. First of all there are special horizontal laws applicable to all media with respect to pre-election campaigns before the elections to the Parliament (*the Saeima*), European Parliament and the local authorities. These two laws does provide for the obligation to the broadcaster and the newspaper or magazine, that broadcasts or publishes the political advertising, to ensure that the individuals, political parties or any other organisations, who have covered the expenses or contributed to the publication of the particular material are identifiable. They are also obliged to give proper accounts to the competent authorities (e. g. the *Anti-corruption bureau* directly subordinated to the Prime minister's office) on the amounts of the income earned during the pre-election campaign.

Apart from law there are also Regulations of the Cabinet of Ministers applicable to all media, e. g. the Regulations on the import, production, dissemination, public communication or advertising of erotic or pornographic materials (1995). These regulations do contain general prohibitive provisions on the production, import, dissemination and advertising of such published or audiovisual materials, except for special places and premises designated for this purpose.

Media diversity and regulation of media ownership

There are no special regulatory mechanisms for the media ownership to ensure media diversity apart from general Competition law (2001)¹² and few provisions in Radio and television law (1995), in particular Art.8. There is also no special institution or regulatory authority that would be responsible for managing the information on the media ownership and supervise the cross-media or cross-sectoral media ownership rights. Therefore it has been admitted by media experts¹³ that sometimes it is even difficult to have a clear picture on media ownership in Latvia, and because of the lack of control it has proven to be quite non-

¹² The translation of the law can be found at <http://www.ttc.lv/New/lv/tulkojumi/E0026.doc>.

¹³ See Richard Baerug (2005) at www.politika.lv and Dimants, A., edit. *Baltic Media World*, at <http://www.politika.lv/index.php?id=110728&lang=lv>.

transparent. Therefore also the data described below (see section 5.2.1) may not be taken as approved official information.

The Radio and television provides for the prohibition of monopoly in the field of broadcasting, where the interests in it would be owned by any political party, non-governmental organisation, commercial entity, group of persons or an individual. An individual owner of a radio or television broadcaster may not own more than 25 per cent of the capital or shares in any other broadcaster. Each broadcaster, except for public broadcasters, may not have more than 3 programmes. A political party or a commercial entity, which is controlled by political party, may not own a broadcaster. The responsible institution for supervising the implementation of this requirement is *National radio and television Council*, which is a regulatory institution for radio and television, both commercial and public, since 1995.

For all other mass media just a general provisions of Competition law apply. It provides for the prohibition to abusive use of a dominant position (e. g. where a market participant takes over more than 40% of a relevant market), which may harm a free competition. There are no cross-sectoral regulatory mechanisms in the Media law of Latvia at the moment, that would clarify, whether a person owing a 40% shares in a press market, could also own at least 20% of the news agency market and, for example, 30% of the news internet portals.

There are also no restrictions with respect to the foreign ownership rights in Latvian mass media. Originally such restriction existed in Radio and television law, providing that a foreign company may own only 49% of the shares in a broadcaster, but this requirement was abolished in 1999.

Access and must-carry rules

Currently there are no detailed rules on the access to the digital broadcasting. The only general provisions in this respect are included in the Article 67 of Electronic Communications Law (2004) that provide for the obligations of the electronic communications service provider to ensure that the rights of the end consumers – the subscribers to the service, are not limited with respect of freedom of choice of the digital terrestrial television or radio service provider, and the digital services are compatible with the other services provided by the electronic communication service providers. The digital terrestrial television and radio services shall be provided in accordance with the EU standards as provided for such services.

Must-carry rules are provided by Article 34 of the Radio and Television Law. This Article applies to the operators of cable TV systems, and it provides for the obligation of the cable TV operators to ensure that the subscribers have access to the broadcasts of public service broadcaster (Latvian Television). It is the duty of the *National radio and television council* to ensure the adequate control on the observance of this rule.

1.1.2. Administrative regulations/rules

According to the Radio and television law *National radio and television council* may adopt decisions with respect to the broadcasters in the field of supervising and controlling the

implementation of the provisions of the Radio and television law. It has also used this right to adopt more general decisions to provide for the implementing rules of the Law though they may serve as the administrative regulatory instruments for the internal use of the Council only.

The Council is also responsible for drafting the National concept for the development of electronic mass media to be renewed once in 3 years. The concept (the last one being adopted in 2003 and covering the period till the year 2005) aims at setting out main action priorities and future trends in the development of electronic mass media, and to promote a programming policy, which corresponds to Latvia's national interests. Special attention is paid to the strengthening and development of the role of public service broadcasters. The *National radio and television council* has also drafted the draft concept paper on the development of Digital terrestrial television, which should serve as a part of a broader concept, including the technical issues. It should be added though that these concept papers set out the strategy for the work of the Council, but are not legally enforceable.

The amendments to the Administrative Offences Code (10 April 2003) and to the Radio and television law (15 May 2003) were adopted to enable the Council to impose financial penalties for the infringements of the advertising rules, dubbing and subtitling rules in the state language with respect to audiovisual works and broadcasts, rules for the operation of the broadcasters and the restrictions for the broadcasting of broadcasts and audiovisual works, which include violence and pornographic and erotic scenes.

1.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

Though not legally binding there also exist professional codes and internal standards, which may be described as a means of self-regulation for journalists and broadcasters. The Code of Ethics as adopted by the Latvian Union of Journalists already back in 1992 states that the mass media should (1) defend the freedom of speech and freedom of press, (2) should not be influenced in any way that limits the free flow of information or debate on any issue of significance for society, (3) have a duty to protect human rights, (4) should provide society with true, verified, objective and clear information, (5) have a responsibility for the information presented and its interpretation, (6) should abstain from duties that are against his/her convictions, (7) must respect intellectual property and avoid plagiarism. As stated by the law "On press and other mass media" and the Radio and television law the editor of the press or the broadcaster is responsible for the information presented in the newspaper/magazine or by the broadcaster in its programmes. He/she should secure the flow of free and proper information, as well as the free exchange of opinions; the editorial board should guard their integrity and act independently of the influence of any persons or groups. A journalist: (1) has no right to reveal sources of information, unless demanded by the court, (2) should respect the dignity of others, (3) should never abuse the emotions and feelings of other people, (4) should be critical in the choice of sources, (5) must respect a person's private life, nationality, race, identity and religious belief. In publications: (1) factual information must be clearly separated from commentary, (2) advertisements must be separated from the

author's material, (3) pictures should be used in their original context; (4) should not pre-judge court proceedings, (5) provide for apologies for incorrect information. Adequate space must be provided for the right of reply. Material can only be published with approval from the author. A journalist must: (1) respect democratic institutions and moral standards, (2) stand up for human values such as peace, democracy, human rights, self-determination, (3) have respect for the national values of other nations and the history, culture, national symbols, independence and freedom of Latvia.¹⁴ It should be noted, however, that neither the National radio and television council, nor any other institution is responsible for the enforcement of these rules. They are thus not enforceable either before administrative bodies or courts.

The Code of Ethics of the *Latvian Association of Advertisers* was first adopted in 1998, that is already before the Law on Advertising, and then redrafted and adopted again in 2001. It first of all states that the provisions of this Code are binding only to the members of Association, and serves as recommendations to other Latvian advertisers. It is, however, applicable only in so far as it does not contradict to the legal provisions as provided by the laws in force (e. g. Advertising Law, Radio and Television Law, Law "On press and other mass media". The Code first of all provides for the professional code of conduct, which includes the following principles: (1) the principle of competency of advertisers, where the advertiser has a duty to provide to the customers with the results of the analysis and research of the issue based on the professional knowledge and reliable sources; (2) the principle of prevention of conflict of interests of the advertising professional with respect of provision of advertising services to the customer; (3) the principle of objectivity in the course of provision of services; and (4) the responsibility on the content of advertising.

With respect to the standards on the content of adverts the following rules should be observed by the advertisers:

- 1) The advertising should abide to the provisions of the Law;
- 2) The advertising must be polite, and, in particular, it should not contain any impingement with respect to national, racial origin, sexual orientation or dysfunctions caused by any illness etc, and in no way it should not infringe the human dignity;
- 3) The advertising must be fair and it should not be critical to the competitors' products; it may not also make use of the comparison of the identifiable trade marks of the products.
- 4) The advertising should not be misleading or it should not contain any exaggerations or it must not hide any facts, which are important to the knowledge of consumer with respect to the product concerned;

¹⁴ Cited from the Final report of the study on "the information of the citizen in the EU: obligations for the media and the Institutions concerning the citizen's right to be fully and objectively informed" prepared on behalf of the European Parliament by the European Institute for the Media, Dusseldorf, 31 August 2004; the contributions made for the report to be finalized also include the one by S. Strausa (former Head of Secretariat of the National Radio and Television Council of Latvia).

- 5) The advertising should be made with the sense of responsibility to the society; it should not contain any invitation to violence, actions that may be harmful to environment, disrespect towards cultural heritage and national language, incitement to consume alcoholic or tobacco products, antisocial behaviour, administrative and criminal offences etc.
- 6) The advertising should not be such as leading to detract loyalty of the society towards advertising.
- 7) The advertising should contain the information on the conditions or possible restrictions of the guarantee for the product and important to the consumers.

The Code also provide for the special rules with respect to the advertising of particular categories of products – medical products, alcoholic beverages, tobacco, financial services and as well as advertising aimed at children and youth, travel services, games and lotteries etc.

However, there are no sanctions provided by the Code in case the advertising professional fails to observe these principles, apart from the issuing of warning and a recommendation not to publish or broadcast the particular advertising material.

The non-governmental organisation – *Association of the broadcasters*, which encompass the majority of national, regional and local radio and TV broadcasters, is active in the field of broadcasting as well. However, it does not issue any binding rules to its members. It acts merely as a co-ordinator of the common action and thus contributes to the development of national policies in the field of electronic mass media, and in particular in the field of copyright and neighbouring rights.

1.2. Regulatory authorities

1.2.1. Authorities

The main regulatory authority for the broadcasters is *National radio and television council*. Apart from it several other institutions are involved in the regulation of the broadcasting sector, the competencies of which are strictly limited to the powers and duties as provided by the respective laws, and who are obliged to co-operate in performing their day-to-day duties. They are as follows:

- *Ministry of Culture*
- *The Competition council* (Konkurences padome),
- *The Directorate for electronic communications* (Elektronisko sakaru direkcija) (under the *Ministry of Transport*),
- *Commission for the regulation of public utilities* (Sabiedrisko pakalpojumu regulēšanas komisija),
- *Centre for the protection of consumers' interests* (Patērētāju tiesību aizsardzības centrs) (under the *Ministry of Economy*)

- *Inspection of the state language* (under the *Ministry of Justice*) (Valsts valodas inspekcija),
- *Anti-corruption bureau* (Korupcijas novēršanas birojs) (under the *Prime minister's office*)

The analysis below will concentrate on the functions and organisation of the National radio and television council though as the central regulatory authority for the control and supervision, as well as for the strategic development of the broadcasting sector.

1.2.1.1. Legal basis

The legal basis for the establishment, composition, functions of and the decision making within the *National radio and television council* is set out by Chapter VI of the Radio and television law (1995). The other most important institutions, with whom the Council is co-operating in the performing its day-to-day functions, are the *Directorate for the electronic communications* under the *Ministry of Transport*, the legal status of which is set out by the recently adopted Electronic communications law (2004) (Chapter II, Art.4-7) and the Commission for the regulation of public utilities, the status of which is set out by the Law “On regulators of public utilities”¹⁵ (2000) and Electronic communications law.

1.2.1.2. Functions/competencies

The work of the *National radio and television council* may be divided into two different directions or spheres of action. First of all it is the policy maker for the development of the electronic mass media (apart from information society services, e. g. internet providers). The Council is responsible for drafting the National concept for the development of electronic mass media to be renewed once in 3 years. The concept (the last one being adopted in 2003 and covering the period till the year 2005) aims at setting out main action priorities and future trends in the development of electronic mass media, and to promote a programming policy, which corresponds to Latvia's national interests. Special attention is paid to the strengthening and development of the role of public service broadcasters. The *National radio and television council* has also drafted the draft concept paper on the development of Digital terrestrial television, which should serve as a part of a broader concept, including the technical issues. The work on the drafting of the more comprehensive concept paper has been started already several years ago by the *Ministry of Transport* (the Department of Communications), but it has been stopped for indefinite time due to the scandalous court trial on the establishment of DTT centre and the agreement for the purchase of the necessary technical equipment from the UK based company *Kempmayer LTD*.

The second sphere of action of the Council is to act as a controlling and supervisory body for both public service broadcasters and commercial broadcasters with the aim to ensure uniform and effective application of the requirements of the Radio and television law. For this purpose the day-to-day work of the Council is mainly ensured by the staff of the *Secretariat of the*

¹⁵ The translation of the law may be found at: <http://www.ttc.lv/New/lv/tulkojumi/E0145.doc>.

Council, which includes the lawyers, technical experts and the Information department. The monitoring and controlling function of the Council is fulfilled by the *Commissions* for the control on the implementation of the Radio and television law, which are made up by the members of the Council.

In order to complete the above stated tasks the amendments to the Administrative Offences Code (10 April 2003) and to the Radio and television law (15 May 2003) have been adopted. These amendments enabled the Council to impose financial penalties for the infringements of the advertising rules, dubbing and subtitling rules in the state language with respect to audiovisual works and broadcasts, rules for the operation of the broadcasters and the restrictions for the broadcasting of broadcasts and audiovisual works, which include violence and pornographic and erotic scenes. Within the terms of its development plan the Council has established and has set out as one of its priorities the development of a modern monitoring unit to strengthen its monitoring capacity.

The *National radio and television council* together with the *Anti-corruption bureau* is also responsible for the control and supervision of the implementation of the laws on the pre-election campaigns before the Parliamentary elections, elections to the European Parliament, and the elections to the local authorities, which provide for the strict requirements on the use of budgetary resources to ensure the equal access to the free transmission time for the political parties, as well as the accounting requirements for the financing of the broadcasts on and advertising on radio and television within the pre-election campaigns.

The other governmental institution involved in the regulation of the electronic media is the *Directorate for the electronic communications (Elektronisko sakaru direkcija)*, which is established under *the Ministry of Transport*, and is responsible for the definition of the governmental policy on redistribution and granting of frequencies for the terrestrial television and radio communications. The frequencies are assigned according to the results of competition organised by the *National radio and television council*.

Management of public service broadcasters

According to the Radio and Television Law, *Latvian Radio* and *Latvian Television* are public broadcasting organisations and operate as State non-profit companies with limited liability.¹⁶ Their primary purpose is the implementation of the national remit.

The *National radio and television council* is also the shareholder of the public capital within the Latvian Radio and Latvian Television, and performs the functions of the general meeting of the shareholders. The Council administers the capital shares owned by the state, by deciding on the draft annual budgetary proposals to be submitted to the Cabinet of Ministers, approves their articles of association, appoints their Director Generals, establishes Audit Committees and approves their Board members.

¹⁶ The status, however, shall be changed pursuant to the requirements of Commercial Law. The Parliament has not still decided on the new legal status of the public broadcasters.

Latvian Radio and *Latvian Television* are managed by Directors General, who are being appointed by the *National radio and television council* for five years. The Council also decides on the annual priorities to ensure the fulfilment of the general aims of the national remit as provided by the Radio and television law.

Latvian Radio and *Latvian Television* may not be privatised in whole or in part. With the permission of the *National radio and television council*, *Latvian Radio* and *Latvian Television* may however participate in the founding of undertakings (companies) and may acquire capital shares in other companies and securities, if this does not reduce the quality of programmes.

1.2.1.3 Organisation

National radio and television council is an independent institution, which is directly elected by the Parliament. It is composed of 9 members of the Council that elect the Chairman of the Council being one of the members of the Council. Though the members of the Council may not at the same time be the members of the board of any of the political parties, they are still nominated by the political parties. The term of the office for the members of the Council is 4 years, however the elections of the members of the Council are organised after each 2 years period, when the members at office are changed according to the principle of rotation.

The Council is funded by the state budget.

1.2.2. Self regulatory bodies

- *Latvian Union of Journalists*
- *Association of broadcasters*
- *Latvian Association of advertisers*
- *Council of Ethics for Advertisers*

1.2.2.1. Legal basis

Being professional association their legal status is not set out by any legislative act. The general law that governs the establishment, registration and the principles of operation of non-governmental and professional organisations is the law “On the societies and funds” (2003).

1.2.2.2. Functions/competencies

The functions and competencies of the professional bodies and societies are set out by the Statutes of the organisation. *Latvian union of journalists* comprises almost all the professional journalists active in their field, and it does set out the professional rules and standards, which have to be observed by the journalists. The most visible example is the Code of ethics of journalists adopted already in 1992. Also the *Latvian Association of Advertisers*, being a non-governmental professional body and the member of the European Advertising Standards Alliance (EASA) has adopted a Code on Ethics of advertising (2001). This code sets out standards of advertising, which are binding to the members of the Association in so far as it does not contradict with the rules provided by the laws in force. However, these codes have not established any regulatory mechanism for the enforcement of these rules.

In 2005 a new professional organisation – *The Council of Ethics for Advertising* has been established. The decisions of the Council are adopted by expert commissions, which are established on ad-hoc basis, but they are in no way legally binding. They mostly serve as a recommendations to the advertisers. Still according to the information available the advertisers are still voluntarily following the recommendations of the Council.

1.2.2.3. Organisation

There is practically no information on the organisation of the professional bodies. They are more or less operating on the basis of organising regular meetings of the members of the organisation.

2. Press

2.1. Regulatory framework

2.1.1. Legal provisions

At the first glance this may be an example (though not a good one) for the self-regulation executed through the non-binding rules and codes for the journalists, which for the large part is true. Though it might also be the consequence of the lack of any media policy as such. Still there are several laws applicable and institutions involved in the regulation of the newspapers and magazines:

First of all, the general law of 1990 “On the press and other mass media” applies, which sets out the general regulatory framework with respect to newspapers and magazines (see sect. 2 above). Art.7 of the law states exhaustively, what kind of information is not allowed to be published at all (e. g. information, which is protected by law as the secret information in the interests of security, the information that invites to the use of violence and subversion of the existing democratic order of the state, propaganda of war, cruelty, the racism and xenophobia etc.) or without obtaining the consent of the competent authorities (e. g. prosecutors office) or persons concerned (e. g. with respect to information about the health condition of an individual or on his personal life). Still the law does not provide for any sanctioning mechanism in case of infringement, but the general clauses on filing the civil claims in court for remedying the harm. The law “On the state official language” provides for the compulsory use of official state language in case of dissemination of information, which is important to the public subject to the principle of proportionality (Art.21). However, it is also allowed to use any other foreign language as well.

However, besides the general law, there are also several horizontal legislative acts applicable also to other types of mass media. In particular the Advertising law should be mentioned, which entered into force in 2000, and has been aligned with the EU Law. It does set out the general requirements to be applicable to advertising – either published or otherwise communicated by the means of electronic media, for example on the misleading advertising and advertising, which is contrary to fair competition, e.g. the prohibition of comparison of alike or competing products. The responsibility for the control of the law is divided between

several governmental agencies and institutions, including the *Inspection for the protection of consumers' interests* (under the Ministry of Economy), the *Competition Council* (in case the advertising does infringe the general competition law), the *State pharmaceutical inspection* (on the advertising of medicine and medical products). The advertising in the electronic means of mass media is controlled by the *National radio and television council*.

There are special laws applicable to pre-election campaigns before the elections to the Parliament (*the Saeima*), European Parliament and the local authorities. These two laws does provide for the obligation to the newspaper or magazine, which publishes the political advertising, to ensure that the individuals, political parties or any other organisations, who have covered the expenses or contributed to the publication of the particular material are identifiable. They are also obliged to give proper accounts to the competent authorities (e. g. the *Anti-corruption bureau* directly subordinated to the Prime Minister's Office) on the amounts of the income earned during the pre-election campaign.

Apart from law there are also Regulations of the Cabinet of Ministers applicable to media, e. g. the Regulations on the import, production, dissemination, public communication or advertising of erotic or pornographic materials (1995). These regulations do contain general prohibitive provisions on the production, import, dissemination and advertising of such published or audiovisual materials, except for special places and premises designated for this purpose.

It may be presumed that because of the lack of a clearly defined media policy there are several inconsistencies with respect to the regulation of different types of media. For example, there is a general ban on advertising of alcoholic beverages and tobacco provided by the Radio and television law and the law "On alcoholic goods", but this prohibition applies only to the advertising in TV and radio, but does not apply to other media, thus giving rise to the concerns of creating unequal environment of competition.

For regulation of media diversity and media ownership see also sect. 1.1.1 above.

2.1.2. Administrative regulations/rules

There are no administrative regulations or rules applicable to written media.

2.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

See sect. 1.1.3. above.

2.2. Regulatory authorities/bodies

Most probably Latvia's situation is quite unique because of the fact that the regulation of written press in Latvia is ultra-liberal, and as already mentioned above there is no special regulatory authority for the newspapers and magazines. However, if the necessity arises for the governmental policy on the particular question to be solved out, which concerns the media policy in the broad terms, it is the competency of the *State Chancellery (the Department for Communications)* to draft any legislative proposals. Usually the special task force would be

established, which would include representatives of different institutions, in particular, where the issue is of a cross-sectoral nature arises, e. g. for the protection of the children's interests, to ensure the democracy and media pluralism in all media etc.

See also sect. 1.2. above for the regulatory authorities involved in the regulation of horizontal issues. The same general regulatory instruments (e. g. as provided by the Competition law, Advertising law etc.) apply also to press.

3. Online Services

3.1. Regulatory framework

The special Law on the information society services has been adopted only recently (end of the year 2004), which provides for the general legal framework for the operation of these services. The law provides for the responsibility clauses of the intermediary services supplier, and it defines the main obligations of the intermediary service supplier. The electronic networks necessary for transmission of audiovisual content shall be considered as intermediary services suppliers.

The intermediary services supplier is responsible for the transmission and storage of information in the electronic services network, however, there are several exceptions to this responsibility. Also, the intermediary services supplier in general is *not responsible* for the contents of the information transmitted or stored, if it does not change the information and does not violate the provisions of its transmission or storage. The intermediary services supplier is not obliged to supervise the information transmitted or stored, however, if it acknowledges that the receiver of services has violated the law, it has an obligation to inform the supervisory authorities.

Thus it may be said that there is not yet a very comprehensive and clear policy or approach to the regulation of the content provided by the information society services. Hopefully it may change in the near future as the new position within the Cabinet of Ministers has been created with the appointment of new Government in the end of 2004 – the Minister, who is responsible for the *e-affairs*.

3.2. Regulatory authorities/bodies

There haven't been established yet any special regulatory authorities for the regulation of online services, nor the authority has been granted to any existing institutions or professional bodies. Thus only the system of granting licences, ensuring the access to the networks of electronic communications etc. is applicable under the regulation of general telecommunications law (see Electronic communications law (2004)).

3.2.1. Authorities

The overall responsibility for the strategic development of the policy is granted to the Ministry of Transport.

Institutions involved in the regulation of technical aspects of on-line services:

- *Directorate for the electronic communications* (Elektronisko sakaru direkcija), which is established under *the Ministry of Transport*
- *Commission for the regulation of public utilities* (Sabiedrisko pakalpojumu regulēšanas komisija)

See also sect. 1.2.1.

4. Films

4.1. Regulatory Framework

Currently the regulatory framework with respect to films is limited only to the extent, which is necessary to set out the general regulatory framework for the distribution of films (subject to the Regulations of the Cabinet of Ministers “On the distribution of films”) with the general aim to ensure the protection of copyrights, and for granting state aid (budgetary funding) as well as co-ordination of applications for the financing of Media programme and Eurimages fund for the production and distribution of national films.

Future regulatory framework

With respect to the self-regulatory or co-regulatory mechanisms the *National radio and television council* together with the *Ministry of Culture* and the *National Film centre* (under the Ministry of Culture) have began the drafting of the binding Law on Films and Regulations of the Cabinet of Ministers on the classification of films, taking into account the practice adopted by other European countries (UK, for example). However, it is not yet clear, what would be the legal status and the composition of the Commission responsible for the classification of the audiovisual content. The draft Regulations provide for the establishment of the Commission, which would be composed of the members from different institutions, including representatives of National radio and television council, Ministry of children and family affairs, Ministry of Education, National Film centre and State policy office. The draft Regulations anticipate that the Commission would be responsible for the classification of the content of films irrespective of the method of their fixation with respect to the adequacy of the content to certain groups of minors and for the evaluation of the situation and consequently drafting the proposals for the protection of minors with respect to the regulation of audiovisual content.

At the moment the only regulation for the classification of the audiovisual content is provided by the internal Instruction adopted by the *National radio and television council* for the control and the sanctioning of the infringement of the watershed time as provided by the Radio and television (Art.18), which provides for the prohibition to include within the TV programmes the broadcasts and films showing the scenes of violence, as well as the erotic scenes.

4.2. Regulatory authority

National film centre (Nacionālais kinematogrāfijas centrs) under the Ministry of Culture. It does encompass also the Film register and the Media Desk.

5. Summary

The media sector in Latvia may rather be characterised as under-regulated. It is particularly true for the press, online services and films (there are even no intentions under discussion for regulation of Interactive Games), where Latvian media law has been criticised for not having real and comprehensive regulatory policy applicable to all media sectors. Besides none of the public or governmental institutions is responsible for strategic development of the broad media policy to ensure the protection of basic human rights and freedoms, media pluralism and diversity and the implications of democratic principles of the freedom of media.

Thus media regulation is actually divided into quite distinct sectors of regulation. The most developed and detailed regulation is applicable to broadcasting sector. Yet there is also a horizontal regulation applicable also to press or written media. But it is totally unclear how the general advertising rules and rules for the protection of minors, as well as competition law would be enforceable in case of information society (online) services. There are no regulatory instruments defined by law or administrative practice, which would apply horizontally to all audiovisual content without distinction with respect to technical means of provision of the service.

It should be noted, however, that the legal framework for the regulation of audiovisual contents, and in particular with the emphasis on the protection of interests of minors, is still under development. Therefore it is almost impossible to provide at this stage a very comprehensive analysis of the regulatory systems, including the self-regulation and co-regulation. In fact the traditions of implementation self-regulatory instruments through different soft-law instruments, codes of practice and professional rules are very new in Latvia, and are rather following the practice of other European countries than might serve as an example to other states.

To summarise the above described systems of regulatory authorities, the most visible is the National radio and television council, which is a single regulatory authority for radio and television broadcasters (both public and commercial). However, the proposals are under discussion at the moment on the reform of the Council to ensure the effectiveness of its operation and most importantly it comply with the basic principles of governance as set out by the constitutional and state administration law.

It may be added that the regulatory authorities have just started to think over the horizontal and gradated approach to the regulation of a content of electronic media, in particular with the emergence of harsh competition from the broadcasters from other EU countries, as well as by the Russian broadcasts coming through the cable networks, but most importantly – the emergence of information society services.

3.15. Lithuania

Introduction

Development in media sphere in Lithuania began after the 1990's when Lithuania regained the Independence as until that time freedom of speech and press did not exist in practice.

The most significant step in the history of media sector in Lithuania was the adoption of the Constitution of the Republic of Lithuania in 1992, where the main principles were enacted, afterwards the development of broadcasting and free press followed. Commercial television started broadcasting, whereas before introducing the democracy, the monopoly of broadcasting belonged to the state. Licensing system for broadcasting and re-broadcasting activities was established. After the 1990's cable broadcasting was also introduced. As far as it regards digital broadcasting, the Digital audio broadcasting was introduced in 2001. At the moment the strategy for introducing the Digital video broadcasting – terrestrial is being prepared.

According to statistics on media consumers in Lithuania for the year 2004, it may be concluded that 19% of residents choose television as the only media mean, 15% limit themselves to local newspapers and radio stations, approximately 11% of residents often use online services as well as daily press and 14% of residents (this group involves mainly young people under 25) are active consumers of television, internet services and radio.

Media regulatory system in Lithuania consists of 3 main institutions: Lithuanian radio and television commission, the Inspector of journalist ethics and the Commission of journalists and publishers. The first one is mainly concerned with the supervision of broadcasting and re-broadcasting activities. The Inspector of journalist ethics covers wide sphere of supervision as regards complaints from interested persons in case of violation of honor and dignity, especially he is responsible for supervision over minors' protection against adverse effect of public information. The Commission of journalists and publishers is a self-regulatory institution which mainly deals with supervision of journalists ethics in the sphere of press.

Constitutional law

Articles 25 and 39 of the Constitution of the Republic of Lithuania, which is legally effective from 6 November 1992, mentions certain freedoms and guarantees which concern media, although any direct links as to media or its regulation are not given in the Constitution.

Art.25 of the Constitution provides that individuals shall have the right to have their own convictions and freely express them. Individuals must not be hindered from seeking, obtaining, or disseminating information or ideas. Freedom to express convictions, as well as to obtain and disseminate information, may not be restricted in any way other than as established by law, when it is necessary for the safeguard of the health, honor and dignity, private life, or morals of a person, or for the protection of constitutional order. Freedom to express convictions or impart information shall be incompatible with criminal actions - the instigation of national, racial, religious, or social hatred, violence, or discrimination, the

dissemination of slander, or misinformation. Citizens shall have the right to obtain any available information which concerns them from State agencies in the manner established by law.

Art.39 of the Constitution of the Republic of Lithuania guarantees minors' protection, as it is stated, that the law shall protect children that are under age.

1. Broadcasting

Broadcasting and re-broadcasting activities, except the National radio and television of Lithuania, are licensed in Lithuania. The National radio and television of Lithuania is a non-profit institution belonging to the State by the right of ownership and operating in accordance with the Law on the National radio and television of Lithuania. Other broadcasters or re-broadcasters have to receive the license from the Radio and television commission of Lithuania. Such licensing system was introduced after regaining the independence, when it was decided to grant the broadcasting licenses to commercial subjects as well.

1.1. Regulatory framework

1.1.1. Legal provisions

The 2 July 1996 Law of the Republic of Lithuania No I-1418 on Provision of information to the public

This Law establishes the procedure for collecting, preparing, publishing and disseminating public information and the rights, duties and liabilities of public information producers and disseminators, participants therein, journalists and institutions governing their activities. Media, according to this law, is defined as books, newspapers, journals, bulletins or other publications, television and radio programs, film and other sound or visual studio productions and other means of public dissemination of information, therefore this Law includes regulations not only for broadcasting, but for the press, online services and films or interactive games as mentioned below.

The 1989 European Convention on Transfrontier television which is legally effective for the Republic of Lithuania from 17 February 2000.

This Convention is concerned with programme services embodied in transmissions. The purpose is to facilitate, among the countries which signed the Convention, the transfrontier transmission and the retransmission of television programme services.

The 29 June 2000 Law of the Republic of Lithuania No VIII-1780 on National radio and television of Lithuania.

This law establishes the procedure of the founding, administration, activity, reorganisation and liquidation of the National radio and television of Lithuania which is a public, non-profit institution owned by the State.

The 15 April 2004 Law of the Republic of Lithuania No. IX-2135 on Electronic communications

This Law regulates relations pertaining to electronic communications services and networks, associated facilities and services, use of electronic communications resources as well as social relations pertaining to radio equipment, terminal equipment and electromagnetic compatibility.

1.1.2. Administrative regulation/rules

December 2004 decision of the Lithuanian radio and television commission “On approval of the rules for licensing broadcasting and re-broadcasting activities”

The mentioned rules establish the procedure and terms of issuing the broadcasting and/or re-broadcasting licenses.

Regulations of the Lithuanian radio and television commission approved by the decision of Commission No.67

Regulations provide the functions and organisation of the Radio and television commission

1.2. Regulatory authorities/bodies

1.2.1. Lithuanian radio and television commission

1.2.1.1. Legal basis

The Radio and television commission of Lithuania is guided by the Constitution of Republic of Lithuania, the 2 July 1996 Law of the Republic of Lithuania No I-1418 on Provision of information to the public, its own Regulations and the Rules for Licensing broadcasting and re-broadcasting activities.

1.2.1.2. Functions/competencies

The Radio and television commission of Lithuania is an independent institution with powers of regulation and supervision of activities of commercial radio and television broadcasters, which is accountable to the Seimas of the Republic of Lithuania. It is a body of experts for the Seimas and Government of the Republic of Lithuania in matters of radio and television broadcasting. Together with the Communications regulatory authority, the Radio and television commission of Lithuania works out the strategy and the strategic plan of radio and television broadcasting. It announces tenders for the acquisition of broadcasting or re-broadcasting licenses. It establishes the tender conditions and the terms of licensing, as well as fixes the rate of a registration fee and licensing fee for tenderers. It adopts decisions concerning the tender results and the granting of licenses. It supervises the observance of terms of licensing and decisions adopted by the Radio and television commission of Lithuania.

The Commission is performing the following functions:

- 1) in conjunction with the Communications Regulatory Authority, draw up the Strategy for Assigning Radio Frequencies to Broadcast and Transmit Radio and Television Programmes; also, in conjunction with the Communications Regulatory Authority and in accordance with the Strategy for Assigning Radio Frequencies to Broadcast and Transmit Radio and Television Programs, draw up and approve the Strategic Plan for the Assignment of Radio Frequencies to Broadcasting and Transmission of Radio and Television Programmes;
- 2) announce and organize, in accordance with the procedure established by the Law on Provision of Information to the Public and the Rules for Licensing Broadcasting and Re-broadcasting Activities, tenders for obtaining broadcasting and/or re-broadcasting licences, determine the terms and conditions of these tenders and licences, and issue licences;
- 3) set the rate of the licence fee and the rate of the fee for the examination of licence applications;
- 4) maintain control over compliance by broadcasters and re-broadcasters with the obligations undertaken by them, also with licence conditions and the decisions adopted by the Commission;
- 5) maintain, within its sphere of competence, supervision over the implementation of the provisions of the Law on the Protection of Minors against Detrimental Effect of Public Information;
- 6) establish the procedure for adhering to the requirements laid down in the laws and the requirements of the European Union concerning the structure and content of programmes as well as the broadcasting of advertisements;
- 7) maintain control over compliance by broadcasters with the provisions of the Law on Provision of Information to the Public concerning the proportion of European works and works by independent producers in the programmes broadcast, the right to broadcast events of major importance to society as well as with the requirements concerning television advertising and provisions on the sponsorship of programmes;
- 8) maintain control over compliance by re-broadcasters with the provisions of the Law on Provision of Information to the Public concerning the re-broadcasting of programmes;
- 9) monitor broadcasters' and re-broadcasters' programmes to maintain control over compliance with the laws and Commission decisions regulating the activities of broadcasters and re-broadcasters as well as with licence conditions;
- 10) impose, in accordance with the procedure established by the law, the following penalties on broadcasters and re-broadcasters who have violated the requirements of the Law on Provision of Information to the Public, licence conditions or who do not comply with the decisions adopted by the Commission: reprimands, monetary penalties prescribed by the Code of Administrative Offences of the Republic of

Lithuania, suspension of licence for a period of up to 3 months or revocation of licence;

- 11) submit proposals concerning the drafting of laws governing the activities of broadcasters and re-broadcasters as well as other legal acts related to these activities;
- 12) initiate the termination of illegal broadcasting and re-broadcasting activities;
- 13) collect information about broadcasters, re-broadcasters and common-use reception networks, analyze their activities, publish information about the participants therein, prepare information and methodical materials on these issues;
- 14) prepare and submit every 2 years to the Seimas an analytical survey of the implementation of Lithuania's audiovisual policy, the development of the market of audiovisual services, and the prospects for the expansion of national audiovisual sector, including the statistical data on the progress achieved by all the broadcasters falling under the jurisdiction of the Republic of Lithuania, also stating the reasons that impede the implementation of the said provisions and remedial measures taken or to be taken.
- 15) cooperate with the institutions of the European Union and other foreign countries which perform equivalent functions, also represent, within the sphere of its competence, the Republic of Lithuania in international organisations;
- 16) establish the procedure for encoding the programmes broadcast and/or re-broadcast;
- 17) perform other functions specified in the laws and other legal acts.

As regards the function mentioned in the paragraph 5, the Commission performs monitoring and informs the Inspector of Journalist Ethics about the possible threat of infringement, as he is mainly responsible for the supervision over the Law on the Protection of Minors against Detrimental Effect of Public Information, therefore the Inspector is empowered to decide whether the broadcaster made any infringement of the above mentioned law. When the decision is passed by the Inspector, the sanctions to the broadcaster are applied by the Radio and Television Commission, the most often of them is a warning or a fine (in case of recursive infringements).

Considering the function mentioned in the paragraph 6, where the Commission is obliged to establish the procedure for adhering the requirements of the European Union, the Commission passes the mandatory decisions explaining the requirements of European Union and in this way fulfills this function, as the decisions of the Commission are compulsory to broadcasters and re-broadcasters.

As regards the function to maintain control over compliance by broadcasters with the provisions concerning the proportion of European works and works by independent producers, the Commission imposes the minimum standards in the licenses, although the control over this issue is quite hard, as the Law on Provision of information to the public

gives the formulation that the required standards should be reached where practicable, therefore it is often impossible to prove that it was practicable to reach the proportion.

The Commission shall have the right to obtain free of charge from broadcasters and re-broadcasters, state and municipal institutions and agencies as well as other legal persons the information necessary to discharge its functions. Members of the Commission and the administration shall be prohibited from disseminating information which is a commercial secret of broadcasters and re-broadcasters.

1.2.1.3. Organisation

The Commission shall comprise 13 members: one member shall be appointed by the President of the Republic, three members shall be appointed by the Seimas on a proposal from the Committee on Education, Science and Culture, one member each shall be appointed by the Lithuanian Artists' Association, the Lithuanian Cinematographers' Union, the Lithuanian Composers' Union, the Lithuanian Writers' Union, the Lithuanian Theatres' Union, the Lithuanian Journalists' Union, the Lithuanian Journalists' Society, the Lithuanian Bishops' Conference, and the Lithuanian Periodical Press Publishers' Association. Members of the Commission shall be appointed for the entire term of office of the appointing institution or the entire term of powers of the appointing organisation's management body. Only a person of good repute may be appointed as member of the Commission. No appointed member of the Commission shall serve more than two consecutive terms. The legal grounds for a member's work in the Commission shall be a decision adopted by the appointing institution or organisation. (By this it is meant, that every member of the Commission is appointed by the decision of the Union or Association or other party, which assigns him to the Commission. For example, the President has to pass the decree, the Lithuanian Artists' association, the Lithuanian Writers' union has to adopt the decision and etc. in order to appoint a member to the Commission, and therefore these legal acts construct the legal grounds for individuals to become the members of the Commission.)

Members of the Seimas and Government, members of the Council of the National Radio and Television of Lithuania, public servants of political (personal) confidence, persons linked with broadcasters and re-broadcasters by virtue of employment, also persons having a participating interest in the broadcasters and re-broadcasters may not be appointed as members of the Commission. Family members of members of the Commission may not have a participating interest in broadcasters or re-broadcasters. If appointed to the Commission, members of political parties and organisations shall suspend their membership in a political party or organisation and participation in the activities thereof until the end of their term in the Commission.

For the purpose of financing the activities of the Commission, the broadcasters and re-broadcasters (except for the National radio and television) that receive earnings from broadcasting and/or re-broadcasting activity must transfer every month to the Commission's account 0.8% of their earnings from advertising, subscription fees and other activities related to broadcasting. The Commission may be financed from other sources as well: funds received for examining license applications, other payments for provided services, support funds,

publishing activities. The Chairman of the Commission shall report at least once a year about the activities of the Commission at the plenary meeting of the Seimas and shall submit the Commission's financial report.

1.2.2. The Communications regulatory authority

1.2.2.1. Legal basis

The Communications regulatory authority is established under the 15 April 2004 Law of the Republic of Lithuania No IX-2135 on Electronic Communications. It is an independent state institution responsible for the regulation of electronic communications activities and for the supervision of compliance with and implementation of the provisions of the Law on Electronic Communications, except where such supervision and implementation fall within the scope of competence of other state institutions. The Communications regulatory authority shall operate in accordance with the laws as well as its own regulations which are approved by the Government.

1.2.2.2. Functions/competencies

The Communications regulatory authority shall perform the following functions:

- 1) exercise control over, supervision of and implementation of the provisions of the Law and the legal acts implementing it, except where such control, supervision and implementation fall within the scope of competence of other state institutions as defined by the Law;
- 2) prepare and approve requirements for equipment and devices and the conditions of their use;
- 3) in the cases provided for in legal acts, issue permits to use equipment and devices, import and use radio monitoring equipment;
- 4) prepare and submit to the Government for approval the National Radio Frequency Allocation Table and implement it within the scope of its competence; prepare, together with the Radio and Television Commission of Lithuania, the Strategy and submit it to the Government for approval; 5) draw up, on the basis of the Strategy and together with the Radio and Television Commission of Lithuania, the Strategic Plan for the Assignment of Radio Frequencies to Broadcasting and Transmission of Radio and Television Programmes;
- 5) cooperate with foreign regulatory authorities governing electronic communications activities; participate, within the scope of its competence, in the work of international organisations and EU institutions, committees and groups the activities of which are related to electronic communications (telecommunications), radio equipment and terminal equipment, electromagnetic compatibility and/or radio spectrum management appointing, where appropriate, experts to participate in relevant committees and groups; pursue international coordination of radio frequencies (channels) and international protection of radio stations (radio frequencies). The Communications

Regulatory Authority may undertake obligations on behalf of the Republic of Lithuania only subject to the powers conferred upon it in accordance with the procedure established by legal acts, except for the cases where an international treaty concluded by the Republic of Lithuania or the European Union law provides for the delegation of functions falling within the scope of competence of the Communications Regulatory Authority to a telecommunications/electronic communications administration of the Republic of Lithuania or a national telecommunications (electronic communications) regulatory authority. In this case, the Communications Regulatory Authority shall perform relevant functions and undertake related obligations in conformity with the provisions of a given international treaty or the European Union law and need not receive any additional powers or carry out other procedures subject to the relevant provisions of the Law on Treaties;

- 6) prepare and submit to the Government or an institution authorized by the Government proposals for national policy and strategy in the field of electronic communications and implementation thereof;
- 7) prepare and submit to the Government proposals regarding price caps for universal service; prepare and submit to the Government for approval the rules for the provision of universal service;
- 8) collect and store, in accordance with the procedure established by the Government, information about the nature of technical data on electronic communications recorded and stored by undertakings providing electronic communications networks and/or services;
- 9) on the basis of the Law and other legal acts, adopt legal acts and perform other functions established by this and other laws, regulations of the Communications Regulatory Authority as well as other legal acts.

1.3. Protection of minors in the sphere of broadcasting

The Law on Provision of information to the public provides, that any programmes and/or broadcasts which, in accordance with the procedure established by the Government of the Republic of Lithuania, are ascribed to the category of public information whose publication or dissemination is restricted should be broadcast on certain time, as it mentioned in the Law only from 23:00 to 06:00 hours or protective measures should be used to ensure that persons responsible for the upbringing and care of children may restrict the offering of such programs to minors. Where such programs and broadcasts are broadcast or re-broadcast from 23:00 to 06:00 hours without required protective measures, they must be identified by acoustic and/or visual means throughout the duration of their broadcasting in accordance with the procedure established by laws and other legal acts.

2. Press

Freedom of the press originates from the freedom of information established in Article 25 of the Constitution of Lithuania. This principal provision is further backed by Article 44 of the

Constitution, which establishes the prohibition on any censorship of the press along with a prohibition for the State, political parties, political and public organisations, other institutions or persons. The basic principles for the activities of the press (producers and disseminators of public information, as well as journalists) fixed in the Law on the Provision of Information to the public include the principles of humanism, tolerance, respect for an individual's privacy, honor and dignity, freedom of speech, creativity and conscience, variety of opinion, maintaining the norms of the professional ethics of journalists.

2.1. Regulatory framework

2.1.1. Legal provisions

The main set of legal norms, which are relevant to the notion of the press are provided in the Law No. I-1418 on the Provision of information to the public.

It governs the relations between the producers and disseminators of public information, also establishes the criteria for information not to be published or not to be furnished. The duties of journalists are also set out in this law. It is provided that journalists shall provide correct, accurate and unbiased news, the duty to authorize information prepared for dissemination for the first time if this is requested by the person who has submitted the information.

2.1.3. Self-regulatory measures

The Code of Ethics of Lithuanian journalists and publishers, 1996.

The Code specifies not ethical actions of journalists and publishers which are prohibited. Although the Code of Ethics of Lithuanian journalists and publishers is not legally binding, but it has the great importance on regulating the sphere of the press. It is provided, that in the case when the assignment compels the journalist to violate the Code of Ethics of Lithuanian journalists and Publishers, the journalist shall have the right to refuse an assignment by the producer of public information, its owner or a responsible person appointed by them, which is related to the production and/or dissemination of public information.

2.2. Regulatory authorities/bodies

2.2.1. Ethics commission of journalists and publishers

2.2.1.1. Legal basis

The Ethics Commission of journalists and publishers is established under the 2 July 1996 Law of the Republic of Lithuania No I-1418 on Provision of information to the public.

2.2.1.2. Functions/competencies

The Commission shall perform the following functions:

- 1) focus on the education of the professional ethics of journalism;

- 2) examine the violations of professional ethics committed in the course of providing information to the public by journalists, producers of public information or responsible persons appointed by the participants therein;
- 3) ascribe press publications, feature and video films, radio and television programmes or broadcasts to the media category of pornographic, erotic and/or violent nature;
- 4) supervise compliance by the producers and disseminators of public information with the requirements laid down in the laws and other legal acts regarding the public showing, reproduction and distribution of feature films, video films and video programmes, their circulation and distribution, the public showing of events of erotic nature, and the procedure for disseminating printed matter of erotic and violent nature;
- 5) supervise the compliance of disseminated public information with the provisions laid down in the laws, prohibiting the incitement of national, racial, religious, social or gender hatred, libel and disinformation;

In performing its functions, the Commission may seek assistance from experts delegated by the ministries of culture, health and justice. All interested persons may appeal to the Commission. The Commission shall act in accordance with the Constitution of the Republic of Lithuania, the Law on Provision of Information to the Public and other laws, international treaties of the Republic of Lithuania, decrees of the President of the Republic, other legal acts passed by the Seimas and Government, as well as the Code of Ethics of Lithuanian Journalists and Publishers and the Resolution on the Ethics of Journalism adopted by the Parliamentary Assembly of the Council of Europe.

Ethics commission of journalists and publishers is mainly associated with the supervision of standards of professional ethics of journalists. Therefore, the Commission is responsible for the supervision of the following legal acts: 1) Law on Provision of information to the public; 2) the Code of Ethics of Lithuanian journalists and publishers 3) Resolution No. 1003 On the Ethics of journalism adopted by the Parliamentary Assembly of the Council of Europe.

Commission is a self-regulatory institution of public information producers and disseminators, therefore, it does not have any administrative powers as to prosecuting the infringements of the laws, the only way of supervision is the issuing of the warnings, in case of not substantial infringements, or the adoption of the decisions in case of more serious infringements, causing harm to public or individuals. Commission decisions concerning the violations of professional ethics or other violations shall be published immediately in the same media where the Commission has established these violations. The publishing of the warnings is not mandatory, whereas if a producer and/or disseminator of public information fails to publish the decision of the Commission pertaining to the violations of professional ethics or other violations in its own media, the decision shall be announced on the National radio of Lithuania.

2.2.1.3. Organisation

It is a self-regulatory institution of public information producers and disseminators. The Commission, comprised of 12 members to be appointed each by the Lithuanian Centre for Human Rights, the Lithuanian Psychiatric Association, the Lithuanian Bishops' Conference, the Lithuanian Periodical Press Publishers' Association, the Lithuanian Radio and Television Association, the Lithuanian Cable Television Association, Regional Televisions' Association, and the Lithuanian Journalists' Union, the Lithuanian Journalists' Society, the Lithuanian Journalism Centre, National Radio and Television of Lithuania and the Lithuanian Chapter of International Advertising Association, shall be formed and its rules of procedure shall be established by an assembly of the representatives of journalists' and publishers' organisations. Members of the Commission shall be appointed for a term of three years. The work of the Commission shall be organized by the Chairman of the Commission, who shall be elected by the Commission from among its members for a term of one year.

The Media support foundation, established under the Law on Provision of information to the public, shall ensure the funding of the necessary work by Commission experts as well as the Commission's information and technical servicing. The Media support foundation was established for the purpose of creating the proper conditions for cultural and educational development in the media, it is financed from the State budget.

2.2.2. The Inspector of Journalist ethics

2.2.2.1. Legal basis

The Inspector of Journalist Ethics is a State Officer who shall supervise the implementation of the provisions of the 2 July 1996 Law of the Republic of Lithuania No I-1418 on Provision of Information to the Public. His competence is established in this Law.

2.2.2.2. Functions/competencies

The Inspector of Journalist Ethics shall perform the following functions:

- 1) examine the complaints of interested persons regarding violation of their honour and dignity in the media;
- 2) examine the complaints of interested persons regarding violation of the right to privacy in the media;
- 3) assess compliance with the principles of providing information to the public set forth in this and other laws, submit proposals to state institutions for improving their implementation;
- 4) cooperate with counterpart institutions of the European Union and other countries as well as represent, within the sphere of his competence, the Republic of Lithuania in international organisations;
- 5) draw up and publish every two years an analytical survey intended to establish the guidelines for the development of a democratic culture in the field of provision of information to the public;

In discharging the functions specified above, the Inspector of Journalist Ethics may:

- 1) reprimand the producers and disseminators of public information about the noticed violations of legal acts governing the provision of information to the public and request that they be eliminated;
- 2) request that a producer or disseminator of public information refute in accordance with the established procedure published false information, degrading the honor and dignity of a person or damaging his legitimate interests, or provide that person with a possibility to reply and deny such information;
- 3) appeal to competent state institutions and the Ethics Commission of Journalists and Publishers in respect of the noticed violations of the legal acts governing the provision of information to the public. (The Inspector is empowered to inform/appeal to the following competent institutions: 1) to the public prosecutor; 2) Competition council; 3) National Council for Consumer protection; 4) Lithuanian radio and television Commission)

Division between the Inspector of Journalist Ethics and the Commission of journalists and publishers appears in the division of their functions. The Commission is concerned more with the complaints as regards professional ethics and infringements made not in accordance with journalists ethics, therefore the Commission is concentrated on the supervision of the Code of Ethics of Lithuanian Journalists and Publishers, whereas the Inspector examines the complaints of interested persons regarding violation of their honor and dignity, their right to privacy in the media. The inspector of Journalist Ethics, while performing his functions, observes the following laws: 1) Law on Provision of information to the public; 2) Law on the Protection of minors from adverse effect of public information; 3) Law on Legal protection of personal data; 4) Law on Advertising as regards the violation of honor and dignity.

The Inspector of Journalist Ethics shall have the right to receive, free of charge, from the producers and disseminators of public information, state and municipal institutions and agencies the information necessary for discharging the functions thereof. The Inspector of Journalist Ethics shall report at least once a year about his work to the Seimas.

2.2.2.3. Organisation

The Inspector of Journalist Ethics shall be appointed by the Seimas on a proposal from the Ethics Commission of journalists and publishers. Only a citizen of the Republic of Lithuania of good repute with higher education qualifications and the competence necessary to perform his duties shall be appointed the Inspector of Journalist Ethics. Members of Seimas and Government as well as public servants of political (personal) confidence may not be appointed as the Inspector of Journalist Ethics. The Inspector of Journalist Ethics and members of his family may not be linked with producers and/or disseminators of public information by virtue of employment and may not have the shares of the producers and/or disseminators of public information.

The Inspector of Journalist Ethics shall act in accordance with the Constitution of the Republic of Lithuania, other laws, international treaties of the Republic of Lithuania, decrees

of the President of the Republic, and other legal acts adopted by the Seimas and Government. He should also act in conformity with the principles of legality, objectivity, justice and openness.

The decisions of the Inspector of Journalist Ethics may be appealed against in court within 30 days after the day of their publication. The Inspector of Journalist Ethics may not hold any other elective or appointive office and receive any other remuneration, except for that prescribed for his current position and payments for pedagogical or creative activity. The Inspector of Journalist Ethics shall work in accordance with the regulations approved by the Seimas.

The activities of the Inspector of Journalist Ethics and his employees who perform information and technical work are financed from the State budget. The funds allocated for this purpose shall be listed under a separate budget item.

3. Online Services

3.1. Regulatory framework

3.1.1. Legal provisions

Online services as well as broadcasting and press is mainly regulated by the Law on Provision of information to the public, where the main principles and criteria for dissemination of information are applied.

The special act for online services is the 5 March 2003 Resolution of the Government of the Republic of Lithuania No 290 on Information prohibited for disclosing in computer networks of public use.

The Resolution specifies which information should be restricted or banned from presentation in internet; it also establishes the liability for the information disclosed on the websites. The main regulatory authority in this sphere is the Information society development committee under the Government of the Republic of Lithuania, which is described below.

In practice the 5 March 2003 Resolution is not effective. After the adoption of the resolution only one infringement was registered, although there's a telephone number and an e-mail address which are created under the resolution specially for the sake of registering these infringements. The supervision authority is the Police department at the ministry of internal affairs; which is actually responsible for registering the infringements as far as it concerns the disclosure of prohibited information in computer networks for public use. In case of breach, the Police department is obligated to inform the Information society development committee and to perform the investigation. Nevertheless, in practice this kind of supervision system does not work as there no sanctions imposed under the resolution in case of infringement, therefore the only notice about the breach on disclosure of prohibited information in computer networks was registered after the adoption of the 5 March 2003 Resolution.

3.2. Regulatory authorities/bodies

3.2.1. Information society development committee under the Government of the Republic of Lithuania

3.2.1.1. Legal basis

Resolution No. 229 of 28 February 2001 of the Government of the Republic of Lithuania on Conceptual Framework of the National Information Society Development of Lithuania

3.2.1.2. Functions/competencies

- 1) to participate in the process of shaping state policy for the development of information technologies and telecommunications and coordinate its implementation;
- 2) to collect and analyze information on violations of the Resolution, as concerns the content of internet;
- 3) to organize the activities of testing the filtration means and to provide the recommendations on the relevant of use of such means.

4. Film/Interactive Games

This is a purely regulated sphere in Lithuania while there are no special legal acts as regarding interactive games, the same provisions of the Law on Provision of information to the public are applied as well as the Law on the Protection of minors from adverse effect of public information, which were analyzed above.

5. Additional information

5.1. Protection of Minors in the sphere of Media

The Law on Provision of information to the public establishes basic principles on the protection of minors. It provides that minors must be protected from public information detrimental to their physical, intellectual and moral development, in particular public information that involves pornography and/or gratuitous violence.

Special 10 September 2002 Law on the Protection of minors from adverse effect of public information is enacted. The mentioned law requires express notification, technical and time restrictions on the access of minors to the harmful public information.

The main supervision authority is the Inspector of Journalist Ethics. The Inspector, acting in accordance with the Code of violations of administrative law, is empowered to draw up an administrative law infringement reports in case of breach of the Law on the Protection of minors from adverse effect of public information.

5.2. Advertising in Media

Law on Provision of information to the public encloses the special requirement for advertising in media. Advertising must be truthful and honest. It should not prejudice respect for human

dignity, include any discrimination on grounds of race, sex or nationality, be offensive to religious or political beliefs, encourage behavior prejudicial to health and the protection of the environment. Advertising must not be misleading or harm the consumer's interests. Advertising aimed at minors or that which is used by minors, shall not cause moral or physical detriment to them, and shall therefore comply with these criteria:

- 1) shall not directly exhort minors to buy a product or a service by exploiting their inexperience or credulity;
- 2) it shall not directly encourage minors to persuade their parents or others to purchase the goods or services being advertised;
- 3) it shall not form minors' opinion that the use of certain services and goods shall make them physically, psychologically or socially superior before other minors;
- 4) it shall not unreasonably show minors in dangerous situations.
- 5) it shall not abuse children's confidence of parents, guardians (caretakers) teachers and other persons

6. Summary

Media sector is regulated by the Law on Provision of information to the public. This Law involves the main criteria applied for broadcasting, press and other forms of disseminating information.

The Law establishes:

- the basic principles of provision of information to the public;
- the protection of minors;
- general provisions on licensing of broadcasting and re-broadcasting activities;
- the requirements on radio and television programs, as regards the time limits for events of major importance for society or for European works;
- the requirements for advertising and teleshopping, while establishing the time limits;
- the regulatory authorities system and functions of the regulatory and self-regulatory bodies. The most important of them:
 - 1) Ethics commission of journalists and publishers – the self-regulatory institution of public information producers and disseminators;
 - 2) Radio and television commission of Lithuania – independent institution for the controls of the activities of radio and television broadcasters and re-broadcasters.
 - 3) Inspector of journalist ethics – a State Officer who performs the supervision of implementation of the Law on Provision of information to the public.

3.16. Luxembourg

Introduction

Sociological characteristics of the Grand-Duchy of Luxembourg

With its 451.600 inhabitants (source: Statec 2004) living in a territory of 2.586 square kilometers, Luxembourg is one of the smallest countries of the European Union, but has a very cosmopolitan population, as nearly 39% of the residents are foreigners (mostly Portuguese, French, Italian, Belgian and German). Such characteristics of the Grand-Duchy of Luxembourg show the relatively small size of its marketplace (which is overall practically a national one) and explain the multicultural and multilingual configuration of the media market in this country of consensus and compromise rather than of confrontation.

Main specificity of the Luxembourg media landscape

Despite its small dimensions in size and population, Luxembourg has a relatively large number of diversified media in all main sectors.

The **written press** is typically multilingual in content and close to political parties or trade unions in terms of ownership and/or editorial policy. The publishers of (significant) newspapers receive public subsidies and benefit furthermore from legal or contractual limitations in advertising imposed upon audiovisual media targeting the domestic public.

Six daily newspapers are published and circulated in Luxembourg, with articles written in French, German, Luxembourgish and sometimes English. Furthermore there are twelve weekly magazines and a lot of periodical publications, mostly of social, professional, associative or specialised interest, like automobile for instance. Such Luxembourg made offer is competing with numerous foreign newspapers and magazines also available on the market.

The largest daily newspaper, *d'Wort* (formerly *Luxemburger Wort*) has a dominant position in the Luxembourg media landscape, forming the characteristic duopoly on the local media marketplace with the other dominant player in the sector of audiovisual media, namely the radio station *RTL Radio Lëtzebuerg* and the television channel *RTL Télé Lëtzebuerg* operated by the commercial corporation *CLT-UFA (RTL Group)*.

The Luxembourg **audiovisual media** are based on a dual organisation: an important private sector and a rather marginal public sector limited to the “socio-cultural” radio station *100,7* (named after its FM broadcasting frequency) which is operated by an organisation of public law, with a mission of public service and financed by public funding only.

In the fields of **radio**, *CLT-UFA* had from 1930 till 1991, on a contractual basis, the monopoly for broadcasting in and from Luxembourg, building up *i.a.* the still existing *RTL* radio programs having a substantial audience in France and Germany, and operating since the late fifties also the national radio program in Luxembourg language, now known as *RTL Radio Lëtzebuerg*. The media law of July 1991 opened the way for granting radio broadcasting licenses also to other operators in Luxembourg. Thus, besides the two

nationwide receivable stations (the commercial program *RTL Radio Lëtzebuerg* and the non-commercial station *100,7*), four medium range radio networks have been licensed to groups where mostly press publishers are involved: *Eldorado*, *DNR*, *Radio Latina*, and *Radio Ara*. The Luxembourg radio landscape is completed by about 15 local stations, which are bound by strict structural and technical limitations and by restrictions in advertising revenue.

In the fields of **television**, besides the historic player *RTL Télé Lëtzebuerg*, recently completed by a new “sister” channel *RTL2* targeting the younger audience, there exist for the time being five television stations *i.e.* *Nordlicht TV*, *Uelzechtkanal*, *T.TV*, *Chamber en direct*, and *.dok*, all broadcast by cable (some by satellite too). More than 90% of the population of the Grand-Duchy of Luxembourg are connected to a cable network and mostly watch television by such means of reception, while 15,5% of the households have individual dishes for satellite reception, and about 2,5% are on terrestrial reception only.

Both in radio and television, Luxembourg is historically also an important place for transnational and international broadcasting, through terrestrial, cable or satellite licenses granted to *CLT-UFA (RTL Group)*. On such international grounds, SES Global (with its Astra satellite system) is the other important player in the Luxembourg media scene, involved in technical signal distribution. In the fields of **electronic communication over the Internet**, 74% of the households in Luxembourg have at least one computer (21% of them own two or more computers) and 59% of the adult population in Luxembourg regularly use the Internet, essentially at home and mainly for e-mail purposes (91%), e-banking (53%) or search for information (55%). About half of the users buy goods or services over the Internet (*statnews* nr. 2/2005 published by Statec). On the side of the providers, about 70% of the Luxembourg businesses had a website at the end of 2003 (about 80% expected for end of 2004) (Source : CEPS/Instead-Statec ILRES).

As concerns **audiovisual production**, a diversified professional sector has been developed as a consequence of the legislation on financial incentives, favouring local activities and international co-productions. For the time being, the Luxembourg cinematographic industry counts about thirty approved production companies employing about five hundred persons, producing between eight and fifteen feature films per year, essentially in co-production with foreign companies (source: www.gouvernement.lu/tout_savoir/medias/prodaudi.html).

Developments in regulatory policy

For more than sixty years (and even longer for the written press), the Luxembourg media landscape was relatively “unregulated”, based upon a light framework legislation, contractual consensus and some self-regulatory measures (advertising, right of reply, etc.). In the early nineties, the political will to de-regulate the media sector paradoxically generated rather an increase in autoritary regulation, as show the detailed and constraining provisions of the law of 27 July 1991 on electronic media (explained hereinafter). With the beginning of the new millennium, a more liberal trend has come up for reducing state regulation and favouring self-regulation and co-regulation in the media sector.

Considering that co-regulation is based upon the idea that the state, the business community and the civil society should share a common responsibility in building rules, by giving all the players an opportunity to reach a consensus facilitating the respect of the adopted rules, such a policy is not new in Luxembourg. An illustration for this is for instance an institutional mechanism in the fields of economics and labour, the so-called “Luxembourg model”. Based upon the law of 24 December 1977 authorizing the government to take measures for stimulating economic growth and for safeguarding full employment, a grand-ducal decree of 26 January 1978 has established and determined the functioning of the “tripartite coordination committee”, which has an equal number of representatives of the government, the private industry (through the professional chambers) and the employees (through the main unions). Being in charge of monitoring the national economy and labour market developments and advising the legislator for remedies and incentives in these fields, such committee is a forum for searching consensus on all important social and economic issues in this country.

Based upon the European directive 95/46/CE, the law of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Mémorial A n° 91* dated 13 August 2002) protects the fundamental rights and freedoms of natural persons, particularly their private lives, as regards the processing of personal data, and ensures the respect of the legally protected interests of corporations and other legal entities. The law provides for some kind of co-regulation in this matter, by encouraging the development of codes of conduct from the professionals concerned and by granting the possibility for the operators of personal data processing to appoint an independent data protection officer, to be approved by the national commission for data protection (“*Commission Nationale pour la Protection des Données (CNPD)*”), which has investigative powers to ensure compliance of the data processing operator with the legal provisions.

Constitutional law

The Constitution of the Grand-Duchy of Luxembourg guarantees freedom of speech and freedom of the press in its article 24, subject to the repression of criminal offence in the use of such rights. Article 11 paragraph (6) of the Constitution guarantees freedom of commerce and industry, subject to the restrictions determined by the legislator.

Furthermore, article 1 of the law of 27 July 1991 on electronic media gives a “quasi-constitutional” statement on the objectives of the broadcasting legislation, proclaiming that the law aims at assuring, in the fields of electronic media, free access of the population to a multitude of sources of information and entertainment, by guaranteeing the freedom of expression and of information, as well as the right to receive and retransmit on the Luxembourg territory all programs complying with the law. The organisation of broadcasting is to be based upon the principles of a free and pluralistic audiovisual communication, independence and pluralism of information, respect of the human person and dignity, highlighting of the cultural heritage and of contemporary creation, promotion of communication, intercultural exchange and integration of immigrants, safeguarding of a pluralistic written press.

There are no specific constitutional provisions on youth protection. Luxembourg applies the European chart of fundamental rights (Art.24 on children's rights) and has ratified, by a law dated 20 December 1993, the Convention on children's rights adopted by the general assembly of the United Nations.

The Luxembourg Constitution has no provisions on public service broadcasting or on media regulatory authorities. There are no constitutional provisions on public policy goals by public administration or on public service in broadcasting. Such matters are treated at the level of ordinary legislation.

Public service in broadcasting was introduced relatively late (after a long period of licensed private broadcasting) and limited to the radio sector, with the creation of the socio-cultural station *100,7* by virtue of the law of 27 July 1991 on electronic media (article 14) and the subsequent grand-ducal decree of 19 June 1992 on the structure and functioning of the public organisation in charge of such station. Article 2 paragraph (4) of such decree provides that in the performance of its mission, the socio-cultural station must promote cultural life, favour artistic creation, contribute to social communication, including intercultural life and transfrontier cooperation, participate in free and pluralistic information, and grant a large access to cultural and social organisations of the country. More specific missions of public service for such station may be defined in multi-annual agreements between the government and the public organisation in charge of the station *100,7*.

In the fields of television, there is no public service broadcaster as such, but the private broadcast organisation *CLT-UFA* is entrusted - to some extent - with a mission of public service. Holder of several commercial radio and television licenses from the Luxembourg government, *CLT-UFA* has committed - as a counterpart for the grant of such licenses - to provide for certain performances of public service in its Luxembourgish radio and television programs. Thus, both *RTL Radio Lëtzebuerg* and *RTL Télé Lëtzebuerg* must broadcast - for a determined minimum of time within their ordinary schedule - programs devoted to news, culture, sports, and foreign speaking communities and transmit a number of events of national interest. By virtue of the license agreement, *RTL's* income from advertising in the Luxembourg territory has been limited - in television - to an annual maximum amount, the surplus of costs of the national TV program being borne by the broadcaster. In radio, the costs for *RTL Radio Lëtzebuerg* are to be covered by advertising revenue (limited in daily time) and to be fully borne by the broadcaster *CLT-UFA*, provided however that the possible losses of such radio exploitation are contractually limited to a certain annual amount, the excess of which would entitle the broadcaster to get a compensation from the Government.

Such situation will normally go on until the expiration of the present broadcasting licences of *CLT-UFA* at the end of 2010. However the debate about what should be public service in broadcasting and who should be in charge of it has already started. Some opinions are in the sense of a merger of both radio and television public service within the existing socio-cultural structure *100,7*. But it is more likely that public service in radio will stay separately with the public organisation *100,7* and that public service in television will continue to be entrusted to one or more private operators, who will have to commit to observe certain obligations in

terms of pluralistic access and balanced information for instance. In its political program published in August 2004, the new Luxembourg government confirmed its intention in this sense, announcing the creation of a legal basis for such purpose.

Some provisions of general application in all media

Advertising

The law of 30 July 2002 on commercial practices and fair competition, *i.a.* regulates comparative advertisement in all media, upon the principles laid down by the directive 97/55/CE.

The Code of advertising practices issued by a professional committee named “*Commission luxembourgeoise pour l’éthique en publicité*” (*CLEP*) sets a number of rules based on principles like decency, honesty, social responsibility, truthful presentation, to be observed in all commercial communication. Such self-regulatory code contains specific provisions on presentation of men and women, protection of children, health care, environmental issues, tobacco and alcoholic beverages, car driving, finance and electronic commerce, for advertisements in all media. The observance of such code is supervised by the above mentioned *CLEP*, a self-disciplinary body competent for advising the advertising community and for treating complaints.

The commission for ethics in advertisement “*CLEP*” (which is the Luxembourg member in EASA, the European Advertising Standard Alliance) has been put in place about 10 years ago by the Luxembourg Council for Advertisement (*Conseil Luxembourgeois de la Publicité*), a non-profit association of private law (*association sans but lucratif*, or *asbl*) formed by the major players active in the fields of marketing and commercial communication in the Grand-Duchy of Luxembourg (agencies through their federation named *Markcom*, electronic and print media, space providers, advertising businesses, etc...). *CLEP* is a committee of twelve members from the different sectors of the advertising business community, appointed by the privately organised Luxembourg Council for Advertisement among its own members. The committee is chaired by a thirteenth person elected by majority vote by the *CLEP* members themselves. The costs of such ethics committee are borne by the above mentioned advertisement council, which is financed by annual contributions from its members. Thus, *CLEP* is a self-regulatory body, independent from public authority, which considers itself as being the guarantor for loyalty and ethics in advertisements appearing on the territory of the Grand-Duchy of Luxembourg. The committee monitors advertising messages from the point of view of the public. It may get active on its own initiative or upon complaint of a third party. In case the committee considers that a given advertisement violates the Code of advertising practices, it advises the advertiser to comply and, in case of refusal, addresses to the faulty advertiser a written blame (which might be made public, in case of serious violation).

Protection of minors against harmful contents in the media

Besides the general regulations on protection of minors, it might be interesting to mention that in its session of 7 November 2003, the Luxembourg government decided to initiate the elaboration of an amendment to article 383 of the criminal code for including the repression of violent contents in the media in addition to the existing regulation on sexual contents, and to create a legal basis for sectorial systems of self- and co-regulation in such fields. This governmental intention has however not yet been implemented by law for the time being.

Sectorial provisions

1. Broadcasting

1.1. Regulatory framework

1.1.1. Legal provisions

The law of 27 July 1991 on electronic media, as amended (*Mémorial* A 1991 page 972, and *Mémorial* A 2001 page 924), has liberalised the Luxembourg media landscape after a period of more than 60 years of broadcasting monopoly of *CLT-UFA*, with the objectives to assure *i.a.*

free and pluralistic audiovisual communication

independence and pluralism in information

respect of the human person and dignity

valorization of the cultural heritage and support for cultural creation

promotion of communication, intercultural exchange and integration of immigrants

continuity of a pluralistic written press.

The media law laid down the basis for two markets of audiovisual communication, (i) by creating the possibility for operators established in Luxembourg to get a license (“*concession*”) for broadcasting television or radio programs of international range destined to reach audiences beyond the domestic population in Luxembourg (so-called « *programmes à rayonnement international* ») and (ii) by providing for the grant of authorisations (“*permissions*”) for sound and/or visual programs targeting the domestic public only (so-called “*programmes visant un public résident* ”). On the other hand, the domestic programs for the resident audience are divided into (i) television programs, (ii) high power radio programs and (iii) low power radio programs, which are again divided into radio networks and local radio stations.

The Luxembourgish speaking radio station “*RTL Radio Lëtzebuerg*” is based upon a permission granted by the Government upon the provisions of article 13 of the law of 27 July 1991 for a high power commercial radio program, using two terrestrial FM frequencies covering the whole territory of the Grand-Duchy of Luxembourg. As mentioned above, a schedule of obligations has been imposed on the operator of such national general interest radio program, more specifically as concerns mandatory programming and advertising rules.

The public organisation (*“établissement public”*) in charge of the radio station “100,7” has been granted by law (article 14 of the media law) a license for a high power non-commercial radio program, using one high power terrestrial FM frequency (being 100,7 MHz). The mission of public service and the financing of the station are defined as mentioned above.

Concerning the low power radio networks (*“programmes à réseau d’émission”*), article 18 of the media law of 1991 sets the basic terms and conditions for qualifying for a license and enumerates the main items to be addressed in the schedule of obligations to be attached to the license. The programs broadcast by such a network may contain commercial messages, subject to certain limits in time.

The legislator created also the possibility for granting licenses for low power local radio stations for which article 17 of the media law sets the basic terms and conditions for being eligible for such a license and enumerates the main items to be addressed in the schedule of obligations attached to the license. A permission for a local radio program can only be granted to a non-profit organisation. The local radio programs may contain commercial messages in very restricted limits.

Besides the rather diversified sector of terrestrial radio (to which an amending law of 2 April 2001 has added the possibilities for admitting digital radio), the media law provides for a system of “permission” for television programs targeted at the domestic public only (article 12 of the law of 1991) and a system of “concession” for television programs of international range and for programs by satellite (article 21 of the law) or by cable (article 23 of the law). As mentioned above, the only permission for a television program aimed at the domestic audience and using terrestrial frequencies has been granted to *CLT-UFA*, with particular programming obligations and a limitation of income from advertising. The other Luxembourg television operations licensed more recently have been granted concessions for programs by cable (and some also by satellite). They target also the domestic public but on specific segments and/or certain parts of the territory only. Originally advertising income was prohibited for such channels, but the government decided at the end of 2002 to grant also such operators the same rights to collect advertising income as *RTL Télé Lëtzebuerg*.

The law of 27 July 1991, as amended, contains general provisions on program content, advertising rules, and items to be possibly addressed in the schedule of obligations connected to the different broadcasting licenses. For television, a specific chapter of the law is dedicated to the transposition of the Directive “Television without frontiers” 89/552/EEC as amended by the Directive 97/36 EC.

Article 6 of the media law provides for quality standards and obligations in content to be observed in general by all licensed programs, based upon the principles of respect of the audience, decency, non-discrimination, protection of minors (through a rather generic “no harm” obligation), etc.

According to article 7 of the law of 1991, the licensed programs may carry advertisements, subject to prohibitions or limitations established by law, decree or schedule of obligations (paragraph 3 of such article 7 expressly prohibits advertising for tobacco products).

Article 10 of the law provides that the schedules of obligations attached to the broadcasting licenses may provide for obligations to pay a royalty to the state or to perform specific cultural services in the general interest of the country. Other conditions which may be imposed upon the licensees in the schedules of obligations are impartiality and objectivity in the presentation of the news, respect of pluralism, promotion of culture and creative activities, limitations in advertising, compulsory broadcast of governmental communications, provision of technical facilities, etc.

Chapter 5 of the law of 27 July 1991, as amended, is devoted to the European rules for television, transposed from the relevant directives mentioned above. Besides the rules about the proportion of European works in the transmission of television programs and the access to major events, the law provides (in article 28) for regulations on advertising, sponsoring and tele-shopping. Such rules are detailed in a Grand-Ducal Decree of 5 April 2001.

Concerning access to cable, there is no must carry rule in Luxembourg which would actually apply as such for the time being. Article 22 paragraph (5) of the media law provides for a possibility to establish - through a Grand-Ducal Decree - a list of programs which might benefit from a priority of retransmission in cable networks, but such a decree has not been issued up to now. However, in its program declaration of August 2004 (mentioned above), the new Luxembourg government announced that, besides the public service, programs of particular interest for the domestic public might benefit from a right of access to the cable networks and/or could possibly get an access to terrestrial frequencies made available for digital transmission, upon transparent, pluralistic and equitable criteria.

In March 2002, the Luxembourg government in place at that time published a policy paper on basic orientations for a reform of the legislation on electronic media ("*Orientations pour une nouvelle législation sur la radio et la télévision*") outlining its intention for the upcoming reform of the existing legislation on electronic media. The paper announces the plan of the government to simplify the legislation and to streamline administrative process. Development of digital broadcasting would make it possible to abandon or at least soften the current restrictive legislation requiring television and radio stations to apply for complex broadcasting licenses. Restrictions on the use of frequencies would be maintained only where they are necessary because of technological bottlenecks.

Future legislation could also draw a clearer distinction between technical regulations and their supervision (falling within the framework of telecommunication legislation supervised by the sectorial regulator "*Institut Luxembourgeois de Régulation (ILR)*") and rules relating to the content of the broadcast (to be dealt with under the new radio and television legislation). The objectives of general interest should be achieved by the selection of programs having priority access to certain networks and frequencies and by missions of public service to be conferred by the Government.

An important section of the policy paper sets out proposals for a new regulatory framework that would involve the creation of a new independent regulatory authority ("*Autorité de Régulation Indépendante (ARI)*"), which would be in charge of both the authorisation process and the control of authorised activities, including the power to impose sanctions.

In its program declaration published in August 2004, the new Luxembourg government confirmed its intention to draft a new legislation on the basis of the above mentioned orientations.

1.1.2. Administrative regulation/rules

Nothing to report in particular.

1.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

Apart from the code of conduct on advertising practices (mentioned above) and the deontology code of the press (mentioned hereinafter), applicable to all media, the commercial broadcaster *CLT-UFA* has adopted in 2003 a charter for its journalists, followed in January 2004 by the institution of an internal supervisory board named “*Conseil des sages*”, in charge of an overall supervision of the content of the Luxembourg speaking *RTL* radio and television programs. Such self-regulatory system has been put into place by *CLT-UFA* as a reaction against critics and proposals for co-regulation made by the national program council (“*Conseil national des Programmes*”(*CNP*)) established by the media law of 1991.

1.2. Regulatory authorities/bodies

1.2.1. Authority/ies

Under Luxembourg law, the regulation of the media is presently still largely vested in the government, acting through or upon proposal of its Prime Minister and its delegated Minister for Communications. On the administrative level, media matters are handled by the media and communications service (“*Service des Médias et des Communications*”) functioning as a department of the Ministry of State (within the competence of the Prime Minister and the delegated Minister for Communications). Such department has been created by the media law of 27 July 1991 (article 29) and has been assigned administrative missions in the fields of advising the Prime Minister in matters of media policy, representing the country in international committees dealing with media matters, assuming respectively assisting the functions of government commissioner for the supervision of the execution of the broadcasting licenses of *CLT-UFA*, *SES* and the public radio station *100,7*. Furthermore, such “*Service des Médias et des Communications*” administratively assists the hereafter mentioned supervising commissions in their tasks of radio and television licensing or monitoring, and has cooperative connections with the Luxembourg Regulation Institute (*ILR*), which is the competent regulator for telecommunications (and since more recently also for the energy sector: electricity, gas...). Apart from this, Luxembourg law has determined one or the other body in the fields of the media, which might be considered as being vested - to some extent - with functions of a media regulator.

1.2.1.1. The Independent Broadcasting Commission (“*Commission Indépendante de la Radiodiffusion*”)

Legal basis

The Independent Broadcasting Commission has been created by virtue of article 30 of the law of 27 July 1991 on electronic media.

Functions/competencies

The Independent Broadcasting Commission is in charge of:

- applying the provisions of the media law relating to the authorisation and the functioning of radio programs with low power transmitters;
- advising the Government for the authorisation and the functioning of the other programs (radio or television) to be licensed ;
- settling possible disputes between the management of the socio-cultural radio station (100,7) and the National Program Council.

Thus the Independent Broadcast Commission decides upon the grant and the withdrawal of the broadcasting licenses for local radio stations and for radio networks (“*programmes à réseau d’émission*”), in independence towards the Government, and supervises the compliance with the legal provisions (*i.a.* articles 15 to 18 of the media law) and the schedule of obligations of such stations (article 30 paragraph 2 of the media law).

According to article 35 paragraph 1bis of the media law of 1991 (as amended), if the *Commission indépendante de la radiodiffusion* notices (or is made aware of by complaint) a violation by a program under its supervision of a provision of the law or of the licence terms and conditions, the commission first requests explanations from the license holder. If after such preliminary procedure, the commission is of the opinion that the program “obviously, seriously and heavily” infringes the applicable provisions, the commission notifies by registered mail its statement of violation to the licence holder and exerts him to comply with the provisions concerned. If the thus notified violation persists or if a same violation occurs again, the Independent Broadcast Commission decides to withdraw the licence. Such a withdrawal of the licence is published in the *Mémorial* (official gazette) and does not entitle the licence holder to indemnification. It may be appealed before the administrative courts. In practice, the commission has apparently not yet withdrawn a licence under such provisions, but has indirectly exercised its sanction rights by refusing - in 2002 - to renew the licence of a local radio station which had not complied with structural constraints and technical limitation of transmission power as provided by law.

The Independent Broadcast Commission is presently the only “nearly real” regulator in the fields of audiovisual media in Luxembourg (apart from the government), insofar it delivers domestic radio licences and monitors their execution. The National Program Council (“*Conseil National des Programmes*”) mentioned hereafter and - even less - a third body created by the media law, the Advisory Media Commission (“*Commission Consultative des Médias*”), are not to be considered really media regulators as such.

As mentioned above, the government intends to propose a merger of the existing media commissions and to set up a real regulating body for the media in the form of a new independent regulatory authority (“*ARI*”) to be in charge of both the authorisation process and the monitoring of authorised activities, including the power to impose sanctions.

Organisation

According to article 30 paragraph 3 of the media law of 1991, the Independent Broadcast Commission is a collegial body of five members appointed for five years by grand-ducal decree. It is chaired by a judge and one of its members is appointed upon proposal of the Press Council (mentioned hereafter). For the time being, its members are a teacher, a former press editor, two judges and an attorney at law. The members of the Independent Broadcast Commission receive a compensation from the government and the working costs of the commission are covered by the state budget (Art.30 par. 5 of the media law). The commission gets administrative assistance from the above mentioned media and communications service (“*Service des Médias et des Communications*”) and gets technical support from the Luxembourg Regulation Institute - *ILR* (Art.30 par. 6 of the media law).

A grand-ducal decree of 17 December 1991 governs the internal organisation of the commission. According to such regulation, the Independent Broadcast Commission must come together if two members or the Minister competent for the media ask for a meeting. Its decisions need a quorum of half the number of the members and an absolute majority vote. Applications made upon public call for tender for a licence for operating radio programs with low power transmitters must be decided by the commission within three months.

1.2.1.2. The National Programme Council (“*Conseil National des Programmes (CNP)*”)

Legal basis

The National Programme Council has been created by virtue of article 31 of the law of 27 July 1991 on electronic media.

Functions/competencies

The National Program Council is in charge of:

- advising the government for the supervision of all kinds of programs licensed, authorised or distributed in the Grand-Duchy of Luxembourg, as to their compliance with program content regulations;
- submitting proposals for a balanced content of the programs of the (public) socio-cultural radio station *100,7*, and monitoring such programs;
- making proposals for increased and balanced choice of program content for the domestic audience.

Such Council makes and delivers its opinions in independence towards the government, but has no power to make decisions of its own with a direct impact on the media operators, such as the grant of licences or authorisations or the sanctioning of non-complying behaviours.

According to article 35 paragraph 2 of the media law of 1991 (as amended), if the National Program Council notices a violation by a program under its supervision of a provision of the law or of the licence terms and conditions, the Council has no direct sanction power, but has to inform the Minister competent for the media, who will then be responsible for initiating against the licence holder the procedure which might end in a withdrawal of the licence.

Organisation

The National Program Council has a maximum of 25 members delegated for 5 years by the representative organisations of the social and cultural circles of the country, including recognised religions and political parliamentary groups, trade unions and employers' organisations, national federations of associations active in the fields of culture, sports, family, charity, ecology, youth and immigration. A grand-ducal decree dated 27 February 1992 governs the internal organisation of the council.

The National Program Council considers itself as a co-regulator in the fields of electronic media. It has launched several program monitoring studies in cooperation with the University of Trier (Germany) and published opinions *i.a.* in connection with the national election campaign 2004 and is elaborating - on its own initiative - a code of conduct for radio and television.

1.2.1.3. The Advisory Media Commission (“*Commission Consultative des Médias*”)

created by virtue of article 33 of the media law of 27 July 1991 is not a media regulator as such. Composed by representatives of the media professionals it has a mere consulting role delivering opinions or positions to the government in the fields of media.

1.2.2. Self- or Co-regulatory bodies

As mentioned above, the commercial broadcaster *CLT-UFA* has put into place in January 2004 an internal board named “*Conseil des sages*” in charge of an overall supervision of the content of the Luxembourg speaking *RTL* radio and television programs. Such self-regulatory body of five members (from the management and the news departments of the stations concerned) handles possible complaints from viewers or listeners and issues opinions to the station concerned. In a press release of 10 February 2004, the National Program Council expressed its satisfaction on such initiative of *RTL*, but insisted on the necessity of co-regulation through an organisation which should be independent from the media operators.

2. Press

2.1. Regulatory framework

2.1.1. Legal provisions

After having been in force for more than hundred and thirty years, the “old” law of 20 July 1869 on the press and on criminal offences committed by the different means of publication has finally been replaced by a new legislation, which has a broader scope, as it applies in all

cases when a person communicates to the public by way of any media, irrespective the technology and the vector used.

The law of 8 June 2004 on freedom of expression in the media (*Mémorial A* 2004 n° 85) is intended to achieve a balance between freedom of expression and protection of privacy and is largely inspired by the Convention for the protection of human rights and fundamental freedoms (essentially its article 10) and the case law related thereto established by the European court of human rights.

The new legislation regulates the status of the journalists and introduces the protection of journalistic sources, whereby a journalist gets the right to refuse to reveal his sources when testifying in court, except in matters of blood crime, drug dealing, money laundering, terrorism or attack on state security.

Concerning measures in favour of the individual citizen, the law confirms the principle of protection of privacy and introduces the principles of presumption of innocence and the right of information follow-up (“*droit d’information postérieure*”) of any person involved in criminal proceedings. The right of reply, formerly regulated separately for the written press and for the electronic media, has been harmonized and united in one set of rules applicable to all media. The law regulates protection of reputation and dignity (article 16) and protection of minors (article 18) in the information media.

Freedom of expression is strengthened by the introduction of the possibility for a journalist to terminate his employment contract (with the right to receive indemnities) in case of a significant change in editorial policy of his employer, and by the “*cascade*” principle by which the civil and criminal liability for any fault committed through a media lies in first instance with the author of the communication, or - if he is not known - with the publisher, or - if he is not known – with the distributor of the publication.

2.1.2. Administrative regulation/rules

Nothing to report in particular.

2.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

The Press Council (explained hereafter) has adopted in December 1995 a self-regulatory code of conduct named “*Code de déontologie de la presse*”, which states that the right of information and the freedom of expression guaranteed by the Constitution and the Declaration on human rights has as a counterpart the responsibility of the journalist and of the publisher, and that such responsibility implies certain obligations in terms of truth, fairness, identification and verification of the information, respect of human dignity and privacy, prohibition of piracy, offence, libel and discrimination, and the observance of news embargo upon exceptional and legitimate constraints. On the other hand, such responsibility implies also that the journalist and the publisher enjoy certain indispensable rights, such as access to all information sources, refusal of obeying to anything contrary to the personal conviction of the journalist or to an agreed editorial policy, and the right to refuse any pressure or influence

from the advertising industry. This code of conduct is currently under review in the light of the provisions of the new press law mentioned above.

2.2. Regulatory authorities/bodies

2.2.1. Authority

There is no regulatory authority as such for the press sector.

2.2.2. Self- or co-regulatory body/ies

Legal basis

The Press Council ("*Conseil de Presse*"), created by the law of 20 December 1979 on the recognition and the protection of the professional title of journalist (*Mémorial* A 1979 nr. 98 and *Mémorial* A 1998 nr. 81) has been re-organised under article 23 of the law of 8 June 2004 on freedom of expression in the media, and is henceforth not only competent for handling the attribution or withdrawal of press cards, but got a real mission of self- and co-regulation.

Functions/competencies

Article 23 paragraph (2) of the law of 8 June 2004 on freedom of expression in the media provides that the Press Council is in charge of (a) working out a deontology code defining the rights and obligations of the journalists and publishers, (b) putting in place a complaints commission for handling possible complaints from individuals about publication of news and statements in the press, and (3) studying all questions relating to freedom of expression in the media. The Press Council is entitled to issue recommendations and directives for the work of journalists and publishers and may organise professional training for them.

Organisation

The Press Council is composed of 14 members, appointed by grand-ducal decree, half of which represent the publishers and half represent the journalists, upon proposal of their respective professional sector. The Council is chaired alternatively for a duration of 2 years by a representative of the publishers and a representative of the journalists (articles 24, 25 and 26 of the press law). The press law furthermore regulates the organisation of the commission of press cards (articles 27 to 30) and of the complaints commission within the Press Council (articles 31 to 35).

3. Online Services

3.1. Regulatory framework

3.1.1. Legal provisions

In order to create an appropriate legal framework for the the new means of electronic communication, the Luxembourg government has initiated in 2001 an action plan named e-

Luxembourg and has put in place an inter-ministerial committee ("*Commission Nationale pour la Société de l'Information*" (CNSI)) for piloting the necessary developments for the implementation of such plan.

As regards the technical matters involved (which are presently still governed by the law of 21 March 1997 on telecommunications), the government has worked out a new set of rules for electronic communications, derived from the so-called "Telecom Directives Package" (Framework Directive (2002/21/EC); Authorization Directive (2002/20/EC); Access Directive (2002/19/EC) ; Universal Service Directive (2002/22/EC; Radio Spectrum Decision (676/2002/EC)) favouring technological neutrality and equal access, and securing safety of the electronic communication networks and services (four draft laws have been introduced before parliament in July 2003, but have not yet been voted: draft 5178 on networks and services, draft 5179 on management of radio-electric frequencies, draft 5180 on re-organisation of the regulating body *ILR*, draft 5181 on protection of personal data).

In its program declaration of August 2004, the government confirmed its intention to continue its policy for electronic governance on the basis of the above mentioned orientations and to adopt a holistic approach for the development of its strategy in the fields of electronic information and knowledge society, by involving all parties concerned. Particular attention will be brought to the development of communication networks, protection of minors, use of information technologies in education, democratization of the access for all citizens to the communication technologies, data protection and safety of networks.

Thus, the legal framework for online services is still largely in progress. It can however be reported about some legal provisions already in place.

First it appears that online services made available over the Internet are not subject to ordinary media law, as it stands now. In the course of the procedure for the grant of a license to operate a Luxembourg radio station primarily on the Internet, the Independent Broadcasting Commission expressed the opinion that the transmission of data on a tele-computer network using the IP protocol is not subject to the law on electronic media and thus is not of the competence of the authorities put in place by such law, so that for a program distributed exclusively by Internet there is no need for a license.

Certain aspects of access and content of online services are treated in the law of 14 August 2000 (*Mémorial* A 2000 nr. 96 p. 2176), as amended by the laws of 19 December 2003 (*Mémorial* A 2003 nr. 189 p. 3990) and of 5 July 2004 (*Mémorial* A 2004 nr. 125 p. 1848) on electronic commerce.

Article 4 of the law of 14th August 2000 relating to e-commerce provides that, without prejudice to the provisions of the law relating to authorisation of businesses in general, access to the activity of a service provider on the Internet is not, in itself, subject to prior specific authorisation.

The e-commerce law defines the concept of information society service as being any service performed normally against remuneration, on distance by electronic means and at the individual demand of the user of the service. The law provides for protection of the consumer

through obligations of information, procedures of contract formation, rules on commercial communication, electronic payment, encryption of signatures, liability of providers, all based upon the European Directive 2000/31/EC on electronic commerce.

The law of 2 August 2002 on protection of services of conditional access has transposed into national law the corresponding EU Directive 98/84/EC of 20 November 1998 protecting encrypted pay services against piracy. Such legislation prohibits the possession and the marketing for commercial purposes of decoders without the authorisation of the service provider. Referring to the notion of "protected services" the law refers to the concept of information society service being defined as in the law of 14 August 2000 on e-commerce.

3.1.2. Administrative regulation/rules

Nothing to report in particular.

3.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

There is no code of conduct specifically for online services, but the code of advertising practices of the Luxembourg federation of marketing and advertising agencies (mentioned above) has dedicated one special chapter 2.9. to self-regulatory provisions applying to advertisements in electronic commerce. To some extent the set of references (of 41 criteria on identification, presentation of products and services, handling of complaints, customer protection, advertisement...etc) to be fulfilled by a candidate for the award of the Luxembourg e-commerce certification (mentioned hereafter) could be considered as some kind of a code of conduct for service providers over the Internet (www.e-certification.lu).

3.2. Regulatory authorities/bodies

3.2.1. Authority

Except for the Luxembourg Regulation Institute "ILR" competent for technical matters in the fields of telecommunications, there is for the time being no regulatory authority as such for the sector of online services. It may however be mentioned that the law of 14 August 2000 relating to electronic commerce (in connection with the law of 22 March 2000 about accreditation, certification and normalisation in general) has created a National Accreditation and Monitoring Authority ("*Office Luxembourgeois d'Accréditation et de Surveillance (OLAS)*"), with the mission to implement a quality policy through the accreditation of *i.a.* certification-service providers delivering qualified certificates linked to electronic signatures. Such authority supervises also the delivery of certificates delivered by certification organisations to websites doing e-commerce and complying with all legal and technical requirements. The first certification body accredited by OLAS was *Société Nationale de Certification et d'Homologation (SNCH)*, a corporation of limited liability (*s.à.r.l.*) held by the state together with professional organisations and federations, which awards the certificates "Luxembourg e-commerce certified".

According to the program declaration of the government of August 2004, the future independent media regulatory authority “*Autorité de Régulation Indépendante (ARI)*” will get the mission to assure the respect of human dignity and the protection of minors in all audiovisual media, including online services (and even, as reported hereafter, for films in movie theatres).

3.2.2. Self- or co-regulatory body/ies

Possibly with the exception - to a certain extent - of the certification organisations mentioned above, there is no self- or co-regulatory body specifically dedicated to online services. However the sector is covered by the organisations of broader scope, such as the press council and the commission for ethics in advertisement (CLEP), mentioned above.

4. Film

In order to promote audiovisual creativeness in Luxembourg and its widest possible distribution, the Grand-Duchy has adopted a law dated 11 April 1990 (as amended by a law of 21 December 1998), which sets up a national fund for the support of audiovisual production (“*Fonds National de Soutien à la Production Audiovisuelle*”).

Furthermore, a law dated 13 December 1988 (as amended by a law of 21 December 1998), destined to favour investments of venture capital in the production of audiovisual works to be made in whole or in part in Luxembourg, provides for a temporary special fiscal treatment of so-called “*audiovisual investment certificates*” (presently in force until end of 2008).

Such legislation on financial incentives for audiovisual production expressly excludes pornography and works conflicting with public order or morality from the benefit of the tax shelter and of other subventions for cinematographic creation.

The law of 13 June 1922 on supervision of public movie theatres (*Mémorial A* 1922 page 653) provides that access to movie shows is prohibited for minors under the age of 17 years, except for films authorized by the cinema control commission organised under the provisions of a grand-ducal decree of 16 June 1922 amended by decrees dated 14 November 1925, 22 August 1938 and 18 december 1950. Such commission has a broad competence of control not only on content of the films and related material but also on technical equipment of the movie theatres. According to its political program declaration, the government intends to abolish such commission and to have it replaced by the future media regulating authority “*Autorité de Régulation Indépendante (ARI)*” which will thus be competent for assuring the respect of human dignity and the protection of minors also in the film sector.

3.17. Malta

Introduction

Until 1991, sound and television broadcasting was the monopoly of the state owned national broadcaster but with the enactment of the Broadcasting Act¹ the broadcasting sector was liberalised and plurality in broadcasting was safeguarded. *Public Broadcasting Services Ltd (PBS)*, the state owned company run on public service lines that has been in operation since 1962, offers the full range of programming within the categories of information, education and entertainment and transmits on three radio networks and two television channels, one of which is a community channel on the cable television network. The private commercial sector is represented by several radio stations operating on the VHF-FM frequency band and by three television stations: *Super One TV*, *Smash TV* and *NET TV*.² While *PBS* because of its public service obligation gets its revenue partly from television licences that must be paid by all television owners and partly from advertising and sponsorships, the private sector broadcasters derive their revenue totally from advertising and sponsorships.

The cable television market was liberalised in 2001 but currently there is only one company providing a cable television service, *Melita Cable*, in operation since 1992, which derives its revenue from subscriptions and advertising and sponsorships. It claims to serve 76 out of every 100 homes in the Maltese islands.³ All the transmissions of the local terrestrial television broadcasting stations that can be received via roof antennae are relayed also through the cable system as are the transmissions of several national and private Italian broadcasting stations (that can also be received via roof antennae given the proximity of the two countries) and the transmissions of a selection of satellite broadcasting stations. In 2005 *Melita Cable* will be launching digital TV services. There are no satellite broadcasters in Malta but several households have satellite dishes to receive overseas satellite broadcasts directly (rather than through the cable television system).⁴ According to an audience survey carried out in 2004 by the Broadcasting Authority the most preferred local television station is *PBS* with 16.2%, followed by *Super One TV* with 14.4%, *NET TV* with 5% and *Smash TV* with 0.2% while the remaining 41.8% (as 22.4% said they had no preferred station) is divided among various Italian television stations (received via roof antennae or the cable television

¹ Chapter 350 of the Laws of Malta.

² Broadcasting Authority website <www.ba-malta.org>(12 February 2005).

³ Melita Cable website <www.melitacable.com>(26 February 2005). The 2003 annual report of the Broadcasting Authority at p 39 shows that, according to a survey conducted in the last quarter of 2003, 69.1% of respondents stated that they are subscribed to Cable TV as opposed to 31.7% that claimed to be served by a roof antenna (terrestrial broadcasting) and 14% that stated they had a satellite dish system installed. The 2004 annual report is still not available.

⁴ See n 3.

network) and satellite broadcasting stations (received over the cable network or via satellite dishes).⁵

As far as the press is concerned, there has always been a plurality of English and Maltese language newspapers providing the whole spectrum of political views, some newspapers being owned by the political parties and some by politically independent entities. As for online services, electronic news is provided by two politically independent entities – *divve.com* and *Maltamedia* – and two entities owned by the two main political parties – *Maltastar.com* and *Maltarightnow.com*. There is strong competition among several Internet service providers and *Melita Cable* that also provides an Internet service through its subsidiary *Video On-Line (ONVOL)* via its cable infrastructure.

Constitutional Law

The Constitution of Malta in a general provision – Article 32 – provides that every person in Malta is entitled to the following fundamental rights and freedoms of the individual, irrespective of his race, place of origin, political opinion, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest:

- life, liberty, security of the person, the enjoyment of property and the protection of the law;
- freedom of conscience, of expression and of peaceful assembly and association; and
- respect for his private and family life.

More specifically, Articles 33 to 36 guarantee protection of the right to life and protection from arbitrary arrest and detention, from forced labour and from inhuman treatment subject to such limitations that the Constitution deems necessary. Article 38 also safeguards the right to privacy by prohibiting, subject to prescribed exceptions, the search of one's person or property or the entry by others on one's premises without one's consent.

Article 41 safeguards the freedom of expression which is deemed to include the freedom to hold opinions and to receive and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons. However, the same provision provides that this right may be restricted, by a law or by action under the authority of a law, when this is reasonably required (i) in the interests of defence, public safety, public order, public morality or decency, or public health; or (ii) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, protecting the privileges of parliament or regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication, public exhibitions or public entertainments. Article 41 also allows a law or action under the authority of a law to impose restrictions upon

⁵ Broadcasting Authority website <www.ba-malta.org>(12 February 2005).

public officers. However, in all cases, the provision of law or action taken under it must be shown to be reasonably justifiable in a democratic society.

Article 41 also provides that anyone resident in Malta is entitled to edit or print a daily or periodical newspaper or journal but this right may be denied or restricted by law to persons under the age of twenty-one years.

Article 45 prohibits any law from making any provision that is discriminatory either of itself or in its effects and any person from being treated in a discriminatory manner by any other person acting in virtue of any written law or in the performance of the functions of any public office or any public authority, subject to such exceptions as are prescribed therein.

Any person whose fundamental rights and freedoms as prescribed in the Constitution are violated may seek redress before the courts and the courts may make such orders or issue such writs or give such directions as they may deem appropriate for the purpose of securing the enforcement of these provisions and ensuring that these freedoms are respected, unless such protection can be secured through the enforcement of any other law.⁶

Articles 118-119 regulate the composition and functions of the Broadcasting Authority whose role it is to ensure that in sound and television services in Malta due impartiality is maintained in matters of political or industrial controversy or relating to current public policy. These provisions and related legislation concerning this Authority are discussed in more detail in the section on broadcasting below.

All the abovementioned provisions of the Constitution may be amended or repealed only if the relative bill is supported by the votes of not less than two-thirds of all the members of Parliament.⁷

Chapter II of the Constitution contains a declaration of principles that is of political rather than legal import since the principles cannot be enforced by a court of law. However, Article 21 provides that these principles though not justiciable

“are nevertheless fundamental to the governance of the country and it shall be the aim of the State to apply these principles in making laws”.

Amongst the principles given constitutional recognition one finds the following principles directly or indirectly related to protection of minors and human dignity:

- the right of all citizens to work and the duty of the State to protect work and to promote such conditions as will make this right effective;
- the duty of the State to prescribe by law the minimum age for paid labour and the maximum number of hours of work per day and obligatory periods of rest;
- the duty of the State to safeguard the labour of minors and to assure their right to equal pay for equal work;

⁶ Art 46.

⁷ Art 66.

- the duty of the State to promote equality of rights between men and women and to take appropriate measures to eliminate all forms of sexual discrimination;
- the right to free primary education in State schools and the duty of the State to help, by means of scholarships and other contributions, capable and deserving students who lack financial resources to progress in their education;
- the right of disabled persons and persons incapable of work to education and vocational training and the right of every citizen who is incapable of work and lacking resources for subsistence to maintenance and social assistance;
- the right of all workers to reasonable insurance on a contributory basis for their requirements in case of accident, illness, disability, old age and involuntary unemployment.

1. Broadcasting

Radio and television broadcasting services in Malta are under the supervision and control of the Broadcasting Authority. The Authority was established in 1961 by Ordinance XX of 1961.⁸ When Malta became independent in 1964 and adopted its independence constitution, the independence of the Broadcasting Authority was further safeguarded through a number of constitutional provisions that replaced the Ordinance. Article 118 provides that the members of the Authority are appointed by the President of the Republic of Malta acting on the advice of the Prime Minister given after consultation with the Leader of the Opposition and may be removed from office only by the President on the advice of the Prime Minister solely on grounds of inability to discharge the functions of their office or for misbehaviour. Moreover, it establishes that in the exercise of its functions the Authority shall not be subject to the direction or control of any other person or authority. The salary of the members of the Authority are automatically paid out of the Consolidated Fund⁹ and, just as their terms of office, it may not be altered to their disadvantage after their appointment.¹⁰

According to Article 119, the function of the Authority is to ensure that, so far as possible, in all sound and television broadcasting services in Malta, due impartiality is preserved in respect of matters of political or industrial controversy or relating to current public policy and that broadcasting facilities and time are fairly apportioned between persons belonging to different political parties.

The functions of the Authority were increased with the enactment of the Broadcasting Act¹¹ in 1991. It now also has the role of selecting and appointing broadcasting licensees and contractors to operate national and community radio and television services throughout Malta at such terms, conditions and limitations as it deems fit and to monitor the performance of the

⁸ The Ordinance entered into force on 29 September 1961.

⁹ The Consolidated Fund is the fund, set up by the Constitution, which contains all the revenues and other moneys raised or received by Malta (Art 102).

¹⁰ Art 107.

¹¹ See n 1.

broadcasters in terms of the constitutional requirements, legal provisions and the relevant broadcasting licences and contracts. Breach of any terms, conditions or limitations attached to a broadcasting licence, as any act in contravention of the provisions of this Act or any regulations or directions made or given under it by the Authority, amounts to an offence that carries a custodial sentence on conviction by the Court of Magistrates.¹² Certain offences in contravention of the provisions of the Act or regulations and directions under it are deemed to be administrative offences by the Act so that the Authority is empowered to adjudicate and impose administrative penalties in their respect.

In the selection and appointment of broadcasting licensees and contractors and in setting the terms and conditions of the licence, Article 11 requires the Authority to be guided, *inter alia*, by the following considerations:

- that the principle of freedom of expression, as enshrined in Article 41 of the Constitution, and the related principle of pluralism should be the basic principles that regulate the provision of broadcasting services in Malta;
- that a diverse system of public and private stations with their own particular character, would be the best system for the realization of the abovementioned basic principles;
- that no situation of monopoly or similar situation of a small group of persons or in favour of any station or group of stations should be allowed.

In the assessment of the applications for licences the Authority is required to consider the economic potential and viability, the quality of scheduled programming and the technological and broadcasting plans and projects.

The Act provides that no organisation, person or company, other than a government owned or controlled company, may own, control or be editorially responsible for more than (i) one terrestrial or cable, radio broadcasting service; and (ii) one terrestrial or cable, television broadcasting service; and (iii) one terrestrial or cable, radio or television broadcasting service devoted exclusively to teleshopping.¹³

The Broadcasting Act implements the TV Without Frontiers Directive (Directive 89/552/EEC as amended by Directive 97/36/EC). More specifically, for the purposes of this report, in relation to advertising, the Broadcasting Authority, issued, in 2001, in terms of the powers granted to it by the Broadcasting Act, a code for advertisements, teleshopping and sponsorships¹⁴ that replaced the less detailed code that existed in the Act. This Code prohibits advertising and teleshopping that, *inter alia*, prejudice respect for human dignity or discriminate on grounds of race, sex or nationality or are offensive to religious or political beliefs or encourage behaviour that is prejudicial to health or safety or to the protection of the environment. Subliminal techniques in advertising and teleshopping and surreptitious

¹² Arts 10 and 38.

¹³ Art 10(6).

¹⁴ Broadcasting Act (Substitution of Third Schedule) (Code for Advertisements, Teleshopping and Sponsorships) Regulations, 2001, LN 245 of 2001, as subsequently amended by LN 134 of 2002.

advertising are likewise prohibited.¹⁵ The Code then contains rules regarding the insertion of advertisements and teleshopping between and during programmes and films and the duration of the advertising spots as well as provisions regulating sponsorships. While tobacco advertising is prohibited, the Code places restrictions on the advertising and teleshopping of medicinal products and medical treatment and alcoholic beverages.

Moreover, the Authority has also published a Broadcasting Code for the Protection of Minors, 2000.¹⁶ This Code protects minors against programmes that might seriously impair their physical, mental or moral development, and in particular prohibits programmes that involve pornography or gratuitous violence. It also protects minors against advertising that may cause mental, moral or physical detriment to them and against misleading advertising specifically targeting minors and advertising that exploits minors in any way. In particular, the Code prohibits advertising that:

- directly exhorts minors to buy a product or a service by exploiting their inexperience or credulity; or
- directly encourages minors to persuade their parents or others to purchase the goods or services being advertised; or
- exploits the special trust minors place in parents, teachers or other persons; or
- unreasonably shows minors in dangerous situations.

The Code requires that all references to “free gifts” for minors in advertisements should include all qualifying conditions, such as any time limit and how many products must be purchased, and any other relevant information.

Observance of these obligations in both codes is secured by the Broadcasting Authority which is empowered by the Broadcasting Act to give directions imposing exclusions from advertisements or programmes on persons providing broadcasting services and may impose administrative fines for non-observance.¹⁷

The Broadcasting Authority is empowered by the Broadcasting Act to publish other codes of standard and practice regarding programmes and transmissions that would be binding on broadcasters and which it would be able to enforce in the way described above.¹⁸ The Authority has published various such codes and guidelines such as a Code of Practice on Disability and its Portrayal in the Broadcasting Media, Guidelines on News and Current Affairs ensuring respect for privacy and children’s rights, Guidelines regarding Participation in Media Programmes of Vulnerable Persons, Guidelines on the Coverage of Tragedies in Broadcasting, Guidelines on Alcoholic Drink Advertising, Sponsorship and Teleshopping, Guidelines on Advertising concerning Medicines, Treatments, Health Claims, Nutrition and

¹⁵ The Code also contains other rules on the permitted form and presentation of advertising and teleshopping.

¹⁶ LN 160 of 2000.

¹⁷ Arts 19 and 20.

¹⁸ Art 20.

Dietary Supplements and Guidelines on Advertising of Financial Services and Products. In matters relating to quality and ethics in broadcasting, the Authority is assisted by an Advisory Committee on Quality and Ethics in Broadcasting.

Affected third parties may also apply to the Authority to seek effective compliance by broadcasters with the provisions of the Broadcasting Act and for this purpose the Broadcasting Authority has issued a Code for the Investigation and Determination of Complaints.¹⁹

Advertising on broadcasting media is also regulated by the Consumer Affairs Act²⁰ that contains general provisions prohibiting all forms of misleading advertising and regulating the content of comparative advertising, irrespective of the medium used.²¹ These provisions, that faithfully implement the Misleading Advertising Directive (Directive 84/450/EEC) and the Comparative Advertising Directive (Directive 97/55/EC), empower the Director of Consumer Affairs, a public officer who heads the government department on competition and consumer affairs that in relation to consumer matters receives and investigates consumer complaints, to issue a compliance order, of his own motion acting in the public interest or on a written application by a consumer association, requiring any person, engaging in any misleading advertising or in comparative advertising that is not compliant with the criteria set by law, to discontinue or refrain from such advertising. This compliance order has immediate effect.

In issuing the compliance order the Director need neither prove actual loss or damage nor actual recklessness, negligence or fault on the part of the person against whom the order is made.

The Consumer Affairs Act also empowers the Director, in order to eliminate or reduce the continuing effects of any non-observance of consumer protection legislation, to require the person concerned to publish a copy of the compliance order issued against him and to publish a corrective statement in relation to any contravention in the daily newspapers. Furthermore, any person who fails to comply with a compliance order would be guilty of a criminal offence punishable by a lump sum penalty or a daily fine.

A person against whom a compliance order has been made may challenge it before the Court of Magistrates in its civil jurisdiction and request its revocation on a material point of law or on the basis that the making of such an order is grossly unreasonable or unjustified. The court may confirm, change or cancel the compliance order. The order is stayed pending the outcome of the case. However, the Director may request the Court to issue an interim compliance order so that the Director's compliance order would remain in force pending the final determination of the case, subject to any modifications the Court might deem necessary.

It is at the discretion of the Director whether or not to issue a compliance order when requested by a consumer association but the latter may appeal from this decision to the Court

¹⁹ LN 161 of 2000, as subsequently amended.

²⁰ Chapter 378 of the Laws of Malta.

²¹ Arts 48-50.

of Magistrates in its civil jurisdiction. It should be noted, however, that the Act encourages voluntary compliance since in Article 100 it obliges the Director, whenever he considers it to be possible and reasonable to do so, to seek first to achieve voluntary compliance with the provisions of this Act and with regulations made under it and consumer-related legislation, before proceeding with the issue of a compliance order.

Since misleading advertising and comparative advertising that is not compliant with the criteria set in the law are criminal offences, the Director of Consumer Affairs may also institute proceedings for such offences before the Court of Magistrates and conduct the prosecution himself.

Other general provisions on advertising are to be found in the Distance Selling Regulations,²² adopted under the Consumer Affairs Act and implementing the Distance Selling Directive (Directive 97/7/EC), that impose information and transparency requirements on anyone advertising via means of distance communication such as radio and television broadcasting. Similar regulations exist in relation to distance selling of financial services, the Distance Selling (Retail Financial Services) Regulations 2005,²³ implementing Directive 2002/65/EC. While the competent body to enforce the Distance Selling Regulations is the Director for Consumer Affairs, the competent regulator in respect of the Distance Selling (Retail Financial Services) Regulations is the Malta Financial Services Authority that may likewise issue a compliance order for the protection of consumers subject to an appeal before the Financial Services Tribunal.

The Equality for Men and Women Act 2003²⁴ also contains a provision – Article 10 – that makes it unlawful for persons to publish or display or cause to be published or displayed any advertisement which promotes discrimination based on sex. The National Commission for the Promotion of Equality for Men and Women, set up by this Act, may, according to Article 17, initiate investigations on such matters, of its own motion or on a complaint by persons claiming to be victims of such discrimination, and if it finds that an infringement has been committed it makes a report to the Commissioner of Police so that he may prosecute for the commission of a criminal offence before the Court of Magistrates.

Broadcasting is also regulated by the Press Act²⁵ while journalists working in broadcasting services are required to respect their code of journalistic ethics but these are discussed in the section on press below.

Two provisions in the Criminal Code²⁶ – Articles 208 and 208A – indirectly are also protective of minors and human dignity on all media, whether broadcasting, press or online services. This is because they prohibit as criminal offences the production, printing and possession, for distribution or public display, as well as the distribution itself of pornographic

²² LN 186 of 2001.

²³ LN 36 of 2005.

²⁴ Chapter 456 of the Laws of Malta.

²⁵ Chapter 248 of the Laws of Malta.

²⁶ Chapter 9 of the Laws of Malta.

or obscene photography, films, videos, electronic images or other material and particularly when they concern minors.

2. Press

The Press Act whose scope of application extends to any printed matter or broadcast prohibits as a criminal offence, *inter alia*, the following:

- the incitement to the commission of grave crimes against the public order, the commission of any offence or generally the disobedience of law through such means;²⁷
- using such means to threaten, insult or expose to hatred, persecution or contempt, a person or group of persons because of their race, creed, colour, nationality, sex, disability or national or ethnic origin;²⁸
- by such means offends public morals or decency;²⁹
- by such means maliciously or negligently publishes false news;³⁰
- by such means commits defamatory libel against any person.³¹

These criminal proceedings before a Court of Magistrates that may be instituted against the author, editor or publisher as the case may be are not a bar to concurrent or subsequent civil proceedings that may be instituted for the award of damages.³² Moreover, the Act also provides a right of reply to any person whose actions or intentions were misrepresented or who was subjected to an attack on his honour, dignity or reputation or to an intrusion into his private life by means of or in a newspaper or broadcast.³³

The Act also provides for the appointment of a Press Registrar by the Prime Minister. Anyone who edits or publishes a newspaper in Malta is required to provide the Registrar with personal details and details concerning the newspaper (including, on request, details regarding its ownership) and the printing press as prescribed by law. The Registrar maintains a register, open to public inspection, containing such details. Every broadcasting licensee is required to have an editor for its broadcasting service and this editor has the same obligations and duties towards the Registrar as the editor of a newspaper.³⁴

The Press Act safeguards the principle of confidentiality of sources by prohibiting courts from ordering disclosure of sources except where this is strictly necessary in the interests of

²⁷ Arts 4-5, 14-17.

²⁸ Art 6.

²⁹ Art 7.

³⁰ Arts 9-10.

³¹ Arts 11-12. Moreover, Art 20 provides that in the case of conviction for defamatory libel, if the injured party so requests, the court shall, in the judgment, order that the said judgment or a summary of it be published in the newspaper or broadcast.

³² Arts 23-27.

³³ Art 21.

³⁴ Arts 34-45.

national security, territorial integrity or public safety or for the prevention of disorder or crime or for the protection of the interests of justice. It also guarantees access to information held by the Government.³⁵

The Institute of Maltese Journalists (formerly the Malta Press Club) and the now defunct Institute of Broadcasters in 1991 issued a self-regulatory code of journalistic ethics. This provided for the setting up of a Journalistic Ethics Council which was eventually replaced in 1999 by the current Press Ethics Commission to oversee that journalists working in the broadcasting, printed matter or electronic communications sectors comply with the provisions of this code. The composition of the Commission is regulated by the Rules of Procedure. These provide that the Commission should be nominated by the Council of the Institute and should consist of a chairman and six members. The Rules do not lay down any criteria for eligibility other than that the chairman and at least one of the members must belong to the legal profession. Thus not all members of the Commission are members of the Institute but they may constitute the majority of members. The current chairman is a former Chief Justice.

The Commission is empowered to consider any complaints lodged with it against any journalist for an alleged breach of ethical behaviour in violation of the code which lists various forms of conduct or practices that it deems to constitute a breach of ethical behaviour such as breach of confidentiality; failure to verify veracity and accuracy of information before publication; misquoting sources of information; lack of respect for private and family life in publishing certain information; use of deceit, trickery, intimidation or harassment to obtain information on private matters or in deliberate abuse of the right to privacy; use of hidden cameras and/or microphones, false identity or other means of entrapment; publication of false, misleading or distorted reports; lack of a clear distinction between fact and conjecture and comment; reproduction of material produced by others in breach of copyright. The code also contains provisions intended to protect the interests of minors and rules on reporting of crimes and court procedures (including filming and taking of pictures at the scene of the crime) to ensure respect for victims and relatives. Furthermore, the code prohibits the exercise any form of ‘character assassination’ of any person through the media and prohibits any person who is an editor or a journalist placed in a managerial position over other journalists from ordering or imposing any journalistic activity to which a conscientious objection is made.

When, after due process, the Commission finds a breach of one or more rules of this code it may issue a decision making a statement of disapproval, censure or grave censure, depending on the gravity of the offence.³⁶

The provisions on misleading and comparative advertising in the Consumer Affairs Act and the provisions of the Distance Selling Regulations and the Distance Selling (Retail Financial Services) Regulations as well as the provisions in the Equality for Men and Women Act 2003, discussed in the section on broadcasting above, are also applicable to the press.

³⁵ Arts 46-47.

³⁶ Institute of Maltese Journalists website <www.maltapressclub.org.mt/>(25 February 2005).

3. Online Services

There is no specific legislation regulating services offered online or the content of information transmitted to the public via electronic means but the general provisions of law are applicable. Thus, the content of advertising via electronic communications falls under the abovementioned general provisions on misleading and comparative advertising in the Consumer Affairs Act and under the provisions imposing information and transparency requirements in the Distance Selling Regulations and the Distance Selling (Retail Financial Services) Regulations that are specifically applicable to electronic mail, videophone and videotext. Both Regulations also regulate inertia selling and unsolicited communication and lay down obligations concerning delivery and performance of distance contracts and protect consumers against fraudulent use of credit cards. Moreover, as mentioned above, journalists using electronic communications are also expected to abide by their self-regulatory code of journalistic ethics. The provisions concerning discrimination in advertisements under the Equality for Men and Women Act 2003, discussed above, are also applicable to online services.

The provisions of the specific legislation in the field of electronic communications – the Electronic Communications (Regulation) Act³⁷ and the Electronic Commerce Act³⁸ – do not apply to the content of the messages transmitted through electronic communication networks as such but only to the operation itself of such networks and services and to issues of quality standards, access and interconnection and interoperability of services.³⁹

The competent regulatory authority to enforce the provisions of the Electronic Communications (Regulation) Act and to deal with certain issues related to the Electronic Commerce Act is the Malta Communications Authority that was established in 2001 by the Malta Communications Authority Act⁴⁰ in order to exercise regulatory functions in relation to electronic communications including certain aspects of data protection in electronic communication, postal services, electronic commerce and similar areas in the field of communications. The members of the Authority are appointed by the Minister responsible for communications for a renewable period of one to three years and may be removed by him on grounds of unfitness to continue in office or incapability of proper performance of duties.⁴¹

The function of this authority is, *inter alia*, to ensure freedom of communication and that communications are not restricted except where this is necessary for (i) the protection of the right to privacy; (ii) the defence of national security, territorial integrity or public safety; (iii) the prevention of disorder or crime; (iv) the protection of public health; (v) the protection of morals and respect for the dignity of the human person; (vi) the protection of the rights and freedoms of others; (vii) the prevention of the disclosure of information received in

³⁷ Chapter 399 of the Laws of Malta.

³⁸ Chapter 426 of the Laws of Malta.

³⁹ The Electronic Communications (Regulation) Act, Chapter 399 of the Laws of Malta, Art 5.

⁴⁰ Chapter 418 of the Laws of Malta.

⁴¹ Malta Communications Authority Act Art 3.

confidence; (viii) the maintenance of the authority and the impartiality of the judiciary; (ix) the technical constraints inherent in the means of communication.⁴²

Specifically in relation to electronic communications, the authority is required by the Electronic Communications (Regulation) Act, *inter alia*, to promote the interests of users within the European Union by (i) ensuring that all users have access to a universal service; (ii) ensuring a high level of protection for consumers in their dealings with suppliers; (iii) contributing to ensuring a high level protection of personal data and privacy; (iv) promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services; (v) addressing the needs of specific social groups; (vi) ensuring that the integrity and security of public communications networks are maintained.⁴³

4. Film/Interactive Games

The Cinema and Stage Regulations⁴⁴ adopted under the Code of Police Laws⁴⁵ sets up a Board of Film and Stage Classification, whose members are appointed annually by the Minister responsible for the Police. The Board's function is to classify films and stage productions on the basis of guidelines drawn up by the board based on the following main criteria: (i) the standards of morality, decency and propriety generally accepted by reasonable adults; (ii) the literary, artistic or educational merit, if any, of the production; (iii) the general character of the production; (iv) the person or class of persons to whom it is intended or by whom the production is likely to be viewed. The Board reports to the Commissioner of Police whether having regard, in their discretion, to public morality, decency or propriety, or to the public interest, the film reviewed is fit for exhibition with or without any suppressed parts. Films may only be shown if certified to be fit for exhibition by the Board and may be viewed only by persons who fall within the age category of the classification given to the film by the Board.

Articles 208 and 208A of the Criminal Code discussed in the section on broadcasting above are also applicable to films and interactive games in so far as they constitute public display of objectionable material.

⁴² *Ibid* Art 4.

⁴³ Electronic Communications (Regulation) Act Art 4.

⁴⁴ SL 10.17 of 1937.

⁴⁵ Chapter 10 of the Laws of Malta.

3.18. Netherlands

Introduction

Broadcasting

The Netherlands have an extremely high level of cable penetration: approximately 91% of households is connected to a cable network. Free-to-air television services are dominating and public finance and advertising remain the most significant sources of revenues for the industry. The Netherlands are considered one of the most competitive broadcasting markets in Europe, due to the large number of different channels in relation to the number of inhabitants and the small size of the language area. The television sector is dominated by the activities of three strong suppliers. Since the early 90's the Netherlands have, both de facto and by law, a dual system of public and commercial broadcasters. The public service broadcaster (Publieke Omroep) together with the biggest commercial operators RTL Netherlands and SBS jointly control 85% of the market.

Publieke Omroep in the Netherlands consists of a lot of different organisations who share the broadcasting time on the six public radio and three television channels. A number of private organisations have been granted airtime for public broadcasting because they represent a certain section of the population (broadcasting associations and religious or spiritual broadcasters). Others have a specific programming remit (NPS and the educational broadcasting services). The NOS is responsible for the collective public programming, news and major events. In addition to the national public broadcasting there are also thirteen regional and around 300 local public broadcasters.

The national commercial broadcasters in the Netherlands are part of large international corporations. RTL Netherlands holds three commercial broadcasting licenses, which are used for providing the channels RTL4, RTL5 and Yorin. SBS operates the TV-channels SBS6, NET5 and Veronica. Besides these six general interest there are nine niche TV-channels with programmes in the areas of music, sports and nature and science.

The radio sector in the Netherlands is characterised by a range of operators and a strong presence for the public broadcaster, at both national and regional levels. There is a variety of national public and commercial stations as well as local ones. In total around 350 radio stations have been licensed.

Press

With almost 30 different daily papers, two free commuter papers and hundreds of weekly titles, the reader is offered a broad and varied information package in print. But this high number of titles is in the hands of increasingly fewer suppliers. With respect to the daily papers, we can distinguish three dominant players - *NV Holdingmaatschappij De Telegraaf*, *PCM Uitgevers NV* and *Wegener NV* - who jointly cater for 90% of the readership market. The newspaper with the largest circulation is the popular *De Telegraaf*, which has an 18.3% market share. There is a strong regional and local press industry, with regional titles outselling

national titles despite the strong market position of the De Telegraaf. There is also a strong daily free sheet sector with two titles: the Metro as well as one produced by the *NV Holdingsmaatschappij De Telegraaf* called Spits. *PCM Uitgevers NV* controls the largest share of circulation in the national press sector with four national daily titles, whilst *Wegener NV* specialises in the regional press sector where it is the dominant player. Between 80% and 90% of all daily newspaper sales in the Netherlands are via subscription.

The best-known weekly newsmagazines are Elsevier, Vrij Nederland, HP/De Tijd and De Groene Amsterdammer. In addition, there is a very large number of popular magazines which generally devote less attention to current social trends and are more concerned with providing entertainment for a general readership or focus on specific interests for particular target groups such as women, young people, car enthusiasts, computer buffs, etc. Although in their own way they contribute to the diversity of the information supply, these publications are not the subject of government media policy.

Internet

The number of households in possession of a high-speed Internet connection in the Netherlands increased considerably in 2004. Half of households with access to the Internet have a cable or ADSL broadband connection. In 2003 only one-third had a high-speed connection to the Internet. The share of households with access to the Internet at home rose from just over 60% in 2003 to 65% in 2004. Four in every five households could only connect to the Internet via a computer. One in five households had more options, for example, a cell phone or handheld computer.

In its monitor report of 2002 the Dutch media authority, CvdM, observed that there is a large number of sites in the Netherlands that offer news or access to news. In 2002, a total of 185 websites can be found that provide general news or access thereto. There are websites that offer actual news items, whether or not arising from an existing news offer in print or as (part of) broadcasting activities. In addition, one sees a wide diversity of news services that mainly focus on offering access to news in the form of (theme) portals, browsers and news links. Suppliers of internet news services both come from the traditional news sectors as the press and broadcasting, but a large number of new players can also be noted. They often have a background as internet service provider or software vendor. From the total number of websites, 36.2% is linked to a written medium, 31.9% belongs to broadcasting organisations and another 31.9% of the sites consists of web papers, e-zines or is

derived from Internet Service Providers. The market of national websites numbers 38 sites in all from 28 different suppliers.

Constitutional law

The freedom of expression has been laid down in the Dutch Constitution of 1983.

Article 7 reads as follows:

“(1) No one shall require prior permission to publish thoughts or opinions through the press, without prejudice to the responsibility of every person under the law.

- (2) *Rules concerning radio and television shall be laid down by Act of Parliament. There shall be no prior supervision of the content of a radio or television broadcast.*
- (3) *No one shall be required to submit thoughts or opinions for prior approval in order to disseminate them by means other than those mentioned in the preceding paragraphs, without prejudice to the responsibility of every person under the law. The holding of performances open to persons younger than sixteen years of age may be regulated by Act of Parliament in order to protect good morals.*
- (4) *The preceding paragraphs do not apply to commercial advertising.”*

Article 110 of the Dutch Constitution regulates the freedom of information and states:

“In the exercise of their duties government bodies shall observe the right of public access to information in accordance with rules to be prescribed by Act of Parliament.”

Legislation regarding the freedom of information legislation was first adopted in 1978 and replaced by the Government Information Act (WOB) in 1991. The act regulates how individuals can demand information on administrative matters contained in documents held by public authorities or companies carrying out work for a public authority. The request for information does not have to be motivated and the public authority in question has two weeks to respond.

1. Broadcasting

1.1. Regulatory framework

The Media Act of 1987 is a formal law which contains most important rules for radio and TV. The Media Decree of 1988 is a so-called delegated general policy measure consisting of more detailed rules. Most provisions of the Television without Frontiers Directive (TWFD) have been implemented through both Media Act and Decree. Furthermore the Dutch media authority, Commissariaat voor de Media (CvdM), has adopted several policy guidelines with the aim to interpret the provisions of Media Act and Media Decree and explain how they will be applied in practice by the CvdM. In the Telecommunications Act of 2000 rules regarding the infrastructure of and access to telecommunications networks, amongst which broadcasting networks, have been incorporated.

The Telecommunications Act of 1998 has less relevance for the broadcasting sector as the Media Act. It provides the primary legal framework for the telecommunications sectors in the Netherlands and aims to provide for full and fair competition between operators of telecom networks. Issues like universal service and end-user interests, the assignment of numbering resources, the minimum set of leased lines, interoperability, conditional access and digital television and the financing of the regulatory authority OPTA are dealt with in the Telecommunications Act.

1.1.1. Legal provisions

The remit of public service broadcasting can be found in article 13c of the Media Act. The requirement to provide public programmes (distinctive from private broadcasting) is further elaborated in article 50, which gives minimum amounts for programmes of informational, educational and cultural broadcasting. Article 52 states the prohibition to broadcast advertising in the programmes of public service broadcasting. Advertising is only allowed in

between programmes of public service broadcasters and provided by a separate organization (i.e. STER). For public service broadcasters the basic assumption is that programmes can not be sponsored, unless the law allows sponsorship explicitly. This basic principle intends to stress the non commercial nature of public service broadcasting.

Following article 52a of the Media Act only three categories of programmes of public service broadcasters are allowed to be sponsored:

- programmes of a cultural nature;
- programmes consisting of a report on or coverage of one or more sporting events/sporting competitions;
- programmes consisting of a report on or coverage of events for charity purposes.

These programmes of public service broadcasters may be sponsored, only as far as they do not consist of news, current affairs, or political information and as far as they are not specially aimed at minors under the age of twelve.

Following the TWF Directive surreptitious and subliminal advertising are strictly forbidden for both public service and private broadcasting. For public service broadcasting this prohibition on surreptitious advertising in programmes is further elaborated in section 3 of the Media Decree (article 26-32).

Most rules regarding the programmes of private broadcasting can be found in chapter 4 of the Media Act (articles 71a -71x). Private broadcasters have far more possibilities to have their programmes sponsored, except news, current affairs and political programmes. Sponsoring may never lead to advertising in the programmes and is only allowed when the independence of programme makers is safeguarded in an editorial statute. In article 71m of the Media Act the prohibition on surreptitious advertising for private broadcasting has been implemented.

The regulations on the amounts and duration of advertisements, drawn from the TWF Directive, can be found in article 71g (private broadcasting) and 41a (public broadcasting) of the Media Act.

Some further programme content provisions in the Dutch Media Act are:

- Public as well as private broadcasters have to broadcast at least 50% programmes of European origin;
- Public as well as private broadcasters have to broadcast programmes made by independent producers: public service at least 25% and private 10%;
- Public as well as private broadcasters have to broadcast at least 50% programmes originally in the Dutch or Frisian language;
- Public service broadcasters have to broadcast enough information, culture and - education; on national level each of three TV-channels should meet the percentages, on local and regional level each individual broadcaster has to broadcast at least 50% programmes which can be categorised as information, culture or education of a regional or local nature.

Article 82h-82o of the Media Act give provisions regarding access to cable networks. Cable operators, in legal terms 'broadcasting network providers', are not totally free in their composition of their cable packages. Article 82k of the Media Act requires municipal councils to install a programme service council which has to advise the cable operator on the composition of the basis package of at least 25 television programmes and 25 radio programmes. The programme service council is not totally free in its advice: some of the programmes are already fixed, due to the so-called must carry obligation in article 82i of the Media Act. If a cable operator refuses to follow the advice of the programme service council, the CvdM can be asked to evaluate whether the reasons of the cable operator are important enough to deviate from the advice regarding the composition of the basis package. The Telecommunications Authority (OPTA) has competences with regard to all other cable access issues, for instance if a provider of a programme wants to get access to another programme package then the minimum basis package.

1.1.2. Administrative regulation/rules

The CvdM has adopted several policy guidelines, explaining how supervision will be executed and how legal stipulations will be applied and interpreted in daily practice. Some guidelines are: Policy guidelines (advertising during) sports programmes, Policy guidelines sponsoring private broadcasting, Policy guidelines sponsoring public broadcasting and Policy guidelines secondary and association activities (public broadcasting).

1.1.3. Other provisions, co-regulatory and self-regulatory measures, codes of conduct

The TWF Directive stipulations concerning the content of advertisements have not been implemented in the Dutch media legislation but in a self regulatory code called the Dutch Advertising Code. It contains a body of rules and regulations to which all forms of advertising are subject, regardless of whether they are broadcast on radio or TV or published in a press magazine. It is divided into a general section and a special section. The general section stipulates, among other things, that advertisements may not be misleading or untrue. This section also contains a number of subjective standards, one of which stipulates that advertising must not be gratuitously offensive or at odds with good taste and decency. The special section contains special advertising codes and the related stipulations for specific products and services.

1.2. Regulatory authorities/bodies

1.2.1. Authorities

a. CvdM

The Dutch media authority (Commissariaat voor de Media or CvdM) was established on 1 January 1988. It is an independent executive body (ZBO), a status that enables it to operate at a distance from the Ministry of Education, Culture and Science. The CvdM has to supervise whether all broadcasters, both public service and private, meet with all provisions of the Dutch Media Act, Media Decree and lower media regulations.

b. OPTA

The Independent Post and Telecommunications Authority (Onafhankelijke Post en Telecommunicatie Autoriteit or OPTA) was established on 1 August 1997 as successor to the Networks and Services Board (TND) of the Ministry of Transport, Public Works and Water Management. OPTA is also an independent executive body and supervises compliance with legislation and regulations in the areas of post and electronic communications.

c. The Netherlands Radiocommunications Agency

The Netherlands Radiocommunications Agency (Agentschap Telecom) is the government agency responsible for frequency planning and management in the Netherlands. Primary activities of the Radiocommunications Agency are frequency planning, issuing licences for frequency use, and enforcement of frequency use.

1.2.1.1. Legal basis

a. CvdM

Article 9 of the Media Act of 1 January 1988 provides the legal basis for the CvdM.

b. OPTA

The OPTA is established on the basis of the OPTA Act of 5 July 1997.

c. The Netherlands Radiocommunications Agency

Its legal basis is provided by article 15 of the Telecommunications Act.

1.2.1.2. Functions/competences

a. CvdM

The functions of the CvdM are mainly defined in the Media Act:

- allocation of broadcasting time for public service broadcasters;
- granting licenses to private broadcasters;
- advising, like comments on budget and concession policy plans of
- national public Service broadcasters;
- monitoring media concentration developments;
- supervision of compliance to Media Act, Media Decree, the Act on the Fixed Bookprice (recently) and other regulations.

Supervision of media legislation implies CvdM controls on programmes for the observance of compliance to:

- rules concerning advertising;
- rules concerning sponsoring;

- rules concerning quota for national, recent and independent
- productions;
- rules ensuring that public broadcasters provide a balanced
- programme of information, culture, education and entertainment.

The competence of the Commissariaat is always exercised a posteriori (afterwards). The Media Act prohibits every form of censorship and prior intervention with regard to programme content. In order to protect the freedom of speech the Commissariaat will never review a programme before it is broadcast.

Competences and sanctions

In order to enforce regulation, the CvdM is authorized to:

- collect information and view documents;
- issue fines of up to € 225,000;
- impose a reduction in the amount of airtime granted;
- withdraw a licence.

The last two types of sanctions will only be imposed in cases of very grave and/or repeatedly violations of the media legislation and are therefore very rarely applied by the CvdM in practice.

b. OPTA

The functions of OPTA are defined in the OPTA Act.

In general the OPTA controls compliance to the Postal Act, the Telecommunications Act, the lower regulations based on these acts and European regulations. These legislation and regulations intend to promote competition on the respective markets and give consumers more choice and fair prices. OPTA can take enforcement measures against a provider if the party holds an excessively strong market position (significant market power or SMP). Such a position can limit competition. In situations of this type, OPTA can impose obligations pertaining to interconnection, network access and tariff regulation.

Based on the New Telecommunications Act, OPTA will define markets, identify parties on these markets with significant market power, and determine the obligations to be assigned to these parties. In determining significant market power, OPTA considers not only the party's market share, but also price developments, opportunities for entrants to the market and shifts in market shares.

OPTA's most important tasks include:

- Settling disputes between providers regarding access to and interconnection between networks;
- Approving or rejecting interconnection and end-user tariffs;

- Issuing telephone numbers;
- Protecting the privacy of consumers in the area of post and telecommunication;
- Regulation of certification providers for electronic signatures;
- Safeguarding the legal minimum of services to be provided in the area of post and fixed telephony.

Competences and sanctions

In order to enforce regulation, OPTA is authorized to:

- Collect information and view documents;
- issue fines of up to € 450,000;
- Issue threats of fines in order to force compliance with legal obligations;
- Retract issued telephone numbers.

c. Radiocommunications Agency

The functions of the Radiocommunications Agency are mainly described in the Telecommunications Act:

- -creation of frequency space, the agency creates frequency space by acquiring frequencies and through planning, consultation, research and advice. The aim is to ensure that sufficient frequency space is available for accommodating all applications and services that are making (shared) use of the airwaves within the electronic communication domain;
- -allocation of frequency space, as demand is still outstripping supply, Radiocommunications Agency must carefully weigh the interests of different (potential) users against each other. The agency sees to the proper distribution of scarce frequency space while also striving to promote the efficient use of that space;
- -protection of frequency space, Radiocommunications Agency investigates the use of the frequency spectrum and monitors compliance with the rules. In this capacity, the agency makes sure that the various parties act in conformity with the Telecommunications Act and takes corrective action in the case of infringements. The underlying aim is to safeguard the optimal usability of electronic communication facilities by protecting users against unlawful, fraudulent and interfering actions;
- -implementation of the national antenna policy. The National Antenna Policy is designed to enable telecommunication applications without compromising safety, health and the living environment. Since 1 October 2001, the National Antenna Bureau has been jointly responsible for the implementation of this policy.

1.2.1.3. Organisation

a. CvdM

The CvdM consists of three commissioners who are appointed by Royal Decree by recommendation of the State Secretary of Media Affairs. They are appointed for five years and they can be re-appointed once.

The CvdM is independent from government and parliament and the broadcasting sector. Nevertheless, decisions of the CvdM can be suspended and overturned by the Ministry (officially by Royal Decree upon the recommendation of the State Secretary of Media Affairs) if they are in conflict with general interest or law. In the history of the CvdM, founded in 1988, only five decisions have been suspended but in the end they were not overturned.

This independence is secured in several manners. Membership of the CvdM may not be combined with employment in a ministry or an institution, service or company whose activities fall under ministerial responsibility. Also it may not be combined with membership of Parliament or of a provincial or local government. Furthermore it is prohibited to combine the function of commissioner with employment in a public or private broadcasting organisation, or a publisher of newspapers and/or magazines.

The commissioners are supported by an office of approximately 55 civil servants. The main departments of the CvdM are a department for programme control, concerned with the 'traditional' supervision of programme regulations, surreptitious advertising and sponsoring. Within this division a monitoring section was set up, whose employees are engaged in monitoring the programmes on radio and television. Apart from this there is a division of juridical affairs, which deals with the procedural aspects of detected offences. The department for financial control is primarily supervising the financial situation of public service broadcasters, including the new task of supervising their commercial activities. Issues like licensing and disputes over access to cable networks are dealt with by the department for airtime and cable affairs.

b. OPTA

The OPTA consist of three Commissioners who are appointed by Royal Decree by recommendation of the Minister of Economic Affairs. They are appointed for five years and they can be re-appointed once. They are supported by an office of approximately 150 employees. The OPTA has three staff departments. The department for strategy and communication coordinates matters that are beyond the level of departments, cohesion in OPTA policy and consultation with external organisations. The department for legal affairs deals with appeals and objections, provides legal support to OPTA staff and the Commission, evaluates legislative proposals and monitors OPTA's required legal quality standards. The third staff department is dealing with business operations and bears responsibility for finance, personnel and organisation, IT and operational affairs. Furthermore there are three line departments. The department involved in numbers and registrations bears responsibility for issuing numbers and enforcing use of the correct number series by providers. The department for interconnection and special access bears responsibility for dealing with interconnection

disputes, disputes regarding special access and disputes regarding cable access. The end-user market department regulates the end-user tariffs (including discount schemes and regional tariff differentiation), obligations for fixed connections and telephony, general rules for the provision of services, privacy, universal services, spam prohibitions, and licence requirements for mobile telephony and post.

c. Radiocommunications Agency

Radiocommunications Agency operates within the policy framework of the Telecommunications and Post Directorate General (DGTP). DGTP and Radiocommunications Agency are equal partners in a single policy chain: DGTP carries responsibility for policy initiation and formulation. Radiocommunications Agency is responsible for policy implementation and enforcement and also delivers practice-based knowledge for policymaking and evaluation purposes. In addition, the agency plays a prominent role in the international arena. The political leadership of Radiocommunications Agency rests with the Minister and State Secretary of Economic Affairs. The Radiocommunications Agency consists of a head office and four regional offices and employs in total around 350 people. There are several departments dealing with frequency infrastructures and systems, licensing, communication, and supervision. In 2001, the National Antenna Bureau was established; a single government window for all antenna-related questions and needs.

1.2.2. Self- or co-regulatory bodies

a. Protection of minors: NICAM

Following national and EU initiatives in the area of the protection of minors in the media, the Dutch government after broad consultation with the sector opted for self-regulation/co-regulation. This resulted in the creation of the Netherlands Institute for the Classification of Audiovisual Media (Nederlands Instituut voor de Classificatie van Audiovisuele Media or NICAM) in 1999 as joint initiative of the whole audiovisual industry. NICAM replaced the former Dutch Film Rating Board and is responsible for the entire audiovisual sector. The members of NICAM include public and private broadcasters as well as film distributors, cinema operators, distributors of films on video, DVD and computer games, video shops and retailers.

b. Content of advertisements: Dutch Advertising Committee

All provisions of the TWF Directive regarding content of advertisements are dealt with by self-regulation in the Netherlands. These provisions are not implemented in media legislation but in the Dutch Advertising Code (Nederlandse Reclame Code). This code is drawn up by the Advertising Code Foundation (Stichting Reclame Code) in which eight organizations associated with the advertising branch in the Netherlands participate. The code must ensure that advertising is accountable and consists of rules like stating that advertisements should not encourage minors to dangerous behaviour, should not be untrue, misleading or gratuitously

offensive. Compliance with the Advertising Code is monitored by the Advertising Code Commission.

1.2.2.1. Legal basis

a. Protection of minors

As far as TV is concerned the Media Act provides the legal framework for the establishment of NICAM and lays down additional provisions relating to the control of harmful content on TV. As an implementation of article 22, paragraph 1 of the TWF Directive, article 52d of the Media Act states that broadcasters should not transmit any programmes which might seriously impair the physical, mental or moral development of persons under the age of sixteen. The CvdM is responsible for monitoring compliance with this rule by following the principle that programmes containing illegal content or hardcore pornography combined with gratuitous violence constitute serious impairment to the development of minors.

Programmes that may impair the physical, mental or moral development of persons under the age of sixteen can only be broadcast if the operators are members of an organisation accredited by the government on the criteria laid down in article 53, paragraph 1 of the Media Act, and are subject to the rules and supervision of that accredited organisation (i.e. NICAM). Consequently, TV channels which do not opt for membership of NICAM cannot broadcast programmes for people older than twelve years old, i.e. they can only broadcast programmes that are suitable 'for all'.

The Dutch classification system, called Kijkwijzer was developed by independent experts and was launched on 22 February 2001 by NICAM. It introduces a uniform classification system for film, TV, video, DVD and includes clear self-regulatory components. The system is based on a classification by age (all ages, not suitable for children younger than 6, 12 or 16 years old) and content descriptors, e.g. indications on what the 'harmful content' consists of (violence, sex, fear, discrimination, drugs and alcohol abuse and coarse language). The organisations affiliated to NICAM classify productions themselves on the basis of the Kijkwijzer coding form. Concretely, the in-house rater/coder who is trained by NICAM uses the Kijkwijzer coding form which is a user-friendly computerised questionnaire. By using this system, every audiovisual work gets one classification which is valid for as long as it exists. The final age rating is determined by the highest content descriptor score. Following the NICAM regulations, television programmes classified as suitable for age twelve and older must not be broadcast before 8 pm. A second watershed states programmes classified as age sixteen and older should not be broadcast before 10 pm.

b. Content of advertisements

The Dutch Advertising Code contains a body of rules and regulations to which all forms of advertising, either broadcast on TV or radio or published in written press or on the internet, are subject. It is divided into a general section and a special section. The former stipulates, among other things, that advertisements may not be misleading or untrue. This section also contains a number of subjective standards, one of which stipulates that advertising must not

be gratuitously offensive or at odds with good taste and decency. The special section of the code contains special advertising codes and the related stipulations for specific products and services, like the Advertising Code for Alcohol Beverages. These stipulations supplement the general provisions of the code. The Dutch Media Act states that broadcasters which do not opt for membership of the Advertising Code Foundation are not allowed to broadcast advertisements in their programmes.

1.2.2.2. Functions/competences

a. Protection of minors

The age classification and pictograms are published in film screening schedules, advertisements, on the packaging of videos and DVDs, in the programme schedules of the TV listing magazines and before the start of films in the cinema, on video and on TV. Every individual or company who thinks the Kijkwijzer's rules have been breached can submit a complaint with NICAM. If a complaint is upheld, NICAM can either issue a warning or impose a fine which may vary up to a maximum of € 11,350 for the film and video industry and up to € 22,700 for broadcasters.

b. Content of advertisements

Following a complaint the Advertising Code Commission can issue a recommendation to the advertiser to stop using it in its current form. In the event of a repeated offence or a serious violation of the code, the media will be asked to stop publishing the advertisement concerned. The organizations which are members of the Dutch Advertising Code pursuant to the Media Act are obliged to reject advertisements against which such a type of ban has been issued.

A recommendation can be made in two different ways:

- -Private. In that case the recommendation by the Commission is only made known to the parties involved, although the Commission's decisions are available to all and can therefore become known to the general public.
- -Public. The recommendation is not only announced to the parties involved but also to third parties.

Furthermore when the complaint is allowed by the Advertising Code Commission, the commission can moreover:

- -set conditions on the broadcast time of the radio and/or TV commercial submitted for evaluation;
- -stipulate for the party whose advertising is found to violate the code, a term during which the recommendation of the committee is to be complied with;
- impose measures as described in the contracts concluded between the Advertising Code Commission and the organizations in consultation with which a Special Advertising Code was laid down.

1.2.2.3. Organisation

a. Protection of minors

NICAM consists of a general and an executive board plus a bureau. There are also three committees linked with NICAM. An advisory committee is consisting of experts from the sector, representatives from the social field and a number of scientists. There are also two independent committees. The complaints committee handles complaints about classification from both individuals and organisations and impose sanctions ranging from warnings to substantial fines; appeals against the rulings of the complaints committee can be lodged with the appeals committee.

b. Content of advertisements

The bureau of the Advertising Code Foundation consists of a secretariat of six people and one director.

The Advertising Code Commission consists of five members, which are:

- -one member appointed by the BVA Association of Dutch Advertisers;
- -one member appointed by the VEA Association of Communication Consultancies;
- -one member appointed by the the media organizations affiliated with the Advertising Code Foundation;
- -one member appointed by the Consumers' Association;
- -one independent member, chairman, appointed by the Advertising Code Foundation.

2. Press

2.1. Regulatory framework

2.1.1. Legal provisions

The Dutch Advertising Code mentioned before also applies to advertisements in written press.

2.1.2. Administrative regulation/rules

2.1.3. Other provisions, co-regulatory and self-regulatory measures, codes of conduct

The Advertising Code Commission also gives recommendations on advertisements in written press.

2.2. Regulatory authorities/bodies

2.2.1. Authorities

There are no regulatory authorities for written press except for the Press Fund (Bedrijfsfonds voor de Pers) founded in 1974, which subsidises newspapers, weeklies and newsmagazines in financial need and special projects, and the Special Journalistic Productions Fund (Fonds

Bijzondere Journalistieke Producties) which subsidizes individual journalists. The Press Fund can also support joint projects by publishers and can fund research which is of importance for the press industry as a whole. These funds aim to increase the freedom of press and diversity by financially strengthening the position of print media. The financial instruments at the disposal of the Press Fund were recently expanded with the addition of two new schemes: an incentive scheme for publications targeting minorities in the Netherlands, and a scheme for journalistic information products distributed via the Internet. The Press Fund is financed from the revenues of advertising on public and private broadcasting. In accordance with the Media Act the government is authorized yearly to decide if it is necessary to transfer money from these revenues to the Press Fund, and if so, it can only be an amount up to the maximum of 4% of the total revenues of these advertising media.

Concentration and mergers

As mentioned before the Dutch media authority, CvdM also monitors concentration developments and trends in written press, but it can not undertake any measures or impose sanctions. In its yearly monitor reports it can recommend the State Secretary of Media Affairs on media policy regarding concentration.

From the beginning of 1999 according to a new Competition Act, based on European regulations, all agreements on competition aiming at restricting a free competition are being forbidden. Also a previous review of proposed mergers by the National Competition Authority (Nederlandse Mededingingsautoriteit or NMa) was being introduced. That review aims at preventing the disturbance of free competition by mergers, agreements between companies or the enforcement of existing positions. This regulation also applies to mergers in press but the NMa does not consider aspects of journalistic freedom or diversity in its decisions.

2.2.1.1. Legal basis

In 1971 the Press Fund was established and from 1974 it acted as an advisory body of the minister for Culture. The minister could take the final decisions on applications if he got a recommendation about such an application from the board of the Press Fund. When the Media Act came into force on 1 January 1988 the Press Fund gained a legal basis as an independent authority (article 123 Media Act).

2.2.1.2. Functions/competences

The board of the Press Fund has to decide whether or not support is to be provided in a given case. Newspapers or magazines have to meet a number of criteria listed in article 129 of the Media Act in order to qualify for financial support. The papers or magazines must contain a substantial amount of news, analysis, commentary and background information about varying matters of topical interest, partly in order to broaden the basis on which political views are formed. They should resort under an independent board of editors on the basis of a charter establishing an editorial identity, they must appear regularly and at least monthly and they

must be available to the general public on remuneration. Furthermore the Press Fund can carry out or facilitate research projects on functioning of the Dutch press sector.

2.2.1.3. Organisation

2.2.2. Self- or co-regulatory bodies

Concentration and mergers

In 1994 the publishers of newspapers agreed on a system of self-regulation in the field of mergers. According to this system all intended concentrations which have as a consequence that the daily newspaper companies involved acquire in common a market share of one third or more of the total circulation of newspapers in The Netherlands, are forbidden unless an independent committee of experts, nominated by the newspaper publishers association, grants a declaration of no objections with respect to the intended concentration. This independent committee can only grant the declaration of no objections if such a merger should not result in a significant and structural hindrance to the actual competition in the Dutch daily newspaper market. In its judgement the committee should also take many other criteria into consideration, such as the structure and developments in the newspaper market in general, the economic position of the enterprises involved, the diversity of the press and the options for the readers in the newspaper market.

Press Council

The Press Council founded in 1960 is a self regulatory body which is charged with the examination of complaints against violations of good journalistic practice by a publication in press or on the internet or in a radio or TV programme. Only persons or organisations who are directly involved in a case of journalistic practice can complain. The complainants are mostly persons or organizations about whom has been published in a false, incorrect or grievous way or whose privacy has been infringed unnecessarily.

2.2.2.1. Legal basis

2.2.2.2. Functions/competences

The complaint must refer to a specific publication or programme and subject to the judgement of the Press Council is the individual journalist, editor or chief-editor and not the press magazine or broadcaster. That means that the working methods, activities and the way of publishing of the journalist himself and eventually the conduct in publishing of the chief-editor are subject to a statement of opinion by the Press Council. As a consequence of that the maintaining of the standard of good taste or general complaints against the press cannot be treated by the Press Council. Since 2003, it is possible to apply for an accelerated treatment of the complaint.

The Press Council has no other possibilities than to give opinion on a complaint about journalistic practice. This opinion will be published in the professional magazine for journalists and also sent to the national news agency (ANP) and to the media. The newspaper,

magazine or program concerned is requested to publish the judgment but cannot be forced to do so. The number of them which actually publish it is slowly growing.

Since 1993 there is also the possibility of mediation between complainant and journalist. Another change is, that the Press Council can give a statement of opinion about a case of principal interest like the use of stolen information by journalists (1995) and the practice of hidden camera's and microphone's (1996).

2.2.2.3. Organisation

In the Press Council Foundation most Dutch media participate by their representative organisations like the Dutch Association of Editors in Chief, the Dutch Union of Journalists, the Association of Dutch Newspapers and the Magazine Section of the Dutch Publishers Association. Also national and regional public service broadcasters as well as the big private broadcasters are members of the foundation. The members, the chairmen and the secretary of the Press Council are appointed by the board of the foundation. The Press Council consists of one chairman, three vice chairmen, ten member-journalists and ten members-not-journalist assisted by an independent secretary who is a lawyer. The chairman and his three substitutes are legal experts. The appointments are for four years and can be prolonged once. Each individual case is dealt with by a chairman and two member-journalists and two members-not-journalist.

3. Online Services

3.2.2. Self- or co-regulatory bodies

In the Netherlands three hotlines regarding internet content have been installed so far. The Internet Hotline Against Child Pornography (Internet Meldpunt Kinderporno) founded in 1995, was the first of its kind in Europe. The hotline run by an independent private foundation is an example of self-regulation of the Internet.

Furthermore there is the Hotline Discrimination on the Internet (Meldpunt Discriminatie Internet or MDI) which aims to counteract discriminatory expressions, mainly in the Dutch part of the Internet. The object of MDI is to screen complaints about discriminatory expressions based on creed, descent, sexual preference, gender, skin colour and/or age, and if necessary to take action.

Both hotlines are recognized by the Branch Association of Dutch Internet Service Providers (De branchevereniging van Nederlandse Internet Providers or NLIP). Other illegal content can be notified at the NLIP.

3.2.2.1. Legal basis

3.2.2.2. Functions/competences

The members of the hotlines do not take an active role in searching the Internet for illegal content. The hotlines only provide Internet users the opportunity to report illegal material.

When the hotlines receive a report, they try to contact the authors or senders and request the illegal material to be removed, if necessary police or justice will be notified.

3.2.2.3. Organisation

The Internet Hotline Against Child Pornography was the initiative of the internet providers joined in the NLIP as well as individual Internet users and is an independent private foundation. Since 1998 the hotline has an office run by volunteers.

The foundation of the Hotline Discrimination on the Internet was supported by NLIP, the National Association of Anti-Discrimination Bureaus, the Complaints Bureau for Discrimination Amsterdam and the Criminal Investigations Department of the Dutch Police (CRI). Its bureau is also run by volunteers.

4. Film/Interactive Games

There are no regulatory authorities for film except for the Netherlands Film Fund (Nederlands Fonds voor de Film) which is the national agency responsible for supporting film production and cinema in the Netherlands. It focuses on the quality and diversity of feature films, documentaries, shorts, animation en experimental films. The Fund's operations cover participation in development, production, distribution and marketing. It is also responsible for promoting a good climate for the national film industry. It was founded in 1993 after the merger of two other funds and its budget is provided by the government. It operates under the responsibility of the Ministry of Culture and receives most of its funds on the basis of four-year plans. In 2003 the Ministry of Finance provided an extra budget for commercial film.

Other funds are the Dutch Cultural Broadcasting Fund (Stimuleringsfonds Nederlandse Culturele Omroepproducties) with the aim to stimulate the development and production of cultural radio and television programmes by the national and regional public broadcasters and the CoBO fund (Stichting Coproductiefonds Binnenlandse Omroep) that encourages co-productions between national public broadcasters and independent film producers.

4.2.1.1. Legal basis

4.2.1.2. Functions/competences

Only producers based in the Netherlands can qualify for financial support. Individual directors and screenwriters can only apply without the involvement of producers to the department of research and development (O&O) or the artistic and commercial film commissioners. Individuals and organisations can receive grants for courses, workshops, publications and exhibitions.

The decision to support projects or persons is based on the quality of script and film plan, the talent of the professionals and the possibilities for screening. These decisions are based on the advice of experts. The time needed to process a request for support varies from four to twelve weeks, depending on the type of request. In 2003 The Netherlands Film Fund granted subsidies of the total amount of around € 22,500,000.

4.2.1.3. Organisation

The board of the Netherlands Film Fund consists of six persons. For the bureau of the Fund 28 people, including part time intendants (high advisors), are working. Furthermore there are several advisory committees divided in areas like short movies, long movies, animation productions, children productions and documentaries.

4.2.2. Self- or co-regulatory bodies

As mentioned before, NICAM is also responsible for assessing classification criteria for films and games and handling complaints. In 2003 NICAM has developed the European labelling system for games, called PEGI.

5. Summary

In the Netherlands most regulation regarding media applies to the broadcasting sector. The CvdM as an autonomous public authority is responsible for licensing and monitoring broadcasters on compliance to media regulation. Most rules are laid down in the Media Act and Media Decree. In case of contraventions the CvdM can impose sanctions. The telecom authority OPTA also has relevance to media, but only as far as issues of access to broadcasting networks are concerned. Like the CvdM, OPTA has sanction and licensing powers. For the use of frequencies a license of the Radiocommunications Agency, falling under the Ministry of Economic Affairs, is needed. Regarding the content of advertisements the Netherlands opted for self regulation.

The Advertising Code Commission, in which representatives of media and advertising organisations participate, monitors compliance to the Dutch Advertising Code which applies to advertisements in all types of media. After assessing an infringement of the code, the Advertising Code Commission can issue recommendations but no financials sanctions. Participating in the Advertising Code Foundation is voluntary but broadcasters will have to if they want to include advertisements in their programmes. In that respect they will be forced to opt for the system of self regulation.

A similar principle underpins the regulation of audiovisual content which might be (serious) harmful to minors. If broadcasters do not join the NICAM, set up by the audiovisual sector, they are not allowed to broadcast programmes only suitable for twelve year and older. Also they will fall directly under the supervision of the CvdM. This consequence is a strong stimulation for broadcasters to participate in the NICAM. If members of NICAM do not comply to the rules, serious fines can be imposed. Since the public authority CvdM keeps competences regarding broadcasters which do not participate in NICAM and furthermore can intervene if serious harmful programmes are broadcast, the system can be considered as truly co-regulation.

The NICAM system also applies to the sectors of video, DVD, games and films.

Further public interference in Dutch film sector is characterised by some funds, of which the Dutch Film Fund, subsidized by the Ministry of Education, Culture and Science, is the biggest.

In the written press sector the Press Fund can allocate subsidies under certain conditions, laid down in Media Act. The Press Council, based on self regulation, is competent to give opinions on journalistic practices of individual journalists, also in the field of broadcasting. With regard to press mergers the sector agreed to respect a one third market share limit as a principle. Furthermore the CvdM monitors concentration developments and trends and the National Competition Authority can prohibit mergers or agreements if free competition will be disturbed.

In the field of online services there is only self regulation of content in the area of hotlines which have been launched by the sector.

3.19. Poland

Introduction

After The World War Two market of media was constructed by the governing political option, i.e. communist party to realize its ideological needs. Until 1989 media system was completely centralized and dependent on communist party, the freedom of speech was just a pure fiction. There was no any independent radio station or TV channel. The censorship was institutionalized to review and accept every program to be aired. Censors had the right to interfere in any program and demand including changes or cancel it without explanation as they found it dangerous for the party.

All newspapers were controlled by the communist party. Extremely strong control was established with respect to television (started in 1952) and radio.

This situation existed until mid-70-ties. Last years of the decade brought underground press vigorously investigated by the regime. In 1980, Solidarity Movement enabled “illegal” press official activity but by virtue of Marshall Law of 13 December, 1981 they were de-legalized and came back to the underground activity again. Between 1983 and 1989 there was several hundred titles edited in the underground all around the country.

1989, the year of transformation has changed everything. The political pluralism, free media and free market became real. It resulted with establishing of many private televisions, radio stations and newspapers. Since 1993 Krajowa Rada Radiofonii i Telewizji (National Broadcasting Council) exists, which is a constitutional body to regulate the market and observe keeping the standards.

Constitutional law

Polish media system is sourced and is an effect of constitutional guarantees. The Constitution of 1997 in Art.14 states that Republic of Poland ensures freedom of the press and other means of social communication.

Following Art.54 the freedom to express opinions, to acquire and to disseminate information shall be ensured to everyone. Preventive censorship of the means of social communication and the licensing of the press shall be prohibited. The Acts of Parliament may require the receipt of a permit for the operation of a radio or television station however.

Only television and radio channels require a license to be issued by National Broadcasting Council which concentrates, during issuing the license, on formal requirements and financing sources exclusively.

According to Art.213 the National Broadcasting Council safeguards the freedom of speech, the right to information as well as safeguards the public interest regarding radio broadcasting and television.

The general overview of the market

Television market

Polish Television was established in 1950s. Permanent broadcasting has began in 1953. All TV programs until 1989 were owned, governed and controlled by the State.

- 1952 the Channel 1 starts;
- 1974 Channel 2 starts;
- 1992 Channel “Polonia” starts; this channel is dedicated to Poles living abroad;
- 1990-2005 – establishing of the regional divisions of Polish Public Television broadcasting locally; presently there are 16 local broadcasters in the following cities: [Bialystok](#), [Bydgoszcz](#), [Gdansk](#), [Gorzow Wielkopolski](#), [Katowice](#), [Kielce](#), [Krakow](#), [Lublin](#), [Lodz](#), [Olsztyn](#), [Opole](#), [Poznan](#), [Rzeszow](#), [Szczecin](#), [Warszawa](#), [Wroclaw](#);
- 1989-1993 broadcasted 19 illegal channels apart of Public TV which were closed after adopting the Broadcasting Act of December 29, 1992;
- 1992 Channel “Polsat” starts as the very first legal commercial television (broadcasting at the beginning through Eutelsat II and in addition since 1994 through the cable);
- 1998 starts cable platform “Cyfra+” and on 1999 starts “Polsat cyfrowy” becoming two leading digital platforms.

Audience share

In 1991 there were 11.3 million registered TV`s (in 1970 – 4.2 million).

In 2003 3,5 million houses had satellite antennas and 1,3 digital receivers

(“Cyfra+” - 700 thousand, “Polsat Platform” - 300 thousand).

Cable sector in that time amounts up to 4,5 million homes. The leader is “UPC Polska” (1.2 million).

The range of broadcast:

- Public Television (TVP) - 100% of the country
- Polsat - 90%
- TVN - over 40%
- Convent of St. Francis (Puls TV) - 15%

Audience share in 2002:

- TVP – 46%
- Polsat – 18.1%
- TVN – 16.1%

Audience share in March, 2005:

- TVP 1 – 24,8%
- TVP 2 – 22%
- Polsat – 17,1%
- TVN – 15,8%
- TVP 3 – 4,2%
- TV 4 – 2,3%
- TV 7 – 1,5%

Radio market

The Polish Radio started 80 years ago, on 1 February 1925.

Presently there are several nation-wide radio stations:

- PR1
- Trojka (PR3)
- RMF FM
- Radio Zet
- Radio Pin
- Radio Plus
- Radio ESKA
- TOK FM
- Radio WAWA

The first two belong to Public Radio however all of the rest are commercial, private stations.

And there are over 830 radio FM local broadcasters.

Audience share looks as follows (2003):

- PR1 - 18%
- Trojka (PR3) - 6,7%
- RMF FM - 28,3%
- Radio Zet - 24,3%
- Radio Pin - n/d
- Radio Plus - n/d
- Radio ESKA - n/d
- TOK FM - 0,5%
- Radio WAWA - 1,6%

1. Broadcasting

1.1. Regulatory framework

1.1.1. Legal provisions

The Broadcasting Act of 29 December 1992 frames the general structure of country broadcasting media sector and stipulates all conditions for obtaining the licence for broadcasting. This law regulates in particular:

- aims and tasks of radio and television broadcasting,
- competencies of the National Broadcasting Council as the State authority competent in matters of radio and television broadcasting i.e.:
 - to safeguard freedom of speech in radio and television broadcasting,
 - to protect the independence of broadcasters and the interests of the public, as well as ensure an open and pluralistic nature of radio and television broadcasting,
 - to supervise the activity of broadcasters,
 - to organise research into the content and audience of radio and television programme services,
 - to determine the licence fees, fees for granting broadcasting licences and registration,
 - to determine the manner in which the broadcaster keeps record of the transmission time and other data, etc.
- the percentage of quarterly transmission time to programmes originally produced in the Polish language and the percentage of quarterly transmission time for European works – excluding news, advertising, teleshopping, sports events, teletext services and games,

- the general guidelines for advertising and especially what kind of advertising is prohibited,
- the general guidelines for sponsoring of programmes,
- the general guidelines for what kind of program content is prohibited and values to be observed by broadcasters,
- the structure, tasks of Public Radio and Television and general terms of their activity,
- the terms of licensing procedure and criteria to be met by applicant to obtain the licence for broadcasting,
- the terms of retransmission of programme services in cable networks and its registration,
- the licence fees,
- the liability for violating the law by broadcasters.

1.1.2. Administrative regulation/rules

The other particular issues are resolved by regulations of the National Broadcasting Council like:

1. Regulation of the National Broadcasting Council of 24 April 2003 concerning procedures related to the presentation of standpoints with regard to crucial public issues by political parties, trade unions and of employers' organizations in public radio and television;
2. Regulation of the National Broadcasting Council of 21 August 1996 concerning the procedure related to presenting and explaining the policy of the state by supreme national authorities public radio and television;
3. Regulation of the National Broadcasting Council of 1 September 1998 concerning procedures related to the division of free broadcasting time, preparation, emission, and information about emission time before elections to borough, county, and voivodeship councils;
4. Regulation of the National Broadcasting Council of 4 February 2000 concerning the fees for granting licences to transmit radio and television programme services;
5. Regulation of the National Broadcasting Council of 6 July 2000 concerning the principles of advertising and teleshopping in the radio and television programme services and detailed rules regulating the restraints on interruption of fees for granting licences to transmit radio and television programme services;
6. Regulation of the National Broadcasting Council of 6 July 2000 concerning sponsoring programme items and other broadcasts;

7. Regulation of the National Broadcasting Council of 6 July 2000 concerning the methods of recording and preserving programme items, advertisements and other broadcasts by broadcasters;
8. Regulation of the National Broadcasting Council of 20 November 2001 concerning the detailed methods of classifying, transmission and announcing programs and other broadcasts that might impair the physical, psychological or moral development of minors.

1.1.3. Other provisions/codes of conduct

There are some other provisions being the codes of conduct which may apply to broadcasters from time to time e.g.:

1. Rules of Journalists' Ethics of Polish Public Television adopted on 10 January 2001;
2. Ethics in Media Card signed on 29 March 1995 by leaders of Polish press and media organizations;
3. Code of Ethics of the Polish Journalists Association,
4. Code of Professional Conduct in Polish Radio adopted on 9 September 2004.

1.2. Regulatory Authorities

National Broadcasting Council

1.2.1.1. Legal Basis

According to Art.213 the National Broadcasting Council safeguards the freedom of speech, the right to information as well as safeguards the public interest regarding radio broadcasting and television. This provision should be interpreted rather as some sort of directive addressed to the legislator who should take it upon consideration during formulating particular competence of the Council and its members – in the light of major aims and directions of Council's activity. Said provision does not give the Council any concrete power. The Council, being included in between of institutions safeguarding the law, should observe whether constitutional rights i.e. freedom of speech and freedom of information are met (especially by public and private broadcasters). In some circumstances those human rights can be limited by the rights of individual persons or by the common (public) interest. And this is exactly Council's duty to balance those two values without giving any priority. This competence is especially executed by legislative and control rights. The Council issues regulations and, in individual cases, adopts resolutions. In case of material breach of said freedoms the Council is in power to withdraw the broadcasting license but it may happen in extraordinary cases only. In practice, the Council announces its negative opinion about some actions of broadcasters from time to time, but does not impose any legal restrictions.

Other provisions can be found in the Act on Telecommunications, as last amended in 2002.

1.2.1.2. Organisation/Functions

The members of the National Broadcasting Council are appointed by the Sejm (i.e. the lower chamber of Polish Parliament), the Senate and the President of the Republic. A member of the National Broadcasting Council can not belong to a political party, a trade union or perform public activities incompatible with the dignity of his function (Art.214).

Every year the Council submits to the Sejm, the Senate and the President an annual report on its activities during the preceding year, as well as information concerning key issues in radio and television broadcasting. Each year the Council presents an annual account of its activities as well as information on key issues in radio and television broadcasting to the Prime Minister. The Sejm and the Senate accept by issuing the resolutions or reject Council's report. A resolution concerning acceptance of the report may contain remarks and reservations.

In case of rejection of the report by both the Sejm and the Senate, the term of office of all the members of the Council expires within 14 days from the date of the last resolution to this effect. However the Council's term of office shall not expire unless so approved by the President.

The Act on Telecommunications stipulated that the telecommunications activities which constitute business activities are regulated and subject to register; the President of the Office of Telecommunications and Post Regulation (URTIP) is authorized body to keep the register (art.10.1 and 2) and is the authority in this field. Entry into register, is carried out on the basis of a written application submitted by the undertaking; the President of URTIP notifies the Chairman of the NBC in the cases within the scope of conditional access systems or EPG provision.

In media sector, concerning the digital environment comprising conditional access systems, electronic program guides, multiplexing of digital signals (Art.10.3), the authorized body is the Chairman of the NBC. The Chairman is also authorized to grant, change or revoke the spectrum rights for spreading and distributing radio and television programs and in above mentioned scope (Art.10.3) and carries out the analysis of the relevant market (Art.21.1).

Due to the very precise and complex procedure the two bodies cooperate in a very close manner.

2. Press

2.1. Regulatory framework

2.1.1. Legal provisions

The constitutional basis for press activity is Art.14 of the Constitution saying that Republic of Poland ensures freedom of the press and other means of social communication. The freedom of speech, acquisition and dissemination of information is guaranteed by the Art.54.1. These rules are complemented by Art.49 stating that the freedom and privacy of communication is ensured by the Constitution. According to Art.32.2. no one shall be discriminated against in political, social or economic life for any reason whatsoever.

The press activity is also regulated by the Press Law of 26 January 1984, amended eight times. According to said Law it is applicable to all journalists and editors of any kind of press titles and TV or radio programs.

Additional legal frames are imposed by Civil (Art.23, 24, 448) and Criminal (Art.212- 214) Codes which determine the rules of journalist/editor liability for libel.

2.2. Regulatory authorities/bodies

2.2.1. Authority/ies

The Polish law does not stipulate any criteria who is a journalist. Because there is no obligatory membership to journalists' organization and there is no any other formal criteria of being a journalist, the journalist is everyone who published some paragraphs or other works in the press from time to time or even once.

2.2.2. Self- or co-regulatory body/ies

There are two competitive journalists' associations in Poland: Stowarzyszenie Dziennikarzy Polskich and Stowarzyszenie Dziennikarzy RP and several minor ones: Katolickie Stowarzyszenie Dziennikarzy, Syndykat Dziennikarzy Polskich, Izba Wydawców Prasy, Krajowa Izba Producentów Audiowizualnych and two unions: Związek Zawodowy Dziennikarzy and Związek Zawodowy Pracowników TVP SA.

Izba Wydawców Prasy (Press Editors' Chamber) is presently composed of 115 members. In between of them are big newspapers editors like Polskapresse, Orkla, Agora, Media Express, Gazeta Pomorska Media and editors of magazines e.g. Polityka Sp-nia Pracy, AWR Wprost, H. Bauer, Axel Springer Polska, Gruner+Jahr Polska, Edipresse Polska, Hachette Filipacchi Polska, AWR Aratus, the editors of specialistics press like Infor, Bonnier Business Polska, Polskie Wydawnictwo Transportowe and regional press editors. Izba Wydawców Prasy represents editors' interests in front of public authorities.

There is also the Związek Kontroli Dystrybucji Prasy (Press Distribution Control Union), being the member of IFABC. The members of the Union are most representing editing companies and it controls most of the press titles being edited all over the country.

The Media Charter of Ethics. It was signed by all existing journalists' organisations and major media organisations. The signatories decided to create the Media Council of Ethics - a body consisting of well-respected media professionals who would guard the principles of the Charter, providing interpretation and informing on cases of ethical standards' violation. The journalists and media organisations are continuing to work on a more detailed code of conduct. In order to organise this work they created an institutional body, the Conference of Media.

In the Public Television exists also Komisja Etyki (Ethics Commission). Its main task is to investigate observation of the professional work standards by editors and journalists working in (or for) Public Television.

3. Online services

Online services sector is backward still however it grows up quickly. The number of registered broadband Internet users amounts to 300 thousand. There is over 5 million Internet users per week. From 1 March 2005 the Internet services are imposed with 22% VAT. To reduce negative consequences the last Tax Law amendment enables Internet users to deduct up to 760 zlotys (app. 190 euros) annually from their income.

The access to internet services is realised via telecommunication network, which means transmission systems and switching or routing equipment and other resource which enable the emission, reception or transmission of signals by wire, by radio, by optical or by other electromagnetic means irrespective of their type (Art.2.p. 35 of Telecommunication Law).

3.1. Regulatory framework

3.1.1. Legal provisions

Regarding the media sector in the context of internet one of the most important premises is clear-cut distinction between the regulation of contents and technical transmission. From this point of view it ought to be stressed that there is no special regulation for internet content in Poland; therefore the existing legal provisions in the scope of *Broadcasting Act*, *Press Law*, *Copyright and related rights Act* and wider the Penal and Civil Code, etc. should be applied, taking obviously into consideration the international character of internet.

Concerning the technical issues of digital broadcasting and internet – access the relevant act is the *Telecommunication Law*. It is important to stress that in the case e.g. of schools, public continuous education centres, public libraries, the expenses related to network connection service provided to ensure broadband internet access is financed from the national budget (Art.81, 100).

According to the presumptions included in the national strategy towards the information society development, which is in accordance with EU standards in this scope, two *Acts* were enacted. The first one is the Act on electronic services of 18 July 2002¹ consists primarily of rules, concerning mainly the duties of service providers and data protection issues, the second one is the Act on the electronic signature of 18 September 2001². It is also to be mentioned that according to the strategy of the National Broadcasting Council³ conditions allowing to create Polish information and cultural resources in the internet should be provided. *"In the line with world-wide trends, feeding of program contents into the cyber space should consist promotion and creation of conditions for the operation of radio and TV broadcasters ...in the Internet and for their transformation into multimedia content producers and distributors."*

¹ Journal of Laws of 2002, no. 144, item 1204.

² Journal of Laws of 2001 No. 130, item 1450.

³ Included in *White Paper* of March of 2004 entitled: *"The Polish State`s Electronic Media Policy in the context of the European Audiovisual Policy"*. www.krrit.gov.pl English version – Bulletin No. 11 and 12/2004.

4. Film/Interactive Games

4.1. Regulatory framework

4.1.1. Legal provisions

Concerning cinematographic film issues the regulatory framework is provided by *Cinematographic Law* of 16 July 1987⁴. The *Law* regulated the activities connected with a film production, distribution, diffusion of a film culture and determines the organisation and financing rules of Polish cinematographic (which comprises film creation and production, protection of cinematographic art, scientific researches, education, etc. - art.1, 2).

Since 1989 there have been a lot of drafts of amendments of this *Law* as a result of difficult organisational and economical situation of Polish cinematography, which has long and valuable tradition and world renown. In the *draft of amendments* of 11 December 2003,⁵ which is now under the final stage of parliamentary procedure, the system transformation is predicted. The most important premises included in the *draft* are as follows:

- enacting an Film Institute as an institution responsible for the development of the sector of cinematography – director and Institute Council members shall be appointed by the *Minister*;
- creating the cultural policy aimed at the development of Polish film market, e.g. *via* supporting the ambitious, artistic not only strictly commercial film production;
- ensuring the wider range of revenues including e.g. trade in film rights, and different budget donations, according to the provisions stipulated in the *Draft*; the Institute could be *inter alias* supported with the budget subsidies, and obligatory exposition levies and contributions of television and cable broadcasters, film distributors, etc..

4.2. Regulatory authorities/bodies

4.2.1. Authority/ies

The minister responsible for the matters of culture and protection of national heritage should play the special governmental role in:

- ensuring for the society the universal access to Polish and world-wide film creation,
- supporting the development of the sector within the frame of projecting and planning cultural policy, preserving a film creation sources, etc (Art.8).

⁴ Consolidation text: Journal of Laws of 2003 No. 58, item 513; www.mk.gov.pl (MK – Ministry of Culture); own translation.

⁵ No. 2598/2003; www.sejm.pl (“sejm” – the lower chamber of Polish parliament).

3.20. Portugal

Introduction

Current state of the art of the Portuguese media regulatory system is the result of a process started up around thirty years ago, when a radical cut was made against an authoritarian political system that persisted for half a century and with the adoption of a new Constitution in 1976 that has established the essential basis for the growing consolidation of a democratic system.

If asked about such a subject, a sceptical person would might respond nevertheless that, in its present shape, the Portuguese media regulatory system appears to be nothing more than just a contradiction in terms – since it seems no longer capable to effectively ensure the correct performance of the tasks that we was committed to and therefore to fulfil the objectives of general interest underlying content regulation, namely the safeguard and promotion of freedom of expression, pluralism, protection of certain vulnerable publics, cultural diversity and of other relevant values and fundamental rights of democratic societies, along with supervision and regulation of the markets.

Particularly over the last years, this topic has been discussed by different extracts of the Portuguese society and, more thoroughly, analysed among professionals and representative parties of the sectors involved. Consensus has emerged on the following points:

- Media regulatory system currently in practice is based on a wide, complex and often inconsistent set of responsibilities and competences assigned to several entities with different profiles and regulatory strategies. The same responsibility and/or competence is sometimes committed to two or more different authorities, while in other occasions negative conflicts arise;
- Coexistence of different regulatory authorities with direct or indirect responsibilities in the media sector gives raise to some concerns, such as: multiplication and overlapping efforts between such entities, with consequences on the efficiency of the work done and on the regulation and supervision of the markets; risks that similar facts or conducts may be analyzed and evaluated differently, and on the basis of identical or different patterns; defective or non-existent articulation between different regulated sectors;
- Legal framework in force proves to be sometimes rather detailed and complicated, often leaving excessive room for interpretation, without allowing flexibility, though. Legal provisions and their application are mostly static, overweighted and unable to respond in satisfactory terms to the pressing need of new market and technological demands and challenges;
- Levels of law enforcement in this domain are also worrying, and effective application of sanctions for non-compliance is unsatisfactory, leading frequently towards impunity;

- Vulnerable and fragmented regulatory intervention gives also cause to lack of certainty and of predictability of decisions, with inherent reflexes in market failures;
- Low experience of co and self-regulatory mechanisms, even in domains particularly appropriated for its implementation.

Regulatory intervention thus becomes inefficient, in a word. This gives cause to particular consequences and concerns with enhanced impact in such a sensitive sector. The impressive need for substantial modifications in the system become almost self-evident, particularly in the context of a well-consolidated model of respect by fundamental rights, and in a sector where market has been broadened and wants to keep growing, despite its weak points and fragilities.

In the document «Novas Opções para o Audiovisual» (New Options for the Audiovisual - December 2002)⁽¹⁾, the Portuguese Government arrived to similar findings and concluded for the need of an extensive restructuring of the media sector ⁽²⁾, extended to three main points: integration between television, telecommunications, culture and education; regulation; interaction with private operators and content producers.

Most of modifications taken so far concern basically the relations between the State and public service radio and television broadcasting, and are reflected in the approval of a package of legal instruments devoted to the restructuring of the State's entrepreneurial sector in the audiovisual domain, the implementation of a new model for the financing of public service radio and television broadcasting, and the adoption of a new Television Act (see *infra*). Some steps were also already made in terms of regulation and, in particular, with respect to the future creation of a new comprehensive regulatory authority for the media – a measure largely hampered by the requirements of a necessary constitutional revision procedure, which was only achieved in July 2004. It is expected that the newly elected Portuguese XVII Constitutional Government will now carry the work that still need to be done in this context, involving the effective creation of a new regulatory authority with a renewed and strengthened statute, and endowed with all the necessary powers for the accomplishment of his enhanced responsibilities as a regulator, supervisor and representative of the media sector in Portugal. It is foreseen that this structure will work along but separately with *ICP-ANACOM*, the regulatory authority for the communications sector (postal and electronic communications) in Portugal. Future full integration and merge of these two entities is a scenario to be envisaged in the future, but not foreseen at the moment. Intensive articulation

⁽¹⁾ Available (only in Portuguese) at:

http://www.portugal.gov.pt/Portal/PT/Governos/Governos_Constitucionais/GC15/Ministerios/PCM/MP/Comunicacao/Outros_Documentos/20021217_MP_Doc_Opcoes_Audiovisual.htm.

⁽²⁾ Based, at least in part, on the previous work done by a Working Group created in the context of the «Convergence and Regulation» initiative, launched in June 2001, with a view to provide the Government with the analytical inputs necessary for the definition of an orientated strategy towards the development of the audiovisual and telecommunications sectors in a converged environment.

and cooperation with the regulatory authority for competition *Autoridade da Concorrência* is also considered as an essential point.

Constitutional law

At a constitutional level, provisions directly relevant for the media sector are particularly found in Arts.37 up to 40 of the Portuguese Fundamental Law of 1976. Considered altogether, they provide an extensive legal framework over a important set of liberties and rights of expression and information.

Article 37 of the Constitution deals with the liberties and rights of expression and information in general. Two different and complementary sets of rights are recognised in this provision, the **right of expression** and the **right of information**, under the following terms: «Everyone has the right to express and publicise his/her thoughts freely, by words, images or other means, and the right to impart, obtain and receive information without impediments or discriminations»⁽³⁾. Reference to the inexistence of any impediments does not obviously mean that no limits exist upon such rights; still, within these limits, unjustifiable limitations to the exercise of such rights shall not be allowed.

One of the most important logical and juridical consequences deriving from such rights is the prohibition of **censorship** – which is understood in very broad terms («any kind or form of»), being aimed at the State or to any other entity, and intended to cover a whole set of *de facto* or *de jure* possible examples, whatever they might occur on *a priori* or *a posteriori* basis.

Some infringements to the limits to the rights of expression or information may give cause to a criminal or an administrative punishment, depending on the nature and importance of the legal value protected. Offences to certain values such as those related with the good name or reputation of a person will be judged more severely, since that they enjoy protection by criminal law. Others will deserve a lighter punishment (usually a financial penalty) based on the application of particular rules by independent administrative authorities, foreseen in Art.267(3) of the Constitution, and «in accordance with the law».

This Article also deals with the **right of reply and of rectification**, an institute with large traditions in the Portuguese legal system. From a constitutional point of view, this right is closely linked with the rights of expression and information, and he is not exercised necessarily and only over the media; hence, its insertion in Article 37 and not in Art.38.

Freedom of the press is guaranteed in Art.38 and in broad terms, comprising not only written or the printed press, but the whole qualified exercise of the rights of expression and of information through any mass media, regardless of the concrete terms by which it is assumed. Several of the specifications of the freedom of the press are listed in Art.38, without prejudice of the convenience or the need of its further regulation by (ordinary) law: freedom of expression and of creation for journalists; right of journalists to intervene in the mass media editorial orientation; right of access to sources of information; right to the protection of professional independence; right to professional secrecy of journalists; right to appoint

⁽³⁾ Article 37(1).

editorial boards by elections. The same provision also refers to the 'classical' right to found newspapers and any other publications without prior authorisation, deposit or qualification, which lies at the heart of the freedom of the press and its historical claims. Although the opposite regime is applicable for the access to radio and television private activity⁽⁴⁾, the need for a license or an authorisation have been regarded as consistent with constitutional requirements.

Under the aegis of Art.38, several guarantees of **independence from political and economic powers** and of **pluralism** were also extensively considered, with general requirements attached to the importance of transparency ⁽⁵⁾, and particular concerns on the specialised nature of «companies that own general information media» and on the prevention of their concentration⁽⁶⁾.

This Article also determines that the existence and operation of a **public service of radio and television** shall both be guaranteed by the State ⁽⁷⁾. Similarly to other media of the public sector, its structure and operation shall be independent from the political powers and able to safeguard the possibility for different lines of opinion to be expressed and discussed ⁽⁸⁾. The Constitution is however silent on the questions to know *inter alia* on what should be the main principles and specific obligations assigned to public service broadcasting; these are set in law and further specified and developed in the concession contracts.

Article 40 of the Constitution sets out the general rules applicable to the **right of TV broadcasting time** (*direito de antena*) and to **the right of reply and political argument** (*direito de resposta e de réplica política*), whose exercise shall meet the objective criteria prescribed by law.

Article 39 of the Constitution foresees the **institutionalisation of an independent authority** (the AACS – Alta Autoridade para a Comunicação Social) incumbent on the defence of the rights and liberties appointed *inter alia* in Arts.37, 38 and 40. AACS was originally created in 1989 ⁽⁹⁾, at the time of the second revision procedure of the Portuguese Constitution, and enshrined in its Art.39. This provision was further amended in the fourth (1997) and sixth (2004) constitutional revision procedures. Along with other provisions, Art.39 was then extensively modified, in line with the purposes foreseen by the Portuguese Government in its initiative aimed at restructuring the audiovisual sector (December 2002), where the creation of a new comprehensive regulatory authority for the media was envisaged as a necessary and adequate substitute for AACS, in a near future. Notwithstanding this fact, it was expressly ensured that, in the meantime, the latter «shall continue to perform its functions until the installation of the members of the regulatory entity referred to in Art. 39 of the

⁽⁴⁾ Article 38(7).

⁽⁵⁾ Article 38(3).

⁽⁶⁾ Article 38(4).

⁽⁷⁾ Article 38(5).

⁽⁸⁾ Article 38(6).

⁽⁹⁾ See details *infra*.

Constitution»⁽¹⁰⁾. At this stage, it is impossible to advance any more details in this subject. What can be taken for granted is that the newly elected Government has already publicly assumed its intentions to carry on with the work done.

In order to entirely meet with the achievement of public goals foreseen by media regulation, it has to be kept in mind that the abovementioned jointed set of Articles have obvious connections with other rights and principles widespread in the Constitution: for example, on the important topic of the protection of minors, attention must also be paid to, e.g., the guarantee of the personal dignity of every human being, under the terms of the law ⁽¹¹⁾, or to the right of the children to be protected by the community and the State with regard to their full development ⁽¹²⁾. Also with an enormous importance are also, e.g., the rights to personal identity, to good name and reputation, to image, to speech, to privacy ⁽¹³⁾, to moral and physical integrity ⁽¹⁴⁾, etc.

Also, Art.18 of the Constitution states the important principle that «the constitutional provisions relating to rights, freedoms and guarantees shall be directly applicable to, and binding on, both public and private bodies».

Public administration plays obviously an important role in the pursuit of public policy goals in terms of media regulation. With a particular interest in this context is Art.267(3) of the Constitution, which states that «independent administrative entities may be established by law», and understood as the main constitutional basis under which several regulatory authorities for different sectors of activity have emerged in Portugal over the last years. However, along with the existence of these public entities endowed with regulatory functions, the Portuguese constitutional system does not prevent the existence of co and self-regulatory mechanisms.

1. BROADCASTING

Given the self-evident importance attached to *television* and *radio* broadcasting, the following analysis of their regulatory framework shall be made separately.

A) TELEVISION BROADCASTING

1.1. Regulatory framework

1.1.1. Legal provisions

Television broadcasting sector is fundamentally governed by the *Lei da Televisão*, adopted on 22 August 2003 (hereinafter referred to as «the *Television Act*»)⁽¹⁵⁾, being its provisions

⁽¹⁰⁾ Article 44 of Constitutional Law 1/2004.

⁽¹¹⁾ Article 26(3) of the Constitution.

⁽¹²⁾ Article 69 of the Constitution.

⁽¹³⁾ Article 26(1) of the Constitution.

⁽¹⁴⁾ Article 25 of the Constitution.

⁽¹⁵⁾ Law 32/2003, of 22 August 2003.

intended to apply to all television operators under portuguese jurisdiction. Declared to be one of the central pieces of the audiovisual restructuring plan carried out by the Government during 2002-2003, the new Television Act, however, and *per se*, has not introduced substantial changes to the legal framework previously in force⁽¹⁶⁾⁽¹⁷⁾. This new legal instrument lays down the conditions required for the access and exercise of television broadcasting activity, understood as «the organisation of programme services in the form of non-permanent images and sounds transmitted by means of electromagnetic waves or any other appropriate vehicle over the air, or by wire, and able to be received by the general public, excluding communication services available only upon individual request»⁽¹⁸⁾. Such a concept is vital for capturing the «essence» of TV broadcasts and to help distinguish these from point-to-point audiovisual communications, subject to the framework of the so-called information society services. The appointed distinction, though, failed to eliminate all grey areas that continues to exist between their blurred boundaries and, as a consequence, lack of legal certainty persists. Moreover, and despite its intended technological-neutral approach, it remains at least controversial the question to know on whether the provisions of the Television Act apply to other forms of streaming programming services than ‘conventional’ broadcast television, namely point to multipoint services, with a minimum relevant editorial content, provided in the internet. Furthermore, and under its current terms, new Television Act seems also helpless to apply to new forms of TV broadcasting that continue to emerge, such as are the cases of the so-called corporate TV transmissions. On the other hand, and conversely, several provisions of the Television Act in force (e.g., the ones related with protection of minors) now expressly apply to retransmissions, although these are not conceptually comprised in its field of application.

Even if it can be affirmed that the Television Act currently in force strikes an adequate balance between the rights and expectations of the different actors therein involved (State, broadcasters, advertisers, rights holders, general public), it is nevertheless also true that this is a legal instrument whose application is (still) clearly intended for the analogical environment. Although some aspects concerning migration to digital were taken into account in some degree⁽¹⁹⁾, it is very likely that in future problems arise similar to those already experienced in the past, with the failed and postponed launching of digital terrestrial transmissions⁽²⁰⁾.

⁽¹⁶⁾ Law 31-A/98, of 14 July 1998 – the former Television Act.

⁽¹⁷⁾ Most important modifications were mainly focused on rules devoted to public service television broadcasting; see also (*infra*) Law 30/2003 (devoted to restructuring the State entrepreneurial sector in the AV domain) and Law 33/2003 (approving the model for the financing of public service radio and television broadcasting), of 22 August 2003.

⁽¹⁸⁾ Article 2(1), lit. (a) of the Television Act.

⁽¹⁹⁾ In the future awarding of licenses for digital terrestrial broadcasts with national coverage, transmission capacity will be reserved for television programme services held by TV licensed operators or concession holders on the date this law comes into effect: Art.18(3) of the Television Act.

⁽²⁰⁾ In 2001, and under the terms of Decree-Law 381-A/97, of 30 December 1997, a license for the exploitation of a DVBT (Digital Video Broadcasting for Terrestrial Television) platform was launched on the basis of a public tender. A license has been granted, but later revoked by the Government on 25 March 2003, on the

Access to TV broadcasting activity by private operators is subject to different rules, depending on whether the broadcasts will use or not terrestrial hertzian spectrum. In the first case, the granting of a license, preceded by a public tender, is required; in the second case it will suffice a mere authorisation, awarded on the basis of a (comparatively) lighter procedure⁽²¹⁾. Licenses and authorisations are in both cases granted by the AACS, in a process where the ICS and the ICP-ANACOM also intervene⁽²²⁾, for a period of 15 years, (renewable in principle for identical terms), and always at an individual basis, i.e., a license/authorisation for each tv programme service to be supplied by a given tv operator⁽²³⁾. Each license or authorisation should specify the range of coverage (international or national)⁽²⁴⁾ of the tv programme service in question, and also the nature of their access by viewers concerned (free-to-air or conditioned access) and type of content/programming (thematic or generalist). These classifications have natural and frequent repercussions at the level of its legal regime.

In which regards to competition issues, it has to be noted the absence of specific anti-trust rules in the new Television Act, which refer to the application of the general framework for protection and promotion of competition, currently set in the so-called *Lei da Concorrência*, of 2003 (the *Competition Act*)⁽²⁵⁾⁽²⁶⁾. However, concerns about transparency on media ownership were ensured in the new Television Act.

Television broadcasting activity is based on the freedom of programming as a general (and very broad) principle, and neither the public administration nor any organ of sovereignty, with the exception of the courts of law, shall impede, limit or impose the broadcasting of any programmes⁽²⁷⁾. Among the exceptions admitted to this principle are important values such as the safeguard of public order, prevention of crime and the respect for the fundamental rights of others. In particular, provisions concerning protection of minors and human dignity as adopted by the TWF Directive and by the European Convention on Transfrontier Television

grounds that not all the necessary conditions were met for the introduction of digital terrestrial television in Portugal.

(21) Despite the differentiation established in the Television Act between licenses and authorisations, it has to be kept in mind that Art.38(7) of the Portuguese Constitution states that «radio and television stations shall operate only with a *license*, granted on the basis of a public tender, under the terms of the law». It seems however that the distinction made in the Television Act is well founded, and that doubts about its constitutionality could have been definitely eliminated with the constitutional revision procedure of 2004.

(22) AACS – Alta Autoridade para a Comunicação Social; ICS – Instituto da Comunicação Social; ICP-ANACOM – Autoridade Nacional das Comunicações. See *infra*, «Regulatory authorities».

(23) Until new legislation is adopted, the appointed rules will continue to be complemented by Decree-Law 237/98 (rectified by Statement of Rectification 13-B/98, of 13 August 1998), which develops the legal framework applicable to licensing and authorisation of tv programme services.

(24) Although the Television Act also foresees television programme services with regional and local coverage, it leaves the definition of its specific legal framework to legislation to be further adopted

(25) Law 18/2003, of 16 June 2003.

(26) Media concentration measures are however, under certain terms set in the Television Act, subject to AACS' intervention: see Art.4(2) and (3), and *infra*.

(27) Article 23(2) of the Television Act.

were fully implemented into national law and, under certain terms, complemented by agreements signed between the main Portuguese TV operators (see *infra*, 1.1.3). AACS has also and repeatedly shown particular attention on this issue, with the adoption of deliberations and directives (see *infra*).

Provisions on the so-called transmission quotas as foreseen in European legislation were also duly implemented in Portuguese Television Act. National legislation provided as well for provisions mainly related with cultural and language policy goals (certain percentages of programmes in Portuguese language), specific types of content requirements and origins and financing of TV productions ⁽²⁸⁾.

Although public service broadcasting remains entrusted to RTP, it is now expressly admitted that also private operators may, under certain conditions, contribute to fulfil some of its specific missions. Main principles and specific obligations assigned to PSB' RTP are set in law and further specified and developed in the General and Special Public Service Television Concession Contracts signed with the Government in 2003, with respect to programming standards, provision of specific services, in-house production, coverage, innovation and technological development, audiovisual archives, cooperation with Portuguese speaking countries, advertising time limits. Concession contracts also contain detailed provisions on the financing of PSB, to which important modifications were introduced: fixation *ex-ante* of the value of compensation indemnities to be granted on a annual basis to RTP, complemented by part of a newly created contribution for the audiovisual and also with advertising revenues (substantially reduced, though). Monitoring of the compliance with the terms of such contracts is of the exclusive competence of the Ministry of Finance and of the member of the Government responsible for the media sector.

National law also deals with the important topic of acquisition of exclusive rights, as established at European level, and with the additional question of the right to information by the public by ensuring access to short extracts of events subject to exclusive rights, similarly to the solution provided by Art.9 of the ECTT. Further administrative rules were adopted with regard to this issue (see *infra*).

As a means to ensure editorial transparency as well as the establishment of deontological and ethical commitments with audiences concerned, each TV programme service should adopt an editorial statute ⁽²⁹⁾.

⁽²⁸⁾ By indirect means, all television operators give their contribution to the increase of production and distribution of television programmes, since that, under the terms of Art.28 of Law 42/2004, of 18 August 2004 (Law of Cinematographic and Audiovisual Arts), they are obliged to pay a tax of 4% on their advertising income, which is used to fund the Portuguese cinema and audiovisual aid mechanism. For the same purposes, Law 42/2004 also foresees the payment of a 5% tax on the income regarding the provision of services of television operators and distributors with conditioned access services (Art.23).

⁽²⁹⁾ For identical reasons this obligation also applies, *mutatis mutandis*, to the radio and press – see *infra*.

Also enshrined and developed in law ⁽³⁰⁾ are the exercise of the rights to TV broadcasting time and of reply and political argument, and also the right of reply, whose should be guaranteed by AACS and, under certain terms, by judicial courts.

Advertising provisions as established at community law were implemented at national level by the so-called *Código da Publicidade (Advertising Code)* ⁽³¹⁾ and also, in which refer to advertising and teleshopping time limits, by the new Television Act. These legal instruments fully comply with the minimal standards set out in the TWF Directive and in certain cases impose even stricter standards. Examples: (a) a clear legal adoption of the net principle concerning the expression «programmed duration»; (b) a clear requirement of a spatial and temporal separation between editorial and advertising content, which *inter alia* render impossible the acceptance of split-screen techniques; (c) the contractual commitments assumed by public service broadcaster RTP with regard to advertising – a maximum of 6 minutes of advertising per hour in its generalist programme service («RTP 1»), and complete exclusion of commercial advertising in its special concession' service programme «A 2:» (former «RTP 2»).

1.1.2. Administrative regulation/rules

The list of administrative rules with importance to TV broadcasting regulatory system is endless. It will only be pointed out some of such rules, regarded as more relevant.

- *Implementing Decree (Decreto Regulamentar) 8/99*, of 9 June 1999, on the administrative regulation of the media registration;
- *Ministerial Order (Portaria) 474-C/98*, of 5 August 1998, on the payment of taxes for the award and renewal of TV licenses and authorisations;
- *Ministerial Order (Despacho) 23819/2004* (Series II), of 28 October 2004 – annual publication by the Government of a mandatory list of televised major events, for «internal» purposes, i.e., which is only mandatory for Portuguese tv operators, and not inserted in the mutual recognition system foreseen in Art. 3(3) of the TWF Directive – Art.28(4) of the Television Act;
- *Ministerial Order (Portaria) 953/98*, of 7 November 1998 (rectified by Statement of Rectification 22-R/98, of 31 December 1998), on the obligation for the holders of exclusive rights to allow access to them to other TV operators with programme services with international coverage – Art.28(5) of the Television Act.

⁽³⁰⁾ See also Arts. 40 and 37(4) of the Portuguese Constitution.

⁽³¹⁾ Approved by Decree-Law 330/90, of 23 October 1990, and subject to several amendments, introduced by: Decree-Law 74/93, of 10 March 1993; Decree-Law 6/95, of 17 January 1995; Decree-Law 61/97, of 25 March 1997; Law 31-A/98, of 14 July 1998; Decree-Law 275/98, of 9 September; Decree-Law 51/2001, of 15 February 2001; Decree-Law 332/2001, of 24 December 2001; Decree-Law 81/2002, of 4 April 2002; Law 32/2003, of 22 August; Decree-Law 224/2004, of 4 December 2004.

1.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

It would be excessive to refer to the existence of an established and more or less developed *system* of co-regulation or self-regulation in the Portuguese media landscape. More accurately, the adoption of occasional measures qualified as such may be pointed out.

1. With regard to protection of minors and of human dignity, particular reference should be made to two initiatives carried out by the AACS.

The first concerns a self-nominated *Agreement on the depiction of violence on television*, signed on 9 July 1997 between the Portuguese TV operators RTP, SIC and TVI, following a proposal of AACS. Implemented in the various programme services explored via terrestrial, cable or satellite by the appointed TV operators, this agreement is aimed to govern the use of a common warning symbol to indicate content unsuitableness of some programmes, and its exhibition in different elements of the TV programming; the appropriateness (in terms of content and of exhibition schedules) of promotional spots vis-à-vis the vulnerability of each viewing public; and the availableness of more specific information on child programming, as a way to provide adequate guidance for parental control. On 25 March 1998, AACS assessed positively the implementation of this agreement, and specified some of its terms ⁽³²⁾. The agreement was further re-evaluated on 10 May 2000 by AACS and the undersigned TV operators. Its application was deemed as positive by the latter, whose did not see any need to formally extend it with regard to programming with sexual content, since it was understood that this topic was already covered by the agreement.

The second initiative of AACS in this context concerns the signature by operators RTP, SIC and TVI, on 18 September 2001, of a *Protocol on the safeguarding of human dignity in television programming with particular regard to the so-called «reality shows»*. Some aspects which deserved particular attention were: previous public divulgation, where applicable, of the rules concerning these «shows»; particular consideration with the exhibition of unsuitable content; safeguard of certain privacy aspects; clear separation between informative and promotional content on any report concerning such programmes.

2. At a different level, another Protocol was signed between RTP, SIC and TVI in August 2003, and homologated by the Government (Homologation is a legal concept existing in the Portuguese Administrative Law, which is understood as an (administrative) act that absorbs both the grounds and conclusions of a concrete proposal or opinion presented by other organ. In this concrete case, it should be understood as a Governmental (non-obligatory) acceptance or agreement of the terms of the protocol which was signed only between the three already mentioned operators RTP, SIC and TVI).

⁽³²⁾ Specifications were introduced with regard to: the duration (15'') of the exhibition of the symbol indicating unsuitableness/violence; exhibition of the symbol at the beginning of each part of a given programme; information on the depiction of violence and the corresponding visual symbol should be extended to other information providers of television programming (newspapers, magazines, etc).

On the assumption of the fixation of certain advertising limits to PSB's programme services «RTP1» and «A 2:» ⁽³³⁾, an exchange of cooperation at different levels between the three operators was established, involving: (a) support to and financing of independent productions; (b) content for PSB's international programme services «RTP-Internacional» and «RTP-África»; and (c) transmission of cultural programming and support to people with hearing disabilities.

TV operators involved in this Protocol considered that its application has been positive. Recently – in 15 February 2005 – they all agreed to introduce slight amendments to it.

3. AACS is also at the origin of a ***Declaration of Principles and Mass Media Agreement concerning the Reporting of Judicial Proceedings***, publicly presented on 27 November 2003 and undersigned since that date by several representatives of the press, radio and television. The document underline the importance of the role played by the representatives of the judicial system and of the media, and draw the attention to the need to secure among them mutual comprehension and respect. In particular, and in the exercise of their functions, media representatives are reminded to the need to act with informative rigour and to fully respect presumption of innocence and the individual rights of the accused and witnesses.

4. With regard to the adoption of **codes of conduct**, see *infra*, 1.2.2., a reference to the code of conduct adopted by the ICAP – Instituto Civil de Autodisciplina da Publicidade.

5. It is also worth noting that *APAN – Associação Portuguesa de Anunciantes (Portuguese Association of Announcers)* has adopted in 2001 a Code of Best Practices in Commercial Communications of Alcoholic Beverages, which is naturally applicable irrespective of the media used for such purposes. Revised in November 2003, this code is being respected by a large majority of the members of industry concerned. APAN has also drawn two more codes of conduct on advertising aimed at children and with children, and on food stuffs.

1.2. Regulatory authorities/bodies

1.2.1. Authorities

A) AACS – Alta Autoridade para a Comunicação Social

1.2.1.1. Legal basis

The *AACS - Alta Autoridade para a Comunicação Social (High Authority for the Mass Media)* is an independent constitutional body for the regulation of the media in Portugal. It was originally created in 1989 by *Constitutional Law 1/89*⁽³⁴⁾, and enshrined in Art.39 of the Constitution. In the last constitutional revision of 2004, the creation of a new comprehensive regulatory authority for the media sector was envisaged as a necessary and adequate substitute for AACS. However, and in the meantime, the latter «shall continue to perform its functions

⁽³³⁾ Subsequently confirmed in the Concession Contracts signed between RTP and the Government in September and November 2003.

⁽³⁴⁾ Constitutional Law 1/89, of 8 July 1989.

until the installation of the members of the regulatory entity referred to in Art.39 of the Constitution» ⁽³⁵⁾.

Without prejudice of AACCS' direct recognition at a constitutional level, where an overview of its main responsibilities is made, along with a brief description of its composition, it is also foreseen that its other functions and competences shall be determined by law, as well as the regulation of his activity. Initially, AACCS was set up by Law 15/90, of 30 June 1990 ⁽³⁶⁾, and further revoked by Law 43/98, of 6 August 1998 ⁽³⁷⁾, which currently is the main legal act governing AACCS' activities. The *Regimento 1/2000*, approved by the AACCS in its plenary meeting of 30 May 2000, contains important provisions dealing with AACCS' organisation and procedures.

1.2.1.2. Functions/competencies

In general terms, a comprehensive jurisdiction across different media sectors is assigned to AACCS. An exhaustive list of AACCS' functions and competences it is neither predetermined in the Constitution nor in a single ordinary law; instead, these are widespread over an entangled set of different legal instruments.

Some of the AACCS' responsibilities foreseen in Constitution or in law are not sector-specific; they are rather intended to apply horizontally, involving different media in the pursuit of common general objectives concerning the safeguard and promotion of certain fundamental rights and relevant values of modern democratic societies. Such are, *inter alia*, the cases of: ensuring the right to information, the freedom of the press as well as the independence of the mass media from political and economical powers; safeguarding the possibility for different lines of opinion to be expressed and discussed; or to incentive the application of journalistic or programming criteria which respect individual rights and ethical standards ⁽³⁸⁾.

Conversely, other aims or responsibilities are naturally more sector-orientated. In which specifically refers to television broadcasting, the fundamental responsibilities underlined in law are as follows:

- Ensuring fairness in TV operators' licensing or authorisation procedures;
- Ensuring respect for the generic and specific objectives attached to television activity and to those underlying to TV operators' licensing or authorisation, ensuring the respect of the rights of the members of the public and, in particular, those who need to enjoy particular protection;
- To guarantee the exercise of the right to TV broadcasting time, the right of reply and of political argument, and the right of reply.

⁽³⁵⁾ Article 44 of Constitutional Law 1/2004.

⁽³⁶⁾ Amended by Law 30/94, of 29 August 1994.

⁽³⁷⁾ Amended by Law 8/2002, of 11 February 2002, and by Law 18-A/2002, of 18 July 2002.

⁽³⁸⁾ Article 3 of Law 43/98.

For the fulfilment of its responsibilities, a set of powers was entrusted to AACCS⁽³⁹⁾. In the context of television broadcasting, AACCS is competent to:

- Award licenses and authorisations required for the pursuit of television broadcasting, as well as to deliberate about their renewals and cancellations⁽⁴⁰⁾;
- Assess the conditions of access to the right to TV broadcasting time and right of reply and of political argument, and the right of reply, and to impose decisions on any complaints or appeals or to serve as an arbitrator in conflicts that may arise in this context⁽⁴¹⁾;
- Issue an opinion (which is, in certain cases, binding) regarding the nomination of the program and information directors of television public service broadcaster⁽⁴²⁾;
- Monitor compliance with provisions dealing with media concentration and ownership⁽⁴³⁾;
- Monitor compliance with provisions dealing with the obligation of publication of data by media companies⁽⁴⁴⁾;
- Exercise its functions under the terms of the law concerning the TV broadcasting of opinion surveys and polls whose subject is directly or indirectly related to political matters⁽⁴⁵⁾;
- Process administrative offences (*contra-ordenações*) and to apply fines and accessory sanctions for the non-compliance of the following provisions of the new Television Act⁽⁴⁶⁾:
 - Art. 24: infringements to the freedom of programming, analysed in lack of respect for the fundamental rights, attempts against the dignity of the human being or impairment to the formation of personality of children and adolescents;
 - Art 25: (with respect to programming announcements) non-compliance with warning visual standards concerning AV works which may adversely affect the development of children or adolescents or affect any other vulnerable members of the public, or failure to mention age rating required for AV works unsuitable for viewers under 16; and

⁽³⁹⁾ Article 4 of Law 43/98 provides an extensive – though not exhaustive – list.

⁽⁴⁰⁾ Article 4, lit. (a), of Law 43/98; Art.16 of the Television Act.

⁽⁴¹⁾ Article 4, lits. (c) and (d) of Law 43/98; Arts.53 *et seq.* of the Television Act.

⁽⁴²⁾ Articles 4, lit. (e), and 6 of Law 43/98.

⁽⁴³⁾ Article 4, lit. (f) of Law 43/98; Arts.4 and 5 of the Television Act.

⁽⁴⁴⁾ Article 4, lit. (g) of Law 43/98; Art.5(2), e.g., of the Television Act.

⁽⁴⁵⁾ Article 1 of Law 10/2000, of 21 June 2000.

⁽⁴⁶⁾ Article 89(4) and (5) of the Television Act.

- Arts 53 up to 63: non-compliance with rules dealing with access and exercise of right to TV broadcasting time, right of reply and of political argument, and the right of reply.

AACS must also appreciate, by means of its own initiative or through a complaint, any behaviour, which is likely to constitute violation of any regulation applicable to the media (television, radio, press), in general⁽⁴⁷⁾.

In the pursuit of its activity, AACS may adopt different types of legal measures: along with *informations* and *proposals*, *recommendations* and *opinions*, with or without binding character, it is also empowered to adopt legal *general guidelines* (*directivas genéricas*) – aimed at particular issues to which AACS confer its particular interpretation and under which future cases will be evaluated –, and binding *decisions* on specific matters of its competence, which may generally be appealed in administrative courts of law.

1.2.1.3. Organisation

AACS is a collegial body, composed of 11 members: one judge, appointed by the Superior Council of the Magistracy, which chairs the AACS; five members elected by the Parliament; one member appointed by the Government; and four members representing the public opinion, the media and the cultural sectors – among whom three are respectively appointed by the National Council of Consumers, the professional association of journalists and the organisations of employers of the media sector, and the fourth being co-opted by AACS members among experts in the cultural and scientific areas.

AACS' diversified composition was designed as an attempt to ensure its representativeness and independence towards economical and political powers.

Persons who do not fully enjoy civil and political rights may not be members of the AACS. These are also subject to the incompatibilities applicable to persons in charge of high public functions. AACS' members are appointed for a period of four years. Although each member may be re-elected, it is however limited to exercise its functions to a maximum of two consecutive terms. Its members are irremovable and only under specified conditions may be dismissed from the exercise of their functions before the end of his term: death or permanent physical impossibility to perform his work; self-resignation to his term; further occurrence of incapacities or incompatibilities (see above) foreseen in law; repeated and unjustified absence to plenary meetings; violation of the duty of professional secrecy, confirmed by a judicial decision.

AACS' members must carry out their duties with impartiality, rigour, independence and also with a strong sense of moral responsibility.

⁽⁴⁷⁾ Article 4, lit. (n) of Law 43/98.

1.2.2. Self- or Co-regulatory body/ies

B) ICS – Instituto da Comunicação Social

1.2.2.1. Legal basis

The *ICS – Instituto da Comunicação Social (Institute for the Media)* is a public institute with autonomy in the management of its own affairs and assets, working under the superintendence of the member of the Government responsible for the mass media sector. It was created by Decree-Law 34/97, of 31 January 1997, as amended by Decree-Law 65/99, of 11 March 1999.

1.2.2.2. Functions/competencies

ICS carries out responsibilities of a very different nature, some of which can not be regarded as pertaining to those usually attached to an independent regulatory authority in the ‘traditional’ sense of the concept. This could be stressed as to compromise ICS’ claimed regulatory independency, and somehow the legitimacy of the duties performed. Basically, ICS’ responsibilities relating to the media include:

- Collaboration in the definition, implementation and assessment of State’s policies for the media sector;
- Monitoring and ensuring compliance with the law concerning radio and television broadcasting activities and the publication of periodical publications;
- Implementing the necessary measures concerning State’s incentive systems (financial support) for the media;
- Keeping a register of the media, as required by law, involving periodical publications, journalistic companies, news agencies, radio and television operators and their inherent programme services;
- Promoting information and heighten the awareness of the different actors involved in the media sector, with the aim of ensuring the correct observance of applicable legislation;
- Collaborating with the Government in the definition and execution of the external policy of Portugal in the area of media and participating in the external representation of the State as regards that sector;
- Promoting and supporting initiatives aimed at work on communication themes in the broadest sense;
- Exercising its powers in the area of State advertising.

In the specific field of television broadcasting, ICS main competences are as follows:

- Administrative instruction of the processes concerning the awarding of a license or an authorisation for the pursuit of television broadcasting ⁽⁴⁸⁾;

⁽⁴⁸⁾ Articles 17 and 89(1) of the New Television Act.

- Monitor compliance with provisions of the Television Act, without prejudice to the competences of any other entity legally entitled for that effect;
- Process administrative offences (*contra-ordenações*) and application of the corresponding penalties referred to most of the cases on non-compliance with the provisions of the Television Act, with the exception of those concerning Arts. 18, 24, 25 and 53 to 63 (to which is incumbent AACs), and 36-37 (CACMEP- see *infra*);
- Organise the registration of television operators and their inherent programme services ⁽⁴⁹⁾;
- Monitor ⁽⁵⁰⁾ compliance with provisions of the Advertising Code concerning basically sponsorship, television advertising and teleshopping ⁽⁵¹⁾⁽⁵²⁾;

1.2.2.3. Organisation (composition of the authority/members of the board, etc.)

ICS is directed by a President, assisted by a Vice-President, which is responsible *inter alia* for directing the services of the Institute and coordinating its respective activities, and the definition of ICS' strategy, in accordance with activity plans previously approved. These should be further implemented by the different departments of the Institute, taking into consideration its respective responsibilities: Means of Communication/Mass Media (*Meios de Comunicação Social*), International Affairs and Counselling (*Assessoria e Assuntos Internacionais*), and Resource Management (*Gestão de Recursos*) Departments.

ICS's organisation also comprises a Management Board and an Advisory Board. The latter has significant importance in the system, considering the terms of its composition – embracing «public and private organizations representing relevant interests within the scope of the media and connected fields» – and responsibilities – which, among others, comprise the aim of ensuring a proper liaison between the different departments of Public Administration represented within it and between these departments and private organisations.

C) Others

To a lesser or a different extent, other entities also have regulatory responsibilities relating to the media sector. Their description is therefore entirely justified, even if more briefly made.

⁽⁴⁹⁾ Article 12 of the New Television Act.

⁽⁵⁰⁾ Together with the IC-Instituto do Consumidor (Consumer's Institute) – see *infra* – and other relevant authorities, as referred to in Art. 37 of the Advertising Code.

⁽⁵¹⁾ Articles 24 to 25-A, and 37, of the Advertising Code.

⁽⁵²⁾ Under the terms of the modification introduced to the Advertising Code by Art. 91 of the Television Act, the future independent regulatory authority will be competent to monitor Art. 24 (sponsorship) and also for processing the administrative offences (*contra-ordenações*) and to apply the corresponding penalties referred to the non-compliance with Arts. 25 and 25-A (television advertising and teleshopping).

IC – Instituto do Consumidor

The *IC – Instituto do Consumidor (Consumer's Institute)* is an organism of the public administration, whose mission is to promote and protect consumers' rights and interests. Under its current denomination, it was set up by Art.21 of *Law 24/96*, of 31 July 1996 (*Lei do Consumidor – Consumer's Act*).

In which refers to television broadcasting, the *Instituto do Consumidor* has the following competences:

- Monitoring of compliance with provisions of the New Television Act, in matters of advertising;
- Processing of administrative offences (*contra-ordenações*) and application of the corresponding penalties referred to the non-compliance with Arts. 24 (when involving advertising broadcasts), 36 (hourly and daily amounts of tv advertising) and 37 (teleshopping windows) of the new Television Act;
- Monitoring ⁽⁵³⁾ compliance with provisions of the Advertising Code concerning basically sponsorship, television advertising and teleshopping ⁽⁵⁴⁾;
- To participate in the definition of the public service television broadcasting, in matters of consumers' information and education ⁽⁵⁵⁾.

IC's composition is currently defined in Decree-Law 195/93, of 24 May 1993.

CACMEP – Comissão de Aplicação de Coimas em Matéria Económica e Publicidade

The *CACMEP – Comissão de Aplicação de Coimas em Matéria Económica e Publicidade (Commission for the Application of Financial Penalties on Economic Matters and Advertising)* – is an administrative authority working within the Ministry of Economy, which was originally set up by Law 28/84, of 24 January 1984. Its current main legal basis is now Decree-Law 81/2002, of 4 April 2002.

The CACMEP is, *inter alia*, competent for the application of fines and accessory penalties on administrative offences (*contra-ordenações*), under the terms of the law. As such, in which refers to television broadcasting, this Commission has the power to punish:

- non-compliance with Arts. 24 (when involving advertising broadcasts), 36 (hourly and daily amounts of TV advertising) and 37 (teleshopping windows) of the new Television Act ⁽⁵⁶⁾; and
- non-compliance with provisions of the Advertising Code concerning basically sponsorship, television advertising and teleshopping ⁽⁵⁷⁾.

⁽⁵³⁾ Together with the ICS-Instituto da Comunicação Social (see *supra*) and other relevant authorities, as referred to in Art.37 of the Advertising Code

⁽⁵⁴⁾ Articles 24 to 25-A, and 37, of the Advertising Code.

⁽⁵⁵⁾ Article 21(2), lit. (b) of the Consumer's Act.

⁽⁵⁶⁾ Article 89(4), lit. (b), of the Television Act.

This special Commission is chaired by a judge and has two more members assigned to each one of its areas, economic and advertising, the latter being ensured by the Presidents of IC and ICS.

AC – Autoridade da Concorrência

The *AC-Autoridade da Concorrência (Competition Authority)* is an independent regulatory authority created by *Decree-Law 10/2003*, of 18 January 2003, in the context of an intended comprehensive reform of the Portuguese legal framework for competition. It has regulatory powers on competition over all sectors of the economy, including the regulated sectors, the latter in coordination with the relevant sector regulatory authorities, as it is the case of the AACS and, to a certain extent, the ICP-ANACOM.

In the field of television broadcasting, the above mentioned coordination is clearly illustrated in the case of Art.4(2) of the Portuguese Television Act, which states that «[c]oncentration operations between television operators subject to the Autoridade da Concorrência's intervention are communicated by this body to the regulatory authority [i.e., the AACS], for the purposes of issuing a prior binding opinion, which shall be negative only when these operations presents founded risks to both freedom of expression and the possibility for different lines of opinion to be expressed and discussed».

Furthermore, it has to be kept in mind that, pursuant to Art. 4(1) of the Television Act, « the general regime of defence and promotion of competition is applicable to television operators, particularly with regard to prohibited practices, especially the abuse of a dominant position, and also to concentration of companies».

ICP – ANACOM (Autoridade Nacional de Comunicações)

ICP-ANACOM (Autoridade Nacional de Comunicações) (Communication's National Authority) is a independent regulatory authority created by *Decree-Law 309/2001*, of 7 December 2001, under a new denomination ⁽⁵⁷⁾ and also with a renewed and strengthened statute of a public corporation endowed with administrative and financial autonomy and its own assets, regarded as more adequate for the accomplishment of his enhanced responsibilities as the regulator, supervisor and the representative of the communications sector in Portugal.

An in-depth analysis of ANACOM responsibilities, particularly in the context of market regulation, clearly testifies the increasing difficulties of drawing a line between regulation of content and of communication networks and services. Such are, e.g., the cases of assuring management of the radio spectrum, involving planning, awarding of spectrum resources and its supervision; promoting competition and development in communications markets, namely in the context of convergence of telecommunications, media and information technologies; or

⁽⁵⁷⁾ Articles 24, 25, 25-A, 37 and 39 of the Advertising Code.

⁽⁵⁸⁾ Formerly, ICP – Instituto das Comunicações de Portugal.

guaranteeing network access for communications operators under conditions of transparency and equality ⁽⁵⁹⁾.

The same applies, *mutatis mutandis*, with some of the solutions embodied in *Law 5/2004*, of 10 February 2004 (*Lei das Comunicações Eletrónicas – Law of Electronic Communications*), which transposes to national law the so-called «EU telecom package». Some examples:

- Services providing, or exercising editorial control over, content transmitted using electronic communications networks and services, including audio-text services, fall outside the scope of application of this law ⁽⁶⁰⁾;
- ANACOM may contribute within its competencies to ensuring the implementation of policies aimed at the promotion of cultural and linguistic diversity, as well as pluralism, in particular of the media ⁽⁶¹⁾, in which for example concerns interoperability of digital interactive television services ⁽⁶²⁾ or of consumer digital television equipments ⁽⁶³⁾;
- Spectrum management is incumbent upon ANACOM, with all the consequences deriving from it ⁽⁶⁴⁾;
- It is up to ANACOM to specify and impose «must carry» obligations for the transmission of specified television broadcast channels and services ⁽⁶⁵⁾.

Under the terms of Art.17 of the Television Act, ANACOM shall issue an opinion on the technical conditions presented in the application for a license or authorisation of a given TV programme service.

ANACOM has the following bodies: a Board of Administration, a Fiscal Council and an Advisory Council. The first is responsible for defining and accompanying the activity strategy of ANACOM. It is comprised by a chairman and two or four members, appointed by the Government. They have five years non-renewable mandates, and are subject to a regime of specific incompatibilities. The Fiscal Council is responsible for the legal control and for economic nature of the financial and patrimonial management of ANACOM. It comprises a chairman and two members, one being a statutory auditor, appointed by the Government, for a three-year renewable period. The Advisory Council is a body for consultation, support and participation in the definition of general guidelines for ANACOM. It is presided over by a representative of the minister overseeing this sector of activity and its members are nominated by the entities represented on the council for three year renewable terms of office. It is

⁽⁵⁹⁾ Article 6(1), lits. (c), (e) and f) of the ANACOM's Statutes, published in Annex to Decree-Law 309/2001.

⁽⁶⁰⁾ Article 2(1), lit. (b) of Law 5/2004.

⁽⁶¹⁾ Article 5(9) of Law 5/2004.

⁽⁶²⁾ See in particular Art. 102(1) of Law 5/2004.

⁽⁶³⁾ Article 103 of Law 5/2004.

⁽⁶⁴⁾ Article 15 of Law 5/2004.

⁽⁶⁵⁾ Article 43 of Law 5/2004.

composed of representatives of interested parties in the telecommunications and postal sectors.

ICAM – Instituto do Cinema, Audiovisual e Multimédia

ICAM - Instituto do Cinema, Audiovisual e Multimédia (Institute for the Cinema, Audiovisual and Multimedia) is a public entity tutored by the Ministry of Culture. Under its current denomination, ICAM was created in 1998 by *Decree-Law 408/98*, of 21 December 1998. Its aims are to strengthen cultural identity and diversity in the areas of cinema, audiovisual and multimedia, by supporting innovation and art creation, reinforcing the content creation industries and promoting the Portuguese culture and the Portuguese language.

ICAM comprises a Board of Directors, with a president and two vice-presidents, with three years renewable mandates; an Advisory Council, composed by several representatives of interested sectors; a Statutory Audit Committee, with a president and two members, with three years renewable mandates; and several internal departments and support services. On the nomination of the members of the ICAM, a differentiation must be made among its bodies. Members of the Board of Directors and of the Statutory Audit Committee are both appointed by the Government; in the first case, by a joint order from the Prime Minister and the Minister of Culture; in the second, by a joint order from the Minister of Finance and the Minister of Culture. In which concern the Advisory Council, each of its members is appointed by the association of the sector they represent.

CNE – Comissão Nacional de Eleições

CNE – Comissão Nacional de Eleições (National Elections Commission) is a permanent and independent head authority on elections, functioning along with the Portuguese Parliament. It was created in 1978 by *Law 71/78*, of 27 December 1978. It performs functions on electoral census acts, presidential, parliamentary, regional, local, European Parliamentary elections, and also within referendum acts. CNE is composed by ten independent members and the President is a judge of the Supreme Court of Justice.

CCPJ – Comissão da Carteira Profissional do Jornalista

Under the terms of *Decree-Law 305/97*, of 11 November 1997, the *CCPJ – Comissão da Carteira Profissional do Jornalista (Journalists Professional License' Commission)*, is a public independent entity empowered to award, renew, suspend and withdraw journalists' professional licenses and other accreditation titles, among other competences foreseen in law. CCPJ is competent to processing administrative offences (*contra-ordenações*) and to apply fines concerning the incompatibilities with the exercise of the trade of journalist, as foreseen in the *Estatuto do Jornalista*, and also the exercise of the trade of journalist without holding the respective license. CCPJ's decisions may be contested and subject to an appeal which shall be analysed by a fully independent *Comissão de Apelo (Appeal's Commission)*. Their decisions can also be contested and judged by administrative courts of law.

CCPJ comprises representatives of the media sector (press, radio and television) and of professional journalists, and it is chaired by a judge, appointed by the Superior Council of Magistracy. They have two-years non-renewable mandates.

ICAP – Instituto Civil da Autodisciplina da Publicidade

The scope of intervention of *ICAP – Instituto Civil da Autodisciplina da Publicidade* (*Civil Institute of Advertising' Self-discipline*) covers the different media sectors. Thus, the following considerations are applicable *mutatis mutandis* to other media referred to in this document.

ICAP is a civil private association created in 1991, comprising several representatives of announcers, advertising agencies and some TV operators. Whilst encouraging respect for ethics and deontology, in which advertising should be based, ICAP seeks to promote, develop and implement a system of self-discipline in this field, as a means to ensure freedom of commercial speech and the dignity and credibility of the advertising speech, irrespective of the media used for such purposes. ICAP's different competences include *inter alia* the power to, on its initiative or on demand, examine, evaluate and if necessary to suspend concrete cases of advertising considered as harmful for the professional or general public rights; to elaborate, establish and implement ethical and deontological rules and codes of conduct; or to contribute for the elaboration and improvement of legislation.

Among others, the privileged instrument approved by the ICAP is his own *Code of Conduct*, inspired in the ICC's International Code of Advertising Practice. Since its adoption in 1991, it was revised seven times (the last occurred on November 2003), seeking a permanent update of its patterns and ethical rules. The Code is intended to apply to all forms of advertising, with the important exception of political advertising. Its provisions and, in particular, the deliberations adopted by the JEP (see below) to resolve disputes are binding to all ICAP members and associates and also to the entities that freely submit their disputes to JEP's appreciation.

In addition to a General Assembly, a Direction and a Fiscal Council, ICAP also comprises a Gabinete Técnico-Jurídico (a Legal Office) and the JEP-Júri de Ética Publicitária (Jury of Advertising Ethics). In the event of inobservance of the decisions adopted by the JEP, and in addition to the sanctions foreseen in the Statutes of the ICAP, the latter could also render public the notice of such a fact, *inter alia* through the media.

ICAP has also created, with the authorisation of the Ministry of Justice, a Centre of Institutionalized Voluntary Arbitrations and a corresponding Arbitral Court, both further regulated. It also introduced mediating practices as an alternative voluntary system for resolving disputes.

B) RADIO BROADCASTING

1.1. Regulatory framework

1.1.1. Legal provisions

Currently, radio broadcasting activity is mainly regulated by *Law 4/2001*, of 23 February 2001 (*Lei da Rádio – Radio Act*)⁽⁶⁶⁾. This legal instrument is aimed to regulate access and exercise in national territory of radio broadcasting activity, understood as «the unilateral transmission of audio communications, by means of electromagnetic waves or by any other appropriate means, intended for the reception by the general public»⁽⁶⁷⁾. Despite the apparent technological-neutral approach of this definition, it explicitly does not apply to radio broadcast transmissions over the internet ⁽⁶⁸⁾.

Similarly to the framework established for television, access to radio broadcasting activity by private operators is subject to different rules, depending on whether the broadcasts will use or not terrestrial hertzian spectrum. The first case requires the granting of a license, preceded by a public tender; the second case will demand a mere authorisation. Licenses and authorisations are in both cases granted by the AACS for a period of 10 years (renewable in principle for identical terms), and always on an individual basis, i.e., a license/authorisation for each radio programme service to be supplied by a given radio operator. The transmission of licenses or authorisations to third entities is expressly prohibited. On the other hand, licenses held already by radio broadcasting operators for the analogical environment are also valid for the exercise of the same activity in the context of digital terrestrial broadcasting⁽⁶⁹⁾.

Radio service programmes are classified in law with regard to the range of its coverage (national, regional or local coverage) and to the content of its programming (thematic or generalist).

With regard to competition issues, *Law 4/2001* point out to the general framework applicable for the protection and promotion of competition, currently set in *Law 18/2003 (Competition Act)*. However, and in addition to concerns on pluralism, concentration operations ⁽⁷⁰⁾ between radio broadcasting operators shall also take in due consideration the judgment criteria foreseen in Art.18 of the Radio Act for transactions involving changes to the control of a given radio broadcasting company. On the other hand, concerns about transparency on media ownership were taken into account in Radio Act.

⁽⁶⁶⁾ Amended by Law 33/2003, of 22 August 2003.

⁽⁶⁷⁾ Article 2(1), lit. (a) of Radio Act.

⁽⁶⁸⁾ Article 2(2), lit. (b).

⁽⁶⁹⁾ See Art.22 of the Radio Act. The *Portaria 470-C/98*, of 31 July 1998, provide administrative regulation for the exploration of digital terrestrial audio broadcasting networks (T-DAB). The first of these licenses was awarded to public service broadcaster RDP in March 1999.

⁽⁷⁰⁾ Concerning this specific point, the law in force only takes into account *horizontal* or *vertical* concentration operations: Art.7(2) of the Radio Act.

Radio broadcasting activity enjoys a very broadly established freedom of programming, being its limitations similar to those attached to television activity. Unlike TV's legal framework, however, detailed provisions on, or particularly aimed to, protection of minors are not foreseen in the Radio Act, given the comparatively lower influence/impact of audio broadcasts. The general guideline applicable, though, is that radio broadcasts shall not attempt against the dignity of the human being, nor violate any fundamental rights, liberties or guarantees or incite to the practice of crimes.

Although extensive, the restructuring process conducted by the Government in 2003 towards public service broadcasting (see *supra*) did not affect its existence and the essential terms of its remit. The State is still obliged to ensure the existence and the operability of a radio public service broadcasting ⁽⁷¹⁾, on a concessionary basis, further specified in a contract. The concessionaire is in particular obliged to provide innovative and high quality standard programming, suitable for the needs of its different audiences, as well as to ensure pluralism, rigour and impartiality of information, and to maintain its independence upon any public or private powers. Under the terms of the law, public service radio broadcasting is financed by means of a charge corresponding to an audiovisual licence fee (*contribuição para o audiovisual*) ⁽⁷²⁾.

Among the several obligations imposed on radio operators in general, particular attention should be made to the mandatory adoption of an editorial statute by each programme service ⁽⁷³⁾, for the reasons already explained ⁽⁷⁴⁾. They must also respect minimal requirements concerning the broadcasting of in-house programming, and meet with particular qualitative and quantitative demands on advertising; with respect to the latter, the main principle is that provisions foreseen in the *Advertising Code* generally apply.

The conditions and terms of the exercise of the right of reply and of rectification in radio broadcasting are very similar to the ones adopted in the fields of press and television ⁽⁷⁵⁾. Likewise, rights to radio broadcasting time and of political argument share profound resemblances with television legal framework, in this context ⁽⁷⁶⁾. The same can also be said on the duty imposed to radio operators and their service programmes as to respect the legal framework concerning registration ⁽⁷⁷⁾⁽⁷⁸⁾.

⁽⁷¹⁾ See also Art.38(5) of the Portuguese Constitution of 1976. Naturally, the same apply to television.

⁽⁷²⁾ Law 30/2003, of 22 August 2003. The audiovisual licence fee is applied to the supply of electrical energy for domestic use, being due monthly from the respective consumers.

⁽⁷³⁾ Article 38 of the Radio Act.

⁽⁷⁴⁾ *Supra*, television broadcasting. The same also apply in the field of press.

⁽⁷⁵⁾ Articles 58 *et seq.* of the Radio Act.

⁽⁷⁶⁾ Articles 52 *et seq.* of the Radio Act.

⁽⁷⁷⁾ As foreseen in Art.5(3) of the Lei da Imprensa, and implemented by Decreto Regulamentar 8/99, of 9 June 1999 (rectified by Statement of Rectification 10-BC/99, of 30 June 1999).

⁽⁷⁸⁾ Aims of registration are as follows: to give evidence of mass media bodies' legal situation, to ensure his ownership transparency and also to provide legal protection for the titles of periodical publications and denominations of radio and TV broadcasting companies: Art. 1(1) of Decreto Regulamentar 8/99.

On the important topic of ensuring the right to information, radio operators are allowed to broadcast short extracts of shows or other public events, aimed at informing the public of the essential content of such events. Additionally, the exercise of the right to information on sporting events, *inter alia* by means of radio commentary or report, may not be limited or restricted on the basis of a financial payment return.

1.1.2. Administrative regulation/rules

Similarly to the methodology adopted for television broadcasting, and due to the same reasons, it will only be pointed out some of the pertinent administrative rules with interest to radio broadcasting.

- *Implementing Decree (Portaria 470-C/98)*, of 31 July 1998, providing administrative regulation for the exploration of digital terrestrial audio broadcasting networks (T-DAB)
- *Implementing Decree (Decreto Regulamentar) 8/99*, of 9 June 1999 (rectified by *Statement of Rectification 10-BC/99*, of 30 June 1999), on the administrative regulation of the media registration
- *Decree-Law 126/2002*, of 10 May 2002, establishing the technical conditions for the exercise of radio broadcasting activity
- *Decree-Law 272/98*, of 2 September 1998 (rectified by the *Statement of Rectification 22-J/98*, of 29 December 1998), on the rules pertaining to RDS system's installation and operation by radio broadcaster operators

1.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

Not applicable. See, nevertheless, and taking into consideration its intended horizontal application, the references made *supra* to:

- the *Declaration of Principles and Mass Media Agreement concerning the Reporting of Judicial Proceedings*, of November 2003 (AACS);
- the relevant *codes of conduct* and *of good practices* adopted by ICAP and APAN.

1.2. Regulatory authorities/bodies

1.2.1. Authorities

A description of the legal basis and organisation of the authorities listed below was already made in this report: see «TV broadcasting», 1.2.1.1. and 1.2.1.3., *supra*. With regard to the responsibilities and competences of such authorities in the field of *radio broadcasting*, observations made in 1.2.1.2. shall take due account of the following points and be adapted accordingly.

A) AACS – Alta Autoridade para a Comunicação Social

In the context of radio broadcasting, AACS is *inter alia* competent to:

- Granting licenses and authorisations required for the pursuit of radio broadcasting, as well as to deliberate about their renewals and cancellations ⁽⁷⁹⁾;
- Assess the conditions of access to the right to radio broadcasting time and of right of reply and of political argument, as well as the right of reply, and to impose decisions on any complaints or appeals or to serve as an arbitrator in conflicts that may arise in this context ⁽⁸⁰⁾;
- Monitor compliance with provisions dealing with media concentration and ownership ⁽⁸¹⁾;
- Exercise its functions, under the terms of the law, concerning the radio broadcasting of opinion surveys and polls whose subject is directly or indirectly related to political matters ⁽⁸²⁾;
- Process administrative offences (*contra-ordenações*) and to apply fines and accessory sanctions for the non-compliance of the following provisions of the Radio Act ⁽⁸³⁾:
 - Art.18 – infringements to the rules on transactions involving changes to the control of a given radio broadcasting company ;
 - Art.19 – infringements to the rules on the observance of the conditions and terms attached to the licensing or authorisation of a given radio programme service ;
 - Art.35 – infringements to the freedom of programming, analysed in attempts against the dignity of the human being, violation of fundamental rights or incitement to the practice of crimes ;
 - Art.37 – infringements to the rules imposing the existence, in each programme service, of a responsible for the orientation and content of radio broadcasts ;
 - Art.38 – infringements to the rules on the elaboration, adoption and convey to AACS of an editorial statute by each programme service ;
 - Arts.52 up to 62 – non-compliance with rules dealing with access and exercise of right to radio broadcasting time, right of reply and right of political argument.

AACS must also appreciate, by means of its own initiative or through a complaint, any behaviour, which is likely to constitute violation of any regulation applicable to the media (television, radio, press), in general ⁽⁸⁴⁾.

⁽⁷⁹⁾ Article 4, lit. (b) of Law 43/98; Arts.15(1), 20 and 70 of Radio Act.

⁽⁸⁰⁾ Article 4, lits. (c) and (d) of Law 43/98; Arts.52 *et seq.* of Radio Act.

⁽⁸¹⁾ Article 4, lit. (f) of Law 43/98; Arts.7, 8 and 18 of Radio Act.

⁽⁸²⁾ Article 1 of Law 10/2000, of 21 June 2000.

⁽⁸³⁾ Article 72(2) of Radio Act.

B) ICS – Instituto da Comunicação Social

In the specific field of radio broadcasting, ICS main competences are as follows:

- Administrative instruction of the processes concerning the awarding of a license or an authorisation for the pursuit of radio broadcasting ⁽⁸⁵⁾;
- Monitoring compliance with provisions of the Radio Act, without prejudice to the competences of any other entity legally entitled for that effect ⁽⁸⁶⁾;
- Processing of administrative offences (*contra-ordenações*) and application of the corresponding penalties referred to most of the cases on non-compliance with the provisions of the Radio Act, with the exception of those concerning Arts. 18, 19, 35, 37, 38, 52 up to 62 (to which is incumbent AACCS – see *supra*), 35 and 44(2),(3) and (5) (to which is incumbent CACMEP - see *infra*);
- Organise the registration of television operators and their inherent programme services ⁽⁸⁷⁾;
- Monitoring compliance with provisions of the Advertising Code ⁽⁸⁸⁾ applicable to radio broadcasting.

C) Others

IC - Instituto do Consumidor

In which refers to radio broadcasting, the IC has the following competences:

- Monitoring of compliance with provisions of the Radio Act, in matters of advertising ⁽⁸⁹⁾;
- Processing of administrative offences (*contra-ordenações*) and application of the corresponding penalties referred to the non-compliance with Arts. 35 (when involving advertising broadcasts) and 44 (provisions applicable to radio advertising) of the Radio Act;
- Monitoring compliance with provisions of the Advertising Code ⁽⁹⁰⁾ applicable to radio broadcasting;

⁽⁸⁴⁾ Art.4, lit. (n) of Law 43/98.

⁽⁸⁵⁾ Article 16 of the Radio Act

⁽⁸⁶⁾ Involving *inter alia* the IC-Instituto do Consumidor (see *infra*) in matters related to advertising: Art. 71(1) of the Radio Act.

⁽⁸⁷⁾ Article 12 of the Radio Act.

⁽⁸⁸⁾ Together with the IC-Instituto do Consumidor (see *infra*) and other relevant authorities, as referred to in Art. 37 of the Advertising Code.

⁽⁸⁹⁾ Article 71(1) of the Radio Act.

⁽⁹⁰⁾ Together with the ICS-Instituto da Comunicação Social (see *supra*) and other relevant authorities, as referred to in Art. 37 of the Advertising Code

- To participate in the definition of the public service radio broadcasting, in matters of consumers' information and education ⁽⁹¹⁾.

CACMEP – Comissão de Aplicação de Coimas em Matéria Económica e Publicidade

In which refers to radio broadcasting, the CACMEP has the power to punish:

- non-compliance with Arts.35 (when involving advertising broadcasts) and 44(2),(3) and (5) (particular provisions applicable to radio advertising) of the Radio Act ⁽⁹²⁾; and
- non-compliance with provisions of the Advertising Code applicable to radio broadcasting ⁽⁹³⁾.

AC – Autoridade da Concorrência

As already underlined, general considerations expressed for the television sector apply *mutatis mutandis* to the field of radio broadcasting. See in particular Art.7(1) and (2) of the Radio Act.

ICP – ANACOM (Autoridade Nacional de Comunicações)

Of particular relevance to radio broadcasting are ANACOM competences on spectrum management ⁽⁹⁴⁾, and also its incumbency to specify and impose «must carry» obligations for the transmission of specified radio broadcast channels and services ⁽⁹⁵⁾. At a more general level, great attention shall also be conferred to the role that ANACOM is expected to play on the implementation of policies aimed at objectives particularly pursued by the media ⁽⁹⁶⁾.

Concerning its competences specifically foreseen in the Radio Act, ANACOM shall issue an opinion on the technical conditions presented in the application for a license or authorisation of a given radio programme service ⁽⁹⁷⁾.

CCPJ – Comissão da Carteira Profissional do Jornalista

As already underlined, general considerations expressed for the television sector apply *mutatis mutandis* to the field of the radio broadcasting.

⁽⁹¹⁾ Article 21(2), lit. (b) of the Consumer's Act.

⁽⁹²⁾ Article 79(2), lit. (b) of the Radio Act.

⁽⁹³⁾ Article 39 of the Advertising Code.

⁽⁹⁴⁾ Articles 15 and, e.g., 30(3) and (4) of Law 5/2004.

⁽⁹⁵⁾ Article 43 of Law 5/2004.

⁽⁹⁶⁾ Article 5(9) of Law 5/2004.

⁽⁹⁷⁾ Article 16(1) of the Radio Act. See also the competence foreseen in Art.71(2).

1.2.2. Self- or Co-regulatory body/ies

Not applicable. See nevertheless the reference made to ICAP - Instituto Civil da Autodisciplina da Publicidade, taking into consideration that its activity is also clearly intended to cover radio broadcasting activity.

2. PRESS

2.1. Regulatory framework

2.1.1. Legal provisions

The main current legal rules applicable to the journalistic sector are the *Estatuto dos Jornalistas (Statute of the Journalists)*⁽⁹⁸⁾ and the *Lei da Imprensa (Press Act)*⁽⁹⁹⁾. The latter rejects any form of censorship and underline freedom of the press as a fundamental value, listing its main implications and pointing out as its only limits «those which derive from the Constitution and the law, in order to safeguard the rigour and objectivity of reporting, to guarantee the right to good reputation, the right to privacy, the right of personal portrayal and to the speech of citizens and to defend the public interest and democratic order»⁽¹⁰⁰⁾.

In the field of the press, and in full correspondence with Art.38(2), lit. (c) of the Constitution, freedom of entrepreneurship (which by definition comprises freedom of speech as well as the right to found newspapers and any other publications, without prior administrative authorisation, deposit or qualifications) remains an unquestioned principle. Journalistic and publishing companies and news agencies may be freely incorporated, provided that some requirements foreseen in law are complied with. Submission to prior and compulsory registration⁽¹⁰¹⁾ in this context by national periodical publications and journalistic and news companies should not be regarded as a prior administrative authorisation.

Concerning competition issues, the Press Act refers, in its Art.4(3), to the general framework applicable for the protection and promotion of competition, currently set in the Competition Act⁽¹⁰²⁾. However, a modification made in 2003 extended to all different possibilities of concentration measures the intervention of the regulatory authorities for the competition and

(98) Law 1/99, of 13 January 1999. Even if historical reasons may partially justify the conceptual placement of the Statute mainly along with the press, the fact is that this legal instrument establishes a set of rules intended to apply horizontally, covering therefore different media sectors. See, e.g., the definition of journalist in Art.1(1): «Journalists shall be deemed those persons who, as their principal, permanent and paid occupation, carry on the activities of research, collection, selection and processing of facts, news or opinions, through text, image or sound, intended for dissemination as news by the press, news agencies, radio, television or any other form of electronic broadcasting».

(99) Law 2/99, of 13 January 1999. Rectified by Statement of Rectification 9/99, of 18 February 1999, and amended by Law 18/2003, of 11 June 2003.

⁽¹⁰⁰⁾ Article 3 of the Press Act.

⁽¹⁰¹⁾ According with the rules set in *Decreto Regulamentar 8/99*, of 9 June 1999 (see *infra*, 2.1.2.).

⁽¹⁰²⁾ See *supra*.

media sectors⁽¹⁰³⁾. Concerns about transparency on media ownership were also ensured in law⁽¹⁰⁴⁾. Furthermore, a State system of press incentives is foreseen, with a view to ensure that different lines of opinion may be expressed and compared ⁽¹⁰⁵⁾.

Also, the Press Act puts great detail on the organisation of journalistic companies, in particular with the definition of director's statute and with the powers assigned to journalists' representative bodies (*conselhos de redacção*). Ensuring the exercise of the rights of reply and of rectification is also undertaken, by means of an extremely detailed regime. In this context, particular consideration should also be taken on AACS' Directive 1/2001, on the right of reply in the press ⁽¹⁰⁶⁾, dealing with the need to observe the exact insertion and localisation of the texts of the reply or rectification.

With regard to advertising, the general principle is that advertising materials disseminated through the press are subject to relevant general legislation (i.e., the *Advertising Code*, mainly), and to the provisions of this law dealing with identification of written or graphic advertising.

Finally, it deals with civil and criminal liability deriving from facts committed through the press. Crimes committed through the press are evaluated by judicial courts.

The question to know on whether the provisions set in the Press Act are applicable to the on-line environment remains controversial. Discussions are more or less focused on the definition of «press» set in Art.9(1) of the law ⁽¹⁰⁷⁾, and also on the mention to «electronic periodical publications» made in abovementioned administrative regulation on registration for the media. Under certain conditions and with the necessary adaptations, the extension of the field of application of the *Press Act* to on-line publications has already been admitted by the AACS in several occasions, since 2001, particularly in cases related with the right to reply.

The *Statute of Journalists* defines the profession's general legal framework, to which it confers a high level of protection, ensured by an extensive list and detailed regime of fundamental rights ⁽¹⁰⁸⁾ – and also duties ⁽¹⁰⁹⁾ – such as the protection of the freedom of expression and of creation, the right of access to information sources, the guarantees of independence and of conscience clause, the guarantee of professional secrecy, and the participation in editorial orientation of the respective news publication.

⁽¹⁰³⁾ In the past, such an intervention was only possible regarding *horizontal* concentrations.

⁽¹⁰⁴⁾ Articles 4(2) and 16 of the Press Act.

⁽¹⁰⁵⁾ Article 4(1) of the Press Act.

⁽¹⁰⁶⁾ Approved in the AACS' plenary meeting of 15 February 2001.

⁽¹⁰⁷⁾ «For the purposes of this law, all printed reproductions of texts or images available to the public shall be included within the concept of the press, irrespective of the printing and reproduction processes and of the means of distribution used».

⁽¹⁰⁸⁾ Already foreseen and listed in Art.38(1) and (2) of the Constitution (see *infra*), and in Art.22 of the Press Act.

⁽¹⁰⁹⁾ See also in this context the Journalists' Code of Practice, *infra*.

Access to journalistic activity is subjected to the issue of a professional license by the *Comissão da Carteira Profissional* (see *supra*).

2.1.2. Administrative regulation/rules

- *Implementing Decree (Decreto Regulamentar) 8/99*, of 9 June 1999, regulating the registration of the media : establishes prior and compulsory registration of national periodical publications and journalistic and news companies
- *Decree-Law 305/97*, of 11 November 1997: approves the Administrative Regulation for the Professional License of Journalists (*Regulamento da Carteira Profissional de Jornalista*) and establishes the *Comissão da Carteira Profissional do Jornalista* (Journalists Professional License' Commission)
- *Decree-Law 56/2001*, of 19 February 2001 (rectified by the Statement of Rectification 4-B/2001, of 28 February 2001) : state system of incentives to the media;
- *Decree-Law 74/82*, of 3 March 1982 – on legal deposit.

2.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

1. The most important document in this context is undoubtedly the *Código Deontológico dos Jornalistas (Journalists' Code of Practice)*, approved by the Journalists' Trade Union (*Sindicato dos Jornalistas*) in its plenary meeting held in 4 May 1993. The Code plays a key major role on the self-arrangement on journalistic professional ethics, enshrining a series of journalists' commitments towards themselves, their professional class and the general public. Briefly, it deals *inter alia* with the duty to report the facts with accuracy and in a exact manner; the fight against censorship and sensationalism, and also against restrictions in the access to information sources; the need for a loyal conduct in the trade of the profession; the identification of sources and professional secrecy; the value of presumption of innocence, and the particular concerns with victims of sexual crimes; the questions of discriminatory treatment, citizens' privacy, and the independence and professional integrity of the journalist. Its effective enforcement has been somehow contested, though.

2. Due to its particular interest in the field of self-regulation, a reference should be made to an initiative (currently) carried out since 2001-2002 by a (comprehensive) press association (*AIND - Associação Portuguesa de Imprensa*), a confederation involving different media (*CPMCS - Confederação Portuguesa dos Meios de Comunicação Social*) and a university (the *UTL-Universidade Técnica de Lisboa*, by means of the *ISCSP – Instituto Superior de Ciências Sociais e Políticas*). It is only mentioned in this chapter dedicated to press because that is where it initially started.

The main aim of this initiative is to put into practice a self-regulated platform in the field of journalistic ethics, as to allow the increase of the citizens' credibility and trust and simultaneously prevent renewed political intervention in this context, e.g., by means of the adoption of supplementary restrictive legislative measures to refrain continuous excess in the

exercise of journalism trade, in particular journalistic practices able to attempt against fundamental rights of the individuals.

A document, entitled «*PCEJA – Plataforma Comum da Ética dos Conteúdos Informativos nos Meios de Comunicação e Auto-Regulação (Common Platform for Ethics and Self-regulation in the Media)*», and containing the fundamental programmed basis of discussion of a future regulatory platform for the whole media sector (also comprising a Commission for the Ethics in the Media – ETICOM, and an Ombudsman for the Communications), was signed in June 2004 by representatives of the different media and professionals concerned.

The adoption of forthcoming concrete measures in this context is expected very shortly.

3. Some periodical publications have adopted **codes of conduct**.

4. See also, and taking into consideration its intended horizontal application, the references made *supra* to:

- the *Declaration of Principles and Mass Media Agreement concerning the Reporting of Judicial Proceedings*, of November 2003 (AACS);
- the relevant *codes of conduct* and *of good practices* adopted by ICAP and APAN.

2.2. Regulatory authorities/bodies

A description of the legal basis and organisation of the authorities listed below was already made in this report: see «TV broadcasting», 1.2.1.1. and 1.2.1.3., *supra*.

With regard to the responsibilities and competences of such authorities in the field of the *press*, observations made in 1.2.1.2. shall take due account of the following points and be adapted accordingly.

2.2.1. Authorities

A) AACS – Alta Autoridade para a Comunicação Social

In the field of the press, AACS is empowered to:

- Assess the conditions of access to the rights of reply and of rectification, and to impose decisions on any complaints or appeals in this context ⁽¹¹⁰⁾;
- Issuing of a prior binding opinion on concentration operations involving journalistic companies or news agencies ⁽¹¹¹⁾;
- Monitor compliance with provisions dealing with transparency on media ownership ⁽¹¹²⁾;

⁽¹¹⁰⁾ Article 4, lit. (c) of Law 43/98; Arts.24 up to 27 of the Press Act.

⁽¹¹¹⁾ Article 4, lit. (f) of Law 43/98; Art.4(4) of the Press Act.

⁽¹¹²⁾ Article 4, lit. (f) of Law 43/98; Arts.4(2) and 16 of the Press Act.

- To exercise its functions under the terms of the law concerning the publication in the press of opinion surveys and polls whose subject is directly or indirectly related to political matters ⁽¹¹³⁾; under the terms of the applicable law ⁽¹¹⁴⁾, this also covers the cases of mass media' electronic editions;
- To process administrative offences (*contra-ordenações*) and to apply fines for the non-compliance of the provisions of the press Act, with the exceptions of Arts.5(2), 15 and 18(2)⁽¹¹⁵⁾;
- Appreciate, by means of its own initiative or through a complaint, any behaviour, which is likely to constitute a violation of any regulation applicable to the media press, in general⁽¹¹⁶⁾;
- Intervene, in mandatory terms, in conflict situations involving the right to access of journalists, for informative purposes, to places open to the public⁽¹¹⁷⁾;
- To confirm the existence of a profound modification in the editorial orientation or nature of a given media organ, at the request of the journalist concerned and based on breach of the conscience clause⁽¹¹⁸⁾.

B) ICS - Instituto da Comunicação Social

In the field of the press, ICS is particularly empowered to:

- Organise the prior and compulsory registration of national periodical publications and journalistic and news companies ⁽¹¹⁹⁾;
- Monitor compliance with Art.28 of the Press Act and with provisions of the Advertising Code ⁽¹²⁰⁾, where applicable;
- Ensure the execution of measures concerning application of the State system of incentives to the press ⁽¹²¹⁾;
- Process administrative offences (*contra-ordenações*) and to apply fines for the non-compliance with provisions of the Press Act concerning prior and compulsory

⁽¹¹³⁾ Article 4, lit. (h) of Law 43/98.

⁽¹¹⁴⁾ Article 1(4) of Law 10/2000, of 21 June 2000. See also 2.1.1., *supra*, on the question to know on whether the provisions set in the Press Act are applicable to the on-line environment.

⁽¹¹⁵⁾ Article 36(1) and (2) of the Press Act.

⁽¹¹⁶⁾ Article 4, lit. (n) of Law 43/98.

⁽¹¹⁷⁾ Article 10(4) of the Statute of the Journalists. Refusal to comply with AACCS' decisions shall constitute a crime of disobedience, of the competence of a judicial court of law.

(118) Article 4, lit. (i) of Law 43/98; Art.12(2) of the Statute of the Journalists.

(119) Article 5 of the Press Act.

(120) Together with the IC-Instituto do Consumidor (see *infra*) and other relevant authorities, as referred to in Art. 37 of the Advertising Code.

(121) Article 4(1) of the Press Act and Decree-Law 56/2001, of 19 February 2001 (rectified by the Statement of Rectification 4-B/2001, of 28 February 2001).

registration by national periodical publications and journalistic and news companies (Art 5(2)), informative requirements foreseen in law for publications (Art. 15) and legal deposit (Art.18) (122).

C) Others

IC – Instituto do Consumidor

In which refers to press, the IC is mainly empowered to:

- Monitor compliance with Art.28 of the Press Act and with provisions of the Advertising Code⁽¹²³⁾, where applicable;
- Process administrative offences (*contra-ordenações*) for the non-compliance with the provisions of the Advertising Code⁽¹²⁴⁾ involving advertising content conveyed in the press.

CACMEP – Comissão de Aplicação de Coimas em Matéria Económica e Publicidade

In which refers to press, the CACMEP is strictly empowered to punish non-compliance with particular provisions of the Advertising Code⁽¹²⁵⁾ involving advertising content conveyed in the press.

AC – Autoridade da Concorrência

As already underlined, general considerations expressed for the television sector apply *mutatis mutandis* to the field of the press. See in particular Art.4(3) and (4) of the Radio Act.

CCPJ – Comissão da Carteira Profissional do Jornalista

As already underlined, general considerations expressed for the television and radio sectors apply *mutatis mutandis* to the field of the press.

2.2.2. Self- or Co-regulatory body/ies

See 2.1.3., PCEJA – Plataforma Comum da Ética dos Conteúdos Informativos nos Meios de Comunicação e Auto-Regulação (Common Platform for Ethics and Self-regulation in the Media)».

See also 1.2.2., ICAP – Instituto Civil da Autodisciplina da Publicidade.

(122) Article 36(2) of the Press Act.

(123) Together with the IC-Instituto do Consumidor (see *infra*) and other relevant authorities, as referred to in Art. 37 of the Advertising Code.

(124) Article 38 of the Advertising Code.

(125) Article 39 of the Advertising Code.

3. Online Services

At the present stage, there is no specific legislation approved and intended for the (exclusive or not) application to the so-called media online services.

On the other hand, and as already mentioned, the question to know on whether the legislation in force for the «conventional» media is also applicable in the online environment may receive different answers, depending (on the approach and) on the specific media concerned. For example, the Radio Act in force is quite explicit when stressing that it does not apply to radio broadcast transmissions over the internet. However, when it comes to Press Act, and despite the fact that the AACCS has already admitted the application of its provisions to on-line publications, «under certain conditions and with the necessary adjustments», the debate is far from being closed on this point. The same goes, *mutatis mutandis*, with the Television Act in force, given the intended technological-neutral approach of its definition of television broadcasting activity, which apparently would may apply to any possible forms of streaming audiovisual programming services designed for reception by the general public without operating on individual demand, irrespective of the technical means employed for such purposes.

Anyway, even if deemed as consistent, such an approach has to be particularly based on considerations of reasonability and of practicability, as to face the unavoidable constraints imposed by the particular nature of the online environment and the inherent characteristics of most of the media and media-alike services therein available. Requirements of national civil and criminal law shall in any event be regarded as the minimum degree of regulation potentially applicable to such cases.

On the other hand, the so-called information society services (which include *video-on-demand* and other «point to point »services) are at present governed by *Decree-Law 7/2004*, of 7 January 2004, which transposed into national legal order Directive 2000/31/CE, of 8 June 2000. ICP-ANACOM was designated to be the central supervisory entity endowed with powers in all fields regulated by this statutory instrument, except for the issues under the sectorial powers of another entity, pursuant to special law⁽¹²⁶⁾.

Among other competences in this field, particular reference must be made to the measures that ANACOM ⁽¹²⁷⁾ is entitled to adopt, as to restrict the movement of a given information society service from another Member State of the EU where it seriously damages or threatens to damage human dignity or public order, including the protection of minors and the fight against any incitement to hatred, along with other relevant values.

Under the terms of the law, «supervisory entities shall encourage the drawing-up of **codes of conduct** by interested parties and their disclosure by electronic means. The involvement of associations or organisations responsible for the protection of consumer interests shall be encouraged as regards the drafting and implementation of codes of conduct affecting their interests. Where appropriate to take account of their specific needs, associations representing

⁽¹²⁶⁾ Article 35 of Decree-Law 7/2004.

⁽¹²⁷⁾ And also the courts of law. Arts.7 *et seq.* and 36(2) lit. (a) of Decree-Law 7/2004.

the visually impaired and disabled or others should be consulted. The codes of conduct shall be publicized online by the supervisory entities themselves» ⁽¹²⁸⁾. Codes of conduct approved in matters included in the field covered by Decree-Law 7/2004 that go beyond the aims of the issuing entity or with a content which do not comply with general principles or rules in force may be contested in court ⁽¹²⁹⁾.

4. Film/Interactive games

Concerning the particular topic of video/interactive games, remains practically unchanged the Portuguese situation as reported in points 24-28 of the response to the questionnaire prepared for the Second Evaluation Report on the application of Council Recommendation of 24 September 1998 concerning the protection of minors and human dignity ⁽¹³⁰⁾. The main relevant modification concern the recent amendments introduced to Decree-Law 39/88, of 6 February 1988 ⁽¹³¹⁾, according to which video and computer games, «regardless of their material support, fixation terms or interactivity», are now expressly covered in its scope/field of application.

Most of the considerations made with regard to video/interactive games are also applicable to films. With particular respect to the exhibition of films by means of television broadcasting, attention must be paid to the rule set in Art.24 according to which the television broadcasting of works which have been subject to age rating systems for the purposes of their cinematographic or videographic distribution shall be preceded by a mention of the rating that they have been given by the competent authority: the CCE – *Comissão de Classificação de Espectáculos* (Entertainment Rating Commission) ⁽¹³²⁾. Whenever the rating in question considers access to such works inadvisable for minors under 16 years of age, their TV broadcast may only occur between 11.00 p.m. and 06.00 a.m., and identified by an appropriate visual symbol throughout their duration. This obligation applies to all items of programming, including advertising and messages, extracts or any images of self-promotion. Programme services with conditioned access are exempted from this obligation ⁽¹³³⁾.

5. Summary

As it stands, the Portuguese media regulatory system may be summarised as follows:

Media activity is based and exercised under extensive and well developed levels of recognition and protection of fundamental rights and liberties within the Constitution and ordinary law.

⁽¹²⁸⁾ Articles 42 and 36(4) lit. (a) of Decree-Law 7/2004.

⁽¹²⁹⁾ Article 43 of Decree-Law 7/2004.

⁽¹³⁰⁾ COM (2003) 776 final, of 12.12.2003. The abovementioned PT document is available, also in English language, at http://europa.eu.int/comm/avpolicy/regul/new_srv/secondreport_en.htm.

⁽¹³¹⁾ By Decree-Law 121/2004, of 21 May 2004.

⁽¹³²⁾ Governed under the terms of Articles 3(1) lit. (b), and 5 to 8 of Decree-Law 106-B/92, of 1 June 1992. See also Article 46(2) of Decree-Law 80/97, of 8 April 1997.

⁽¹³³⁾ Article 24(2) to (5) of the Television Act.

However, regulatory structure is unbalanced and conflicting, with regard to legislative mechanisms and to the entities responsible for ensuring law monitoring and enforcement, and inefficient in terms of its effective intervention, with inherent distortions in media and other associated markets and compromising objectives of general interest underlying content regulation.

Co and/or self-regulation mechanisms still play a small relevant role in such a regulatory structure, without prejudice of the growing recognition of its importance and the emergence of occasional and more or less important examples, particularly in the sector of television broadcasting and press.

Substantial modifications are expected in this context, in a future not too distant, by all different interested parties of the media sector.

3.21. Slovakia

Introduction

Transformation of the political and economical system in Czechoslovakia after 1989 and in Slovakia after 1993 brought significant changes also to the media sector. Political pluralism and the ensuing massive boom of TV and radio broadcasting, press, audiovisuals, as well as advertising and new technologies created the need for new legislation. As a result, a series of statutory instruments were adopted. This process, however, cannot be considered finished, given the enduring absence of self-regulatory and co-regulatory mechanisms in some media sectors.

The dominating bodies regulating the media sector in the Slovak republic are the state bodies. Although the legal regulations relevant for the media sector or the Constitution of the Slovak republic do not exactly stipulate that “co-” or “self-regulation” via other (non state subjects) is non acceptable, such subjects, if even exist, do not have such effective legal instruments (e.g. supervising or sanctions) at their disposal as do the state bodies have. In this case, there is not any conveyance of the part of state competencies to these subjects. This, however, does not mean, that these institutions do not fulfil important tasks in such areas as e.g. ethical self-regulation of the respective media (advertisement, press). From the above it seems evident that these institutions do not replace the state body regulation adjusted by the legislation.

The Constitution

The Constitution of the Slovak Republic, published in the Collection of Laws under no. 460/1992, is the fundamental regulation of the Slovak Republic guaranteeing human rights and freedoms, including the right to information and free expression of opinions and ideas.

Provisions relevant for the media are in Part 2, Chapter Three - “Political Rights”, **Article 26** of the Constitution of the Slovak Republic. The Constitution of the Slovak Republic:

- guarantees the right of expression and the right to information
- guarantees the right to express one’s opinions and freely seek, receive and disseminate ideas and information
- provides that no approval process is required for publication of the press
- provides that radio and television companies may be required to seek permission from governmental authorities to set up private businesses
- prohibits censorship

Under the Constitution, the freedom of expression and the right to receive and disseminate information may be lawfully limited only where, in a democratic society, it is necessary to protect rights and freedoms of others, state security, law and order, health and morality.

1. Broadcasting

In the introduction to the topic regarding the TV and radio broadcasting, we present the overview of the TV and radio broadcasters in the Slovak republic, their territorial extent, as well as amount of broadcasting. The data reflect the situation in 2003.

TV Broadcasting in the Slovak republic in 2003

TV Channels	Broadcasting Hours/year	Number of broadcasters
Slovak Television 1 (Public-Service Broadcaster)	6 357	1
Slovak Television 2 (Public-Service Broadcaster)	4 015	
Total broadcasting extent of Public-Service Broadcaster	10 372	1
TV MARKÍZA	7 384	1
TA 3	5 980	1
TV JOJ	8 736	1
Regional, local and other multiregional TV channels	528 557	81
Broadcasting extent of licensed TV broadcasters	550 657	84
Total extent of TV broadcasting	561 029	85

Source: Council for Broadcasting and Retransmission of the SR

Radio Broadcasting in the Slovak republic in 2003

Radio Channels	Broadcast. Hours/year	Number of broad- casters
Slovak Radio (Public-Service Broadcaster)	44 677	1
Multiregional radio channels	44 970	7
Regional radio channels	78 840	9
Local radio channels	52 560	6
Other radio channels *	5 040	2
Broadcasting extent of licensed radio broadcasters	181 410	24
Total extent of radio broadcasting	226 087	25

*AWR, Radio Rebeka

Source: Council for Broadcasting and Retransmission of the SR

The Strategy and Technical Criteria of Launching the Terrestrial TV Broadcasting in DVB-T in Slovakia is regulated by the Government Decree No. 589/2001. The project of digitalization of TV and Radio broadcasting in Slovakia should be functional in 2006 and accomplished in 2015 at the latest.

1.1. Regulatory framework

1.1.1. Legal provisions

The legislative framework regulating electronic media – broadcasting and retransmission – has been formed in the democratic conditions gradually since 1991. The first regulation governing TV and radio broadcasting was the Act 468/1991 on Radio and Television Broadcasting. This Act was substituted by **Act 308/2000 on Broadcasting and Retransmission, as amended**, which harmonised electronic broadcasting in Slovakia with the European legislation. Act 308/2000 came to effect on 4 October 2000.

Together with Act 308/2000 on Broadcasting and Retransmission as amended, the following regulations constitute the basic legislative framework for this sector of the media:

- Act 16/2004 on Slovak Television
- Act 619/2003 on Slovak Radio

- Announcement of the Ministry of Foreign Affairs of the Slovak Republic 168/1998 on conclusion of the European Convention on Cross-border Television
- Announcement of the Ministry of Foreign Affairs of the Slovak Republic 345/2002 on conclusion of Protocol Amending the European Convention on Cross-border Television

Act 308/2000 on Broadcasting and Retransmission as amended

Act on Broadcasting and Retransmission regulates the position and competencies of the Council for Broadcasting and Retransmission, as well as the rights and obligations of the broadcaster, retransmission operator and legal or natural persons referred to in Section 2 (2) and (4) of the Act and applies to:

- broadcasters authorised to broadcast under the law
- broadcasters authorised to broadcast under this Act on the basis of a licence
- broadcasters authorised to provide retransmission under this Act on the basis of a licence

Act on Broadcasting and Retransmission also governs:

- the Council for Broadcasting and Retransmission
- fundamental rights and obligations of broadcasters and retransmission operators, and special obligations of a broadcaster
- European works and independent production in broadcasting
- the right of the public to access information in broadcasting
- advertising, teleshopping and sponsored programmes
- broadcaster's self-promotion and teleshopping
- plurality in broadcasting and transparency of property and personal relations in broadcasting
- proceedings concerning the granting of a broadcasting licence and the proceedings on retransmission registration
- sanctions for breach of obligations
- frequency spectrum for broadcasting

Under this Act, the broadcaster and retransmission operator enjoy freedom and independence; restrictions can only be introduced in a law.

Protection of human dignity and humanity and the right to correction are guaranteed in Part V, Sections 19 – 21 of the Act

The programme service and all its elements, in its content and form, shall not infringe upon human dignity and the basic rights and freedoms of others; at the same time it shall not:

- promote violence and instigate hatred
- include in programme offers extracts from works illustrating the use of guns, environmental devastation and views which could evoke an expression of hidden form of promotion of alcoholism, smoking and use of narcotic substances
- promote war or describe cruel or other inhumane behaviour in an inappropriate manner
- depict without justification scenes of real violence
- in an open or hidden form promote alcoholism, smoking, use of narcotic substances or trivialise the effects of such use

Under Section 20 of the Act, the broadcaster is obliged to ensure that programmes or other elements of the programme service which can impair the physical, mental or moral development of minors, especially those containing pornography or coarse, unjustified violence, are not broadcast. Programmes or other elements of programme service which could endanger the physical, mental or moral development of minors, or impair their mental health or emotional condition, must not be broadcast between 6.00 a.m. and 10.00 p.m.

In composing the programme structure of broadcasting, the broadcaster of a television programme service shall also take into account the suitability of programmes and other elements of the programme service for minors. On the basis of the classification of programmes according to age-suitability, the broadcaster of a television programme service is obliged to introduce and apply a uniform system for parents and those adults who take care of minors, informing them on the suitability of programmes for age groups under 7, 12 and 18.

The access of the public to information in broadcasting of television programme service is guaranteed in Part VII, Sections 29 – 31 of the Act. Exercise of a broadcaster's exclusive rights to live coverage or deferred coverage of political, social, cultural or sport events must not restrict the access of the public to information on those events. The broadcaster of television programme service can for the purpose of news produce and transmit deferred coverage on an event for which another broadcaster has exclusive broadcasting rights.

Act 16/2004 on Slovak Television

Act 16/2004 is a statute important for the sector of TV broadcasting, regulating the position, mission, tasks and activities of the Slovak Television, its bodies, as well as its economy and financing.

Slovak Television (Slovenská televízia) is a public-service, national, independent, information, cultural and educational institution offering services to the public in the field of television broadcasting; its mission is to provide public service in television broadcasting.

Slovak Television is funded by its own resources as well as the public funds. In using the funds, Slovak Television is obliged to be as economical and effective as possible.

Slovak Television, in particular:

- broadcasts on two nation-wide terrestrial channels
- provides for regional broadcasting
- takes into account the needs of the aurally-impaired viewers and other social minorities in broadcasting
- broadcasts the majority of its programmes in the public interest
- broadcasts programmes that are thematically and regionally balanced, in the languages of minorities and ethnic groups living on the territory of the Slovak Republic
- carries advertising and sponsored programmes in accordance with Act 308/2000 on Broadcasting and Retransmission

The bodies of Slovak Television are:

- Council of Slovak Television
- Supervisory Board of Slovak Television
- Director General

Act 619/2003 on Slovak Radio

Act 619/2003 regulates the position, mission, tasks and activities of the Slovak Radio, its bodies, as well as its economy and financing.

Like the Slovak Television, the Slovak Radio (Slovenský rozhlas) is a public-service, national, independent, information, cultural and educational institution offering services to the public in the field of radio broadcasting. Its mission, position, tasks and activity are comparable with those of the Slovak Television referred to above.

Slovak Radio is funded by its own resources, as well as the public funds. In using the funds, Slovak Television is obliged to be as economical and effective as possible.

The bodies of the Slovak Radio are:

- Council of Slovak Radio
- Supervisory Board of Slovak Radio
- Director General

1.1.2. Administrative regulations/rules

The legal framework for regulation of broadcasting and retransmission has a statutory basis.

1.2. Regulatory authorities/bodies

1.2.1. Authority/ies

Council for Broadcasting and Retransmission

The Council for Broadcasting and Retransmission was established by Act 308/2000 on Broadcasting and Retransmission as amended, for the purpose of enforcing the interests of the public in the process of application of the right to information, freedom of expression and the right of access to cultural values and education, as well as state regulation in the field of broadcasting and retransmission. In performing the state administration functions in the field of broadcasting and retransmission, the Council is in the position of a state administration body with nation-wide competence defined in this Act and separate regulations.

The Council ensures that plurality of information is preserved in news programmes of the broadcasters operating on the basis of the Act or a licence issued in accordance with Act 308/2002 on Broadcasting and Retransmission. It also supervises the compliance with regulations pertaining to broadcasting and retransmission and performs the state administration functions in the sector of broadcasting and retransmission in the scope determined by this Act.

1.2.1.1. Legal Basis

The second part of **Act 308/2000 on Broadcasting and Retransmission** (Sections 4-14) forms the legal basis for the functions and operation of the Council for Broadcasting and Retransmission.

1.2.1.2. Functions/Competencies

The competencies of the Council for Broadcasting and Retransmission are manifold. The Act gives the Council competence in the field of performance of state administration functions (Section 5(1)) and other competence (Section 5(2)).

Its state administration functions include awarding broadcasting licences and registration of retransmission, granting additional frequencies to a broadcaster, supervising the fulfilment of obligations imposed under Act 308/2000, setting deadlines for changes to be made to broadcasters' legal constitution, imposing sanctions, drawing up various plans, processing statistics for broadcasting and retransmission, etc.

The competencies of the Council also include:

- exercising powers in accordance with the European Convention on Cross-border Television
- participating in the legislative process
- giving notice to the Council of the Slovak Television and the Council of the Slovak Radio of violation of statutory obligations
- submitting annual report on the situation in broadcasting to the National Council of the Slovak Republic

1.2.1.3. Organisation

The Council has nine members elected and recalled by the National Council of the Slovak Republic. The tenure of the Council members is 6 years. Every two years, a third of the Council members is elected. The Council Chairman and Vice-chairman are elected from and by the Council members.

The Council has its own budget and is financed by the state.

The functions of the Council resulting from its mission and the competencies are performed by its members, while the activities related to the operations of the Council are performed by the employees of the Office of the Council for Broadcasting and Retransmission.

1.2.2. Self- or Co-regulatory Bodies

Council of Slovak Television

Under Section 8(1)(a) of Act 16/2004 on Slovak Television, the Council of Slovak Television – a Slovak Television body – supervises the compliance with the Act on Slovak Television and the fulfilment of tasks arising for Slovak Television under separate regulations.

The Council of Slovak Television has 15 members elected by the National Council of the Slovak Republic. The tenure of the Council members is 6 years.

In accordance with Section 8(1)(d), the Council approves the Statute of the Slovak Television, the Statute of the Supervisory Board of the Slovak Television, the Statute of Programme Makers and Co-operators, which can be considered as the internal statutes issued for the purpose of internal regulation in the Slovak Television.

Radio Council

It has similar regulatory functions as the Council of Slovak Television. It also approves similar internal statutes for the Slovak Radio. As a body of the Slovak Radio, it also watches over the compliance with laws and the fulfilment of tasks of the Slovak Radio in accordance with Act 619/2003 and separate regulations.

The Radio Council has 15 members elected by the National Council of the Slovak Republic. The tenure of the Council members is 6 years.

Presently there are no self-regulatory bodies in broadcasting and retransmission in Slovakia.

2. Press

As to the information given by the Ministry of Culture of the Slovak republic, there operated 1019 publishers on the national level and 581 publishers on local, and/or regional level in the Slovak republic in 2003. In the category “newspapers” there were registered 463 titles in all, thereof 21 dailies, other titles had lower periodicity. As to the category of “journals” the were registered 1076 titles in all, thereof 58 weeklies, other titles had lower periodicity.

2.1. Regulatory Framework

2.1.1. Legal Provisions

Act 81/1966 on Periodic Press and Other Mass Media

Act 81/1966 on Periodic Press and Other Mass Media as amended is the fundamental statute governing the sector of press.

Act 81/1966 as amended, implements the constitutional freedom of expression, expression in words and press in the sector of periodic press and other mass media.

Section 3 of the Act defines:

- periodic press as newspapers, magazines and other periodic press, published at least twice a year under the same name and in the format characteristic for the particular type of press
- mass media (except for periodic press), such as the services of news agencies, news bulletins and other journalist-type programmes in radio and TV broadcasting, news reports, as well as sound and video recordings used for provision of regular information to the public

The permission to publish periodic press is granted upon registration of the applicant; Slovak natural and legal persons are entitled to such permission. Other entities may publish periodic press only with the consent of the state.

The Act also regulates:

- the registration process for periodic press
- the position of the publisher, editor-in-chief and editors, their rights and obligations, as well as sanctions for the violation of the obligations
- protection against abuse of the freedom of expression and expression in words and press.
- correction of incorrect data
- distribution of periodic press

Protection of children and juveniles and human dignity in the press:

Under Section 9b of Act 81/1966 as amended, the publisher shall make sure that periodic press contains neither information promoting war or describing cruel or otherwise inhuman action in a manner downplaying, excusing or approving of war or such action, nor information promoting or describing the use of narcotics in a manner that would be downplaying, excusing or approving of such use.

Protection of children and juveniles in relation to distribution of press is guaranteed also in **Act 445/1990, which regulates the conditions for sale and distribution of press and other things potentially threatening morality.**

For the purposes of this Act, “press and things” means periodic and non-periodic press, audiovisual recordings, depictions or other things which can endanger morality or cause public outrage due to their subject-matter or character. The items may be sold and distributed in special shops or other premises approved for this purpose by the respective body of state administration. The approved premises may not be located near schools or school facilities and premises where religious ceremonies take place.

In selling and distributing such things, the natural and legal persons must also comply with these conditions:

- the things may not be displayed in shop-windows and publicly promoted
- the things may only be sold and distributed by persons over 18 years of age
- only persons over 18 years of age may enter the approved premises

Act 40/1964 as amended, the Civil Code

Protection of personality in accordance with Sections 11 - 16 of the Civil Code applies in particular to:

- the life and health of a person
- civil and human dignity
- privacy, name and expressions of private nature

The above protection of personality pertains to all media sectors where writings of private nature, portraits, visual images and video and audio recordings related to a natural person or his/her expressions of private nature are created or published.

2.1.2. Administrative Regulations/Rules

The legal framework for press regulation has a statutory basis.

2.1.3. Other provisions (especially co-regulatory or self regulatory measures, codes of conduct, etc.)

As regards the problem of ethical self-regulation in journalism, it is necessary to mention the **Code of Ethics** adopted by the Slovak Syndicate of Journalists (SSJ). The Code is binding for all members of the SSJ.

The Code of Ethics regulates:

- the principles of protection of human rights and freedoms and human dignity
- the obligation to publish truthful, verified and professional information.
- the relation between the journalist and his/her information source
- the ethics of information collecting, relations with colleagues
- prohibition of plagiarism

2.2. Regulatory Authorities/ Bodies

2.2.1. Authority/ies

Under Act 81/1966 as amended, **the Ministry of Culture of the Slovak Republic** is the body responsible for registration of periodic press, and it also supervises the fulfilment of obligations under this Act. It is also authorised to impose sanctions in case of violation of obligations.

In relation to the protection of personality, it is also the courts that play an important role in regulating the contents of the periodic press as well as other media.

2.2.2. Self-regulatory bodies

Self-regulatory bodies for the press include the **Slovak Syndicate of Journalists** – an independent, non-state organisation established in 1990 and the **Press Council of the Slovak Republic**. Members of the Slovak Syndicate of Journalists are journalists working in press, radio, TV and news agencies in Slovakia.

The organisational structure of SSJ consists of a congress, the Managing Board, the Supervisory Board, the Chairman and the Chairman's Advisory Board.

The Press Council of the Slovak Republic was established in 2002 and is another independent authority for printed periodicals. It aims to:

- support and protect the rights of the public to truthful, verified and professional information,
- supervise the compliance with the rules of ethics applicable to the journalist work,
- supervise the adherence to the freedom of press and free access to information,
- deal with complaints.

In monitoring the compliance with the rules of ethics of the journalist work, the Press Council of the Slovak Republic acts upon the Code of Ethics adopted by the Slovak Syndicate of Journalists.

The Press Council of the Slovak Republic has six members. Their tenure is 6 years.

3. Online Services / Online Games

As to the January 2005 as much as 50 % of Slovak inhabitants aged over 15 years approached the Internet. 22.3 % of users were connected to Internet in public places. The possibility to be connected to Internet at home was used by 13.4 % of inhabitants. Another group of inhabitants is able to use the connection to Internet at work. (Source: GfK Slovakia Agency).

According to the information by Telecommunication Office of the Slovak Republic, at present 236 Internet providers are operating in Slovakia.

Regulation regarding the Internet and “on-line games” (in the area of advertisement) is set in the Act 147/2001 on Advertising and therein entrenched protection of minors as well as human dignity etc. Till these days, in the Slovak Republic, there neither exist such self-

regulation nor institution in this sector to supervise and check the contents of Internet sites, both from the aspect of protecting the minors or human dignity etc. However, in case of publishing the contents whose character points to some kind of criminal offence, criminal statutes can be applied.

3.1. Regulatory Framework

3.1.1. Legal Provisions

The principal regulation for Electronic Commerce is Act 22/2004 on Electronic Commerce, which introduced into Slovak legal system the 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 (Directive on electronic commerce). The Directive represents a common legal framework for electronic commerce for all member states, which were obliged to implement this directive.

The Act regulates, in particular:

- the freedom of providing information society services
- obligations of the service provider in the field of provision of information
- contracts concluded via electronic devices
- exclusion of liability by the service provider
- international cooperation in e-commerce

Regulations related to e-commerce are Act 215/2002 on Electronic Signature and Act 610/2003 on Electronic Communications.

3.1.2. Administrative Regulation/Rules

The legal framework for e-commerce regulation has a statutory basis.

3.1.3. Other provisions (especially co-regulatory or self regulatory measures, codes of conduct, etc.)

3.2. Regulatory authorities/bodies

Under Section 7 of Act 22/2004 on Electronic Commerce, **Slovak Trade Inspection** conducts supervision over the adherence to the Act, in accordance with Act 128/2002 on State Control on the Internal Market in the Consumer Protection Issues.

3.2.2. Self Regulatory Body

Slovak Association for Electronic Commerce is an association of legal entities established with the aim of developing e-commerce in Slovakia. It does not aim to self-regulate e-commerce (field of protection of minors, human dignity etc.), but, rather, to promote and support all forms of e-commerce and assert the interests of its members.

4. Film

4.1. Regulatory Framework

4.1.1. Legal Provisions

Act 1/1996 on Audiovisuals as amended is the framework regulation for the sector of audiovisuals. It sets forth some conditions for the production, use and distribution of audiovisual works. It, however, does not apply to audiovisual works produced or used and distributed exclusively by means of television broadcasting.

Act 1/1996 on Audiovisuals as amended regulates:

- identification of all audiovisual works
- obligations of producers, distributors and operators
- advertising in audiovisual performances
- financing of Slovak audiovisual works
- supervision
- penalties

The Act also imposes obligations aimed at the protection of children and juveniles on producers, distributors and operators of audiovisuals. Should the content of an audiovisual works threaten the mental or moral development of minors under 15 and juveniles under 18, there is an obligation to determine or indicate the age which the work is suitable for.

4.1.2 Administrative Regulations/Rules

The legal framework for regulation of the audiovisuals sector has a statutory basis.

4.1.3. Other provisions (especially co-regulatory or self-regulatory measures, codes of conduct, etc.)

4.2. Regulatory authorities/bodies

The main state administration body in the sphere of audiovisuals is the **Ministry of Culture of the Slovak Republic**, which also performs regulatory functions in this field. The fulfilment of obligations arising under Act 1/1996 on Audiovisuals as amended is supervised by the Ministry, or employees of state cultural institutions authorised by the Ministry.

4.2.2. Self- or Co- regulatory Bodies

In Slovakia, there are a number of non-state, professional organisations in the field of audiovisuals. None of them, however, performs a self-regulatory function.

5. Advertising

5.1. Regulatory framework

5.1.1. Legal Provisions

The issue of advertising in the media is governed by several regulations, depending on the particular medium.

It is the following regulations:

The general legal framework for advertising in Slovakia is provided by **Act 147/2001 on Advertising as amended**. In addition to stipulating general advertising requirements, the Act regulates:

- comparative advertising
- alcoholic beverages advertising
- tobacco product advertising
- guns and ammunition advertising
- medication advertising
- advertising of infant preparations and the follow-up preparations

While the Act on Advertising can be considered the *lex generalis* for advertising, each other regulation applicable to various media sectors is the *lex specialis*. The Act on Advertising is predominantly applicable to the sector of printed media.

Broadcasting and retransmission is covered by **Act 308/2000 on Broadcasting and Retransmission**, whose Sections 30-39 regulate the issues of advertising, teleshopping and sponsored programmes in a complex manner. Under Section 32 (1), general regulations on advertising, i.e. Act 147/2001 as amended, is not applicable to broadcasting.

Under Section 32 (4) of Act 308/2000, advertising and teleshopping shall not:

- infringe upon freedom and equality in the dignity and rights of people and evoke fear in them
- contain any discrimination on the basis of sex, race, colour of skin, language, national or social origin, or nationality or ethnicity
- offend the faith or religion, political or other persuasion
- encourage actions causing damage to or endangering health
- encourage actions damaging the environment

The Act also specifies the restrictions on the broadcaster for the purpose of **protection of minors**, in particular, preventing teleshopping from compromising their physical, mental or moral development or disturbing their health or emotional state.

Restriction of advertising of some products and services:

- **full prohibition** – all forms of advertising tobacco products; drugs containing narcotic, psychotropic and other addictive substances, as well as drugs on prescription; advertising of guns and ammunition; political advertising (unless provided to the contrary in a separate regulation), promotion of religion or atheism.
- **partial restriction** – advertising of alcoholic beverages with the exception of beer, as well as advertising of erotic services, goods and audiotext services is allowed only between 10pm and 6am; .
- Advertising of alcohol and drugs available without prescription must comply with **additional statutory requirements**.

Advertising in the **sector of audiovisuals** – audio-visual performance – is regulated by Section 5 of **Act 1/1996 on Audiovisuals as amended**.

The Act prohibits advertising:

- encouraging behaviour that endangers moral development, or damages interests in the protection of health, safety or the environment
- intended for or displaying children, if it encourages behaviour endangering their health, mental or moral development,
- promoting human and veterinarian drugs available only on prescription
- promoting alcoholic beverages, narcotic, psychotropic and other addictive substances, poisons and violence
- that is in contradiction with a prohibition provided in another regulation

5.1.2. Administrative Regulations/Rules

The legal framework for advertising regulation has a statutory basis.

5.1.3. Other provisions (especially co-regulatory or self-regulatory measures, codes of conduct, etc.)

The ethical principles of advertising practice in Slovakia (Code of Ethics), adopted by the Advertising Standards Council in 2004, regulates and provides:

- general principles of advertising practice (truth, honesty and fairness of advertising, social responsibility)
- special advertising requirements (value of product, price comparison, discrediting of competitors, imitation of advertisements).
- specific advertising practice rules (alcohol advertising, protection of children and juveniles, tobacco advertising, home-delivery advertising).

This code does not substitute legislative regulation of advertising, but the rules of ethics are in relation to it.

5.2. Regulatory Authorities/Bodies

5.2.1. Authority/ies

The **Council for Broadcasting and Retransmission** performs supervisory activities in the field of broadcasting and retransmission in accordance with Act 308/2000. Under Section 67 (5)(a), this authority may also impose penalties in case of infringements upon provisions of this Advertising Act.

The following authorities perform supervision over adherence to Act 147/2001 on Advertising:

- **State Veterinary and Food Administration of the Slovak Republic**
- **State Institute for Drug Control** performs supervision over advertising of drugs and infant preparations and the follow-up preparations,
- **State Institute for Veterinary Drug Control** performs supervision over advertising of veterinary drugs,
- **Slovak Trade Inspection** performs supervision in all other cases

The audiovisuals sector under Section 7 of Act 1/1996 is supervised by the **Ministry of Culture of the Slovak Republic**, or employees of state cultural institutions authorised by the Ministry. Under Section 8 (2)(b), the Ministry of Culture may impose a penalty in case of infringements upon provisions of this Advertising Act.

5.2.2. Self or Co- Regulatory Bodies

The **Advertising Standards Council**, established in 1995 by entities on the marketing communication market is the self-regulatory entity in the advertising sector. It is a non-state, non-profit, self-regulatory organisation for ethics.

The Council performs the following activities:

- publishes the Code of Ethics
- enforces the compliance with the Code of Ethics by means of the Arbitration Committee
- performs educatory activities
- represents its members in the European Advertising Standards Alliance
- cooperates in the issues of ethics with the state authorities, courts, associations and other institutions in Slovakia and abroad
- represents the interests of the advertising industry and participates in the drafting of legislation

The Advertising Standards Council is made up of the following bodies: General Assembly, Secretariat, Presidential Board and the Arbitration Committee

6. Conclusions

The regulations governing the media sector in Slovakia are numerous, which is apparent in particular in advertising where there are a number of regulations in force and several regulatory bodies.

There are no effective self-regulatory bodies or mechanisms in broadcasting and retransmission and the regulation framework is exclusively in the hands of the state. A similar situation is also in the field of audiovisuals and e-commerce. Advertising and press are the two most self-regulated sectors. Here, the professional non-state organisations perform regulatory activities and complement state regulation by applying the ethical self-regulation.

Another characteristic feature of Slovakia's media sector is the absence of subordinate legislation - the most fundamental regulations are laws. However, this is not a negative fact considering the importance of this sector for the society.

3.22. Slovenia

Introduction

With a population of less than 2 million, Slovenia has around 1,200 different media, including 968 printed publications with a total circulation of about 6 million. Around 60% of Slovenian households are linked to cable television systems. The internet access in households has shown dramatic growth in recent years, tripling from 15 % in 1999 to 45 % in 2003. While dial-up access still prevails, broadband technologies are gaining ground, with cable having a 14 % share and ADSL closing in with an 8 % share in households.

In Slovenia, 7 daily newspapers are published, with a total circulation of about 350,000; 45 weeklies and regional newspapers with a circulation of 1.6 million; 33 fortnightly publications with a circulation of 360,000; 41 occasional publications on current affairs, the economy and politics with a total circulation of 612,000; 183 academic and professional journals; 33 cultural magazines, mainly monthlies, with a total circulation of around 80,000; 48 entertainment tabloids and magazines with a total circulation of around 500,000; as well as 8 foreign language magazines on Slovenia. The traditional dailies (*Delo*, *Večer*, *Dnevnik*), began to be published after the Second World War, have the largest number of regular subscribers. Regional weeklies with a similar tradition and a relatively large circulation also have a high percentage of regular readers.

In Slovenia there are 4 national television channels and over 30 regional and local channels. The development of the cable TV network around Slovenia, presently managed by over 80 cable operators, stimulated the appearance of local television channels.

RTV Slovenija (RTVS) is a public service broadcaster with two national coverage television channels. There is also a regional television channel for the Italian minority broadcasting from a regional centre in *Koper-Capodistria*. Additional regional television channel was launched from a regional centre in Maribor in 2002. The first channel SLO 1 started in 1958. There is a variety of programmes broadcast daily with a total duration of 24 hours; more than half of them are in-house productions.

Pro Plus, a company with mixed ownership (CME and Slovenian partners), started business in 1995. It now produces the leading commercial TV channels in Slovenia – *POP TV* and *Kanal A*. These are independent and complimentary TV channels, producing a wide range of domestic programmes as well as offering a variety of international programmes.

According to the people meter measurement¹ in 2003, public national services had a 34 % share (SLO1 25 % and SLO" 9 %) and commercial national services a 38 % share (*POP TV* 29 % and *Kanal A* 9 %) of Slovenian television audiences.

The radio market in Slovenia is highly fragmented. After the liberalisation of the allocation of frequencies following Slovenian independence, the number of electronic media entities

¹ Media Service AGB

almost trebled. Private players are well established in this competitive market and it is more difficult for the public channels to achieve high shares. RTV Slovenija (RTV SLO) is a public service broadcaster with three national radio programmes (*Program A*, *Val 202*, *program ARS*), four regional programmes (one of them *Radio Capodistria* is designed for the Italian minority) and one local radio programmes, there are more than 70 regional and local commercial and non-commercial radio stations².

General remarks

In 1991, the media sector was entirely privatised, with the former state radio and television broadcasters remaining the only public-owned institutions. Public radio and television ([RTVS](#)) enjoy special status in terms of national significance. It is financed from monthly licence fee, the total sum of which is approved by the state. It is also allowed to supplement its income through commercial sources.

The systemic media law (Mass Media Act) covers all media: broadcasting, print, electronic publications, teletext and other forms. Media legislation is thorough and restrictive, but regulatory and supervisory bodies are generally not very effective. Media concentration is high and is still in progress. Data on ownership are easily accessible but change rapidly, making the media landscape difficult to map and interpret.

Constitutional and legal framework

The Constitution

The Constitution of the Republic of Slovenia³ was proclaimed on 23 December 1991. Freedom of expression, of thought, freedom of speech and public appearance, of the press and other forms of public communication and expression is constitutionally guaranteed. Everyone may freely collect, receive and disseminate information and opinions (both Article 39). The rights to personal dignity and safety (Article 34), to correction and reply (Article 40), to privacy (Article 35), protection of personal data (Article 38) and the rights of children (Article 56) are also guaranteed by the 1991 Constitution.

Peculiarity might be the fact that the right to correction and reply is a constitutionally guaranteed right. It is elaborated more precisely in Articles 26-44 of the Mass media act (2001).

² Source: Facts about Slovenia, Public relations and media office

³ Official Journal, N. 33/1991

Media legislation

The Mass media Act

In June 2001, the Slovenian Parliament Slovenia adopted the Mass Media Act (*Zakon o medijih – ZMed*)⁴ providing rules and regulations for the entire media sphere: print, broadcasting – public and private, and others.

Previous media law adopted in April 1994 was regulating print as well as radio and television broadcasting. Public radio and television was not covered under this piece of legislation. Rather a special law on RTVS, also accepted in April 1994, regulated it.

The law pays considerable attention to the protection of pluralism and media transparency, which are protected by the imposed limit of shares owned by one legal person in different media entities. It contains special provisions on radio and television stations and programs.

Anyone who wants to acquire more than 20% owner's share in a radio or television station or a daily newspaper, now has to obtain an approval from the Ministry of Culture. The Ministry will refuse to issue such an approval if it leads to a buyer gaining a monopoly over advertising (in such a case the refusal is not simply an option, but obligation). The monopoly means gaining control over more than 30% of radio or television advertising time, or coverage that exceeds 40% of the national coverage. As for the daily newspapers, this translates into 40% of the total sold copies in Slovenia.

- Under the Article 2/1 of the present law mass media are: newspapers and magazines, radio and television stations, electronic publications, teletext and other forms of editorially formulated programming published daily or periodically through the transmission of written material, vocal material, sound or pictures in a manner accessible to the public. (Art. 2/1)

For the purpose of entry in the mass media register the publisher must register the mass medium at the Ministry of Culture prior to commencing the performance of activities. The ministry must enter a medium in the mass media register if the applicant fulfils all the conditions prescribed by this act. (Art. 12 and 13).

The dissemination of programming that encourages national, racial, religious, sexual or any other inequality, or violence and war, or incites national, racial, religious, sexual or any other hatred and intolerance shall be prohibited (Art. 8).

Any person shall have the right to demand that the responsible editor publish free-of-charge a correction by such person to any report published that infringes upon the person's rights or interests. (Right to correction of a report published – Art. 26/1). If the responsible editor fails to publish a correction within the period and in the manner stipulated by the present act, the person that demanded the publication of the correction shall have the right to file a suit against the responsible editor at the court competent for civil disputes (Art. 33).

⁴ Official Journal, N. 35/2001

Any person shall have the right to demand that the responsible editor publish free-of-charge a reply to information published by which that person through demonstrable statements denies, significantly corrects or significantly elaborates upon the statement of facts and figures in the information published. The right to reply to information published is intended to secure the interest of the public in terms of objective, multilateral and up-to-date information, as one of the essential conditions for democratic decision-making in public affairs (Art. 42).

Surreptitious advertising shall be prohibited. Advertising may not: prejudice respect for human dignity, incite discrimination on the grounds of race, sex or ethnicity, or political or religious intolerance, encourage behaviour damaging to public health or safety or to the protection of the environment and the cultural heritage, give offence on the grounds of religious or political beliefs or damage consumers' interests (Art. 47/1,2).

Advertisements that are targeted primarily at children or in which children appear may not contain scenes of violence, pornography or any other content that could damage their health or mental and physical development or otherwise have a negative effect on the impressionability of children (Art.49/1).

The second part of the mass media act contains special provisions on radio and television stations. Among programming requirements and restrictions are more detailed rules on protection of minors. Television stations may not present scenes of unjustified or excessive violence or pornography or other programmes that could seriously harm the mental, moral or physical development of children and other minors (Art. 84/1).

Television station may between 12 pm and 5 am present programming that contains scenes of violence and erotic material only if they are clearly and understandably designated by a visual symbol prior to the presentation thereof and warning must be given that such programming is not suitable for children under the age of fifteen (Art. 84/3,4). On the basis of this provision the Broadcasting Council initiated in 2002 an agreement on presenting visual symbols before presenting programs unsuitable for children and minors. Different symbols were proposed for programs which are entirely suitable for them and other for those programs minors could watch only with parent or other adult person attendance. This agreement in the form of a recommendation was signed on 2 July 2003 between Broadcasting Council and five major Television stations (*RTVS, Kanal A, TV Pika and TV3*). Agreed symbols are published on TV schedules and before presentation of the corresponding program. In practice this agreement is not executed consistently.

On the basis of the mass media act 18 different by-laws and administrative regulations were adopted by government or competent ministry.

1. Broadcasting

1.1. Regulatory framework

1.1.1. Legal provisions

- **The Law on Radio-television Slovenia**

The Law on Radio-television Slovenia⁵, public service broadcaster (*zakon o Radioteleviziji Slovenija- RTVS*) was adopted on 8 April 1994. RTVS Slovenia shall have the status of a public institution of special cultural and national importance, performing a public service in the field of radio and television broadcasting activities. This special law (*lex specialis*), beside the systemic media act, regulate status of the RTV Slovenia as a public institution performing public service in the field of radio and television activities. It regulates its status, activities, administration, management and supervision. According to the law, RTVS broadcasts on 2 national TV channels, 3 national radio channels, airs one radio and TV channel for the Italian and Hungarian national community respectively, produces radio and TV programmes for Slovene national minorities in the neighbouring countries, radio and TV programmes for foreign audiences and radio and television programmes in the regional centres in Maribor and Koper/Capodistria.

In April 2005 the government submitted the draft new law on Radio-television Slovenia which gives more power and competences to the state, especially by nominating the majority of members in proposed new governing bodies (programme and audit board) and by that endangered the present public status of this institution.

- **Telecommunications Act**

Telecommunications Act⁶ (*zakon o telekomunikacijah*) among other areas regulates the conditions and procedure for using the radio frequency spectrum and the conditions for network interconnection services, conditions for using radio and telecommunications terminal equipment and regulate the organisational structure and operation of the Telecommunications, Broadcasting and Post Agency of the Republic of Slovenia as an independent regulatory authority in this field.

1.1.3. Other provisions

- **Obligations Code**

Obligations Code⁷ (the OZ) regulates reimbursement of damage in case of defamation or calumny (Art. 177). In a case of the infringement of a personal right the court may order the publication of the judgement or a correction at the injurer's expense or order that the injurer must retract the statement by which the infringement was committed or do anything else through which it is possible to achieve the purpose achieved via compensation (Art. 178).

⁵ Official Journal, N. 18/1994 with amendments

⁶ Official Journal, N. 30/2001 with amendments

⁷ Official Journal, N 83/2001, 3 October 2001

Just monetary compensation independent of the reimbursement of material damage shall pertain to the injured party for physical distress suffered, for mental distress suffered owing to a reduction in life activities ...the defamation of good name or reputation, the truncation of freedom or a personal right, ...and for fear, if the circumstances of the case, particularly the level and duration of distress and fear, so justify, even if there was no material damage. (Article 179 OZ).

- **Penal code**

In the Penal Code of the Republic of Slovenia (*Kazenski zakonik RS*)⁸, the chapter dealing with criminal offenses against honor and good name defines, among others, the following criminal offenses: defamation (Article 170), injurious accusation (Art. 171), exposure of personal and family circumstances (Art.172) and reproach of a criminal offence with the intention to disparage (Art.173).

Child pornography is an criminal offence according to the Penal code (Art. 187, Chapter 19). The possession of child pornography is not an offence and there are no special legal provisions for "sexual offences against children using the internet".

- **The Code of Ethics of Slovene Journalists**

The current Code of Ethics of Slovene Journalists was adopted by the Association of Journalists⁹ and the Union of Journalists in October 2002. The Code of Ethics¹⁰ covers the conduct of all journalists (print and broadcast), regardless of whether they are members of the Association or Union.

The Code is not entirely new, but is a revision of an earlier Code which was adopted by the Association in 1991. Prior to Slovenian independence, the conduct of Slovenian journalists was regulated by the Yugoslavian Code of Ethics and overseen by the "court of honour" or "ethics council" of the Association and Union. The "ethics council" had a reputable history of defending journalists against unethical manipulations of those in power before the transition to democracy.

The new Code of Ethics adopted in 2002 was designed to be less complex than the 1991 model and to address new issues resulting from the privatisation of the media. The Code includes a section on conflicts of interest which seeks to put a clear distance between advertising and editorial content. Clause 13 states: "Interweaving or combining journalistic and advertising texts and actions is impermissible" and clause 19 states: "the journalist should disclose possible unavoidable conflicts of interest to the public or exclude himself/herself from reporting and commenting on them."

The section on rights of journalists and accountability to the public appears to place journalists in a strong position in relation to their employers in the event that they are

⁸ Official Journal, N 63/1994, with amendments

⁹ <http://www.novinar.com/>

¹⁰ http://www.novinar.com/dokumenti/Code_of_Ethic.doc

requested to undertake unethical assignments. Clause 24 states: “The journalist has the right to turn down any job in opposition to this code or his/her convictions,” and clause 25 provides that “No one is allowed to alter or revise the content of the journalist’s report or other piece of work without his/her consent.”

The journalist should respect the individual’s right to privacy and avoid sensationalistic and unjustified disclosure of one’s privacy to the public. Intrusion into individual’s privacy is only permissible if there is an overriding public interest. With public officials and others seeking power, influence and attention the public’s right to be informed is greater. The journalist should be aware that gathering and publishing information and photographs may cause harm to individuals not accustomed to media and public attention (clause 20).

The journalist should avoid stereotyping by race, gender, age, religion, ethnicity, geography, sexual orientation, disability, physical appearance and social status. Discrimination based on sex, ethnicity, religion, social or national origins, insults about religious feelings and customs and incitement of conflicts between nationalities are impermissible (clause 23).

In 2000 the Peace Institute (NGO) put forward an initiative to establish a tripartite press council composed of the representatives of publishers, journalists and civil society. This initiative, in spite of extensive debate and some support, was not executed up to now.

- **Professional standards and ethical principles of journalism in the programmes of RTV Slovenia**

In May 2000, the Council of RTV SLO adopted the Professional standards and ethical principles of journalism in the programmes of RTVS¹¹, consisting of 21 chapters, such as: diversity and balance of reporting, respecting the values of viewers and listeners, portrayal of special sections of society, children and minors in the programmes of RTV Slovenia, right to correction, the Ombudsman/Guardian of the professional standards, advertising, promotion and sponsoring in the programmes of RTV Slovenia, etc.

The professional standards and principles of journalistic ethics in the programmes of RTVS regulate portrayal of special sections of society. Journalists and other programme makers should consider carefully portrayal of women, children, religion and religious groups, people with disabilities, sexual minorities, older people, grief and suffering, violence vulgarity, profanity, sexual behaviour, etc.

Until a law on RTVS and the statutes of RTVS are amended, the function of the ombudsman/guardian of professional standards and principles of journalistic ethics in the programmes of RTVS are to be performed by the Council of RTVS.

¹¹ http://www.rtvlo.si/modload.php?&c_mod=static&c_menu=1053434779

- **The Slovenian Code of Advertising Practice**

The Slovenian Code of Advertising Practice (hereinafter the Code) is a self-regulatory instrument of the advertising business. It was adopted by the General Assembly of the Slovenian Advertising Association¹² in 1994

The Code represents a supplement to the existing legal acts regulating advertising practices as well as the regulations arising from the nature and system of information provision in the Republic of Slovenia, a constituent part of which is advertising or paid transmission of information to businesses and other organizations and individuals on their products, services, offers, ideas, etc. The Code implements European self-regulatory patterns. Its principles are in accordance with the principles of the International Chamber of Commerce.

The Code functions in such a way that every advertisement appearing in Slovenian mass media and aimed at Slovene audiences can be assessed by means of its rules and principles. The procedure of accord evaluation of an advertisement with the Code can be initiated by any citizen of the Republic of Slovenia even if they are not strictly tied to the advertising business. The Code applies to all individual and legal bodies engaged in the advertising process in Slovenia, including the advertiser, advertising agencies as well as the media.

Special attention should be devoted to creating and communicating advertisements aimed at young people or those in which young people appear as actors or models. (Clause 12)

1.2. Regulatory authorities/bodies

- **The Ministry of Culture**

The Ministry of Culture supervises the implementation of the Law on Mass Media and keep the mass media register.

- **The Media Inspector**

The Media Inspector of the Ministry of Culture supervises the implementation of the Law on Mass Media. The Media Inspector deals with breaches of the Law on Mass Media on his own initiative or after complaints from the public. In 2004, the Inspector dealt with 116 cases. 72 were complaints from the public and 46 were the result of the inspector's own initiative. The majority of the complaints were about the obligation to enlist the media into the register of media, followed by complaints about the transparency of media data and about the protection of the Slovene language.

There is only one media inspector for 841 media outlets. While the Media inspector managed up to now to solve most of the complaints from the public, possibly also because there are relatively few such complaints, there is not enough pro-active work by the inspector, who should be monitoring the media content and determining whether it is in compliance with the Law on Mass Media.

¹² <http://www.soz.si>.

- **The Telecommunications, Broadcasting and Post Agency of the Republic of Slovenia**

The Telecommunications, Broadcasting and Post Agency of the Republic of Slovenia¹³ (Agency) is an independent regulatory authority, whose decisions can only be challenged before courts. It is financed by fees, collected from telecommunication and broadcasting operators. The Agency has powers to manage telecommunication and broadcasting spectrum, regulate the post market, settle disputes among operators on prices, infrastructure etc., set the prices of some services, decide on concentration in certain cases, collect the fees from operators, supervise telecommunication and broadcasting operators and it is also competent for the accreditation of electronic signatures.

It is managed by a director and two deputies - one for the telecommunication and one for the broadcasting field - all three appointed by the government. The Agency provides support to two independent councils: one for telecommunications and the other for broadcasting. Both councils have a power to give or refuse their consent to the statutes of the Agency.

- **The Broadcasting Council**

The Broadcasting Council¹⁴ is an independent expert body in the broadcasting regulation field. It consists of seven members, appointed by the National Assembly on the basis of a public invitation, for a tenure of five years. The Parliament also formally appoints the President of the Council, who is elected by the members of the Council from their own ranks. Candidates for membership are nominated by the:

- University of Slovenia (experts for law, telecommunications and information)
- Chamber of Culture (expert for audio-visual culture)
- Chamber of Commerce (expert for economy)
- Slovene Journalist Association (expert for journalism and communication studies)

According to the Mass Media Act the Broadcasting Council shall conduct the following tasks:

- it shall provide the Telecommunication, Broadcasting and Post Agency with initiatives for the conduct of expert supervision of the implementation of programming requirements and restrictions specified in the present act and shall adopt the annual plan for the conduct of such supervision,
- it shall adopt decisions on the issue, revocation and transfer of licenses for performing radio and television activities, and provide the agency with binding proposals and approvals for the issue and revocation of licences for performing radio and television activities,
- it shall adopt decisions on the assignment or revocation of the status of a local, regional or student radio or television station, and propose to the agency the issue of the relevant acts,

¹³ <http://www.atrp.si>.

- it shall provide the relevant ministry with a preliminary opinion on the assignment or revocation of the status of a non-profit radio or television station,
- it shall adopt decisions for the preliminary opinion of the agency in connection with the restriction of concentration,
- it shall assess the situation in the area of radio and television stations,
- it shall propose to the responsible minister detailed criteria for defining local and regional programming, the procedure and conditions for acquiring the status of special stations, and criteria for in-house production and other programming on radio and television stations specified in the present act,
- it shall give approval to regulations setting out the procedure for issuing, amending, renewing and revoking the licence for performing radio and television activities and the content of the ruling on the issue thereof ,
- it shall propose the method and criteria for formulating the list of events of public importance in the Republic of Slovenia and the procedure for compulsory consultations among interested parties, and shall formulate the agency proposal for the content of the list,
- it shall propose to the relevant ministry a development strategy for radio and television stations in the Republic of Slovenia,
- it shall for the National Assembly draw up an annual report or assessment of the situation in the area of broadcasting and proposals for improving the situation and
- shall perform other tasks in accordance with the present act and the founding act.

Technical, expert, financial and administrative support for the operation of the Broadcasting Council is provided by the Telecommunication, Broadcasting and Post Agency of the Republic of Slovenia. The funds for the work of the Broadcasting Council shall be provided from the national budget, at the proposal of the agency. The funds are managed by the agency as ordered the Broadcasting Council.

However, its effectiveness was for most part of 1990s doubtful, as it has never actually withdrew any broadcasting license, in spite of alleged violation of the media law by some stations. Its control of broadcasting stations remained mostly on paper. The situation changed with the entry into force of the new Mass Media Act, but its powers remain limited while the law still is quite frequently not observed sufficiently.

• **The Market Inspectorate**

The Market Inspectorate of the Republic of Slovenia¹⁵ (within the Ministry of the Economy) is a national inspection agency, operating independently on the basis of regulations set out in the constitution, laws and secondary legislation. The inspectorate is responsible for

¹⁴ <http://www.sigov.si/srd/>.

¹⁵ <http://www2.gov.si/mg/tirs/tirs.nsf>

supervising the application of laws and other regulation in the areas of consumer protection, trade, the catering industry, small business and crafts, prices, and the safety of non-consumable products on the market.

Market Inspectorate is responsible also for surveillance of copyrights and other similar rights in e-commerce of different computer games, programmes, films and music CD's. Basis for any measure against violations for pirated phonograms and video grams is the Act on Conditions for Reproductive Video and Audio Operations¹⁶. For this area also the Act on Copyrights and Similar Rights¹⁷ applies. Articles 21 and 22 of this act specify material copyrights among which there is also the right of reproduction (copying) and distribution (sales).

Although surveillance of internet commerce is a very demanding procedure, the Inspectorate carries out surveillance of internet pages. In cases of violations the Inspectorate may according to the law temporarily confiscate video grams, which were used for, or meant for a violation and submit them to authority in charge for dealing with offences. Market inspectors for this purpose inspect also internet advertisements.

- **Human Rights Ombudsman**

The Human Rights Ombudsman¹⁸ (*varuh človekovih pravic*) was introduced into Slovenia's constitutional system with the passing of the new constitution in December 1991. The Law on the Ombudsman¹⁹ was passed in December 1993. The Human Rights Ombudsman Institution was established and began to work on 1 January 1995.

Although the Article 159 of the 1991 Constitution stipulates that the ombudsman protect fundamental rights of individuals only in matters relating to state bodies, local government bodies and statutory authorities, it is also active in the field of media. People often complain to him about the media violating their rights to privacy, honour and good name, or disrespecting the principle of "presumed innocence". On this basis the ombudsman draws attention to those questions in his annual report to the parliament or by public statements. The ombudsman may suggest changes in legislation in his reports to parliament and submit request for the assessment of constitutionality and legality of regulations or lodge a constitutional complaint in connection with an individual case, both before constitutional court.

- **The Council of RTVS**

The managing body of RTVS is the Council of RTV Slovenia (the Council) consisting of 25 members. 5 members are appointed by the Parliament, as closely as possible reflecting the proportional representation of the members of the parties on government. The Parliament cannot appoint Members of Parliament or state officials to the Council. One member is

¹⁶ Official Journal, N. 42/1994, 50/1994, 1/1995)

¹⁷ Official Journal, N. 94/2004

¹⁸ <http://www.varuh-rs.si/>

¹⁹ Official Journal, N. 71/1993

appointed by the Italian and the Hungarian national community respectively. One member respectively is appointed directly by:

- the University of Ljubljana and the University of Maribor,
- the Academy of Arts and Sciences,
- the Association of Film Producers,
- the Association of Musicians and the Association of Composer,
- the Association of Writers and the Association of Theatre Artists,
- the Association of Cultural Organisations,
- the Federation of Journalists,
- the Council of the Organisation of the Disabled Persons,
- the National Olympic Committee,
- the Association of Employers,
- the Co-operative Union and Farmers' Association,
- the Co-ordination Committee of Organisations and Parties of the Retired People,
- representative trade unions as organisations of employees,
- the Youth Council and the Union of Youth Supporters and
- religious communities in Slovenia.

Three members are directly elected by the employees of RTV Slovenia; they have to represent information programming, culture and arts programmes and the technical department of the organisation.

The mandates to the Council last four years and may be renewed. The current mandate expires in 2006. Deputies, members of parliament, state officials and leadership members of political parties, as well as persons currently employed or those who used to be employed by RTVS less than three years ago before their appointment cannot be elected as civil-society representatives to the Council.

The Council adopts the statutes, appoints and relieves the director general, the directors of radio and television programmes, the director of the transmitters and communications unit, the directors of national minority programmes and the editors-in-chief, it determines the licence fee, adopts the financial plan and final accounts, defines programme standards and programme concepts and decides on other relevant issues. Determining the licence fee requires the approval of the government of the Republic of Slovenia; the election of the director general, as well as the adoption of statutes has to be approved by the Parliament. Financial operations are supervised by a seven-member Audit committee. The parliament appoints and relieves five members of the Audit committee, 2 members are directly elected by the employees of RTV Slovenia. They are appointed for a mandate of 4 years.

The business and operations of RTVS are managed by the director general, who has a mandate of 4 years appointed by the council of RTVS on the basis of a public call. The Council of RTVS elects the directors of radio and television programmes and the head of the transmitters and communications unit on the basis of a public call upon a proposal following the recommendations of the director general. The directors of national minority programmes are appointed on the basis of a public call on the proposal following the recommendations of the national minority council and the director general. Editors-in-chief are appointed by the Council of RTVS on the basis of a public call upon a proposal following the recommendations of the director in charge. All mandates are appointed for a period of 4 years and may be renewed.

1.2.2. Self- or Co-regulatory body/ies

- **The Ethics Council of the Association of Journalists and Union of Journalists**

The Ethics Council²⁰, a nine member joint body of the Association and Union (but located within the Association), adjudicates on complaints brought in relation to the Code of Ethics. The Council can also initiate its own proceedings. Decisions are based solely on the provisions of the Code of Ethics which therefore excludes for example decisions on the right of reply which is regulated by the Media Law. The Code of Ethics covers the conduct of all journalists (print and broadcast), regardless of whether they are members of the Association or Union. The Council examines the conduct either of an individual journalist or of an editorial board if the complaint concerns an issue such as a headline for which the journalist alone could not be held responsible. A negative adjudication against a journalist is published on the Council's website and in the worst case can result in expulsion from the Association. There is no obligation for the media outlet concerned to publish the Council's decision and newspapers frequently avoid publishing negative adjudications on their own practice, while readily publishing decisions concerning rivals.

- **The Ombudsman/Guardian of the Professional Standards and the Principles of Journalistic Ethics**

The guardian ombudsman of professional standards and the principles of journalistic ethics in the programmes of RTVS supervise the implementation of the professional standards and principles of journalistic ethics defined by this document. Furthermore, the journalist protects the interests of the licence fee payers, as well as those of journalists and other radio and television programme makers, against groundless complaints and criticism and against unfounded measures taken by individual editors.

In accordance with the laws governing RTV Slovenia, listeners and viewers have to turn first to the editors-in-chief of the individual radio and television programmes of RTVS with their complaints, proposals and suggestions. If they are not satisfied with their response or actions, they may pursue their concern further with the guardian of professional standards and ethical principles.

²⁰ <http://www.razsodisce.org/razsodisce/razsodisce.php>

According to the final provisions of the professional standards adopted in May 2000, »until a law on RTVS and the statutes of RTVS are amended, the function of the ombudsman/guardian of professional standards and principles of journalistic ethics in the programmes of RTVS are to be performed by the Council of RTV Slovenia«. Since then, nothing has changed, the Council of RTVS is very exceptionally discussing issues related to the professional standards and the function of the ombudsman/guardian is not effectively performed.

- **Advertising Arbitration Court**

Advertising Arbitration Court²¹ (hereinafter the Court) is the self regulating-body within the Slovenian Advertising Chamber. The Court consists of seven members appointed by the Advertising Chamber for four years. They are nominated from experts in the advertising business. Present composition of the Court does not include consumer or general public representatives. The Court interpret the Slovenian Code of Advertising Practice in particular cases.

²¹ http://www.soz.si/oglasevalsko_razsodisce/.

3.23. Sweden

Introduction

Swedish Media Policy

The objective for Swedish media policy is to further freedom of expression, diversity, media independence, accessibility and to impede on harmful contents in the media.

Sweden has a long history of safeguarding public interest in general, and consumers' interests in particular. Generally consumers are afforded strong protection all through the Swedish legislative system emanating from various regulations. Additionally, a notable character of Swedish public law is the right of public access to official records (Sw. *offentlighetsprincipen*), which means that as a principle rule all citizens have access to public records, subject to only a few restrictions, *e.g.* if the public record for some reason is classified.

In this context it should also be mentioned that by the adoption of the Act on Freedom of the Press in 1766 Sweden became the first country in the world to institute freedom of the press.¹

Radio and television

In 1956, the Parliament (Sw. *Riksdagen*) adopted a decision on the development of television in Sweden. TV is distributed in a number of ways: by the terrestrial network, through the cable network and via satellite. TV broadcasting can be carried out both through analogue and digital technology.²

For analogue transmissions over the terrestrial network a licence from the government is required. At present, three companies hold licences for analogue terrestrial transmissions³:

- Sveriges Television AB (SVT)
- The Swedish Educational Broadcasting Company (UR)
- TV4 AB

In Sweden 4 million households have access to a TV.⁴ Additionally there are numerous foreign TV companies broadcasting over satellite to Sweden which generally are subject to foreign legislation.

Sweden has two public service TV-channels – SVT 1 and TV 2 – sorting under Sveriges Television (SVT), and four public service radio channels sorting under Sveriges Radio (SR) which are not controlled by commercial interests and all have nationwide coverage but serves the general public. Moreover the TV channel TV 4 has nationwide coverage but is not entirely

¹ Christina Nylander, *Medierätt* 1, 3rd edition, p. 31.

² http://www.rtvv.se/uk/About_media/TV/.

³ *Medieutveckling 2004*, report issued by the RTVV, available at http://www.rtvv.se/_upload/infomaterial/7-551852745568127186987852.pdf.

⁴ http://www.rtvv.se/se/Om_media/tv/.

controlled by the same public service directives as SVT 1 and TV 2. The basic idea by having radio and TV-channels serving the general public is to grant all citizens access to a broad and versatile supply of high quality in all genres. Guidelines for SVT's and SR's exercise of their public responsibility follows from the conditions stipulated in broadcasting licences issued by the Government (see further below). TV 4 holds a licence of the Government why it is bound by conditions connected to the licence. The activities of SVT and SR are financed by obligatory fees collected from the public, about 3,4 million people pay such fees.⁵

Radio is transmitted nationally, regionally or locally. Radio is often distributed via the terrestrial network, but it is possible to distribute radio via cable and satellite as well. Radio transmission can take place using both analogue and digital technology.⁶ Generally a permit to broadcast is necessary in order for a company to be allowed to broadcast.

Close to 80 percent of the Swedish population listens to the radio on a daily basis.⁷ "The public service companies - the Swedish Broadcasting Corporation (SR) and the UR - have a strong position as the only nationwide programme companies."⁸ The radio stations, sorting under Sveriges Radio (SR) and the UR, are P1, P2, P3 and P4 which broadcast nationwide and 26 local radio stations.

Press

The Swedish press sector is divided into daily morning newspapers and tabloids, although the tabloids also are accessible in the morning. The morning newspapers are divided into two groups (i) big city newspapers, *e.g.* Dagens Nyheter, which has the largest circulation of 363.400⁹, Svenska Dagbladet and Göteborgs-Posten and (ii) country newspapers, *e.g.* Nerikes Allehanda, Hallandsposten and Syd-Svenska Dagbladet. In recent years competition has arisen from Metro, a free newspaper which has entered into the newspaper market. It is primarily distributed in Stockholm, Göteborg and Malmö but a special edition (Metro Riks) is also delivered in 11 other larger cities. The main tabloids are Expressen and Aftonbladet. The latter is the largest newspaper in Sweden with a daily circulation of 444.100.¹⁰

Internet

As regards Internet Sweden in the international perspective, Sweden is one of the countries where IT availability is the greatest.¹¹ Surveys show that 87 percent of all children in Sweden claim to have Internet access in their homes.¹²

⁵ <http://www.radiotjanst.se/>.

⁶ http://www.rtvv.se/uk/About_media/Radio/.

⁷ Medieutveckling 2004, p. 14.

⁸ http://www.rtvv.se/uk/About_media/Radio/.

⁹ <http://www.tu.se/dagstidningarna.jsp;jsessionid=3128091111424815593>.

¹⁰ <http://www.tu.se/dagstidningarna.jsp;jsessionid=3128091111424815593>.

¹¹ Medieutveckling 2004, p. 52.

¹² Medieutveckling 2004, p. 55.

Constitutional law

Fundamental laws

Sweden has a written Constitution which establishes the rules for political decision-making. Moreover, Sweden has four fundamental laws (i) the Instrument of Government, (ii) the Act of Succession, (iii) the Freedom of the Press Act and (iv) the Fundamental Law on Freedom of Expression, which serve as a basis for how Sweden is ruled. The Instrument of Government (RF) contains comprehensive rules on fundamental rights and freedoms in general.

Freedom of speech is set out by the Fundamental Law on Freedom of Expression (YGL) and constitutes the fundamental legislation with regard to *e.g.* broadcasting, interactive games, films, and online services. The YGL gives all citizens the right to express his own words and will, subject to a few exemptions. Exemptions have to be stipulated in the special catalogue of crimes included in the YGL which refers to the TF (see further below).

Freedom of the press follows from the Freedom of Press Act (TF) and is obviously the elementary instrument for *e.g.* a free press. The TF provides that all citizens has the right to issue written documents regardless of its content, subject to very few exemptions. The only limitations on the Freedom of the Press follows from the catalogue of offences against the freedom of the press set out in chapter 7 of the TF. As mentioned above the catalogue is common to the YGL and TF.

Chapter 7 Sec. 4 of the TF establishes 18 offences against the freedom of press/freedom of expression:

1. high treason;
2. instigation of war;
3. carelessness injurious to the interests of the Realm;
4. dissemination of rumors which endanger the security of the realm;
5. treason or betrayal of country;
6. insurrection;
7. espionage;
8. unauthorized trafficking in secret information;
9. carelessness with secret information;
10. sedition;
11. agitation against a population group;
12. offences against civil liberty;
13. unlawful portrayal of violence;
14. defamation;
15. insulting language or behavior;

16. unlawful threats;
17. threats made against a public servant; and
18. perversion of the course of justice.

The first 6 of the offences listed above only applies in times of war and is therefore of little importance here. The offences that should be of the most significance for in this context ought to be (i) agitation against a population group. (ii) offences against civil liberty, (iii) defamation and (iv) insulting language or behavior.

The prohibition of censorship is a fundamental principle of both the YGL and TF. Albeit the YGL appears more lenient of the two in comparison. Namely, the TF prohibits all censorship, while the YGL allows for films to be preliminary examined by the Swedish National Board of Film Classification (SBB) (Sw. Statens Biografbyrå).

Special legislation on the media

While the legal framework is set out by the YGL and TF, more specific regulation follows from special regulations issued either by the Government after consulting the Parliament or a public authority. As regards the work of public authorities it should be mentioned that the Government cannot influence the public authorities save by giving general directives, *i.e.* a minister cannot influence in a specific matter.

Moreover, as far as advertising is concerned it is a delicate matter to define the line between reach of the Market Practises Act (MPA) and the protective scope of the fundamental laws. Obviously an advertising measure cannot be challenged under the MPA if the measure enjoys protection of a fundamental law. The decisive factor whether the MPA applies is whether the advertising contains commercial information. Restrictions to the YGL and TF should of obvious reason be exercised strictly. Supervision under the MPA is generally carried out by the Consumer Agency, which is headed by the Consumer Ombudsman (KO). Advertising is also to some extent subject to self-regualtion, *e.g.* by Näringslivets Etiska Råd mot Könsdiskriminerande reklam (ERK), which streive to ensure that no sex is discriminated against in advertising, and Marknadsetiska rådet (MER) which applies the guidelines on advertising of the ICC. Both the ERK and MER scrutinizes all advertising regardless of business within the Swedish market.

The legal framework for broadcasting is set out in the Radio and Televisions Act (RTL). A rules regarding must carry obligations could be mentioned in this context. For instance net holders providing Cable TV that includes more than ten households must ensure that that some programmes of the public service channels and TV 4 can be viewed.

The supervision of the media sector is generally carried out by a public authority each assigned to cover a specific area. In some areas the extent of self-regulation is more present, this is particularly true regarding the press and games, while in other areas legislation governs completely.

1. Broadcasting

1.1. Regulatory framework

1.1.1. Legal provisions

The legal framework for broadcasting is set out in the RTL.

Commercial TV restrictions, *e.g.* on:

- The prohibition of advertising to children under 12 years of age;
- The prohibition to televise commercials in immediate connection with of a TV programme that is principally intended for children under 12 years of age;
- The obligation not to deny a significant proportion of the Swedish general public an opportunity to view a Swedish or foreign event that is of particular importance;
- Restriction on length and placement of a commercial during a programme; and,
- Restrictions on sponsoring.

Other restrictions, *e.g.* on:

- Programmes with violent and pornographic content.

As regards certain products there are special restrictions:

- Alcoholic beverages;
- Tobacco products;
- Pharmaceuticals sold on prescription;

Commercial radio restrictions, *e.g.* on:

Generally the same restrictions as for TV commercials apply to radio commercials.

An important difference is that the prohibition of advertising to children less than 12 years of age does not apply to radio.

1.1.2. Administrative regulation/rules

As mentioned above some regulation follows from conditions incorporated in broadcasting licences granted by the Government.

The terms of the licences for those companies, *inter alia* includes a provision that they shall exercise the right to broadcast impartially and accurately. The terms of the licences also require the companies to bear in mind the special impact of the broadcast media when deciding the subject matter, form of presentation and scheduling of programmes. This implies an obligation to be particularly careful about representations of violence, sex and drugs as well as content that may be perceived to discriminate against people on the basis of gender or ethnic background. Furthermore, the companies are cautioned to respect the individual's private life in programming.

1.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

Pressens Samarbetsnämnd (the “Press’ Committee of Collaboration”) has issued the Code of ethics for the press, radio and TV, which is not legally binding but generally followed.

1.2. Regulatory authorities/bodies

1.2.1. Authority/ies

Broadcasting is monitored by two public authorities:

- The KO;
- The Chancellor of Justice;
- The Radio and Television Authority (RTVV); and
- The Swedish Broadcasting Commission (GRN).

1.2.1.1. Legal basis

The legal basis for the abovementioned authorities follows from chapter 9 of the RTL.

1.2.1.2. Functions/competencies

The RTVV grants licences for local and community radio transmissions and for temporary transmission. The RTVV also designates local cable broadcasting companies. Concerning licences to transmit digital terrestrial television one assignment of the authority is to submit proposals to the Government on how the licences should be distributed. The authority also issues regulations on television standards and exercises a supervisory role in this area.

The GRN monitors the contents of radio and TV-broadcastings. The GRN shall, on a strictly ex post facto basis, supervise the compliance of programme content with the provisions of the laws which regulate broadcasting services and the licences granted by the Government. The GRN has jurisdiction over all Swedish radio and television broadcasters offering services to the *Swedish* general public. Broadcasts transmitted by foreign broadcasting companies by satellite to the Swedish public are subject to the legislation of the country where it is established. The GRN also conducts research projects on radio and television. The GRN have several sanctions at its disposal: fines, conditional fines and issue an order to publish a decision of the the GRN. Generally decisions of the GRN may be challenged before the Administrative Courts.

1.2.1.3. Organisation

The RTVV is headed by a director-general appointed by the government. The director-general which holds the executive power, is the highest decision-making level of the RTVV. A supervisory council including three members appointed by the Government ensures that the activity of the RTVV is regularly supervised.

The GRN consists of:

- The authority; and
- The Commission.

The authority is headed by a director-general appointed by the Government and must have the experience of being a judge.¹³

The GRN includes a Chairman and regular members alternates are also summoned to meetings and participate in the decisions in the absence of ordinary members. The Chairman and Deputy-Chairman are senior judges. The other members and alternates of the Commission represent various sections of society (e.g. politicians and representatives of the media and the cultural sector). Regular members and alternates of the Commission, like the Director, are appointed by the Government.¹⁴

1.2.2. Self- or Co-regulatory body/ies

The ERK, see above .

1.2.2.1. Legal basis

The statutes of the ERK.

1.2.2.2. Functions/competencies

The NRK monitors for advertising that constitutes sex discrimination.

1.2.2.3. Organisation

The NRK includes representatives from the business including organisations such as Sveriges Reklamförbund, and from various companies such as *TV 4 AB* and *Kanal 5 AB*.

2. Press

2.1. Regulatory framework

2.1.1. Legal provisions

The TF.

2.1.2. Administrative regulation/rules

Certain restrictions on the publication of periodicals *inter alia* regarding:

- Responsible editor; and,
- Certificates for periodicals.

¹³ Medieutveckling 2004, p. 115 f.

¹⁴ http://www.grn.se/grn_index.asp.

2.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

Pressens Samarbetsnämnd, which is a “joint Committee founded by the leading media organisations in Sweden: The Newspapers Publishers Association, The Magazine Publishers Association, The Union of Journalists and The National Press Club.”¹⁵ has issued the Code of ethics for the press, radio and TV, which is supervised by the Swedish Press Council and the Press Ombudsman (PO).¹⁶ SR and STV have chosen to follow the Code of Ethics but are not subject to the supervision of the PO/Swedish Press Council.

The Code of Ethics contains guidelines on *inter alia* rules of publicity, individual integrity, the use of pictures and the publishing of names, please see footnote 15 for an English version of the Code of Ethics. Newspapers generally follow the Code of Ethics. If a newspaper breaches the Code of Ethics it has to publish the decision of the PO/Swedish Press Council.

As for practicing journalists the Professional Ethics Board (Sw.Yrkesetiska nämnden) (YEN) monitors their professional behavior.¹⁷

2.2. Regulatory authorities/bodies

2.2.1. Authority/ies

There are two authorities relevant for the press¹⁸:

- the Press Subsidies Council (Sw. Presstödsnämnden); and,
- the Talking Magazines Council (Sw .Taltidningsnämnden).

2.2.1.1. Legal basis

the Press Subsidies Council

- Förordning (1988:673) med instruktion till Presstödsnämnden;
- Förordning (1990:524) om presstöd;
- Förordning (2001:898) om särskilt distributionsstöd; and
- Förordning (2002:739) om tillfälligt utvecklingsstöd.

the Talking Magazines Council

- Förordning (1988:582) om statligt stöd till radio- och kassettersättningar; and
- Förordning (1988:674) med instruktion för Taltidningsnämnden.

¹⁵ <http://www.po.se/Article.jsp?article=1905&avd=english>.

¹⁶ <http://www.po.se/english.jsp?avd=english>.

¹⁷ http://www.sjf.se/portal/page?_pageid=53,38441&_dad=portal&_schema=PORTAL.

¹⁸ Medieutveckling 2004, p. 126 f.

2.2.1.2. Functions/competencies

The Press Subsidies Council shall safeguard the multiplicity of the press.

The Talking Magazines Council shall aim to increase the supply of news for visually impaired, aphasiacs, dyslectics and people with certain functional disorders.

2.2.1.3. Organisation (composition of the authority/members of the board, etc.)

The Press Subsidies Council has ten members and ten substitutes.

The Talking Magazines Council's members all have experience from various part of the society.

The Press Subsidies Council and the Talking Magazines Council have a joint secretariat.

2.2.2. Self- or co-regulatory body/ies

- the Swedish Press Council;
- the Press Ombudsman (PO); and
- the YEN.

2.2.2.1. Legal basis

The self-disciplinary system of the Swedish press established by the guidelines is not based on legislation but is completely voluntary and is wholly financed by four press organisations: The Swedish Newspaper Publishers' Association, The Magazine Publishers' Association, The Swedish Union of Journalists and The National Press Club.¹⁹ These organisations are also responsible for drawing up the Code of Ethics for Press, Radio and Television in Sweden.

2.2.2.2. Functions/competencies

The PO shall examine all complaints lodged by the general public and carry out an enquiry. Once the inquiry is concluded, PO has the option to either (1) the matter is not considered to warrant formal criticism of the newspaper, or (2) if the evidence obtained is weighty enough to warrant decision by the Press Council.²⁰

If the PO determines to drop a claim the complainant may appeal that decision directly to the Press Council. Furthermore, the complainant from taking the matter to a regular court of law after review by PO and the Press Council.²¹

2.2.2.3. Organisation (composition of the authority/members of the board, etc.)

The Press Council is composed of a judge, who acts as chairman, one representative from each of the above-mentioned press organisations and three representatives of the general

¹⁹ SOU 2001:28 p. 109.

²⁰ <http://www.po.se/english.jsp?avd=english>.

²¹ <http://www.po.se/english.jsp?avd=english>

public who are not allowed to have any ties to the newspaper business or to the press organisations.²²

The PO is appointed by a special committee consisting of the Chief Parliamentary Ombudsman (JO), the chairman of the Swedish Bar Association and the chairman of the National Press Club.²³

3. Online Services

3.1. Regulatory framework

3.1.1. Legal provisions

For the purpose of this compilation we have excluded regulation on electronic commerce.

There are no specific legislation addressing online services, save for Lag (1998:112) om ansvar för elektroniska anslagstavlur which stipulates responsibility as regards content for the administrator or owner of a Bulletin Board System. As a principal rule the fundamental laws do not apply to information on the Internet.²⁴

Newspapers and magazines that are presented unalterably on the Internet enjoys protection from the TFL, chapter 1 Sec. 7 of the TFL.

It is possible for online newspapers to apply for an authorization to publish and thereby be subject to protection from the fundamental laws, chapter 1 Sec. 9 of the YGL.

3.1.2. Administrative regulation/rules

Personal Data Act (SFS 1998:204) (PUL) which restricts processing of personal data.

3.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

The KO has issued guidelines on the use of personal data and market practices, *i.e.* guidelines on electronic commerce including responsibility of the information on websites, how to enter into electronic agreements etc. The KO's website is available in English at <http://www.konsumentverket.se/mallar/en/startsidan.asp?lngCategoryId=646>.

3.2. Regulatory authorities/bodies

3.2.1. Authority/ies

The Swedish Data Inspection Board (DI)

²² <http://www.po.se/english.jsp?avd=english>

²³ <http://www.po.se/english.jsp?avd=english>

²⁴ Christina Nylander, Medierätt 1, 3rd edition, p. 51.

3.2.1.1. Legal basis

The PUL

3.2.1.2. Functions/competencies

The DI monitors the use of personal data in various media.

4. Film/Interactive Games

4.1. Regulatory framework

4.1.1. Legal provisions

- Lag (SFS 1990:992) om granskning och kontroll av filmer och videogram.
- Förordning (SFS 1990:994) med instruktion för statens biografbyrå.
- Chapter 16 Sec. 10b and 10c of the Penal Code

4.1.2. Administrative regulation/rules

It is obligatory to let the Swedish National Board of Film Classification (SBB) carry out a preliminary examination of films aimed to be shown on cinemas.²⁵

The Office of the Chancellor of Justice shall obtain statements from the SBB before initiate proceedings on alleged breaches of the prohibition of unlawful portrayal of violence.

4.2. Regulatory authorities/bodies

4.2.1. Authority/ies

- the SBB reviews films and movies the enter the market.
- Office of the Chancellor of Justice.
- Media Council

4.2.1.1. Legal basis

The SBB – Förordning (SFS 1990:994) med instruktion för statens biografbyrå

4.2.1.2. Functions/competencies

The SBB reviews films and movies that enter the market.

The Office of the Chancellor of Justice appears before courts in cases regarding portrayal of violence.

²⁵ Medieutveckling 2004, report issued by the RTVV, available at http://www.rtvv.se/_upload/infomaterial/7-551852745568127186987852.pdf.

4.2.1.3. Organisation (composition of the authority/members of the board, etc.)

The SBB holds 12 employees. Besides them there are two substitute film censors and sixteen inspectors appointed.²⁶

4.2.2. Self- or co-regulatory body/ies

- Sveriges Branschförening MDTs; and
- The Media Council.

4.2.2.1. Legal basis

MDTS self-regulatory powers are based on the Pan European Game Information (PEGI) system. It establishes that games containing elements of violence or sex should adequately marked. MDTs is established by the business.

The Media Council was established by the Government and is governed by three directives adopted by the Government:

- Dir. 1990:40
- Dir. 1998:110
- Dir. 2003:75

4.2.2.2. Functions/competencies

MDTS supervises that videogames are adequately marked according to the PEGI system.

The Media Council aims to reduce the risks for harmful effects of the media on children and young people. The Council has to give particular attention to portrayals of violence and pornography and to apply a clear gender perspective in its work. Children and young people must be involved actively in the Council's activities.²⁷

4.2.2.3. Organisation (composition of the authority/members of the board, etc.)

The Media Council includes six members and a chair. The Council also has four advisers and three experts at its disposal.²⁸

²⁶ Medieutveckling 2004.

²⁷ http://www.medieradet.se/templates/Page____369.aspx.

²⁸ http://www.medieradet.se/templates/Page____369.aspx.

3.24. Spain

Introduction¹

General overview

Placed on southwest Europe, with a territory of 504.750 thousand km², at the end 2004 Spain had a population of 43.197.684 million people, from which 34.474.000 are over 16 years old; for 2002 the percentage of illiteracy was 3.1% of the population and 11.3% had no scholar education at all. Its Gross Domestic Product² was 2.7% for 2004. The contribution of the telecommunications and advertising industries to the GDP has increased, in 2004, 6.8% and 4.9%, respectively.³

In respect of politics and administrative organization, The spanish *Constitution* of 1978⁴ consolidated a democratic political system after 36 years of General Francisco Franco dictatorship. The Kingdom of Spain is a parliamentary monarchy, with a central government and central public administration, but is also divided in 17 regions, each with its own regional government, as well as in 49 provinces. Each city, town and medium size village has its own council.

Since 1 January 1986 Spain belongs to the European Union and last 20 February 2005, by national referendum, the EU Constitution was approved.

Overview of the market

The three main subsectors of the media market are printing press, and analogical hertzian radio and television broadcasting: there are more than 200 daily general information newspapers; 1 national radio and television corporation; 9 public regional radio and television corporations; 3 national commercial television channels; more than 33 radio networks –either national, regional or local-; and more than 800 local television broadcasters.⁵

The daily newspapers increased 1% their market in 2004, with 4.07 million copies sold; generalist programming radio broadcasters achieved between February and November 2004, 11.466.000 million listeners/day, while thematic radio broadcasters got 10.187.000 million listeners/day; for 2004 the average time of television viewing achieved 239 minutes

¹ All the national laws, regulatory provisions, names of institutions and professional bodies, and title of ethical codes have been translated into English; their original names and titles appear once in the footnotes in order to be easily reached through the Internet or any other mean.

² Producto Interior Bruto, PIB.

³ Data from the National Statistics Institute –Instituto Nacional de Estadísticas- web page, <http://www.ine.es>.

⁴ Constitucion Espanola 1978.

⁵ From the official governmental agenda of the media, <http://www.la-moncloa.es>; however, there is not an official census of the spanish media, specially because of the undetermined number of local broadcasters.

person/day, and for the first time in history, a national commercial television channel –Tele 5– became leader of the year, with a share of 22.1%.⁶

A general view on the new technologies market shows that for 2004, 32.9% of the population surfs the Web, although only 25.2% of homes have a connection to Internet; 38% of Internet users declare to have security problems when navigating the Web.⁷

In respect of the advertising market, interactive media consolidated themselves in 2004 with an investment of 94.5 million euros, which meant a growth of 30.3%; while the general increase of the advertising sector was of an average of 6.9%, and still represent the 47.9% of the total market.⁸

An average of 13 million people/month went to the cinema in Spain during 2004, which left a taking of more than 690 million euros; in respect of the video/dvd market, the data refer to 2003 and show a general taking of more than 772 million euros, from which 567 belong to dvd renting and buying.⁹

Constitutional foundations

Article 20 of the spanish *Constitution of 1978* settles the main legal principles in respect of public mass media functioning, freedom of information and freedom of expression, as well as their limits:¹⁰

“1. The following rights are recognized and protected:

- a) the right to freely express and disseminate thoughts, ideas and opinions by word, in writing or by any other means of communication;*
- b) the right to literary, artistic, scientific and technical production and creation;*
- c) the right to academic freedom;*
- d) the right to freely communicate or receive accurate information by any means of dissemination whatsoever. The law shall regulate the right to invoke personal conscience and professional secrecy in the exercise of these freedoms.*

2. The exercise of these rights may not be restricted by any form of prior censorship.

3. The law shall regulate the organization and Parliamentary control of the social communications media under the control of the State or any public agency and shall guarantee access to such media to the main social and political groups, respecting the pluralism of society and of the various languages of Spain.

4. These freedoms are limited by respect for the rights recognized in this Title, by the legal provisions implementing it, and especially by the right to honour, to privacy, to personal reputation and to the protection of youth and childhood.

⁶ Data from the professional journal *Noticias de la Comunicacion*, january 2005, <http://www.noticom.es>; and General Media Study –Estudio General de Medios–, january 2005, <http://www.aimc.es>.

⁷ Data from Telecommunications and Information Society Observatory –Observatorio de las Telecomunicaciones y la Sociedad de la Información–, march 2005, <http://www.red.es>.

⁸ Data from 2004 year reports of *PriceWaterhouseCoopers-IAB* Spain, and *Infoadex*, <http://www.pwc.es> and <http://www.infoadex.es>.

⁹ Data from the Ministry of Culture –Ministerio de Cultura– web page, march 2005, <http://www.mcu.es>.

¹⁰ Art.10: “(...) 2. *The principles relating to the fundamental rights and liberties recognized by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements thereon ratified by Spain*”.

5. *The confiscation of publications and recordings and other information media may only be carried out by means of a court order*".

Article 38 regulates the bases of the economical system:

"Free enterprise is recognized within the framework of a market economy. The public authorities shall guarantee and protect its exercise and the safeguarding of productivity in accordance with the demands of the economy in general and, as the case may be, of its planning".

Finally, due to the political and administrative organization of the country, with a central government, regional governments and city councils, Art.149 must be considered, as it refers to the transfer of some jurisdiction competences to regional and local administrations, including commercial, intellectual property, and press, radio and television regulation. These competences, taken to the mass media sector, have mainly come to some regulation measures on: audiovisual independent authorities (co-regulation), establishment of regional public radio and television corporations, organization and control over local radio and television stations, as well as some measures on specifics of commercial communications.

General media concentration and mergers rules

Although some specific rules have been promoted for the audiovisual subsector, the general provision on the issue came in 1989 with the Competition Act 16/1989 of 17 July 1989, modified by the Act 62/2003 of 30 December 2003.¹¹

"Article 14. Scope of application.

1. Any project or operation involving the concentration of undertakings shall be notified to the Competition Service by one or more of the participant undertakings, when:

a) As a consequence of the transaction, a share equal or higher than 25 percent of the national market or of a geographical market defined within same, is acquired or increased for a certain product or service, or,

b) The global turnover of all the participants in Spain exceeds the amount of 40.000 million pesetas (240.404.841,75 euros) in the last accounting year, as long as at least two of the participants have an individually turnover in Spain of more than 10.000 million pesetas (60.101.210,44 euros).

This obligation of notification does not affect concentration transactions that fall within the scope of application of (EEC) Council Regulation 4064/89, amended by (EEC) Regulation 1310/97.

2. For the purposes foreseen in the previous item, a concentration transaction shall be deemed to be any stable change in the control structure of the participant undertakings, by means of:

a) The merging of two or more previously independent undertakings.

b) Take-over of all or part of an undertaking or undertakings by any legal means or business.

c) The creation of a joint venture and, in general, the acquisition of joint control over an undertaking, when the latter permanently carries out the functions of an independent economic entity and does not have the fundamental objective or effect of co-ordinating the competitive behaviour of undertakings that continue to be independent".

The Act 10/1988, 3 May 1988, on private television¹² established that (Art.19) no legal or physical person could hold directly or indirectly stocks in more than one company; neither

¹¹ Ley 16/1989, de 17 de Julio, de defensa de la competencia, modificada por la Ley 62/2003, de 30 de diciembre.

¹² Ley 10/1988, de 3 de mayo, de television privada.

could have more than 25% of the capital of the company. However, in 1997, the *Act 66/1997, 30 December 1997, on tax, administrative and social measures*,¹³ increased the percentage from 25% up to 49%; in 2002, a similar provision, modified Art.19 of the *Act 10/1988*, establishing the possibility of stock participation in more than one television company whenever its geographical scope is regional or local –and never coincidental in the same scope-, and within future legal limits; finally, in 2003, the percentage raised again up to 100%.

Recently, in the field of radio broadcasting, the *121/000021 Act Draft, 11 February 2005, on urgent measures to promote the digital terrestrial television, liberalization of cable television and promotion of pluralism*,¹⁴ intends to allow the direct or indirect control of 50% of the radio administrative concessions in a same geographical scope, but always up to a maximum of 5 concessions.

General policy frame and objectives

- Freedom of establishment for printing press companies.
- Restriction on the establishment for private radio and television broadcasters, either analogical hertzian, or digital terrestrial.
- Restrictions on the establishment for cable operators companies.
- Freedom of establishment for satellite distribution companies, either digital or analogical.
- Restrictions on advertising and commercial communications: subliminal, comparative, non-loyal and untruthful; defence of media audiences as consumers.
- Establishment of Internet regulation on behalf of users' security and privacy.
- Protection of rights of youth and children through co-regulation.
- Balance of interest between freedom of information and honour and privacy.

Prospectives

- Promotion of digital terrestrial radio and television broadcasting: compulsory television analogical switch-off, new national and regional concessions, re-organization of local television map, accelerate the transition to digital terrestrial radio broadcasting.
- Redefinition of the public service role of national public television company, as well as fixation of its position in a commercial market; redefinition of its financial funding.
- Promotion of television self-regulation in respect of dust-tv.

¹³ Ley 66/1997, de 30 de diciembre, de medidas fiscales, administrativas y de orden social.

¹⁴ Proyecto de Ley 121/000021 de medidas urgentes para el impulso de la television digital terrestre, de liberalizacion de la television por cable y de fomento del pluralismo.

Press and magazines

Introduction to the market

The press market, which is totally under private companies, includes daily general information newspapers, financial newspapers, sports newspapers, weekend newspapers supplements, and magazines. Information and Control of Publishing is the office in charge of controlling the dissemination and diffusion of the press. Since 2003 the market has started a soft recover after three years of decrease; if in 2003 it grew up 0.8%, in 2004 its growth was 1%, with an average of 4.07 sold newspapers/day. The leader newspapers in 2004 were *El Pais*, *Marca* –sports-, *El Mundo*, *Abc* and *La Vanguardia*. Their diffusion was an average of 468.346 (thousands), 380.279, 308.192, 276.915 and 203.715 copies/day respectively.

Between February and November 2004, the leading weekend newspapers supplements were *El semanal*, *Pais semanal*, and *Mujer de hoy*, with an average of 4.6 (million), 3.3 and 2.2 readers respectively; the leading weekly magazines belong to the so-called “pink press”, focused in celebrities and social events: *Pronto*, *Hola* and *Lecturas*, get to 3.5 (million), 2.7 and 1.5 readers respectively.¹⁵

The specific data about investment of advertisers in the press and magazines subsector refers to 2003 and gets to 1.496 (thousand million) euros for the daily press, 106 (hundred million) euros for the weekend press supplements and 601 (hundred million) euros for the magazines.¹⁶

Regulatory provisions

Non specific ones for this subsector; however, Spanish limits on media concentration and media mergers must be respected, as well as any regulatory provision in respect of content restriction and freedom of information -e.g. privacy, honour, defamation, advertising, etc-, although they have not been specifically conceived for the press.

It can be noticed, although it is not usually mentioned, the *Royal Decree 1189/1982, 4 June 1982, on the regulation of certain activities not convenient or dangerous for youth and children*,¹⁷ which refers to the prohibition of any obscene or non decent external advertising of cinema, theatre or any other spectacle; also, pornographic magazines cannot be externally shown in any shop or press-selling point.

Co-regulation and independent authorities

None.

¹⁵ <http://www.noticom.com> and <http://www.aimc.es>.

¹⁶ <http://www.pwc.es>.

¹⁷ Real Decreto 1189/1982, de 4 de junio, sobre regulacion de determinadas actividades inconvenientes o peligrosas para la infancia y la juventud.

Self-regulation

Three non-compulsory affiliation professional bodies must be outlined: the Federation of Spanish Press Associations, the Catalunya Journalists Professional College and the Galicia Journalists Professional College.¹⁸ The first of them is a national body; the other two are regional ones; and in the three cases affiliation is not compulsory to work as press journalist, which explains the small impact of professional associations in the field.

The Federation of Spanish Press Associations was born in 1922, although during the dictatorship of General Franco could not develop as an independent body; it was founded again in 1984, and nowadays 41 local/regional press associations belong to it; between its functions outstands the official representation of the professional sector in the country, although this does not match with the reality. Since 1993 it has a deontological code and, since 2004, a deontological council.

The Catalunya Journalists Professional College was born in 1985 and it has nowadays 3.500 affiliated; its geographical scope of work is the region of Catalunya; since 1996 it exists, inside the College, the Catalunya Press Council¹⁹ as a private arbitration institution, to implement the deontological code of the college –since 1992-.

The Galicia Journalists Professional College was born in 1999 and it has nowadays over 1.000 affiliated; its geographical scope of work is the region of Galicia; in 2004 it approved a professional statute where it was included a deontological code.

Apart from these non-compulsory professional bodies, the most important Spanish have their own deontological code or, at least, it includes some ethical references within the statute of the media: *El Pais*, *Abc*, *El periodico de Catalunya*, *La Vanguardia*, *La Voz de Galicia*, etc.

Radio broadcasting

Introduction to the market

Radio broadcasting starts in Spain in 1924 and since then has developed itself mainly under private initiative. It is impossible to give an exact number of radio stations in Spain, as the development of local broadcasters is quick and uncontrolled; however, it is possible to make a distinction between national/regional networks, as well as between public/private operators: *Radio Nacional de Espana* is the public national network, with five different programmes; *Catalunya Radio*, *Canal Sur Radio*, *Euskadi Irratia*, *Onda Regional Murcia*, *Radio Galega*, *Radio Castilla La Mancha* and *Canal Nou Radio* are public regional operators, all with different programmes; between the national private broadcasters, there should be mentioned: *Ser*, *Cope*, *Onda Cero*, *Punto Radio*, and *Onda Cero*.

¹⁸ Federacion de Asociaciones de la Prensa de España, Colegi de Periodistes de Catalunya, Colexio de Xornalistas de Galicia. It must be noticed that the word “college” in this context refers to a legal status professional body.

¹⁹ Consell de la Informacio de Catalunya.

Between February and November 2004, the generalist stations got an average of more than 11 million listeners/day, being *Ser*, *Onda Cero* and *Cope* the leading ones, with 5,1 million, 1,9 million and 1.8 million, respectively; for the same time, the thematic-format radio achieved an average of 10 million listeners/day, being the 24 hours musical format the most successful one: *Cadena 40*, 2,5 million; *Cadena Dial*, 1,4 million; *Kiss FM*, 1,2 million.²⁰

It must be noticed that the national public broadcaster, *Radio Nacional de España*, is not under the audience control of the Media General Study. Also, there are not consolidated studies about the audience of the Digital Audio Broadcasting, as its Spanish birth took place in 1998 and its coverage is not national yet; however, in Madrid and Barcelona there are 3 digital multiplex functioning at the moment with the following broadcasters: *Radio Nacional de España*, *Cope*, *Ser*, *Quiero*, *Godo*, *Comeradisa*, *Punto Radio*, *Intereconomía*, *Radio Marca*, *El Mundo*, *Onda Rambla*, *Radio España*.²¹

For the year 2004, the advertising investment in the radio subsector increased in 6.3%, that is 540 million euros.²²

Regulatory provisions

As in the case of the press subsector, all the provisions concerning with media contents are of application to radio broadcasters; but, opposite to the press case, there are, since 1964, also specific measures on the subsector, focused on the organization of the analogical hertzian spectrum and, now, on the organization of the digital terrestrial radio broadcasting; in both cases, through the development of technical plans, which established a limited number of stations for AM/FM, as well as public national/regional/local –with the participation of regional/local administrations-competitions in order to achieve a concession; however, the existence of quite a variety of companies can be remarked, as the analogical spectrum has been deeply exploited.

As in the case of television, the *Act 4/1980, 10 January 1980, of the Statute of Radio and Television*,²³ defined radio broadcasting as an “essential public service legally entitled to the State”, which means that any private operator will function under a temporal concession regime.

The *Act 111/1991, 8 April 1991, on the organization and control of the local councils radio stations*,²⁴ must be remarked as the one to give power to the city councils to stablish their own public local broadcasters; one year later, the *Royal Decree 1273/1992, 23 October 1992*, enabled the regional governments and city councils to make new FM concessions.

²⁰ <http://www.aimc.es>.

²¹ <http://www.rtve.es>.

²² <http://www.infoadex.es>.

²³ Ley 4/1980, de 10 de enero, del estatuto de la radio y la television.

²⁴ Ley 111/1991, de 8 de abril, de organizacion y control de las emisoras municipales de radiodifusion sonora.

However, the legal present and future of radio broadcasting begins in 1999 with the passing of the *Royal Decree 1287/1999, 23 July 1999, on the National technical plan of digital terrestrial radio broadcasting*.²⁵ The law fixed: 6 digital programmes for the national public operator, *RNE*; the number of the rest of national programmes would be decided by the Government; 3 digital programmes for the regional public operators; the number of the rest of regional programmes would be determined by the regional governments; the digital local programmes would be decided by the regional governments.

Twelve national concessions for a period of ten years were made by governmental decision in 2000; however the still high price of the radio portables impedes its development.

Co-regulation and independent authorities

Non national ones; but two regional independent authorities can be outlined: the Broadcasting Council of Catalunya and the Broadcasting Council of Navarra.²⁶

The first one was born in 2000, with the *Act 2/2000 of the Parliament of Catalunya*,²⁷ as an independent authority to control those audiovisual services under the jurisdiction of the regional government of Catalunya; it is member of the European Platform of Regulatory Authorities (EPRA) and a founding member of the Mediterranean Network of Regulatory Authorities; its main duty is the enforcement of legislation and rules concerning the audiovisual sector, protection of children and youth, protection of human dignity, control of advertising and commercial communications, promotion of Catalunya own language.

The second one was born in 2001 with the *Act 18/2001 of the Parliament of Navarra*,²⁸ as an independent authority for radio and television broadcasting within the limits of the region; between its functions: control the broadcasting of national constitutional values; protection of minorities and children rights; control of the media fulfilment of the audiovisual regulation; study of radio and television concessions; control broadcasting advertising; protect the interests of citizens and consumers through the Audience Defence Office.

Finally, it must be noticed that regions like Madrid, Galicia, Pais Vasco and Andalucia are developing their own broadcasting councils, and find themselves now in different stages of its constitution; also, the national government has announced the creation of a national broadcasting authority.

²⁵ Real Decreto 1287/1989, de 23 julio, por el que se aprueba el plan tecnico nacional de radiodifusion sonora digital terrenal.

²⁶ Consell de l'Audiovisual de Catalunya, <http://www.audiovisualcat.net>; and Consejo Audiovisual de Navarra, <http://www.consejoaudiovisualdenavarra.es>.

²⁷ Ley 2/2000 del Parlamento de Catalunya.

²⁸ Ley 18/2001 del Parlamento de Navarra.

Self-regulation

The so mentioned deontological codes for the press subsector can be considered here, as those professional bodies are not reduced to the affiliation of press journalists, but opened to any media journalism professional.

But it must be said that, opposite to the press situation, non radio broadcasters possess a deontological code; it is only possible to find some general editorial principles within the public regional broadcasters like *Canal Sur Radio*, with an ombudsman since 1997, *Radio Castilla La-Mancha*, or *Catalunya Radio*; and the newsroom statute and advertising basics of *Canal Nou Radio*.

All of their principles repeat the general formula of the *Act 4/1980, of the Statute of Radio and Television*: respect for constitutional values; fairness and truth in news; respect for freedom of expression; respect of the political and social pluralism; special protection of youth and children; and promotion of regional identity and values.

TV broadcasting

Introduction to the market

Television broadcasting started in 1956 with *TVE*, the Spanish national public operator; it was not until 1989 when the first national commercial analogical channels –*Antena 3*, *Tele 5* and *Canal Plus*– came into action; the last one of them as a thematic encrypted broadcaster, focusing in sports and cinema. However, before their appearance in the market, and in the beginnings of the 80s, three regional public broadcasters started operating in Catalunya, Pais Vasco and Galicia; at the same time, local cable and analogical television stations were developing despite the inexistence of regulatory provisions, reaching the number of approximately 300 at the end of the decade; finally, since 1997, digital satellite television became a reality with the launch of *Canal Satelite Digital* and *Via Digital*; analogical satellite television has never succeeded in Spain, carried out by a Spanish company.

The updated map of television includes: the 4 mentioned national analogical operators –*TVE*, *Antena 3*, *Tele 5* and *Canal Plus*–; 8 public regional analogical operators, some of them with several channels –*TVG*, *ETB*, *TV3*, *Canal Nou*, *Canal Sur*, *TV Castilla La Mancha*, *Canarias TV* and *Tele Madrid*–, and the recent approval by law, in 2004, of analogical regional public channels for Aragon, Baleares, Extremadura and Castilla-Leon; more than 800 private/public local analogical stations, with three main companies creating networks –*Localia TV*, *Popular TV* and *Grupo Correo*–; 1 digital satellite operator –*Digital Plus*–, after the merger in 2003 of *Via Digital* and *Canal Satelite*, reaching now 1.65 million subscriptions; finally, in respect of digital terrestrial television, in 2004 there were, apart from the national and regional analogical operators, two new commercial national companies –*Veo TV* and *Net TV*–, as well as regional commercial companies in Madrid, La Rioja, Navarra and Catalunya. The analogical switch-off is intended, following the *121/000021 Act Draft on Urgent measures to promote the digital terrestrial television, liberalization of cable television and promotion of pluralism*, 11 February 2005, to happen in 2010.

For 2004 the audience shares of analogical operators were as follows: Tele 5, 22.1%; TVE1, 21.4%; Antena 3, 20.8%; average of regional public operators, 17.4%; TVE2, 6.8%; Canal Plus, 1.8%; finally, analogical local broadcasters, as well as cable and satellite ones, a total of 9.7%.

The time of viewing has increased to 219 minutes/person/day, reaching the historical maximum; in respect of television advertising, this subsector is the preferred media with a total investment for 2004 of 2.6 thousand million euros, which means an increase of 15% comparative to 2003.²⁹

Regulatory provisions

The *Act 4/1980, 10 January 1980, of the Statute of Radio and Television* defined television, as mentioned before, “essential public service legally entitled to the State”; this conception has guided, and still does, the whole regulation of the medium in Spain; as in the case of radio broadcasting, any private initiative appears as an administrative temporal concession of the Government, through the modality of public contest; the only exceptions to this regulatory principle come through public regional operators, as well as in the satellite market: the *Act 46/1983, 26 December 1983*³⁰, *on the regulation of the third television channel*, allowed regional governments to create their radio and television corporations, which was a right also conceded by Art.149 of the Constitution.

In 1988, the *Act 10/1988, 3 May 1988, on private television* recognized the right to indirect management of national television by private companies, under the manner of temporal concession, and allowed three operators to start broadcasting; after, in 1995, the next regulatory step comes with the *Act 37/1995, 12 December 1995, on satellite television*³¹ and *Act 41/1995, 22 December 1995, on local hertzian television*:³² while the satellite regulation opened the market to any company desiring to operate, the local television regulation established a maximum of 2 stations, but just in case one of the two was managed by the city council; however, it must be mentioned that reality shows that analogical local television is a field out of the control of public authorities –which they know-, as the number of known stations is over the number of possible legal concessions.

²⁹ <http://www.aimc.es>.

³⁰ Ley 46/1983, de 26 de diciembre, de regulacion del tercer canal de television.

³¹ The satellite regulation was completed in 1997 with the implementation of the correspondent EU directives, through the *Act 17/1997, 3 May 1997, on the implementation to the Spanish law of the Directive 95/47/CE, 24 October, from the European Parliament and the Council, about the use and rules for television signals transmission, and the approval of additional measures for the liberalization of the sector*; this Act was modified in 13 September 1997, by Royal Decree Act.

Translation: Ley 37/1995, de 12 de diciembre, de television por satellite; Ley 17/1997, de 3 de mayo, de incorporacion al derecho espanol de la directive 95/47/CE, del parlamento europeo y del consejo, sobre el uso de normas para la transmission de señales de television y se aprueban medidas adicionales para la liberalizacion del sector.

³² Ley 41/1995, de 22 de diciembre, de television local por ondas.

The arrival of the digital terrestrial television has been seen by experts as an opportunity to re-organize the legal frame of television in Spain: the *Royal Decree 2169/1998, 9 October 1998, on the national technical plan of digital terrestrial television*, and the *Order 9 October 1998 on the technical rules and digital terrestrial television service provision*,³³ went on again on the mixed model of direct and indirect management of television services, establishing the transition of national analogical channels to broadcasting, as well as the possibility of an unlimited number of new concessions under the criteria of the national and regional governments, depending on the geographical scope of broadcasting. Must-carry-on obligations for digital operators, in respect of conditional access, are not present, as users will not be able to access an audiovisual broadcasting whenever they wish to. No special provisions on EPG are established; however the fact of an unique multiplex for every 4 channels could have future consequences on the users' rights, from the perspective of its administration. The commercial channels, now broadcasting in analogic technology, signed in 2001 an agreement with Retevisión so that this company provides the necessary technological devices to broadcast. Finally, two other regulatory provisions must be remarked as the most recent: the *Royal Decree 439/2004, 12 March 2004, on the national technical plan of local digital terrestrial television, with a modification by Royal Decree 2268/2004*;³⁴ and the *121/000021 Act Draft, 11 February 2005, on urgent measures to promote the digital terrestrial television, liberalization of cable television and promotion of pluralism*.

The first one establishes the existence of, at least, 4 digital programmes –conventional channels- in every demarcation –territorial administrative unit preconfigured by the city councils and the regional governments; basically, will include province capitals, regional capitals and locations with over 100.000 population- ; this number of 4 could be increased if the correspondent regional government considers so. A maximum of 20% of the technical capacity of the digital channel could be reserved to data and additional value services.

The second one, still not an Act in force, but just pending on the Senate decision, after passing the Deputies Chamber, will mean the following changes: a city council or a joint-venture between several city councils will be able to hold up to a maximum of 2 local television digital stations; the term of the concessions will last for ten years; and, despite its purpose of DTV promotion, it cancels the limit for analogic national operators, as well as the Government has declared its intention of licensing two possible new analogic channels.

Apart from the regulation of the market itself, it must be remarked that the *Royal Decree 410/2002, 3 May 2002, on television programmes classification and signalization*,³⁵

³³ Real Decreto 2169/1998, de 9 de octubre, por el que se aprueba el plan técnico nacional de televisión digital terrenal; Orden de 9 de octubre de 1998 por la que se aprueba el reglamento técnico y de prestación del servicio de televisión digital terrenal.

³⁴ Real Decreto 439/2004, de 12 de marzo, por el que se aprueba el plan técnico nacional de la televisión digital local;

³⁵ [Real Decreto 410/2002, de 3 de mayo](#), por el que se desarrolla el apartado 3 del artículo 17 de la Ley 25/1994, de 12 de julio, modificada por la Ley 22/1999, de 7 de junio, y se establecen criterios uniformes de clasificación y señalización para los programas de televisión.

implementing the Directive without frontiers, establishing the compulsory age classification of programmes, at its start, and commercial stops.

Finally some regional governments like Galicia, Catalunya and Pais Vasco have passed their own law on audiovisual services contents.

Co-regulation and independent authorities

Already mentioned for the radio broadcasting subsector.

Self-regulation

The general principles specified for public radio broadcasters are also valid for public television operators; in respect of private national commercial channels, Antena 3 possesses kind of Watchers Office,³⁶ where anyone can send claims or consultation, although its effectiveness is not clear also, some regional public broadcaster have their ombudsmen, as well as editorial principles which cannot be described as real self-regulation code; however the most remarkable deontological issue is the sign in December 2004 of the self-regulation code on television contents and children, with the agreement of the public and commercial national channels. As general rule it determines that contents broadcasted between 6 am and 22 pm should be suitable for people under 18.

Cinema and video

Introduction to the market

The EU cinema productions represented in 2004 almost 52% of the Spanish market, while USA works got almost 40% of it; that is, 187.913.400,42 euros and 481.974.420,26 euros, respectively; a total of almost 140 million people went to the cinema, which means that almost 50% of the Spanish population does not ever go to the cinema or just do it less than 5 times/year. *Shreck 2*, *Troya* and *Mar adentro* were the three works which more succeeded.

For the video/dvd market, dvd means 91% of the films selling market –more than 21 million copies sold-, while video falls down to 9%; that is a expenditure of around 20 euros per citizen. 50% of commercialized films were EU nationals, while 39% was USA.

Advertising in the cinema subsector went on to 40.7 (million) euros for 2004, which meant a decrease of 15.5% in respect of 2003.³⁷

Regulatory provisions

Mainly focused on the promotion of audiovisual production, through national/regional governmental financial aid –except for X films-, and compulsory co-production investment for televisions.

³⁶ Oficina del Espectador.

³⁷ Data taken from the statistics of the Ministry of Culture, General Media Study and Infoadex, march 2005.

Several provisions established the cinema legal frame: The *Act 15/2001, 9 July 2001, on the promotion of cinema and the audiovisual sector*,³⁸ established as a general rule compulsory exhibition of 1 day of EU films, every 3 days of third countries films exhibition; at the same time, the Act remembered the obligation of age classifying before cinema exhibition, television broadcast or video/dvd rent/sell.³⁹

The *Royal Decree 81/1997, 24 January 1997, on the protection and promotion of the cinema*,⁴⁰ determined the competence of the Institute of Cinematographic and Audiovisual Arts, as well as the regional administrations, in the review of the film and its age classification. Also, in the field of television, the *Act 25/1994, on the implementation of the directive 89/552/CEE, "Television without frontiers"*, made compulsory for television companies to preserve 51% of its broadcasting time to EU audiovisual works, including cinema; recently, the *Royal Decree 1652/2004, 9 July 2004*,⁴¹ made compulsory for television broadcasters to give each year 5% of their financial income after taxes to cinema financing.

In respect of video/dvd products, it can be mentioned the *Royal Decree 448/1988, 22 April 1988, on the diffusion of cinema films and other audiovisual works through video support*.⁴²

Co-regulation and independent authorities

The *Royal Decree 7/1997, 10 January 1997, on the organic structure and functions of Institute of cinematographic and audiovisual arts*,⁴³ established the role of this autonomous institution in the sense of promoting the making, distribution, and conservation of Spanish films and visual arts. Despite its autonomous legal status, and its role in content classifying, it is not usually considered as an independent authority.

Self-regulation

None.

³⁸ [Ley 15/2001](#), de 9 de julio, de fomento y promoción de la cinematografía y el sector audiovisual.

³⁹ Followed by the Royal Decree 526/2002, 14 June 2002, on the promotion of cinema and the making of films under coproduction.

⁴⁰ [Real Decreto 81/1997](#), de 24 de enero, por el que se desarrolla parcialmente la Ley 17/1994, de 8 de junio, de protección y fomento y se actualizan y refunden normas relativas a la realización de películas en coproducción, salas de exhibición y calificación de películas cinematográficas.

⁴¹ Real Decreto 1652/2004, de 9 de julio, por el que se aprueba el Reglamento que regula la inversión obligatoria para la financiación anticipada de largometrajes y cortometrajes cinematográficos y películas para televisión, europeos y españoles.

⁴² Real Decreto 448/1988, de 22 de abril, por el que se regula la difusión de películas cinematográficas y otras obras audiovisuales recogidas en soporte videográfico.

⁴³ Real Decreto 7/1997, de 10 de enero de estructura orgánica y funciones del Instituto de la Cinematografía y de las Artes Audiovisuales.

Internet, online and cable content distribution

Introduction to the market

32.9% of the Spanish population usually gets into Internet, which means approximately 11 million users in between October/November 2004; this data shows the non stop increase in the use of the Net, since 1996, when only 1.6% of the population was considered as users; 64.6% of the users declare to access the Internet from home, while 32.6% do it from work places; however, only 25.2% of homes have connection, while 87.44% of the companies are connected.⁴⁴

In respect of cable content distribution, and other telecommunications services, the main companies are *Telefonica* -54.9% of the market, for 2003-, *Auna* -10.8%-, *Ono* -1.1%-, *Vodafone* -11%. These companies take part, directly or indirectly, either in the market of mobile communications, access to Internet or content cable distribution.⁴⁵

In 2002, 40% of the houses could enjoy cable distribution, but only 15% of them had a subscription to cable services; the number of ADSL lines has increased from 1 million at the end of that year, to 2.6 million in 2005; however, only 1 million people were subscribed to cable television services in 2003.

Regulatory provisions

The general provision for telecommunications subsector is *Act 32/2003, 3 November 2003, on Telecommunications*,⁴⁶ which simplifies the regulatory frame existing since the last general act in 1998.

In respect of Internet services, the search for users' security and privacy has been established, incorporating the correspondent EU directives, through the *Act 34/2002, 11 July 2002, on Information Society services and electronic commerce*; the *Order 662/2003, 18 March 2003, on the National plan on internet domain names under the Spanish code ".es"*; the *Act 59/2003, 19 December 2003, on the electronic signature*; and the *Royal Decree 292/2004, 20 february 2004, on the creation of a public trust mark for Information Society services and electronic commerce*.⁴⁷

⁴⁴ Data taken from Telecommunications and Information Society Observatory and from General Media Study, march 2005.

⁴⁵ Telecommunications Market Commission –Comision del Mercado de las Telecomunicaciones-, 2003 Report, <http://www.cmt.es>.

⁴⁶ Ley 32/2003, de 3 de noviembre, General de Telecomunicaciones.

⁴⁷ [Real Decreto 292/2004, de 20 de febrero](#), por el que se crea el distintivo público de confianza en los servicios de la sociedad de la información y de comercio electrónico y se regulan los requisitos y procedimiento de concesión; [Ley 59/2003, de 19 de diciembre](#), de firma electrónica; [Orden CTE/662/2003, de 18 de marzo](#), por la que se aprueba el Plan Nacional de nombres de dominio de Internet bajo el código de país correspondiente a España (".es"); [Ley 34/2002, de 11 de julio](#), de servicios de la sociedad de la información y de comercio electrónico.

The aim of these provisions is to establish a secure frame for the development of electronic commerce and other services, through the determination of a responsibility system in the storage and dissemination of personal data.

In respect of cable services, its regulatory frame refers to the *Act 42/1995, 22 December 1995, on cable telecommunications*,⁴⁸ which established a limitation of up to 2 cable operators in each geographical demarcation, and gave to the company *Telefonica* –then, public company-, the chance to be one of the two. It is an must-carry-on obligation of any television cable operator to distribute the signal of all opened television channels which are received on its geographical scope.

Co-regulation and independent authorities

The Telecommunications Market Commission⁴⁹ was created as an independent authority for the ITC market by the *Royal Decree 6/1996, 7 June 1996, on the Liberalization of telecommunications*.⁵⁰ Its three main functions are: encouraging competence within the market; establishing and supervising general duties of the operators; as well as developing an arbitrage role in case of controversy.

Also, *Red.es* appeared in 2000 as a public company, belonging to the Science and Technology Ministry,⁵¹ with the main function of managing the Internet Spanish domain “.es”.

Both of them have not content regulation functions.

Self-regulation

Apart from every ethical and deontological rules mentioned in respect of the press, radio and television –whereas applicable on the Internet-, three private initiatives must be mentioned, although it cannot be said they are really significant, and they do not represent any kind of authority:

Asimilec is a multisectorial association of electronic and communications enterprises, existing since 1984; the affiliated companies represent 80% of the Internet services and traffic providers; in November 2004 it published a deontological code declaring the respect for the human rights values, freedom of information, human dignity and specially, protection of children and youth.

The Internet Users Association⁵² has not a deontological code; however, since its constitution in 1995, has tried to defend the rights of internet users and consumers, promoting its “good” use.

⁴⁸ Ley 42/1995, de 22 de diciembre, de telecomunicaciones por cable.

⁴⁹ Comision del Mercado de las Telecomunicaciones.

⁵⁰ Real Decreto 6/1996, de 6 de junio, de liberalizacion de las telecomunicaciones.

⁵¹ Ministerio de Ciencia y Tecnologia.

⁵² Asociacion de Usuarios de Internet.

Finally, the Spanish Internet Observatory, started in 2002, created a kind of citizens net, with the mission of study and divulgate Internet issues.

Videogames and interactive games

Introduction to the market

The revenue of the market for entertaining software and hardware has reached in 2004 the amount of 790 million euros, just 10 million less than the year before; the most preferred videogames are strategic ones. *Grand Theft Auto*, a game for people over 18 years old was the most sold of the year.⁵³

Regulatory provisions

The Decree 37/2002, 12 July, 2002, on the administrative authorization procedure for the exploitation of videogames and software in personal computers, has no provisions in respect of harmful content or age classification.⁵⁴

Co-regulation and independent authorities

None.

Self-regulation

Since 2003 the Pan European Game Information self-regulation code has been used by several Spanish companies to age classify its products and content, thanks to the signing of the code by the Spanish government; this code substitutes and extends the 2001 code of the Spanish Association of Entertainment Software Editors and Distributors, *Aesde*.

Advertising

Introduction to the market

For 2004 the total amount of investment on the advertising market grew up to 6.9%, which meant 12.846,3 million euros; 2004 was the second positive year after a certain stop in the precedent times. This investment represents 1.7% of the national GDP, slightly superior to 2003 and 2002. In respect of the investment distribution, non conventional advertising media acquired 52.1% of it, while the 47.9% left went to conventional ones. Between these last ones, television keeps supremacy with 43.5% of the revenues, while Internet only achieves 1.5%; between “below-the-line” media, personalized mailing kept 25.9% of the investment.⁵⁵

⁵³ Data taken from the 2004 Report, by Spanish Association of Entertainment Software Editors and Distributors –Asociacion Espanola de editors y distribuidores de software de entretenimiento, AESDE, <http://www.aesde.es>.

⁵⁴ Decreto 37/2002, de 12 de julio, por el que se fijan los procedimientos reguladores de las autorizaciones administrativas para la explotación de videojuegos o programas informáticos en ordenadores personales.

⁵⁵ <http://www.infoadex.es>.

The main advertising organization in Spain is the Spanish Association of Advertising Agencies (AEAP-Asociación Española de Agencias de Publicidad), founded in 1977, and representing the interests of 40 advertising companies, including the most remarkable ones of the country. Also, it is the unique Spanish organization belonging to the European Association of Communication Agencies, EACA.

Regulatory provisions

The main advertising regulatory framework is national, and regional parliaments and governments only develop some rules on the issue as secondary aspects of their laws on the selling and providing of some products and services -such as alcohol, tobacco, hygienics, gambling, etc.-, or related with some advertising supports fixed on public zones.

The *Act 34/1988, 11 November 1988, on Advertising* establishes the national frame for the development of the activity, applied whether conventional or non conventional media; it sets as non-licit advertising the following: misleading, unloyal, subliminal, negative comparative, as well as any other one which goes against the constitutional values and human dignity, specially in the case of women, youth, and children; of course, there must be added as non-licit, any infringement of any rule on specific product advertising.

The main legal frame can be completed with the general *Act 26/1984, 19 July 1984, on the Defence of Consumers and Users*, the *Act 25/1994, 12 July 1994, on the incorporation of the Directive on Television without Frontiers* (modified by the *Act 22/1999, 7 June 1999*), the *Act 29/2002, 28 October 2002, on the incorporation of several EU Directives on the Protection of the Interests of Consumers and Users*; and the already mentioned acts on Internet and online content distribution, which contain measures in respect of electronic commercial communications.⁵⁶

Co-regulation and independent authorities

None.

Self-regulation

Since 1995 it exists the Association for Self-regulation on Commercial Communications – named before as Association for Self-control on Advertising-. Its members are either advertisers, as advertising agencies, mass media and other companies working on the field of commercial communications; its character as a previous-consult institution –“copy-advice” leads to avoid the Courts resolution of conflicts, through the dispute of controversies in a self-regulation form, thanks to the existence of an intern Jury composed by authorities in the field

⁵⁶. The main content of the EU Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising, and the Directive 97/55/EC of European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising, was beforehand included in the text of the general Act 34/1988, 11 November 1988, on Advertising.

of Law, Economics, commercial communications, as well as representer of the National Institute of Consum.

Its Code of Advertising Conduct was established in 1996 and its main principles refer to the respect of the spanish laws and constitutional precepts, explicit recognition of advertisements, respect of good faith of consumers, non use of fear or superstition, non incitement to violence, and respect of good taste, among others; advertising must be based on authenticity, truthfulness, as well as the respect of the misleading, unloyal, subliminal and comparative advertising rules contained in the spanish law.

The Association has also published an Ethical Code on Electronic Commerce and Interactive Advertising (1999) and another one on Cinema Advertising (2000) .

The Associations belongs to the European Advertising Standards Alliance, EASA.

3.25. United Kingdom

Summary

The UK regulates the media sector:-

To different levels depending on the type of media.

- Broadcasters, especially terrestrial broadcasters, are subject to the most detailed regulation; the press is self-regulated;
- Some types of media (e.g. games) may find themselves subject to different rules depending on type of content and, potentially, platform;
- There are a wide range of regulatory mechanisms used: traditional regulation; co-regulation; self-regulation

Although different concerns may be protected, there is consistency in the desire to protect minors. Within the broadcasting sphere, diversity and quality of programming seem to be primary concerns, at least as far as the public service broadcasters are concerned. The Communications Act, in addition to setting down these objectives (see further below) implements the EC Communications Package, including the provisions regarding access to infrastructure. In particular s. 64 Communications Act implements Article 31 USD (must carry provisions); currently the free to air terrestrial channels are identified as the beneficiaries of must carry obligations. Ofcom is currently considering imposing obligations on ntl and Crown Castle under s. 64 Communications Act.

The main concerns regarding advertising seem to relate to honesty and consumer protection (in addition to the protection of minors, already noted), though the provisions in the Television without Frontiers Directive concerning frequency and placement are found in the regulator's codes. As will be discussed below, television and radio advertising falls now to be dealt with by the Advertising Standards Agency, rather than by Ofcom. Transferring day to day responsibility for broadcast advertising content standards to the ASA, which is the body responsible for all other forms of advertising, is hoped to make the complaints procedures more accessible to the public.

There has been a proliferation of codes and adjudicating bodies, potentially leading to a confused regulatory framework.

Introduction

Overview of the Market

The press during the twentieth century has not been subject to direct regulation, certainly there has been no state support for particular titles. There has been some consolidation in the titles available. Currently, there are 11 national daily titles, and 12 national Sunday titles. Additionally, there are a number of regional/local titles: 20 morning, 76 evening and 11 Sunday papers. There are also 529 weekly newspapers (excluding free titles). Magazines are

numerous, consumer magazines number in excess of 3,000 titles, though circulation varies widely; and there are more than 5,000 business/professional journals.

The BBC was originally granted a monopoly in broadcasting, both radio and television. Commercial television was introduced in the 1950's with ITV (although the introduction of BBC2 in the 60's was a response to perceived poor quality broadcasting). Channel 4 was introduced during the 80's. Channel 5 started broadcasting within the last ten years. Cable and satellite broadcasting has also grown during the 1990s. The cable market has shown significant consolidation, reducing from 29 operators in 1992 to two major operators now, with some additional smaller operators. There is one satellite broadcaster. DTT was introduced by the Broadcasting Act 1996. Although originally offered as a subscription service, this is now free to air.

Commercial radio was not introduced until significantly later than broadcast television and is based mainly on local licences. Excluding the BBC services, there are nearly 400 commercial radio stations in the UK.

There are approximately 3,450 cinema screens in the UK, some operating independently but many forming part of larger cinemas.

The games development market started as a cottage industry; by 1995 the UK software publishing market had consolidated, with many small independents being bought out by companies such as Atari, Microsoft and Sony. This consolidation has tended to continue, as part of the consolidation of the media sector generally. Some independents do remain, however: Eidos; Codemasters; Empire Interactive and SCi Entertainment. Many of the large developers employ teams of programmers, not only to develop new games but to ensure that games are available over different platforms.

Audience Share

The figures collected by the Broadcasters Audience Research Board (BARB) show a total of 2,302,000 homes having cable or DTH television in January 1992. By the end of 2004, that figure had risen to 12,036,000, approximately two thirds of which had satellite television, with cable representing 3,277,000 homes and DTT 2,075,000. Digital television penetration across all platforms by the end of the second quarter 2003 was 11,287, 000 or 44.5% of UK tv households. According to BARB, at December 2004, the viewing was split amongst the various broadcasters as follows:-

- terrestrial commercial broadcasters averaged 10:43 hours (38%);
- the BBC (but only BBC 1 and BBC2): 9:24 hours (33.3%); and
- other broadcasters together, 8:05 (28.7%).

As regards the press, *The Sun* sells nearly 4 million copies every day and *The Daily Mirror* nearly 2.5 million per day. The best selling 'quality' newspaper is *The Telegraph*, selling just over 900,000 copies per day; *The Financial Times* sells 385,000 copies every day, just less than some monthly magazines. The *Radio Times* sells about 1.4 million copies a week, and is read by virtually all members of the buying household. Some weekly women's magazines sell

well, with *Woman's Own* and *Woman* each selling around 630,000 copies; *Bella* sells over 400,000 copies. At the other end of the scale, many technical and business magazines, and many local papers, sell only a few thousand copies of each issue.

Since the 1950s, when television became the most popular form of entertainment for most people in Britain, fewer people have gone to the cinema regularly. Numbers of admissions declined to 54 million by 1985 but have since increased: 135 million in 1998.

NOP World's Internet User Profile Survey, found that, as at June 2003, 53 per cent of the population had used the internet in the previous 12 months, rising from 8% in 1998. With the increase in users, the demographics of internet use in the UK are beginning to resemble UK demographics generally although there is still a slight bias towards a male audience. Internet users tend to be relatively well off: while the AB socio-economic groups account for 18 per cent of the UK population, online they make up 26 per cent of users. The *Fishbowl Study*, conducted by Simon Priest & Associates, found that it was Internet users' third most popular medium in terms of usage time, behind TV and radio.

Sales of entertainment and leisure software across all formats totalled £1.34 billion – an increase of 6.6 per cent over 2003's record figures. An ELSPA paper claimed the UK games market to be the biggest in Europe and the third biggest in the world. It is also claimed to be bigger than the market for cinema or video rental.

Revenue

Most elements of the media sector depend on two main types of revenue: sales of the product; and advertising revenue. According to the Advertising Association (which is an association of the various advertising trade associations), the advertising market in the UK in 2003 (excluding classified advertising) was worth approximately £13,069,000,000. It is forecasting an increase in expenditure for 2005 and suggests that there will be a long term increase over the next decade.

The largest single group of expenditure related to television advertising. The press came next, with £1,432,000,000 being spent on advertising in national newspapers and £949,000,000 in relation to regional newspapers. Consumer magazines accounted for £622,000,000 and professional journals £588,000,000. Of the rest of the media sector £582,000,000 was spent on radio advertising; cinema attracted advertising spend of £180,000,000 and the Internet £376,000,000.

Within the newspaper sector, it seems the popular dailies and consumer magazines tend to obtain more of their income from sales than advertising (according to the ASA popular dailies' income is split 56% to 46%), whereas for the 'quality' newspapers and regional papers the reverse tends to be the case (64% of quality newspapers' income on average derived from advertising).

As regards revenue in relation to television, in the UK:-

- net advertising revenue was worth approximately £4.4 billion;

- subscription revenues constituted 25% of the overall revenue, at approximately £2 billion;
- the sale of goods equalled 4% (£312 million);
- sponsorship brought in 1% (£94 million) of the overall revenue; and
- £382 million, or 5% of the overall total, came from other sources.

The Report on Advertising prepared for Ofcom at the end of 2004, noted that traditional tv advertising revenues fell sharply during 2001-03, though it is unclear whether this is cyclical or a structural change. Despite the optimistic views of the ASA, the Merrill Lynch Report *The Rise of the Machines* suggests that the impact of pvr is such that free-to-air television paid for via advertising revenue will have to change its business model given that so many viewers will skip advertising, given the choice.

Figures from ELSPA for 2002 show that games outstrip cinema and video; the figures given are £1,081,000,000 £755,000,000 and £476,000,000 respectively.

Introduction to the Regulatory Framework

Although all can be seen as means of communication, there are distinct legal regimes applying to the different types of activity in the media sector. The press and online services have not been particularly heavily regulated; films and videos are subject to classification rules, whereas the broadcast media has been closely regulated in terms of infrastructure and, particularly, content, although the British rules distinguish between different types of content provider. In most sectors, the regulation is delegated to specialist agencies though these vary in form from top-down regulation (the traditional television and radio model) through co-regulation (broadcast advertising) to self-regulation (e.g. the press).

One of the peculiarities of the British legal system¹ is that there is no formal written constitution. Freedom of expression was traditionally protected by the common law²; the UK ratified the European Convention on Human Rights and the Human Rights Act introduced greater protection for those rights although there is not a full system of judicial review. Special provisions do apply concerning data protection and to freedom of expression as regards the media in the *Data Protection Act* 1998 and the *Human Rights Act* respectively.

1. The Broadcasting Sector

1.1. Primary Legislation

The main regulatory framework for broadcasting in the UK is found in the *Communications Act* 2003, which in addition to regulating broadcast content also implements the telecommunications regulatory package. The *Communications Act* is not, however, a stand-

¹ If such a thing as the British legal system exists: England, Scotland, Northern Ireland as well as the Channel Islands and the Isle of Man have separate legal systems.

² The position of the right to privacy in the UK is much less clear.

alone piece of legislation: there are numerous references to the obligations contained in the earlier regulatory system introduced by the *Broadcasting Acts* 1990 and 1996. Additionally, statutory instruments are used to fill in and up date points of detail. Some statutory instruments, which must be made within the authority of an Act of Parliament, are used to implement EC Directives.³ The previous regulatory was supposed to be a lighter touch than that which had gone before; the system in the *Communications Act* is aimed at being yet lighter touch regulation.

As with the previous system, much of the regulatory responsibility is passed on to an independent regulator. The innovation in the *Communications Act* is that the three regulatory bodies which dealt with content issues (the Independent Television Commission (ITC), the Radio Authority (RA) and the Broadcasting Standards Commission (BSC)) have been merged, together with the Radio Communications Agency, responsible for spectrum management, and Ofcom the former telecommunications regulator, into one body: Ofcom.

The UK broadcasting market in terms of regulation can be divided, broadly, into three groups:

- the BBC;
- terrestrial broadcasters; and
- cable and satellite companies (subscription/pay television).

The BBC:-

- does not in general fall within the scope of the Ofcom's regulatory powers;⁴
- does not carry advertising;
- does promote its own programming.
- The BBC did not have to bid for its licence to broadcast.

The terrestrial broadcasters other than the BBC (the ITV companies, Channel 4 and Channel 5):-

- all carry advertising;
- are subject to the regulatory control of the Ofcom through the licence conditions contained in their respective broadcasting licences; and
- are subject to positive as well as negative content obligations.
- Channel 3 licences were originally awarded competitively (by the ITC) by reference to:
 - A cash bid
 - An outline of the proposed service, assessed qualitatively.

³ For broadcasting, many statutory instruments will be made under the Broadcasting Acts. Some which are implementing the requirements of EC law will be made under the European Communities Act 1972.

⁴ Some of the BBC's commercial subsidiaries fall within the scope of the Ofcom, as do the multiplexes on which the BBC broadcasts its digital programming.

A similar approach applied in relation to the grant of radio licences.

The cable and satellite companies:-

- carry advertising and sponsorship;
- are funded through subscription; and
- although they are under some constraints as regards content, seem to be under a lighter regulatory regime than the terrestrial broadcasters, particularly as regards the grant of licences.

Ofcom has responsibility for broadcasters (television and radio), such as ITV, and also those providing ‘television licensable content services’.⁵ Following the ITC’s approach, internet on tv would not be regulated under the broadcasting regime – this approach would seem to be reflected in *Communications Act*. The ITC did take the view that it would regulate enhancements to existing television services (which could include games) and interactive walled-garden applications.

S. 211 *Communications Act* obliges OFCOM to regulate independent television services in accordance with the terms of the Communications Act and the 1990 and 1996 Broadcasting Acts (see ss. 2, 6-9 *Broadcasting Act 1990*). These are the main provisions relating to protection of minors as regards programme and advertising content, although they have a broader focus of concern, such as taste and decency, impartiality and the portrayal of violence. The main mechanism for control of content is through the use of codes with which broadcasters must comply, although positive content obligations (e.g. regional programming, amount of news etc) may be contained in the broadcasters’ licences.

Compliance with the codes is required by the terms of the Communications Act; compliance is also ensured by virtue of terms inserted in the operators’ licences. Penalties for non-compliance range from:-

- the requirement that certain advertisements are not broadcast;
- the imposition of fines; to
- the ultimate sanction of the revocation of the broadcasting licence.

1.2. Codes of Conduct

There are a number of codes made under the *Broadcasting Acts* and the *Communications Act*. Ofcom has responsibility for drafting the codes; it may also devolve the responsibility for these codes to another body. It is also relying on the previous regulators’ existing codes until time is found to review them. The main codes deal with programme content (*‘The Programme Code’*); advertising and sponsorship (*RASA, Sponsorship Code*, TV and radio advertising codes), although this is not an exhaustive list. Additionally, there are separate rules relating, for example, to electronic programme guides and cross promotions. The ITC

⁵ See ss 232-234 *Communications Act 2003*.

also issued guidance notes, explaining in more detail the impact of the rules in the Codes and dealing with matters falling outside the scope of the Codes; these have also been retained by OFCOM. As suggested by s.3(4) *Communications Act 2003*, Ofcom proposed that the regulation of advertising should be contracted out, under s.1(7) CA and ss. 66 and 77(1) *Deregulation and Contracting Out Act 1994*. Although Ofcom remains ultimately responsible for its regulation, the ASA now has day to day responsibility for the regulation of broadcast advertising. Any changes in the codes require the consent of Ofcom.

1.3. Regulatory Authorities

1.3.1. Ofcom

OFCOM was established by the *Office of Communications Act 2002*, but its powers were conferred by the *Communications Act*. OFCOM has general duties and specific duties. According to section 3(1) *Communications Act*:

“It shall be the principal duty of Ofcom, in carrying out their functions;
(a) to further the interests of citizens in relation to communications matters; and
(b) to further the interests of consumers in relevant markets, where appropriate by promoting competition”.

More specifically, Ofcom has a number of enumerated duties:-

1. Ensuring the optimal use of the electro-magnetic spectrum;
2. Ensuring that a wide range of electronic communications services - including high speed data services - is available throughout the UK;
3. Ensuring a wide range of TV and radio services of high quality and wide appeal;
4. Maintaining plurality in the provision of broadcasting;
5. Applying adequate protection for audiences against offensive or harmful material;
6. Applying adequate protection for audiences against unfairness or the infringement of privacy.

As noted above, these specific duties are elaborated further in the *Communications Act*, and cross refer to the obligations (formerly imposed on the ITC and RA) contained in the *Broadcasting Acts 1990 and 1996*.

Ofcom is a statutory corporation. It is required to report annually to Parliament. The main decision making body of Ofcom is its Board. This Board is a unitary Board with a mix of executive and part-time members. This is by contrast to the structures established for the previous regulators; it has been deliberately established in this manner to replicate the boards of the companies that Ofcom regulates. It employs a full time staff and is also supported by advisory committees, notably the 13 member Ofcom Content Board, set up under s.12(1) *Communications Act*.

The Ofcom Content Board must comply with a specific code of conduct for its members.⁶ It has delegated and advisory responsibility for a wide range of content issues, which as regards television fall into three categories:-

1. negative content regulation. (harm and offence, accuracy and impartiality, fairness and privacy);
2. quantitative matters (quotas for independent television production, regional production and original EU/UK production); and
3. public service broadcasters (particularly ITV, Channel 4 and Five).

It also has responsibility for format regulation for radio.

Obviously Ofcom must act within the terms of the powers conferred on it by the primary legislation, and an action for judicial review may be brought to verify this.

1.3.2. ASA

ASA was established in 1962 by the Advertising Association as an independent body to adjudicate on possible breaches of the Code of Advertising Practice drafted by the Committee of Advertising Practice. The 1962 Moloney Committee rejected the establishment of a trade commission, preferring instead self-regulation. The Committee did, however, qualify this view, stating that “our conclusion depends on the satisfactory working of the new scheme, and in particular on the continued quality and independence of the Authority at its pinnacle.” The aim of industry self-regulation was to ensure that advertisements are ‘legal, decent, honest and truthful.’ Advertisers who disregard the rules can be denied access to newspapers, magazines, poster sites, direct mail or the Internet. ASA is funded by the industry via ASBOF.

Since 1988, self-regulation has been backed up by statutory powers under the Control of Misleading Advertisements Regulations. The ASA can refer advertisers who refuse to co-operate with the self-regulatory system to the Office of Fair Trading for legal action. The current code is the 11th edition of the code, issued in 2004.

ASA assumed responsibility for broadcast advertising on November 1st 2004, in the form of ASA(B). Given the different status of the broadcasting codes from the ASA codes, ASA’s operational structures were amended⁷ and broadcasting related complaints have ‘separate and proper consideration’ from complaints relating to non-broadcast advertising.⁸ ASA(B) has responsibility for adjudication on complaints, BCAP for reviewing codes of conduct.⁹ BCAP will be assisted in its role by an advisory committee, the AAC, based on the committee that advised the former ITC. It will represent the views of citizens and consumers and have

⁶ Code of Conduct available on OFCOM website at http://www.ofcom.org.uk/about_ofcom/boards_panels/brds_adv_bodies/ofcom_content_board/code_of_conduct/?a=87101.

⁷ See paragraph 14 Memorandum of Understanding between Ofcom and ASA (MoU).

⁸ See paragraph 18 MoU.

⁹ BCAP’s responsibilities are set out at paragraph 30 MoU.

independent expert or lay members.¹⁰ ASA(B) may impose certain requirements on broadcasters/advertisers in relation to upheld complaints (i.e. change the advert or cease broadcasting it), but ASA(B) does not have the power to fine licensees. It may refer intransigent licensees to Ofcom.¹¹

The ASA Council is formally appointed by its chairman. Two thirds of its members are independent of the advertising industry. Industry members do not act as representatives of their company whilst on the Council.

2. The Press

2.1. Legal Provisions

The press is not formally regulated within the UK, although journalists and newspapers remain subject to general laws (e.g. obscenity, defamation). Additionally there are rules relating to media mergers, which aim to take into account the public interest in the plurality of the media.¹² Otherwise, the print media in all its forms has been subject to industry self-regulation, currently in the form of the Press Complaints Commission (PCC). Advertising in the print media is covered by the normal rules relating to advertising; advertising standards are enforced via the ASA.

2.2. Self-Regulatory Body

The PCC was established by the press industry in 1991 when the press was facing the threat of statutory regulation and the introduction of privacy laws following the *Calcutt Report*.¹³ There is no statutory basis for the PCC. It replaced the Press Council which the *Calcutt Report* had described as ‘ineffective as an adjudicating body’. The PCC is an independent body which deals with complaints from members of the public about the editorial content of newspapers and magazines. It is funded by the newspaper industry via Pressbof. It is organised broadly along the lines suggested made in the *Calcutt Report*: it consists of national, regional and periodical editors (7) alongside a group of lay members (9, including the Chairman). In 1995 an Appointments Committee was introduced to ensure that the lay members were appointed by a body independent of the industry and the PCC.

The PCC adjudicates on the industry code of conduct drafted by the Code Committee made up of senior editors. Since 1993 the Code has been subject to ratification by the PCC. The

¹⁰ See s. 3(1) Communications Act.

¹¹ See paragraphs 25 *et seq* MoU. Ofcom has recently fined a teleshopping channel, Auctionworld, £450,000 and revoked its licence in response to concerns about misleading claims about the value of the goods it was selling. See also determination in respect of Shop Smart Television: http://www.ofcom.org.uk/licensing_numbering/tv/nd/shops.

¹² This concern applies in relation to the broadcast media as well. See *Enterprise Act* 2002 as amended by the *Communications Act* 2003 and Ofcom guidance.

¹³ *Calcutt Report on Privacy and Related Matters*, Cm 1102 (1990).

most recent version of the code dates from 1st June 2004. The Code and the PCC do not deal with matters of taste.

Industry members should comply with the code; the PCC has reported that this requirement is progressively being incorporated into the contracts of employment for journalists so that they may be subject to sanctions/disciplinary action if they breach the code.¹⁴ There have been complaints that PCC adjudications are not enforceable and some elements of the press will ignore them.¹⁵ The courts in a number of judgments, have deferred to the specialist knowledge of the PCC, an approach that is reflected in the HRA. Following further controversy over journalism standards, the Code has been tightened and steps taken to strengthen the independence of the PCC, although there are still questions as to whether this form of self-regulation is adequate.¹⁶ Certainly it is interesting to note that in the *Peck* case¹⁷, in which images of a man attempting to commit suicide were released to the public, the broadcast regulators found violations of the relevant privacy codes as regards the broadcasters' actions, the PCC did not in relation to the print publication of stills of the same video as had been broadcast. There are many cases where individuals, often celebrities will resort to the courts rather than accept a PCC determination, bringing an action based on confidentiality as now understood in the light of Article 8 ECHR/HRA.¹⁸

3. Online Services

3.1. Legal provisions

Online services are subject to the *Electronic Commerce (EC Directive) Regulations 2002*¹⁹ and part 8 of the *Enterprise Act 2002*, which implement the *Electronic Commerce Directive*.²⁰ Similarly, the *Distance Selling Regulations 2000*²¹ implements the *Distance Selling Directive*.²² Advertising carried on the internet is subject to the *ASA Code* (see above). The PCC will review online versions of newspapers, though it does not review other services (such as chat rooms) offered by newspapers. General laws, such as those relating to obscenity, defamation, incitement to racial hatred etc will also apply.

¹⁴ Government Response to National Heritage Committee, *Privacy and Media Intrusion* Cm 2918 (1995), para 2.14(iv).

¹⁵ Second Calcutt Report *Review of Press Self-Regulation* Cm 2135 (1993), paras 4.25-4.27, 4.41 and 5.23.

¹⁶ See 2nd Calcutt Report (1993) and the Report of the House of Commons Select Committee, March 1993. More recently see Fifth Report from the Culture, Media and Sport Committee, Session 2002-03, *Privacy and media intrusion* (HC 458).

¹⁷ This case eventually was heard by the European Court of Human Rights: *Peck v. UK*.

¹⁸ Note that this is not a judicial review action regarding the decision of the PCC; it is unclear whether such an action could be brought. See *R v. PCC, ex p. Stewart-Brady* [1997] EMLR 185, at 189.

¹⁹ SI 2002/2013.

²⁰ Directive 2000/31/EC.

²¹ SI 2000/2334.

²² Directive 97/7/EC.

ISP providers were found to be liable for content on the web²³; this gave the industry the incentive to establish the Internet Watch Foundation (IWF) to provide an online reporting mechanism of alleged illegal content.²⁴ Otherwise there is no specific *ex ante* regulatory system in place to regulate Internet content in general, including online services. The *Communications Act* makes clear that Ofcom has no remit over Internet content in general.²⁵

ICSTIS, the industry body regulating premium rate telephony content in the UK, has established a subsidiary to deal with internet content accessed via mobile phones, the Independent Mobile Classification Body (IMCB). It was established in accordance with the UK Code of Practice for the self-regulation of new forms of content on mobiles (published by the mobile operators in January 2004). Commercial content services which fall within IMCB's remit and the Classification Framework include: still pictures; video and audiovisual material; and mobile games, including java-based games. It excludes text, audio and voice-only services, including where delivered as a premium rate service and regulated by ICSTIS; gambling services (covered by UK legislation); moderated and unmoderated chat rooms; location-based services (subject to a separate mobile operator code of practice); content generated by subscribers, including web logs; and content accessed via the internet or WAP where the mobile operator is providing connectivity only. Although ICSTIS has been established for some time, it should be noted that there is a proliferation of industry associations, which may lead to the fragmentation of industry interests, potentially creating tension in such industry bodies. There also seems to be a proliferation of industry self-regulatory bodies.

3.2. Self-regulatory bodies

3.2.1. IWF

The IWF was formed in 1996 following an agreement between the government, police and the internet service provider industry that a partnership approach was needed to tackle the distribution of child abuse images (often referred to as child pornography) online. It is funded by the EU and the UK internet industry including ISPs, mobile network operators and manufacturers, content service providers (CSPs), telecommunications and software companies and credit card bodies. Its remit is to minimise the availability of potentially illegal internet content, in particular:

- images of child abuse hosted anywhere in the world;
- criminally obscene content hosted in the UK;
- criminally racist content hosted in the UK.

²³ On UK jurisdiction for obscene material see *R v. Perrin* [2002] EWCA Crim 747 (22nd March, 2002), more generally see *R. v. Wallace Duncan Smith* [2004] EWCA Crim 631 (17 March 2004).

²⁴ See now s. 17(1) E-Commerce Regulations.

²⁵ Communications Act s. 233, though the precise meaning of this provision might itself be unclear. Section 234 provides that s. 233 may be modified by order by the Secretary of State.

It further aims to foster trust and confidence in the Internet among current and future fixed and mobile internet users; assist service providers to combat the abuse of their systems for the dissemination of criminal content; and assist law enforcement in the fight against criminal content on the Internet. The IWF originally had the remit to develop a labelling and rating system. This is now the responsibility of the Internet Content Rating Association (ICRA).

3.2.2. ICRA

ICRA is an independent, non-profit organization whose mission is to develop, implement and manage a voluntary self-rating system which provides internet users world wide with the choice to limit access to content they consider harmful, especially to children. It was founded in 1999 by a group of international internet companies, such as AOL and BT, and has an office in the UK and USA, with additional representatives in Germany and Hong Kong.

3.2.3.. IMCB

The IMCB operates under a contract between itself and the mobile operators. It has no powers conferred on it by law. It is funded by the operators and its funding is entirely separate from that of ICSTIS. The remit and operating procedures of the IMCB are set out in the IMCB Guide and Classification Framework. The IMCB is described as an independent body whose decisions are made by a board of members. Board members of IMCB are drawn from the ICSTIS Committee. A multi-disciplinary team supports the Board.

IMCB's remit is to determine a classification framework for commercial content against which content providers can self-classify their own content (whether provided directly or indirectly) as 18 where appropriate. More specifically, IMCB will maintain the Classification Framework; review and amend the Classification Framework after consultation in light of changes in the law or changes in society's expectations; publish information about the role and work of IMCB including an annual report and summary of accounts; deal with all complaints and disputes about the misclassification of commercial content; and consult with the Mobile Operators over the appointment of new members to the IMCB Board.

The Framework also introduces the Classification Framework Appeals Body ("CFAB"), which is a body of persons independent of IMCB appointed to hear appeals against decisions made by IMCB under the IMCB Complaints and Dispute Procedures. The Chairman is a solicitor or barrister of not less than 10 years standing.

4. Film/video/games

4.1. Legal Provisions

The *Cinemas Act* obliges local authorities to impose restrictions prohibiting the admission of children to 'unsuitable' films. In practice, this responsibility has been devolved to the British Board of Film Classification (BBFC), which classifies films according to their suitability for certain age groups. The final decision remains with the local authorities which means that different authorities (even adjoining authorities) may take different views as to the acceptability (or not) of a given film.

The *Video Recordings Act* 1984 specifies that it is an offence to distribute a video which has not been awarded a classification, which effectively gives the classifying body the possibility of banning a video by refusing it a classification.²⁶ The *Video Recordings Act* gives the BBFC statutory powers (i.e. it is the body designated for this purpose by the Secretary of State) to determine the classification of videos. Section 7 specifies three types of classification. Section 8 of the *Video Recordings Act* allows the Secretary of State to make orders regarding packaging and labelling of videos.²⁷

In classifying the work, the BBFC must have ‘special regard to the likelihood of video works in respect of which such certificates have been issued being viewed in the home’.²⁸ The *Criminal Justice and Public Order Act* 1994 introduced further criteria that the BBFC should also take into account. These are any harm that may be caused to ‘potential viewers’ or, through their behaviour, to society by the manner in which a video work deals with criminal behaviour, illegal drugs, violent behaviour or incidents, horrific behaviour or incidents or human sexual activity. The most significant aspect of these new criteria was the definition of potential viewers as including those below the minimum age specified in the certificate. If a significant proportion of under-aged viewers are likely to view the work, then it must be classified in a form suitable for these potential viewers. There is a right of appeal from BBFC decisions to the Video Appeals Committee.²⁹ Local trading standards departments are the enforcement authority for the Video Recordings Act, rather than the BBFC or VSC.

The scope of the act is broader than just videos, although it is limited to works involving at least some moving images. Amended by the *Criminal Justice and Public Order Act* 1994, the *Video Recordings Act* is expressed to include any other device capable of storing data electronically. The Act is therefore no longer limited to video tape or disc, but also content released on cartridge and, probably, any other device used now or in the future. Although intended to cover programming, the act is not so limited and can cover content such as software and, possibly, video games. Note that s 2(1)(c) provides:

“Subject to subsection (2) or (3) below, a video work is for the purposes of this Act an exempted work if, taken as a whole-
it is designed to inform, educate or instruct;
it is concerned with sport, religion or music; or
it is a video game.”

The function of subsections (2) and (3) is to bring back within the act, material which would otherwise have fallen outside the regulatory scheme. These provisions provide:

“(2) A video work is not an exempted work for those purposes if, to any significant extent, it depicts
human sexual activity or acts of force or restraint associated with such activity;
mutilation or torture of, or other acts of gross violence towards, humans or animals;
human genital organs or human urinary or excretory functions;

²⁶ S. 2 *Video Recordings Act* 1984. See facts in issue in *Wingrove v. UK* (1997) 24 EHRR 1.

²⁷ *Video Recordings (Labelling) Regulations* 1985, as amended 1995 and 1998.

²⁸ S. 4 *Video Recordings Act* 1984.

²⁹ See the Video Appeals Committee Provisions.

*techniques likely to be useful in the commission of offences;
or is likely to any significant extent to stimulate or encourage anything falling within paragraph (a) or; in the case of anything falling within paragraph (b), is likely to any extent to do so.
(3) A video work is not an exempted work for those purposes if, to any significant extent, it depicts criminal activity which is likely to any significant extent to stimulate or encourage the commission of offences.”*

Note that special rules apply to gaming, lotteries and other games of chance for prizes. These rules are not discussed in full here; the government is proposing a substantial liberalisation of the rules.³⁰

4.2. Codes of Conduct

The BBFC issues guidance on film (and video) classification, the most recent version being issued February 2005. Issues which have been added to the range of classification concerns, or which have increased in emphasis:

- incitement to racial hatred or violence;
- expletives with a racial association;
- language which offends vulnerable minorities;
- suicide and self-harm;
- emphasis on easily accessible weapons;
- sexual violence and rape;
- promotion or glamorisation of smoking, alcohol abuse or substance misuse.

Subject to the operations of sections 2(2) and (3) *Video Recordings Act*, video games fall outside the act’s regime³¹; content classification is dealt with in a self-regulatory manner, although there are rules relating to packaging. Until 2003, the system in place was Entertainment Leisure Software Publishers Association (ELSPA), which had four categories of classification. The system was administered by the Video Standards Council (VSC) as an independent body. This has been replaced by the European PEGI system, under the aegis of the Interactive Software Federation of Europe (ISFE) as of spring 2003. ISFE have contracted the administration of the system to the relevant Dutch authority (NICAM), which in turn is using the VSC as its agent. The new system has five age based categories, introducing a ‘7+’ category not found in the previous British system. Also new is the use of content descriptors, which were not found in the ELSPA system. Given that games may lose exemption under the Video Recordings Act, those games applying for a 16+ or 18+ rating will be examined by VSC to ensure that they do still fall within the terms of s. 2(1)(c). Further,

³⁰ Information about the Governments proposals can be found at: http://www.culture.gov.uk/gambling_and_racing/gambling_bill/default.htm A text of the bill and explanatory memorandum can be found at: <http://www.publications.parliament.uk/pa/ld200405/ldbills/019/2005019.htm>. Note that there have been problems with gambling on interactive tv: discussed e.g. Ieuan Jolly ‘iTV - betting and gaming’ (2003) 5(8), E.B.L. 7.

³¹ It is unlikely that video games in an amusement arcade would need to be licensed by the local authority.

there is an additional requirement on game publishers to provide NICAM with all materials that it may require to enable NICAM to examine the content of all games applying for a 12+ rating. Random checks of games rated at the 3+ and 7+ levels may be carried out.

4.3. Regulatory Bodies

4.3.1. BBFC

The BBFC is an independent, non-governmental body, which has exercised responsibilities over cinema since 1913, and over video since 1985. Its income is derived solely from the fees it charges for its services, calculated by measuring the running time of films or video works submitted for certification. The BBFC has a Council of Management, which appoints a president and two vice presidents, as well as a director and deputy director. The latter form the top of the management team. The Council does not get involved in policy development. Day to day decisions on film content are made by the ‘examiners’. There are additionally a number of advisory committees: one monitoring the BBFC policy and practice; one advising on matters relating to children; the third concerning video packaging.

4.3.2. VSC

The VSC is a non-profit-making company and its primary task is to develop and administer a Code of Practice which has been designed to promote high standards within the video industry. The code does not deal with content rating itself but compliance with the law/industry self-regulation standards and with sales/display practices. Membership of the VSC is voluntary. The VSC is managed by a 21 member committee comprising representatives from the different groups making up its membership. It is funded by annual membership fees which vary according to the category of membership. The VSC has established its own VSC Consultative Committee, to advise on issues of taste and decency and prevailing attitudes in society. The Committee includes members of the VSC managing committee and lay members, such as representatives from the National Children’s Home, the Evangelical Alliance. The VSC has a complaints board procedure whereby any alleged breaches of the rules will be investigated; ultimately members can be expelled. Membership of VSC is not mandatory. The VSC cannot impose sanctions on its members; where there seems to the VSC that there is a prima facie case of a breach of the rules, it refers the matter to the police.

5. Summary

There is no consistent approach to regulation across the media sector in the UK. There are different levels of regulation and different mechanisms for regulation. Some sectors are tightly regulated, with a specific legal framework; others are subject merely to the general laws. A variety of regulatory bodies are involved, from trading standards officers (which are government officials) and governmental bodies such as BBFC to bodies such as ASA whose self-regulatory functions are backed by statute, through to pure self-regulation in the form of the PCC. With the development of new media, there seems to have been a proliferation of industry bodies, codes of practice and adjudicating bodies with the result that there is quite a

complicated patchwork of rules and standards with which some media (e.g. games) must comply depending variously on type of content and sometimes platform used.

4. COUNTRY REPORTS NON-EU-COUNTRIES

4.1. Australia

Introduction

Chronology of key events in the development and regulation of Australia's media sector.

1901 – Australia first formed as a federation with a constitution that provides power to the federal government to make laws with respect to ‘postal, telegraphic, telephonic, and other like services’.

1923 – radio broadcasting first introduced some stations funded from government-imposed licence fees and some commercial radio stations.

1932 – the national broadcaster (Australian Broadcasting Commission (now Corporation)) (“**ABC**”) created by Parliament.

1949 – Australian Broadcasting Control Board (first statutory broadcasting regulator) established.

1956 – television first introduced in Australia

1956 – 1962 – television broadcasts extended to most regional areas. (Northern Territory not until 1971)

1975 – colour TV first introduced

1979 – first deregulation of the telecommunications sector occurs with the sale by government of Australia's national satellite system to the first privately owned telecommunications service provider.

1980 – Australia's second national television broadcaster the Special Broadcasting Service (“**SBS**”) commences broadcasting. It now broadcasts nationally in 68 languages.

1991 – further deregulation of the telecommunications sector progressively introducing competition in all telecommunications services markets.

1992 – The *Broadcasting Services Act 1992* (Cth) commences with new regulatory policy that different levels of control are to be applied by the regulator across the range of services according to the degree of influence that the service is able to exert in shaping community views in Australia. Act also introduces co-regulatory code development for matters of community concern in relation to content of programs.

1994 - Subscription television broadcasting first commences.

2002 - Digital television launched.

1 July 2005 – projected date for commencement of new merged broadcasting and telecommunications regulator to be called the Australian Communications and Media Authority (“ACMA”) –merger of ABA and ACA.

Population and television

Australia’s population is slightly over 20 million. Most of Australia's population is concentrated in two widely separated coastal regions. By far the largest of these, in terms of area and population, lies in the south-east and east.¹ 99% of Australian homes have access to television. Most households have access to 5 television services, the ABC, SBS and three commercial services. In 2004 Pay TV penetration was to 23% of all households.²

Constitutional Law

Australia is a federation of six States, each with its own Constitution and parliament, and several Territories of which two, the Northern Territory and the Australian Capital Territory, have their own parliaments. However most regulation of the media sector occurs via the laws of the federal parliament which has power, through section 51(v) of the Constitution, to make laws with respect to ‘postal, telegraphic, telephonic, and other like services’. The High Court of Australia has interpreted this provision to make clear this includes the power to make laws with respect to wireless, broadcasting and telecommunications services³.

Relevant State and Territory laws regulate offensive content and prohibited publications in print, film and in the online environment by creating offences. Under section 109 of the Constitution, in the event of an inconsistency between federal and state law, federal law prevails.

There is no provision in either Australia's federal constitution or in any of the state constitutions which explicitly guarantees freedom of speech or a free press. Defamation laws exist in each State and Territory but there is no uniform federal defamation law. Privacy laws are mainly federal and have exemptions for the media.

Public service broadcasting, or national broadcasting as it is known in Australia, is enshrined by parliament through the *Australian Broadcasting Corporation Act 1983 (Cth)* and the *Special Broadcasting Services Act 1991 (Cth)*. Both these Acts contain charters which bind the ABC and the SBS to provide different types of national broadcasting services. The national broadcasters are strident about their independence from government and are largely self-regulatory.

Many acts of parliament which form the legal framework for the media sector have objects clauses which can be used by courts as an interpretative aid to the legislation. Rules which govern the pursuit of public policy goals by public administration vary from authority to

¹ Australian Bureau of Statistics; see <http://www.abs.gov.au/Ausstats/abs@.nsf/94713ad445ff1425ca25682000192af2/fe3fa39a5bf5aa5aca256b350010b3fd!OpenDocument>

² <http://www.aba.gov.au/tv/faqs/history.htm#12>

³ *Rv Brislan* (1935) 54 CLR 262. *Jones v Commonwealth* (No 2) (1965) 112 CLR 206.

authority and are dealt with in detail below (see 1.2) e.g. Sec. 6(2) of the *Broadcasting Services Act 1992* states that the parliament also intends that broadcasting services ... in Australia be regulated in a manner that, in the opinion of the ABA enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on providers of broadcasting services. Similar regulatory policy applies to development of codes in the Telecommunications industry.⁴

Broadcasting

1.1. Regulatory Framework

Policy Objectives

With regard to the policy objectives of:

- protection of minors and human dignity,
- advertising
- quality, ethics, diversity of media

The relevant objects of the *Broadcasting Services Act 1992*⁵ are as follows:

- a) to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information;
- b) to encourage diversity in control of the more influential broadcasting services
- c) to encourage providers of broadcasting services to respect community standards in the provision of program material
- d) to promote the provision of high quality and innovative programming by providers of broadcasting services
- e) to ensure that providers of broadcasting services place a high priority on the protection of children from exposure to program material which may be harmful to them.

A number of these objectives are pursued through direct regulation in the form of statutory prohibitions and licence conditions. There are also legal provisions that proscribe co-regulatory schemes for content regulation as follows:

Broadcasting codes of practice

The Act states that, “It is parliament’s intention that sections of the broadcasting industry develop, in consultation with the ABA and taking account of any relevant research conducted by the ABA, codes of practice that are to be applicable to the broadcasting operations of each of those sections of the industry”⁶. These codes may cover a broad range of matters including

⁴ Sec. 112 *Telecommunications Act 1997*.

⁵ Excerpts from Sec 4 *Broadcasting Services Act 1992*.

⁶ Sec. 123 *Broadcasting Services Act 1992* (Cth)

broadcasting time devoted to advertising and such other matters relating to program content as are of concern to the community⁷.

If:

- a) a group representing a particular section of the broadcasting industry develops a code of practice to be observed in the conduct of the broadcasting operations of that section of the industry; and
- b) the ABA is satisfied that:
 - (i) the code of practice provides appropriate community safeguards for the matters covered by the code; and
 - (ii) the code is endorsed by a majority of the providers of broadcasting services in that section of the industry; and
 - (iii) members of the public have been given an adequate opportunity to comment on the code⁸;

the ABA must include that code in its Register of codes of practice. Once a code is in the Register, members of the public may complain, first to the broadcaster and then subsequently, if not satisfied with the response from the broadcaster, to the ABA who must investigate the complaint and provide a report of its investigation to the complainant⁹.

The ABA may determine program standards where codes of practice fail or where no code of practice is developed in relation to an issue that is of concern to the community¹⁰.

Industry Codes and standards for telecommunications industry

Part 6 of the *Telecommunications Act 1997- Industry Codes and Standards* also contains a co-regulatory scheme of codes and standards for matters relating to the delivery of telecommunications services to customers. These can affect the operation of broadcasters particularly those using cable and satellite to deliver their services. This scheme works as follows:

- Bodies and associations that represent sections of the telecommunications industry may develop industry codes.
- Industry codes may be registered by the ACA.
- Compliance with an industry code is voluntary unless the ACA directs a particular participant in the telecommunications industry to comply with the code.
- The ACA has a reserve power to make an industry standard if there are no industry codes or if an industry code is deficient.

⁷ Ibid, Sub-section 2(l) and (f)

⁸ Ibid, Sec. 123(4)

⁹ Ibid. Sec. 147.

¹⁰ Ibid. Sec. 125.

- Compliance with industry standards is mandatory.

Access

Legal provisions that affect the issues of access to telecommunications services to carry broadcasting services are found in Part 3 of the *Broadcasting Services Act 1992* and Part X1C of the *Trade Practices Act 1974*.

Access for broadcasting services to the radiofrequency spectrum is largely the province of the ABA who plan spectrum and make available broadcasting licences (some by merit, others by auction). The ACA also make available some spectrum that can be used for these purposes.

Access for broadcasting services to cable and satellite networks is mainly regulated by the competition regulator, the ACCC. The object of the law that the ACCC must follow is, to promote the long-term interests of end-users of carriage services or of services provided by means of carriage services¹¹.

Advertising Regulation

The regulation of advertising on broadcast media provides an interesting case study as it is conducted through direct regulation, co-regulatory and self-regulatory regimes.

Advertisements relating to medicines and elections are directly regulated¹² and provisions exist¹³ which exempt from certain regulation matter of an advertising character that is an accidental or incidental accompaniment to the broadcasting of other matter.

Certain other practices in relation to advertising are specifically prohibited under sections of the Trade Practices Act 1974. Offences include misleading and deceptive advertising¹⁴, bait advertising¹⁵ and a wide range of misrepresentations¹⁶.

Particular forms of advertising are separately regulated by specific codes and legislation. E.g. food and drug advertising, gambling and alcohol advertising.

Co-regulatory schemes are found in the various broadcaster's codes of practice. Self regulation of advertising exists through the Australian Association of National Advertisers scheme.. See below 1.1.2.

1.1.2. Administrative regulation/rules

NIL.

¹¹ Sec.152AB(1) Trade Practices Act 1974 (Cth).

¹² Schedule 2 to the *Broadcasting Services Act 1992*, clauses 3 and 3A.

¹³ Ibid, clause 2.

¹⁴ Sec. 53 Trade Practices Act 1974.

¹⁵ Ibid, Sec. 56.

¹⁶ Division 2 of Part VC of the Trade Practices Act 1974.

1.1.3. Other provisions, especially co-regulatory or self regulatory measures, codes of conduct

There are a number of codes and standards developed under the *Broadcasting Services Act 1992* as follows:

- Childrens Television Standard – this standard is determined by the ABA in consultation with the industry and applies to all commercial television broadcasters. The objective of the children's television standard is to ensure that children have access to a variety of quality television programs made specifically for them, including Australian drama and non-drama programs.
- Australian Content Standard - this standard is also determined by the ABA in consultation with the industry and applies to all commercial television broadcasters. The objective of the Australian content standard is to promote the role of broadcasting in developing and reflecting a sense of Australian identity character and cultural diversity.
- Commercial Radio Standards –these binding standards require commercial radio broadcasters to disclose all presenter's sponsorship arrangements. These were developed by the ABA after an investigation where it reached the view that there was convincing evidence that a registered code of practice was not operating to provide appropriate community safeguards for a particular matter.
- The ABA has registered codes of practice for all broadcasting sectors, with the exception of the ABC and SBS codes which are notified to the ABA. Section 123A of the *Broadcasting Services Act 1992* requires periodic review of the codes.

Breach of an ABA standard is directly enforceable as a breach of a broadcaster's licence conditions. Breach of a code is not directly enforceable but action can be taken to make a provision of a code a licence condition which if breached again is then directly enforceable.

1.2. Regulatory authorities/bodies

1.2.1. Authorities

1.2.1.1. Legal basis

Legislative support for the main agencies that regulate in the media sector is found in:

- the *Broadcasting Services Act 1992*, which creates the Australian Broadcasting Authority (“**ABA**”).
- The *Australian Communications Authority Act 1977* which creates the Australian Communications Authority (“**ACA**”);
- The *Trade Practices Act 1974* which creates the Australian Competition and Consumer Commission (“**ACCC**”)
- The *Classification (Publications, Films and Computer Games) Act 1995* which creates the Classification Board and the Classification Review Board.

Other key pieces of legislation are the Telecommunications Act 1997 and the Radiocommunications Act 1992.

1.2.1.2. The functions/competencies of the statutory regulatory agencies are as follows:

Australian Broadcasting Authority

The ABA is responsible for planning the radiofrequency spectrum used by broadcasters, administering ownership and control restrictions on commercial broadcasting services (including cross-media restrictions with newspapers), licensing new broadcasting services, content regulation for broadcasters and online service providers and hosts by registering co-regulatory codes of practice, making standards and licence conditions, investigating complaints in relation to same and taking enforcement action.

Australian Communications Authority

The ACA is responsible for regulating telecommunications in accordance with the relevant telecommunications legislation and managing the radiofrequency spectrum in accordance with the Radiocommunications Act 1992. The ACA may make service provider determinations which bind content service providers and carriage service providers. It also administers a co-regulatory scheme of codes and standards that applies to members of the telecommunications industry. See below for detail.

Australian Competition and Consumer Commission

The ACCC is responsible for competition and consumer policy across all industries. The object of the *Trade Practices Act 1974* is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection¹⁷.

1.2.1.3. Organisation

The ABA, ACA and ACCC are all statutory authorities with governing members appointed by the governor-general on recommendation from the relevant federal government Minister. Staff are members of the Australian Public Service. The Minister for Communications, Information Technology and the Arts maintains an oversight over the ABA and the ACA and has some limited powers to direct their activities.

1.2.2. Self or co-regulatory bodies

1.2.2.1. Legal Basis

Telephone Information Services Standards Council (“**TISSC**”) and the Australian Association of National Advertisers (“**AANA**”) are examples of self regulatory bodies and have no legal basis in statute law.

¹⁷ Sec. 2 *Trade Practices Act 1974*.

1.2.2.2. Functions/competencies

1.2.2.3. Organisation

TISCC

TISCC is an independent regulatory body funded by the telephone information services industry. It is the governing body of 190 Complaints, and is made up of three (3) community members, three (3) industry members and an independent Chairman. Two of the industry members are 190 service providers, and one is from the telephone company sector. This aims to create a balance between the interests of consumers and the industry.

TISCC assists the 190 industry to fulfill its obligations to the public, by deciding on fair and independent standards for the advertising and message content of 190 services. These standards are set out in its Code of Practice. The Code includes, for example, rules to make sure that:

- callers are fully aware of the cost of 190 services before using them,
- callers are not given false or out of date information on the services,
- services are not unnecessarily delayed.

TISCC has an arbitrator who assesses complaints about 190 services against the Code of Practice, and decides whether a breach of the Code has occurred. In cases where a breach is established, the arbitrator decides which remedy should apply. This can require the 190 service provider to alter the service to comply with the Code, and/or provide a refund to the caller where appropriate.

A secretariat ensures compliance with the Code of Practice by conducting monitoring and investigative activities, and handling consumer complaints prior to assessment by the Arbitrator.

AANA

AANA administers a complementary self-regulatory system whereby the Advertising Standards Board, made up of a representative cross section of the community, provides a free public complaints resolution service. It considers complaints about any form of published or broadcast advertising in relation to issues including:

- the use of language
- the discriminatory portrayal of people
- concern for children
- portrayal of sex, sexuality and nudity, and
- health and safety.

Claims are also considered by the Advertising Claims Board which provides a claims resolution service on a user-pays cost recovery basis, adjudicating on issues of:

- truth

- accuracy and
- legality of advertising.

With their authority resting on the industry's voluntary adherence to self-determined standards, both boards make their determinations under appropriate sections of the Advertiser Code of Ethics as prescribed by the AANA. The current system of self-regulation came into operation in 1998 following consultation with industry, consumer and government representatives.

2. Press

2.1. Regulatory framework

2.1.1. Legal Provisions

Direct legislative regulation of the press is extremely limited. All states and territories other than South Australia and Victoria require newspaper printing houses to include their name and address and the name and address of the publisher in the newspaper; some states also require registration to some state legislation about the form of mastheads.

2.1.2. Administrative regulation/rules

NIL

2.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct etc.

The Australian Press Council has laid down broad principles to which it is committed. In considering complaints, the Council will have regard for this Statement of Principles.

2.2. Regulatory authorities/bodies

2.2.1. Authorities

NIL

Self or co-regulatory body

The main regulatory body for the press is the Australian Press Council.

2.2.2.1 Legal Basis

The Australian Press Council is a voluntary association of organisations and persons with a Constitution.

2.2.2.2. Functions/competencies

This self-regulatory body of the print media was established in 1976 with two main aims: to help preserve the traditional freedom of the press within Australia and ensure that the free press acts responsibly and ethically.

To carry out its latter function, it serves as a forum to which anyone may take a complaint concerning the press. In fact its main role is to deal with complaints from members of the public about newspapers or magazines.

2.2.2.3. Organisation

The Council is funded by the newspaper and magazine industries, and its authority rests on the willingness of publishers and editors to respect the Council's views, to adhere voluntarily to ethical standards and to admit mistakes publicly.

Its 21 members consists of a Chairman, ten representatives of the constituent organisations, two journalists, one member from a panel of editors, and seven public members.

3. Online Services

3.1. Regulatory framework

3.1.1. Legal Provisions

The regime for regulation of prohibited content in relation to online services is contained in Schedule 5 to the Broadcasting Services Act 1992. It became law in 1999.

These provisions required an industry association (the Internet Industry Association (“**IIA**”)) to develop a code of practice addressing issues identified in the legislation by 31 December 1999 or the regulator (the ABA) was required by law to determine a standard. A code was developed and registered by the relevant date but the ABA maintains reserve powers under the legislation to include greater direct regulation if it considers necessary to do so.

3.1.2. Administrative regulation/rules

NIL

3.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct etc

The IIA Content Codes (3) were developed by the industry in conjunction with the regulator and first registered in December 1999.

The three codes are:

- ISP obligations in relation to internet access only
- ISP obligations in relation to content hosted outside Australia
- ICH obligations in relation to content hosted within Australia

Both the industry and the regulator have roles to play under the code provisions.

3.2. Regulatory authorities/bodies

3.2.1. Authority

ABA-see above and Classification Board –see below.

3.2.1.1. Legal Basis

3.2.1.2 functions/competencies

3.2.1.3. Organisation

See above for ABA and below for Classification Board.

4. Film/Interactive Games

4.1 Regulatory framework

4.1.1. Legal Provisions

The National Classification Scheme (“NCS”) is a cooperative arrangement between the States, Territories and the Commonwealth supported by legislation under which the Classification Board classifies films, computer games and publications on behalf of the States and Territories. The Scheme commenced on 1 January 1996.

The Commonwealth *Classification (Publications, Films and Computer Games) Act 1995 (Cth)* establishes the Classification Board, the Classification Review Board, the Classification System, and contains the National Classification Code (the Code). Under the NCS, the States and Territories are responsible for the enforcement of classification decisions. Therefore, each State and Territory has classification enforcement legislation to complement the Commonwealth Act. The enforcement legislation sets out how films, publications and computer games can be sold, hired, exhibited, advertised and demonstrated in each State or Territory. Some States and Territories have reserved censorship powers.

The National Classification Code names and describes the classification categories used by the Board. These categories are either advisory or legally restricted.

Classification decisions are required to give effect to the following principles which are set out in the Code:

- a) adults should be able to read, hear and see what they want;
- b) minors should be protected from material likely to harm or disturb them;
- c) everyone should be protected from exposure to unsolicited material that they find offensive; and
- d) the need to take account of community concerns about:
 - i) depictions that condone or incite violence, particularly sexual violence; and
 - ii) the portrayal of persons in a demeaning manner.

4.1.2. Administrative regulation/rules

NIL

4.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct etc

Classification guidelines describe the different classification categories and the limits of material suitable for each category in more detail. The guidelines for films and computer games are reviewed regularly. They are approved by the Commonwealth, State and Territory ministers responsible for classification.

There are combined guidelines for the classification of films and computer games. There are separate guidelines for publications. They contain descriptions of each of the categories, indicating the most suitable audience for the film, publication or computer game in terms of age and legal restriction. Each classification category contains a list of the criteria (classifiable elements) used by the Board when making classification decisions.

4.2. Regulatory authorities/bodies

4.2.1. Authorities

The Classification Board and the Classification Review Board

4.2.1.1. Legal Basis

The *Classification (Publications, Films and Computer Games) Act 1995 (Cth)* establishes the Classification Board and the Classification Review Board.

4.2.1.2. Functions/competencies

The Classification Board and the Classification Review Board are responsible for classifying films, DVDs, videos and computer games before they are made available to the public. The Board also deals with referrals from the police, the Australian Customs Service and the ABA. The Board classifies Internet sites referred by the ABA and provides advice to the Australian Customs Service in relation to the importation of publications, videos and computer games. The Board does not classify TV programs or films for TV.

4.2.1.3. Organisation

The members of the Classification Board are chosen to be broadly representative of the Australian community. This means they are drawn from diverse areas, age groups and backgrounds.

Members are appointed by the Governor-General (on recommendation from the Attorney-General), usually for three years. No members can serve for a total of more than seven years.

The Board is currently made up of a Director, a Deputy Director, two Senior Classifiers and other Board members.

Similarly members of the Classification Review Board are appointed by the Governor-General on the advice of the Commonwealth Attorney-General, who consults with State and Territory Censorship Ministers. No members may serve for a total of more than seven years.

The Review Board consists of a Convener, a Deputy Convener and at least three (but not more than eight) other members.

The Office of Film and Literature Classification (“OFLC”) provides logistical support to the Classification Board and the Classification Review Board. The OFLC is an Australian Government body within the Attorney-General’s portfolio.

4.2. Canada

Overview

The Canadian media system is highly developed, with per capita rates for fixed telephone, cable, and Internet access penetration generally among the highest in the world even despite Canada's harsh climate and sparse population. In contrast to this technological sophistication, however, Canadian media history has always kept a nervous eye on the south: the U.S. not only constitutes the world's largest media market, it is a market which speaks in a language and accent familiar to the Anglophone public sphere which comprises three quarters of Canada's population. This has accentuated the differences between the country's two linguistic communities: on the one hand a French-language market intensely interested in its own programming but with limited population to fund its production, and on the other a comparatively large English-language market but which reads, listens to and, especially, watches content mainly made elsewhere.

The Canadian media system is complex and multidimensional. At the centre is the publicly funded Canadian Broadcasting Corporation (CBC) which operates two main TV networks (in English and French), two cable all-news channels, four radio networks, a northern service that reaches into the vast expanse of the Canadian North and an international service, Radio-Canada International. The national public broadcaster receives 60 per cent of its funding in the form of an annual grant from Parliament with the remainder coming from sales and advertising. The CBC is the largest journalistic organization in the country and is also the main showcase for original Canadian radio and television production.

Beyond the CBC, the media horizon is dominated by a clutch of privately owned media conglomerates whose properties include newspapers, radio and TV stations, satellite services, magazines, cable operations and sports franchises. Taken together, they tower over the CBC in terms of both revenue and audience reach.

The largest of these corporations is Bell Canada Enterprises, which owns the CTV television network, Canada's most prestigious newspaper, The Globe and Mail, a bevy of cable channels, as well as telephone and satellite services. CanWest Global, founded by the late Israel Asper, owns Canada's third TV network, Global Television, and the Southam newspaper chain which includes the National Post, as well as a number of important regional newspapers.

In Quebec, the landscape is dominated by Quebecor. It controls TVA, Quebec's most watched TV network, Vidéotron, which has a firm grip on the cable market in Quebec, important newspapers such as Le Journal de Montréal as well as the Sun newspaper chain which owns tabloid papers in Toronto, Ottawa, Winnipeg, Calgary and Edmonton among other properties. Quebecor also produces a host of magazines, owns book and music stores and runs concert tours. It is also the largest printing company in the world. Yet another major player, Rogers Communications, owns most of the country's English-language magazines, is Canada's largest cable provider, has a share in a number of cable and digital channels,

operates dozens of radio stations, and recently purchased the Toronto Blue Jays baseball team.

While the Canadian media system is dominated by a handful of corporations, audiences are fragmented to a degree not found in many other countries. This is especially the case with television. There are over 250 cable and digital TV services including ones aimed at children, the business community, Aboriginal people, older citizens, gays and religious viewers. The CBC has with the exception of its all news channels, Newsworld and RDI, been denied entry into the bounteous world of cable TV. Private broadcasters have been allowed to buy the prime properties in cable TV, while the CBC has had to watch from a distance.

The daily newspaper industry in Canada remains highly concentrated; the five largest newspaper groups control over 75 per cent of the market. In each of the east-coast provinces of Newfoundland, Prince Edward Island and New Brunswick, a single company owns all of the English-language newspapers. Concentrated ownership, the convergence of newspapers with television networks and Internet sites, and the increasingly interventionist style of a new generation of media owners has renewed government interest in concentration issues, but no concrete policy measures have yet been proposed.

Table 1: Canadian Daily Newspaper Ownership (January, 2003)

Publisher	Newspapers	Total Weekly Circulation (as of 3/31/02)	Percentage of Total Weekly Circulation
CanWest Publications	13	9,293,037	28.48
Quebecor	15	6,855,134	21.01
Torstar	4	4,486,042	13.75
Power	7	3,012,795	9.23
Bell Globemedia	1	2,085,115	6.39
Osprey Media Group	22	2,047,999	6.28
GTC Transcontinental	10	1,007,970	3.09
FP Canadian	2	999,937	3.06
Halifax Herald	2	711,968	2.18
Brunswick News	3	650,569	1.99
Horizon Operations	5	625,179	1.92
Hollinger Canadian	10	327,220	1.00
Independents	5	313,580	0.96
Black Press	1	113,507	0.35
Annex Publishing	2	93,165	0.28
Totals	102	32,623,217	100

(Source: Canadian Newspaper Association (www.cna-acj.ca/newspapers/facts/ownership.asp))

Finally, Canada is one of the most “wired” countries in the world. But even in this relatively affluent and technologically advanced country, Internet access is far from universal, and tends to be more common among men, English speakers, urban dwellers, the wealthy and the educated.

CONSTITUTIONAL LAW

Division of Powers

Canada is a federal system with two levels of government, each sovereign within their jurisdictions. The Constitution Act, 1867¹ and associated case law governs the division of jurisdictional powers between federal and provincial governments.

Broadcasting in Canada is a federal matter. Although the drafters of the 1867 Constitution could not have contemplated having to allocate jurisdiction over broadcasting, high appellate courts have designated broadcasting and then non-over-the-air broadcast distribution undertakings—that is, cable² (and by extension, satellite)—as the responsibility of the federal government, both under its general responsibility for unspecified matters of national interest pertaining to the “Peace, Order, and good Government of Canada”,³ and under the federal responsibility for interprovincial “Works and Undertakings” such as telegraphy.⁴ The telecommunications networks which underlie the provision of online services are likewise federal under the interprovincial heading;⁵ this holds even where the networks do not cross provincial lines, given the interconnected nature of logical telecom signals once their interconnected physical infrastructure is in place.⁶

Provinces have broad jurisdiction over “all matters of a merely local or private nature” and, particularly, “property and civil rights in the province”.⁷ This jurisdiction appears to address most aspects of non-interconnected media. Film censorship boards as they existed in most provinces were found *intra vires* these powers.⁸ Despite regular federal review of the newspaper industry, it appears likely that the same powers give provinces jurisdiction over the regulation of press, interactive games, and certain online services. Provinces may similarly regulate advertising in any medium, including broadcasting, so long as the province’s intent is to address some concrete issue and not in the regulation of broadcasting itself.⁹

¹ *Constitution Act, 1867*, (U.K., 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, Appendix II) [1867 Constitution].

² *Capital Cities Communications Inc. v. Canadian Radio-Television Commission*, [1978] 2 S.C.R. 141. *Dionne v. Québec (Public Service Board)*, [1978] 2 S.C.R. 191.

³ *1867 Constitution*, *supra* note 1 at s. 91. *Re Radio Communication in Canada*, [1932] A.C. 304 (P.C.). *Re CFRB and Attorney-General for Canada*, [1973] 3 O.R. 819.

⁴ *1867 Constitution*, *supra* note 1 at s. 92(10)(a).

⁵ *Toronto v. Bell Telephone Co.*, [1905] A.C. 52 (P.C.).

⁶ *Alberta Government Telephones v. CRTC*, [1989] 2 S.C.R. 225.

⁷ *1867 Constitution*, *supra* note 1 at ss. 92(13), 92(16).

⁸ *N.S. Board of Censors v. McNeil*, [1978] 2 S.C.R. 662.

⁹ *Irwin Toy Ltd. v. Québec (A.G.)*, [1989] 1 S.C.R. 927 [Irwin Toy]; *Québec (A.G.) v. Kellogg’s Co.*, [1978] 2 S.C.R. 211. Laws made in respect of one level of government’s jurisdiction may trench incidentally on the other level of government’s jurisdiction, so long as the “pith and substance” or “matter” of the law is *intra vires* the enacting level: *Re Anti-Inflation Act*, [1976] 2 S.C.R. 373 at 450-459; *R. v. Crown Zellerbach*, [1988] 1 S.C.R. 401 at 432.

Freedom of the Press and Other Media of Communication

The Charter of Rights and Freedoms set within the Constitution Act, 1982¹⁰ entrenches in its section 2(b) the “fundamental freedom” of “thought, belief, opinion and expression, including freedom of the press and other media of communication.”¹¹ Federal¹² and some provincial¹³ bills of rights had already provided similar rights under private law. But because these bills of rights were not constitutionally entrenched, the state was in a position to overrule them in subsequent statute, making them of limited use against public parties.¹⁴ Opposability to private parties was similarly limited insofar as communication takes place in a market framework, giving the speaker the option to speak elsewhere, and jurisprudence had not developed a scarcity doctrine finding a political-economic rationale for elevating speech rights above property rights in concentrated markets. By entrenching a right to freedom of the press and other media of communication against state actors, the Charter has shaped the regulatory framework for the media sector by preventing a variety of prior restraints¹⁵ and holding any censorious or prohibitive schemes up to a high standard.

The Charter did not step into a void, however. Jurisprudence built on the division of powers to establish what has been referred to as an “implied bill of rights” had carved out a particular status for political speech. The implied bill of rights was rooted in the 1938 holding that an Alberta Act to Ensure the Publication of Accurate News and Information that forced newspapers to publish government comment was ultra vires the province because the importance of the “free discussion of public affairs” to the democratic system was such that it exceeded provincial jurisdiction over property and civil rights and fell under the federal

¹⁰ The *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982 (U.K.)*, 1982, c. 11 [1982 *Constitution*], was a Canadian bill incorporated as the annex to a British statute, the *Canada Act*. The arrangement enacted by this scheme set out a domestic mechanism for further constitutional amendments and ended the British Parliament’s formal authority over Canadian law, effectively “patriating” the *Constitution Act, 1867* which, until then had been known simply as the *British North America Act*. The 1867 and 1982 constitutional documents are in this sense the central components of Canadian constitutional law.

¹¹ *Canadian Charter of Rights and Freedoms*, Part 1 of the 1982 *Constitution*, *supra* note 10 [Charter].

¹² *Canadian Bill of Rights*, R.S. 1960, c. 44 at ss. 1(d), 1(f) [Bill of Rights].

¹³ For instance, the Quebec *Charter of Human Rights and Freedoms*, R.S.Q. 1978, c. C-12 at s. 3.

¹⁴ The *Bill of Rights* was a so-called “quasi-constitutional” document imposed manner and form requirements on subsequent statutes seeking to infringe it, *supra* note 12 at s. 2, and *Re Lavell and Attorney-General of Canada*, [1974] S.C.R. 1349 on rules of interpretation. This quasi-constitutional status did not lead to significant reliance on the *Bill*, however.

¹⁵ Film censorship, in *Re Ontario Film and Video Appreciation Society* (1984) 41 O.R. (2d) 583 (C.A.); reporting restrictions, in *Re South and the Queen (No. 1)* (1983) 41 O.R. (2d) 113 (C.A.) and *Edmonton Journal v. Alta.* [1989] 2 S.C.R. 1326; and so forth.

peace, order, and good government clause.¹⁶ That jurisprudential background has infused both statute and case law relating to the press and other media of communication. The Criminal Code was in 2002 modified to prohibit specifically the harassment of journalists through means including violence, threats of violence, persistent following, repeated communication, and surveillance.¹⁷ Case law addresses the importance of journalists' source confidentiality by setting out a test balancing the special protection afforded it under the Charter, particularly as speech connected to public affairs, against circumstances in which state intrusion into this confidentiality—particularly in the context of gathering criminal evidence—would be justified.¹⁸ A strongly-worded lower-court 2004 decision which failed to cite the balancing test and found a journalist in contempt of court for disobeying a judicial warrant,¹⁹ however, reignited calls for Canadian statutory guarantees similar to those provided in U.S. “press shield” laws.

The special weight accorded to speech's political and democratic role in freedom of expression and Charter jurisprudence²⁰ may be an important constitutional consideration for Canadian broadcasting regulation law. Canadian statutory law assigns to an administrative body, the Canadian Radio-Television and Telecommunications Commission (CRTC), the right to regulate market entry in radio and television broadcasting. Other statutes buttress market entry regulation by prohibiting the use or retransmission of unauthorised signals.²¹ Yet jurisprudence has failed to establish conclusively whether this multi-statute regulatory scheme violates the Charter protection of freedom of expression and particularly of the press and other media or, if it does, whether such a violation is justifiable.

In the only explicit consideration of this point, a 1984 lower-court decision restricted its examination to the regulation of airwaves, holding that Charter s. 2(b) should not be confused with the right to “use someone else's property” (airwaves), and that the Canadian government in regulating the airwaves was in this sense merely managing someone else's property—the

¹⁶ *Re Alberta Statutes*, [1938] S.C.R. 100, endorsed by Justices Rand, Kellock, and Locke (of five) in *Saumur v. City of Quebec*, [1953] 2 S.C.R. 299 and by Justices Rand, Kellock, and Abbott (of eight, others concurring on other grounds) in *Switzman v. Elbling*, [1957] S.C.R. 285 [“Padlock Law” Case], particularly Justice Rand's linkage of freedom of expression with “government by the free public opinion of an open society.”

¹⁷ *Criminal Code*, R.S. 1985, c. C-46 at s. 423.1.

¹⁸ *Descôteaux v. Mierzwinski*, [1982] 1 SCR 860; *Canadian Broadcasting Corp. v. Lessard*, [1991] 3 S.C.R. 421; *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, [1991] 3 S.C.R. 459.

¹⁹ *St. Elizabeth Home Society (Hamilton, Ontario) v. Hamilton (City)*, [2004] O.J. No. 5015.

²⁰ The values underlying freedom of expression are set out most authoritatively by Justice McLachlin in *Irwin Toy*, *supra* note 9 at 976: “(1) seeking and attaining the truth is an inherently good activity; (2) participation in social and political decision making is to be fostered and encouraged; and (3) the diversity in forms of individual self-fulfillment and human flourishing ought to be cultivated in an essentially tolerant, indeed welcoming, environment not only for the sake of those who convey a meaning, but also for the sake of those to whom it is conveyed.”

²¹ See discussion *infra*, notes 81 to 82 and accompanying text.

public's.²² But that decision applied only to one of the physical media which broadcasting regulation addresses, and in any case appears inconsistent with subsequent Charter protection of protesting and postering on public property as expression constituting “participation in social and political decision-making”.²³ In a separate decision regarding residency requirements for voting, on the other hand, Justice L’Heureux-Dubé spoke for a 5-2 Supreme Court majority in noting that “speech often takes place under conditions of scarcity. Both the resources and the very opportunities for speech may tend to be limited, whether by time, lack of money, unavailability of space, or even by our capacity to digest and process information.” She therefore concluded that, “[w]hile it is accurate to claim that government interference is very often inconsistent with individual freedom, it is equally accurate to say that genuine autonomy presupposes the legislature's active intervention if necessary.”

This scarcity doctrine—resources, not airwaves—implies that because the market fails to distribute access to communications evenly, the resulting failure to maximise diversity of opinion constitutes a market failure which regulation’s job is to correct. Should Canadian courts directly address the compatibility of broadcasting market entry regulation with Charter s. 2(b), Justice L’Heureux’s scarcity doctrine may come into play.²⁴

Speech Regulation

Even where resource scarcity is not at issue, Charter rights are not absolute: they are “subject ... to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”;²⁵ provincial Charters have similar proportionality tests.²⁶ A number of Canadian laws purport to regulate harmful speech on these grounds. Among them are doctrines and statutes that address defamation, hate speech, pornography, the workings of law and justice, and harmful commercial expression.

²² *New Brunswick Broadcasting Co., Limited v. Canadian Radio-television and Telecommunications Commission*, [1984] 2 F.C.A. 410 at 88-89.

²³ *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 S.C.R. 139; *Ramsden v. Peterborough (City)*, [1993] 2 S.C.R. 1084.

²⁴ It came closest in *Bell Express Vu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559 [*ExpressVu v. R.*], in which the court upheld the Radiocommunications Act prohibition on unencrypted signals at para. 55, but without considering its Charter validity, noting at paras. 65-67 that the applicant had failed to raise Charter agreements in courts below and that for the Supreme Court to overstep the bounds of judicial review and do so would also be to overstep the courts’ role vis-à-vis the legislature in democracy: “if courts were to interpret all statutes such that they conformed to the Charter, this would wrongly upset the dialogic balance.... [W]here a statute is unambiguous [and there has been no challenge as to its constitutionality], courts must give effect to the clearly expressed legislative intent and avoid using the Charter to achieve a different result.” The issue of broadcast regulation’s Charter constitutionality was also relevant to *Genex Communications Inc. v. Canada (Attorney General)*, [2004] F.C.A. (A-464-04), judgement not yet rendered at this writing [CHOI Appeal].

²⁵ *Canadian Charter*, *supra* note 11 at s. 1. The proportionality test is set out in *R. v. Oakes*, [1986] 1 S.C.R. 103.

²⁶ For instance, *Quebec Charter*, *supra* note 13 at s. 9.1.

Private law in Canada operates under a French civil law regime in Quebec and a Commonwealth common law regime in other parts of the country. Under Quebec's civil law, defamation falls into the general category of extracontractual obligations,²⁷ and is made out when "an ordinary person would believe that the remarks made, when viewed as a whole, brought discredit on the reputation of another person" in a manner that was not reasonable, irrespective of their accuracy.²⁸ The common law tort of defamation in Canada, on the other hand, takes both accuracy of the statement and status of the attacked person into account. Latitude for fair comment means that the scope for political commentary is wider than would be commentary about private persons, however: unlike the Quebec Press Act,²⁹ common-law statutory encoding of defamation in, for instance, Ontario sets out the category of privileged reports to protect "fair and accurate reporting on matters of public concern."³⁰ Still, key elements of Canadian defamation law are similar under both systems: blind to whether or not the attack on reputation was intentional, weighs one party's right to free speech with the other's right to reputation,³¹ and even public figures have access to it.³²

Hate speech is regulated under the Criminal Code³³ and, except for broadcasting, under human rights codes, including the federal Canadian Human Rights Act³⁴ for online services and provincial statutes for the press and for film and online video games. The Canadian Human Rights Act prohibits any communication over a regulated telecommunication facility or over a computer network, including the Internet, which "is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination",³⁵ including "race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability

²⁷ *Civil Code of Québec*, S.Q. 1991, c. 64 [CCQ], art. 1475; see also art. 6 and 7 regarding the obligation of good faith.

²⁸ *Prud'homme v. Prud'homme*, [2002] 4 SCR 663.

²⁹ R.S. 1964, c. 48; R.S.Q. 1997, c. P-19.

³⁰ *Libel and Slander Act*, R.S.O. 1990, c. L.12, at ss. 3(1)-3(2).

³¹ "The publication of defamatory comments constitutes an invasion of the individual's personal privacy and is an affront to that person's dignity. The protection of a person's reputation is indeed worthy of protection in our democratic society and must be carefully balanced against the equally important right of freedom of expression": Justice Cory for the majority in *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 [*Hill v. Scientology*] at 121.

³² "The *New York Times v. Sullivan* decision has been criticized by judges and academic writers in the United States and elsewhere.... I can see no reason for adopting it in Canada in an action between private litigants.... Surely it is not requiring too much of individuals that they ascertain the truth of the allegations they publish.... Those who publish statements should assume a reasonable level of responsibility": *Hill v. Scientology*, *supra* note 31 at 137.

³³ *Criminal Code*, R.S. 1985, c. C-46.

³⁴ R.S. 1985, c. H-6 [CHRA].

³⁵ CHRA, *supra* note 34 at s. 13(1), which clause was upheld in *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892. Specific inclusion of the Internet at s. 13(2) resulted from a provision of the *Anti-Terrorism Act*, R.S. 2001, c. 41 at s. 88.

and conviction for which a pardon has been granted.”³⁶ The Criminal Code prohibits advocating the killing or physical destruction³⁷ of a group distinguished by colour, race, religion, ethnic origin, or sexual orientation,³⁸ or communicating statements in “any public place” which incites hatred against such a group.³⁹ The Criminal Code also prohibits certain non-child⁴⁰ and child pornography.⁴¹

Some speech is regulated with the goal of promoting the workings of law and democracy. The Youth Criminal Justice Act protects the privacy of young persons under the age of 18 by prohibiting the publication of a report in any medium which would identify an offender, victim, or witness in any trial.⁴² The Criminal Code does the same for all victims and young witnesses of sexual offences,⁴³ and further allows the judge to order a publication ban protecting the identity of any victim or witness where “necessary for the proper administration of justice”.⁴⁴ A publication ban of this type must, however, be necessary to uphold the fairness of the trial—no alternatives must reasonably be available—and the benefits to fairness must outweigh the harms to the rights of the parties and the public, including freedom of expression.⁴⁵ The Canada Elections Act,⁴⁶ meanwhile, regulates federal elections to the House of Commons. In addition to general expenditure limits for parties and candidates which create a de facto limit on the amount of advertising time parties can procure, the Elections Act weighs in specifically on election surveys—methodological details must be included wherever reported in any medium,⁴⁷ and a media blackout is imposed on voting day⁴⁸—and on foreign and domestic broadcasting. Foreign broadcasters may not be used by

³⁶ *CHRA*, *supra* note 34 at s. 3(1).

³⁷ *Criminal Code*, *supra* note 33 at ss. 318(1)-318(2).

³⁸ *Criminal Code*, *supra* note 33 at s. 318(4).

³⁹ *Criminal Code*, *supra* note 33 at s. 319(1). These prohibitions were upheld as justifiable infringements of the freedom of expression in *R. v. Keegstra*, [1990] 3 S.C.R. 697, which held that hate propaganda as defined in the *Criminal Code* was far from the core values underlying such rights and freedoms; that, “[t]hough the fostering of tolerant attitudes among Canadians will be best achieved through a combination of diverse measures, the harm done through hate propaganda may require that especially stringent responses be taken to suppress and prohibit a modicum of expressive activity”; and that the *Criminal Code* provisions “create a narrowly confined offence which suffers from neither overbreadth nor vagueness”: Dickson CJ for the majority at 785.

⁴⁰ *Criminal Code*, *supra* note 33 at s. 163, upheld as a reasonable limitation on free speech in *R. v. Butler* [1992] 1 S.C.R. 452.

⁴¹ *Criminal Code*, *supra* note 33 at s. 163.1.

⁴² Youth Criminal Justice Act, R.S. 2002, c.1 at s. 110.

⁴³ *Criminal Code*, *supra* note 33 at s. 486(1.1).

⁴⁴ *Criminal Code*, *supra* note 33 at s. 486(3).

⁴⁵ *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835 at 878; *R. v. Mentuck*, [2001] 3 S.C.R. 442 at s. 32.

⁴⁶ R.S. 2000, c.9 [Elections Act].

⁴⁷ *Elections Act*, *supra* note 46 at ss. 326-327. The constitutionality of this provision under *Charter*, *supra* note 11 at s. 2(b) was under review at this writing: *R. v. Bryan*, [2004] B.C.C.A. 140.

⁴⁸ *Elections Act*, *supra* note 46 at ss. 328-329.

Canadians to influence the vote of other Canadians.⁴⁹ Domestic broadcasters must allocate free time during peak viewing hours to each party,⁵⁰ sell advertising time in a way that is equitable to all parties, ensure that their audiences are apprised of the main issues, and air election debates.⁵¹ A Broadcasting Arbitrator designated by Elections Canada in cooperation with political parties works with the CRTC to monitor and coordinate the domestic broadcast coverage.⁵² Similar arrangements are envisioned for plebiscites held under the Referendum Act.⁵³

Most advertising regulation in Canada follows either a self-regulatory regime or a co-regulatory regime enabled under through the discretion of an administrative body, but some statutes explicitly mandate the regulation of advertising under their jurisdiction. Apart from the Elections Act, the most prominent of these are the Food and Drugs Act⁵⁴ and, in Quebec, the provincial Consumer Protection Act.⁵⁵ The Food and Drugs Act includes a series of provisions prohibiting misleading, deceptive, or harmful advertising in any medium⁵⁶ and awards regulatory powers to the relevant minister to enforce these rules;⁵⁷ most ministerial regulations in this respect have adopted a co-regulatory scheme.⁵⁸ The Consumer Protection Act prohibits commercial advertising in any medium to children under the age of 13;⁵⁹ regulations defining when commercial advertisements target children and when they do not⁶⁰ are enforced by the Quebec Consumer Protection Office, an administrative body empowered by that statute.⁶¹ Medium-specific advertising regulation is described below.

⁴⁹ *Elections Act*, *supra* note 46 at ss. 330.

⁵⁰ *Elections Act*, *supra* note 46 at ss. 335.

⁵¹ *Federal General Election Guidelines for Broadcast Licensees* (2000 Oct. 24) Circular CRTC 2000-441.

⁵² *Elections Act*, *supra* note 46 at ss. 332.

⁵³ R.S. 1992, c. 30 [*Referendum Act*].

⁵⁴ R.S. 1985, c. F-27 [*Food and Drugs Act*].

⁵⁵ R.S.Q. 1978, c. P-40.1 [*Consumer Protection Act*].

⁵⁶ *Food and Drugs Act*, *supra* note 54 at ss. 3, 5, 9, 10, 17, 20.

⁵⁷ *Food and Drugs Act*, *supra* note 54 at s. 30.

⁵⁸ See discussion *infra* notes 185 to 186 and accompanying text.

⁵⁹ *Consumer Protection Act*, *supra* note 55 at ss. 248-249. Case law endorsing this limitation on speech in has played an important role in shaping the constitutional law of freedom of expression. In *Irwin Toy*, *supra* note 9 at 931, Justices Dickson, Lamer, and Wilson upheld the “reasonableness of the legislature's conclusion that a ban on commercial advertising directed to children was the minimal impairment of free expression consistent with the pressing and substantial goal of protecting children against manipulation through such advertising.”

⁶⁰ *Regulation Respecting the Application of the Consumer Protection Act*, R.R.Q. c. P-40.1, r.1 at ss. 87-91.

⁶¹ *Consumer Protection Act*, *supra* note 55 at ss. 291-304.

1. BROADCASTING

1.1. Regulatory Framework

1.1.1. Legal Provisions

Broadcasting Act

The Broadcasting Act⁶² is the chief statutory instrument under which broadcasting is regulated in Canada. It has three main functions: to set out Canada's broadcasting policy; to impute responsibilities to the CRTC, a regulatory body charged with administering that policy; and to define the CBC, the public service broadcaster assigned to producing a "wide range of programming that informs, enlightens, [and] entertains" Canadians with a view to furthering that policy.⁶³ Encompassed in section 3 of the Act, the policy itself includes twenty separate provisions for the broadcasting system and public service broadcaster within that system.

With regard to structure, the policy sets out that Canada's broadcasting system "makes use of" public radio frequencies,⁶⁴ although it is not limited to the airwaves,⁶⁵ in constituting a "single" but mixed system⁶⁶ divided along two axes, sectors defined by ownership and language. With regard to ownership, the broadcasting system is composed of separate public, private (commercial), and community broadcasting sectors.⁶⁷ Each of the three sectors is to contribute to overall policy objectives,⁶⁸ but they function asymmetrically: the public broadcaster is to address the needs of Canadians' diversity (regional, bilingual, multicultural) and unity ("contribute to shared national consciousness", available throughout Canada);⁶⁹ the community model is explicitly "alternative" and complementary to "mass audience" broadcasting⁷⁰ provided by the commercial sector. With regard to language, the system operates "primarily" in English and French, but here too the spheres are asymmetrical: they "operate under different conditions and may have different requirements."⁷¹

With regard to content, the policy sets out cultural, political and economic goals. Generally, the broadcasting system should "serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada" through "a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity".⁷² Culturally,

⁶² R.S. 1991, c. 11 [*Broadcasting Act*].

⁶³ *Broadcasting Act*, *supra* note 62 at s. 3(1)(l).

⁶⁴ *Broadcasting Act*, *supra* note 62 at s. 3(1)(b).

⁶⁵ *Supra* note 2.

⁶⁶ *Broadcasting Act*, *supra* note 62 at s. 3(2).

⁶⁷ *Broadcasting Act*, *supra* note 62 at s. 3(1)(a).

⁶⁸ *Broadcasting Act*, *supra* note 62 at s. 3(1)(e).

⁶⁹ *Broadcasting Act*, *supra* note 62 at s. 3(1)(m).

⁷⁰ *Broadcasting Act*, *supra* note 62 at s. 3(1)(r).

⁷¹ *Broadcasting Act*, *supra* note 62 at ss. 3(1)(b)-(c).

⁷² *Broadcasting Act*, *supra* note 62 at ss. 3(1)(d)(i), (ii).

however, the citizenry for whom these goals are to be accomplished is carefully identified as multicultural; inclusive of men, women and children; further inclusive of the disabled, a group for whom accessible programming should be made available “as resources become available”;⁷³ and with a “special place” for aboriginal peoples.⁷⁴ Programming should therefore reflect the needs and interests that accompany these identities and circumstances.⁷⁵ Politically, the broadcasting system should provide information and analysis from a Canadian point of view,⁷⁶ exposing the public to differing views on matters of public concern⁷⁷—as part of a varied and comprehensive⁷⁸ menu that entertains, too, that is. Economically, this should take place in a way that makes maximum use of Canadian talent,⁷⁹ including a “significant contribution from the Canadian independent production sector.”⁸⁰

The Broadcasting Act entrenches this policy within its text rather than empower a ministry to study broadcast policy and a minister to then enact it through Cabinet. By combining an entrenched policy and provisions enabling an administrative body (the CRTC), the Act grants that body significant latitude in the choice and deployment of instruments to meet the policy’s goals. A drawback, however, is the resulting institutional separation of CRTC broadcast regulation—and the policy interpretation animating it—from other media policy and program delivery bodies, particularly funding bodies whose criteria are often quasi-regulatory insofar as market participants wish to qualify for available funding. Most of these are located inside a non-arm’s-length Department of Canadian Heritage, the ministry to which the CRTC reports, but some are housed in separate arm’s-length agencies, notably Telefilm Canada and the Canadian Television Fund.

Other Legal Provisions

The regulatory regime set out in the Broadcasting Act is supported by the Radiocommunications Act,⁸¹ which is administered by Industry Canada and prohibits all persons from “decod[ing] an encrypted subscription programming signal or encrypted

⁷³ *Broadcasting Act*, *supra* note 62 at ss. 3(1)(p).

⁷⁴ *Broadcasting Act*, *supra* note 62 at ss. 3(1)(d)(iii), 3(1)(o).

⁷⁵ *Broadcasting Act*, *supra* note 62 at s. 3(1)(d)(iii).

⁷⁶ *Broadcasting Act*, *supra* note 62 at ss. 3(1)(d)(ii).

⁷⁷ *Broadcasting Act*, *supra* note 62 at ss. 3(1)(i)(iv).

⁷⁸ *Broadcasting Act*, *supra* note 62 at s. 3(1)(i)(i).

⁷⁹ *Broadcasting Act*, *supra* note 62 at ss. 3(1)(d)(iii), 3(1)(f).

⁸⁰ *Broadcasting Act*, *supra* note 62 at ss. 3(1)(i)(v).

⁸¹ R.S. 1985, c. R-2; 1989, c. 17 [*Radiocommunications Act*]. “The *Broadcasting Act* and the *Radiocommunication Act* must be seen as operating together as part of a single regulatory scheme. The provisions of each statute must accordingly be read in the context of the other and consideration must be given to each statute’s roll [sic] in the overall scheme”: LeGrandeur Prov. Ct. J. in *Knibb* at paras. 38-39, adopted by Gibson J. in *ExpressVu Inc. v. NII Norsat International Inc.*, [1998] 1 F.C. 245, *aff’d* (1997), 222 N.R. 213, at para. 35, and by Iacobucci J. in *ExpressVu v. R.*, *supra* note 22 at 46. A challenge to the *Radiocommunications Act* as amended in 2002 was before the courts at this writing, appealing *R. v. Thériault*, (2004) IIJCan 45941 (QC C.Q.).

network feed” and from “retransmit[ting] to the public an encrypted subscription programming signal or encrypted network feed that has been decoded in contravention” of the unauthorized decrypted encoding prohibition.⁸² This measure is aimed at protecting Canadian broadcast regulation from leakage via Canada’s location in the footprint of several U.S. satellite broadcast distributors, and Canadian industry from the competition that these distributors represent.

The Copyright Act⁸³ also supports the Broadcasting Act⁸⁴ by allowing the retransmission of “local or distant” broadcast signals without infringing copyright if and only if broadcasters retransmit simultaneously and in unaltered form, have paid royalties as fixed by the Copyright Board of Canada, and are in compliance with the Broadcasting Act⁸⁵—that is, are either licensed or exempted from licensing by the CRTC. The status of Internet-based broadcast distribution under this regime is controversial. In 1999, the CRTC exempted broadcast-over-Internet from licensing requirements for a five-year period,⁸⁶ creating a loophole for Internet-based rebroadcasters who could now retransmit television signals without a license as long as they complied with Copyright Board tariffs. No intervenor successfully applied for a Copyright Board tariff appropriate to Internet-based transmission, however, and a 2002 modification to the Copyright Act excluded “new media”, or Internet, rebroadcasters from the retransmission rights granted to other rebroadcasters. The CRTC’s licensing exemption for Internet rebroadcasters expired in 2004, but it had not visited the issue at this writing; it has been argued that such a review would need to reexamine retransmission rights under the Copyright Act as well.

The Competition Act⁸⁷ regulates competition in Canada, including firms’ market conduct and representations to the public, as well as mergers between firms. Just as the Broadcasting Act empowers the CRTC to regulate broadcast markets,⁸⁸ the Competition Act empowers a Competition Bureau to regulate markets generally. Although the Competition Act splits out the judicial decision-making role—the Bureau must apply to the Competition Tribunal for an enforcement order—the Bureau is usually able to resolve issues of concern through direct negotiations with parties. The CRTC’s and Competition Bureau’s overlapping mandates at law have on occasion led to conflicting administrative rulings.⁸⁹ The Competition Act is not

⁸² *Radiocommunications Act*, *supra* note 81 at s. 9(1).

⁸³ R.S. 1985, c. C-42 [*Copyright Act*].

⁸⁴ *ExpressVu v. R.*, *supra* note 22 at 52.

⁸⁵ *Copyright Act*, *supra* note 83 at ss. 31(1), 2.4(1)(c).

⁸⁶ *New Media* (1999 May 17) Public Notice CRTC 1999-84. *Exemption Order for New Media Broadcasting Undertakings* (1999 Dec. 17) Public Notice CRTC 1999-197. *Internet Retransmission* (2003 Jan. 17) Public Notice CRTC 2003-2.

⁸⁷ R.S. 1985, c. C-34; R.S., 1985, c. 19 (2nd Supp.), s. 19 [*Competition Act*].

⁸⁸ Economic regulation is implicitly part of this mandate. The CRTC’s gradual loosening of its rules governing vertical integration, and regulation of resulting vertical dominance under an “undue preference” offence, has been an important part of its response to that mandate.

⁸⁹ See discussion *infra*, notes 181 to 183 and accompanying text.

alone in regulating advertising and representations to the public, meanwhile; the Food and Drugs Act, in particular, continues a number of provisions regulating the advertisement of food, drugs, cosmetics, and “devices”.⁹⁰

The Employment Equity Act⁹¹ regulates employers under federal jurisdiction, including the broadcasting industry, and assigns specific duties to private employers with at least 100 employees.⁹² These duties include evaluating internal barriers to discrimination; establishing an employment equity plan, including numerical targets for women, Aboriginal peoples, visible minorities, and the handicapped; and reporting annually to the Department of Human Resources and Skills Development Canada as to progress.⁹³ The promulgation of that Act removed the CRTC’s jurisdiction from enforcing employment equity among employers with at least 100 employees: the bodies’ jurisdiction had previously overlapped. Broadcasters with less than 100 employees, however, continue to report to the CRTC on employment equity, and all broadcasters are required to report as to on-air portrayal of members of the four designated groups.⁹⁴

1.1.2. Administrative Regulations and Rules

Market entry control in the form of licensing is Canadian broadcasting regulation’s chief instrument. Although Parliament had at this writing indicated an intention to grant the CRTC more nuanced enforcement tools, and particularly the ability to fine companies,⁹⁵ the Commission’s only enforcement powers under the Broadcasting Act are tied to license grants, truncated renewals, suspensions, and non-renewals. Ongoing regulation of broadcasting program content and industry structure are therefore tied to market entry regulation.

Classes of License

The Broadcasting Act distinguishes three types of broadcast undertakings: distribution undertakings, programming undertakings, and networks.⁹⁶ Broadcast distribution undertakings (BDUs) are divided by technology: cable (terrestrial) distribution undertakings, including coaxial and DSL-over-twisted-pair infrastructure; Direct-to-Home (DTH) distribution undertakings; and radio distribution undertakings, which are exempted from most

⁹⁰ R.S. 1985, c. F-27 [*Food and Drugs Act*] at ss. 3(1), 5(1), 6(3), 6.1(2), 10(1), 10(2), 17, 20(1), 21.

⁹¹ R.S. 1995, c. 44 [*Employment Equity Act*].

⁹² *Employment Equity Act*, *supra* note 91 at ss. 3, 4(1)(a).

⁹³ *Employment Equity Act*, *supra* note 91 at ss. 5-18.

⁹⁴ See discussion *supra* note 138 and accompanying text.

⁹⁵ “The Government will table amendments to the Telecommunications Act to provide the Canadian Radio-television and Telecommunications Commission (CRTC) with direct fining authority. This measure should provide the CRTC with the flexibility to regulate in a more strategic manner that focuses on results”: Canada, Department of Finance, *The Budget Plan 2005* (Ottawa: Queen's Printer, February 2005) at 166.

⁹⁶ *Broadcasting Act*, *supra* note 62 at s. 2(1).

regulation.⁹⁷ Cable BDUs are further subdivided based on distinct regulatory regimes for Class 1 (at least 6000 subscriptions), Class 2 (2000 to 5999 subscriptions, exempt from some regulation⁹⁸), and Class 3 (under 2000 subscriptions, exempt from most regulation⁹⁹) systems. A firm may hold up to one Class 1, one Class 2, and one Class 3 license per Canadian region;¹⁰⁰ each license applies to all systems of that class in that region.¹⁰¹

For broadcast programming undertakings and the networks which federate them, classes of license are divided by language, medium (radio, television), and ownership sector (commercial, community, and the CBC). The sector-based divisions structure broadcast undertakings as a series of categories. Commercial radio undertakings are either Group I (Pop, Rock and Dance), Group II (Country), or Group III (Specialty).¹⁰² Community radio undertakings are either Community (subdivided into Type A, only CBC present in market, and Type B, others present too),¹⁰³ Native (Type A, no commercial stations in market, and Type B, commercial present too),¹⁰⁴ or Campus (Community-based and Instructional).¹⁰⁵ Commercial television undertakings are either conventional over-the-air (subdivided into Canadian and non-Canadian),¹⁰⁶ analogue specialty and pay (Canadian and “non-Canadian satellite”),¹⁰⁷ digital specialty and pay (Category 1 and Category 2),¹⁰⁸ or video-on-demand and

⁹⁷ *Exemption Order Respecting Radiocommunication Distribution Undertakings* (2002 Aug. 12) Broadcasting Public Notice CRTC 2002-45.

⁹⁸ *Exemption of Cable Broadcasting Distribution Undertakings that Serve Between 2,000 and 6,000 Subscribers* (2003 April 30) Broadcasting Public Notice CRTC 2003-23.

⁹⁹ *Exemption Order Respecting Cable Systems Having Fewer than 2,000 Subscribers* (2001 Dec. 7) Public Notice CRTC 2001-121; *Revocation of the Licenses of Exempted Small Cable Distribution Undertakings* (2002 Feb. 19) Broadcasting Decision CRTC 2002-45.

¹⁰⁰ The five regions adopted for the purpose of regional licensing are: Region 1, British Columbia and the three northern territories; Region 2, Alberta, Saskatchewan and Manitoba; Region 3, Ontario; Region 4, Quebec; Region 5, the four Atlantic provinces. *Changes to the Commission's Approach to Cable Undertakings—Proposed Exemption for Cable Systems with Fewer Than 2,000 Subscribers, and Implementation of a Regional Licensing Model* (2001 May 29) Public Notice CRTC 2001-59 [*Class 3 Exemption and Regional Licensing Proposals*] at para. 4.

¹⁰¹ This regional licensing scheme is set out in *Licensing Cable Undertakings: A Regional Approach* (2000 Dec. 7) Public Notice CRTC 2000-163; *Class 3 Exemption and Regional Licensing Proposals*, *supra* note 99 at paras. 4-6, 43-51; and *A Regional Approach to Licensing Cable Distribution Undertakings—Adoption of Related Amendments to the Broadcasting Distribution Regulations* (2003 Sept. 17) Broadcasting Public Notice CRTC 2003-48.

¹⁰² *A Review of Certain Matters Concerning Radio* (1995 April 21) Public Notice CRTC 1995-60. This categorisation holds more loosely for AM radio stations, whose conditions of license are more discretionary but tend to follow the FM formats.

¹⁰³ *Community Radio Policy* (2000 Jan. 28) Public Notice CRTC 2000-13.

¹⁰⁴ *Native Broadcasting Policy* (1990 Sept. 20) Public Notice CRTC 1990-89.

¹⁰⁵ *Campus Radio Policy* (2000 Jan. 28) Public Notice CRTC 2000-12.

¹⁰⁶ *Structural Public Hearing* (1993 June 3) Public Notice CRTC 1993-74.

¹⁰⁷ *Specialty Programming Services* (1984 April 2) Public Notice CRTC 1984-4; *The Commission's Approach to Application of New Specialty and Pay Television Services* (1995 Nov. 30) Public Notice CRTC 1995-205; *Introductory Statement – Licensing of New Specialty & Pay Television Undertakings* (1996 Sept. 4)

pay-per-view.¹⁰⁹ Community television undertakings are either cableco-provided community channels or non-profit-run community programming services.¹¹⁰

One special modality and two special formats serve as additional modifiers to certain classes of licenses. Low-power radio and television broadcasting¹¹¹ is a special modality under which the administrative burden on applicants and licenseholders is reduced; such licenses most often apply to special-event and information-service broadcasting,¹¹² but also support a number of conventional local over-the-air undertakings. Ethnic and religious broadcasting are special formats which modify the nature of the programming required of a licensee. Ethnic undertakings target a culturally or racially distinct group other than those linked to France, the British Isles, or Aboriginal Canadians, and air at least half their programming in a relevant third language.¹¹³ Religious undertakings air programming that “deals with a religious theme, including programs that examine or expound religious practices and beliefs or present a religious ceremony, service or other similar event”; they must be balanced in their programming, which may include showing multifaith programming, and must adhere to Guidelines on Ethics for Religious Programming regarding the solicitation of funds, abuse or misrepresentation of any individual or group, targeting for the purpose of conversion, and accuracy of comments about other religious groups.¹¹⁴

Public Notice CRTC 1996-120; *Timetable for the Commission's Consideration of Applications for New Specialty and Pay Television Services* (1997 Mar. 27) Public Notice CRTC 1997-33 [*Analogue Specialty/Pay Timetable*].

¹⁰⁸ *Licensing Framework Policy for New Digital Pay and Specialty Services* (2000 Jan. 13) Public Notice CRTC 2000-6 [*Digital Pay/Specialty Framework*]; *Introductory Statement – Licensing of New Digital Pay & Specialty Services* (2000 Dec. 14) Public Notice CRTC 2000-171 [*Digital Specialty/Pay Introduction*]; *Revised Procedures for Processing Applications for New Digital Category 2 Pay and Specialty Television Services* (2004 Apr. 8) Broadcasting Public Notice CRTC 2004-24 [*Category 2*]; *Improving the Diversity of Third-Language Television Services – A Revised Approach to Assessing Requests to Add Non-Canadian Third-Language Television Services to the Lists of Eligible Satellite Services for Distribution on a Digital Basis* (2004 Dec. 16) Broadcasting Public Notice CRTC 2004-96.

¹⁰⁹ *Licensing of New Video-on-Demand Programming Undertakings* (1997 Jul. 2) Public Notice CRTC 1997-83; *Licensing of New Video-on-Demand and Pay-Per-View Services* (2000 Dec. 14) Public Notice CRTC 2000-172.

¹¹⁰ *Policy Framework for Community Media* (2002 Oct. 10) Broadcasting Public Notice CRTC 2002-61 [*Community Media Policy*].

¹¹¹ CRTC, *Community Media Policy*, *supra* note 110.

¹¹² Low-power undertakings that provide live or pre-recorded messages about traffic, weather conditions, highway construction and closures, conditions on bridges and in mountain passes, and information about tourist attractions are generally exempt from licensing: *Exemption Order Respecting a Class of Low-Power Radio Programming Undertakings* (2004 Nov. 26) Broadcasting Public Notice CRTC 2004-92.

¹¹³ *Ethnic Broadcasting Policy* (1999 July 16) Public Notice CRTC 1999-117. See also *Radio Regulations*, *infra* note 120 at s. 7 and *Television Broadcasting Regulations*, *infra* note 121 at s. 9.

¹¹⁴ *Religious Broadcasting Policy* (1993 June 3) Public Notice CRTC 1993-78.

Criteria for selecting one license applicant over another vary by license class, but generally try to balance the Broadcasting Act's cultural, political, and industrial goals.¹¹⁵ Commercial radio applicants, for instance, are evaluated as to the quality of their application, including the on-air schedule's evidence of planning and level of innovation; diversity of news voices in the relevant local market; state of competition in the relevant market; impact the proposed station would have on that competition.¹¹⁶ Because television is more preproduction- than flow-oriented, it adds a Canadian content element: analogue specialty and pay television applications are examined with regard to Canadian programming content, Canadian programming expenditures, degree of complementarity with existing services, and financial viability.¹¹⁷

Category 1 (Canadian) digital specialty and pay services, similarly, are evaluated as to their contribution to Canadian programming, diversity of available genres, reasonableness and innovativeness of business plan, and cost; Category 2 (usually non-Canadian) services are tested for the degree to which they "can be considered either totally or partially competitive with Canadian specialty or pay television services", and are generally excluded where they would displace a similar Canadian service.¹¹⁸ This requires the CRTC to define product markets for program content and to determine geographic market capacity for broadcast and advertising revenues. An application whose proposed programming stands out by its "prima facie attractiveness ... [with regard] to Canadian content, local and regional programming and independent production", for instance, may nonetheless lose if it "fails to demonstrate that the size and likely share of the target market can provide enough advertising revenues to ensure financial viability"¹¹⁹.

Content Regulation

Content obligations are set out in omnibus regulations promulgated under the Broadcasting Act—including the Radio Regulations,¹²⁰ Television Broadcasting Regulations,¹²¹ Pay Television Regulations,¹²² Specialty Services Regulations,¹²³ and Broadcasting Distribution Regulations¹²⁴—and with more detail in specific notices and decisions. Content regulation addresses four broad areas: ethical matters; Canadian and French-language content; local and

¹¹⁵ *Supra* notes 72 to 80 and accompanying text.

¹¹⁶ *Commercial Radio Policy, 1998* (1998 April 30) Public Notice CRTC 1998-41 [*Commercial Radio Policy*].

¹¹⁷ *Analogue Specialty/Pay Timetable*, *supra* note 107.

¹¹⁸ *Digital Pay/Specialty Framework*, *supra* note 108 at paras. 23, 34.

¹¹⁹ *New Television Station for Toronto/Hamilton* (2002 April 8) Broadcasting Decision CRTC 2002-81 at 18.

¹²⁰ S.O.R./86-982.

¹²¹ S.O.R./87-49.

¹²² S.O.R./90-105.

¹²³ S.O.R./90-106.

¹²⁴ S.O.R./97-555.

priority content, including news; and political content, largely regulation in respect of Elections Act and Referendum Act provisions.¹²⁵

Ethical concerns are approached through content prohibition and portrayal guidelines. Content is prohibited where it constitutes obscene or profane language, telephone conversations to which consent was not secured, false or misleading news, or abusive comment which “tends to or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability” are prohibited.¹²⁶ The last two categories, false or misleading news and abusive comment, mirror language in the Canadian Human Rights Act and Criminal Code,¹²⁷ but the “false news” provision was struck from the latter in a 1992 case ruling it an unreasonable curtailment of free speech rights.¹²⁸ A license non-renewal appeal arguing that speech rights considerations in non-broadcast speech regulation should hold for broadcast speech regulation despite limited access to broadcast media was before the court at this writing.¹²⁹

Portrayal guidelines, on the other hand, are set down in separate codes incorporated into regulations and conditions of license and administered through co- and self-regulatory regimes¹³⁰ which address violence,¹³¹ sex role portrayal,¹³² and advertising, particularly advertising to children¹³³ and advertising of food, drugs, and alcohol.¹³⁴ Violence regulations, in particular, establish rules making broadcaster classification mandatory but incorporating classification schemes developed by an industry Action Group on Violence on Television, for

¹²⁵ *Supra*, notes 46 to 52 and accompanying text.

¹²⁶ *Radio Regulations*, *supra* note 120 at s. 3; *Television Broadcasting Regulations*, *supra* note 121 at s. 5; *Pay Television Regulations*, *supra* note 122 at s. 3(2); *Specialty Services Regulations*, *supra* note 123 at s. 3; *Broadcasting Distribution Regulations*, *supra* note 124 at s. 8.

¹²⁷ *Supra* notes 33 to 41 and accompanying text.

¹²⁸ *R. v. Zundel*, [1992] 2 S.C.R. 731.

¹²⁹ *CHOI Appeal*, *supra* note 24.

¹³⁰ *Canadian Broadcast Standards Council* (1991 Aug. 30) Public Notice CRTC 1991-90; *Cable Television Standards Council* (1992 Mar. 16) Public Notice CRTC 1992-22.

¹³¹ *Voluntary Code Regarding Violence in Television Programming* (1993 Oct. 28) Public Notice CRTC 1993-149; *Pay Television and Pay-per-View Programming Code Regarding Violence* (1994 Dec. 21) Public Notice CRTC 1994-155; *CRTC Policy on Television Violence* (1996 March 14) Public Notice CRTC 1996-36; *Television Violence – Timetable for Introduction of Canadian Rating System Codes Using V-Chip Technology* (2000 July 24) Public Notice CRTC 2000-109.

¹³² *Industry Guidelines for Sex-Role Portrayal* (1990 Oct. 26) Public Notice CRTC 1990-99; *1992 Policy on Gender Portrayal* (1992 Sept. 1) Public Notice CRTC 1992-58.

¹³³ *Revised Broadcast Code for Advertising to Children* (1993 June 30) Public Notice CRTC 1993-99.

¹³⁴ *Radio Regulations*, *supra* note 120 at ss. 4-5; *Television Broadcasting Regulations*, *supra* note 121 at ss. 6-7; *Specialty Services Regulations*, *supra* note 123 at ss. 4-5. On alcohol, see also *Amendments to the Radio, Television and Specialty Services Regulations Respecting the Broadcast of Alcoholic Beverage Advertising* (1997 Jan. 31) Public Notice CRTC 1997-12; *Amendment to Broadcasters' Reporting of their Alcohol Educational Initiatives* (1999 Aug. 12) Public Notice CRTC 1999-132.

English-language conventional and specialty programming,¹³⁵ and classification schemes developed by provincial film bureaux, for English-language pay and pay-per-view and all French-language television programming.¹³⁶ A code addressing cultural diversity and ethnic stereotyping was in development at this writing;¹³⁷ aspects of both are also addressed by omnibus employment equity rules establishing reporting requirements and targets as to the representation of women, aboriginal persons, disabled persons and members of visible minorities among on-air personalities and, to a lesser degree, off-air employees.¹³⁸ Most major Canadian broadcasters are also required as a condition of license to file a report annually addressing progress in corporate accountability, reflection of diversity in programming, and community involvement as they relate to presence and portrayal of cultural diversity.¹³⁹

The scheme for encouraging Canadian and French-language content combines on-air quotas, advertising exemptions, must-carry rules, and mandatory expenditures. Radio and television undertakings must air minimum specified levels of Canadian content, defined in terms of the citizenship of the creators and not the nature of the content.¹⁴⁰ On radio, 35 percent of music on commercial stations and 50 percent on public stations must generally be Canadian music, both over the full day and between 6 am and 6 pm; for traditional and special interest music this figure is reduced, for instance to 20 percent for public stations, and falls to 7 percent for

¹³⁵ *Classification System for Violence in Television Programming* (1997 June 18) Public Notice CRTC 1997-80; *The Pay Television and Pay-Per-View Programming Code Regarding Violence* (1994 Dec. 21) Public Notice CRTC 1994-155.

¹³⁶ Set out concisely in a CRTC letter decision, *Letter to Bernard Guérin (TQS)* (2004 Aug. 4), online: <<http://www.crtc.gc.ca/archive/ENG/Letters/2004/lb040804.htm>> [Guérin letter]. As the letter decision explains, the Quebec film classification scheme's ratings may applied to pay, pay-per-view, and video-on-demand services, while the rating scheme but not necessarily the ratings themselves may be applied to conventional and specialty services, since the latter's wider availability—particularly to children during prime time, and without having expressly chosen to pay for the channel as one might choose to pay for a movie—requires a greater degree of caution.

¹³⁷ *Commission's Response to the Report of the Task Force for Cultural Diversity on Television* (2005 March 21) Broadcasting Public Notice CRTC 2005-24 at para. 68 [Diversity Response] set a due date of 21 July 2005.

¹³⁸ *Implementation of an Employment Equity Policy* (1992 Sept. 1) Public Notice CRTC 1992-59; *Amendment to Reporting Requirements for Employment Equity in On-air Positions*, (1995 June 19) Public Notice CRTC 1995-98; *Amendments to the Commission's Employment Equity Policy* (1997 April 2) Public Notice CRTC 1997-34. These requirements are administered by the CRTC for licensees with less than 100 employees and, as set out in the 1996 *Employment Equity Act*, *supra* note 91, by Human Resources Development Canada for licensees with at least 100 employees. The requirement to report on on-air personalities to the CRTC continues to apply to any broadcaster with at least 25 employees, however.

¹³⁹ Reaffirmed in *Diversity Response*, *supra* note 137 at paras. 57-60. See, for instance, *License Renewals for the Television Stations Controlled by CTV* (2001 Aug. 2) Decision CRTC 2001-457 [CTV Renewal Decision] at paras. 54-57, and *License Renewals for the Television Stations Controlled by Global* (2001 Aug. 2) Decision CRTC 2001-458 [Global Renewal Decision] at paras. 54-58.

¹⁴⁰ For radio, *Commercial Radio Policy*, *supra* note 116 at paras. 136-146. For television, *Certification for Canadian Programs – A Revised Approach* (2000 March 17) Public Notice CRTC 2000-42.

ethnic-format stations during ethnic programming periods;¹⁴¹ for French-language radio stations, an additional requirement sets French-language music at no less than 65 percent of popular music aired weekly on commercial radio, and 85 percent on public radio.¹⁴² On community television, 80 percent of content must be Canadian, or 20 percent more than must be local.¹⁴³ On public television, 75 percent of broadcast-day content, and 80 percent during the peak viewing hours of 7 pm to 11 pm, must be Canadian; for the public English- and French-language specialty news services; this rises to 90 percent.¹⁴⁴ On commercial television, 60 percent of programming must be Canadian, including 50 percent between the evening hours of 6 pm and midnight;¹⁴⁵ for Category 1 digital specialty and pay undertakings this is reduced to 15, 25, then 35 percent over the first three years of operations;¹⁴⁶ for their analogue Canadian counterparts proportions are similar, though decided on a case-by-case basis.¹⁴⁷ Advertising exemptions operate alongside Canadian content quotas: broadcasters may promote Canadian feature films and programs outside the twelve-minute-per-hour advertising allotment to non-pay television stations;¹⁴⁸ broadcast distributors may use “local availabilities”, or station breaks, on non-Canadian stations to promote basic Canadian services (at least 75 percent) and pay offerings (up to 25 percent).¹⁴⁹

Must-carry and “distribution and linkage” rules for broadcast distributors supplement on-air rules by giving the Canadian channels responsible for them a prominent place on the dial.¹⁵⁰

¹⁴¹ *Commercial Radio Policy*, *supra* note 116 at paras. 80-123; *Licenses for CBC English-language Television and Radio Renewed for a Seven-year Term* (2000 Jan. 6) Decision CRTC 2000-1 [*CBC License*] at Annex; *Licenses for CBC French-language Television and Radio Renewed for a Seven-year Term* (2000 Jan. 6) Decision CRTC 2000-2 [*SRC License*] at Appendix.

¹⁴² For commercial radio, this must correspond to at least 55 percent of music aired during the day: *Commercial Radio Policy*, *supra* note 116 at para. 16.

¹⁴³ *Community Media Policy*, *supra* note 110 at para.

¹⁴⁴ *Licenses for Newsworld and RDI Renewed for a Seven-year Term* (2000 Jan. 6) Decision CRTC 2000-3 at Appendix Parts I, II.

¹⁴⁵ *Building on Success – A Policy Framework for Canadian Television* (1999 June 11) Public Notice CRTC 1999-97 [*Television Policy*] at para. 68.

¹⁴⁶ *Digital Specialty/Pay Introduction*, *supra* note 108 at Appendix 2. Canadian content obligations for ethnic Category 1 digital services are, however, generally 15%. Special provisions are also set out for digital Category 1 music video services, expressed as 20, 25, and 30 percent of music videos aired. Category 2 services “generally have less stringent obligations with respect to Canadian content”: *Category 2*, *supra* note 108 at para. 35.

¹⁴⁷ *Analogue Specialty/Pay Timetable*, *supra* note 107.

¹⁴⁸ *Television Policy*, *supra* note 161 at paras. 80-82.

¹⁴⁹ *Proposal to Insert Certain Promotional Material in the Local Availabilities of U.S. Satellite Services* (1995 Jan. 18) Decision CRTC 95-12; *Television Policy*, *supra* note 161 at para. 103. See also *Proposal by the Canadian Cable Television Association to Amend the Policy Regarding the Use of Local Availabilities – Call for Comments* (2004 July 9) Broadcasting Public Notice CRTC 2004-47, process still ongoing at this writing.

¹⁵⁰ The rules set out here apply to the largest broadcast distributors. “Class 3” licensees serving below 2000 homes, in particular, are exempted from many of these rules: *Exemption Order Respecting Cable Systems Having Fewer Than 2000 Subscribers* (2001 Dec. 7) Public Notice CRTC 2001-121.

Required basic service includes all local stations, including network affiliates; the closest affiliate of every remaining Canadian network, including the CBC in both languages and the Aboriginal Peoples Television Network (APTV); the provincial educational broadcaster; the House of Commons broadcasting service; and any ethnic services which serve at least 10 percent of the local catchment area.¹⁵¹ All analogue Canadian¹⁵² and digital “Category 1”¹⁵³ specialty and pay services must also be made available, although not necessarily on basic service. Non-Canadian satellite services may be distributed only in discretionary packages: each such service must be bundled with at least one Canadian specialty service, and no package may include more than five foreign services.¹⁵⁴ Finally, programming measures such as on-air quotas, advertising exemptions, and must-carry rules are supplemented by mandatory expenditures under which certain broadcast undertakings and their distributors must route a portion of their revenues into Canadian content funding—\$400 to \$27,000 annually per commercial radio station,¹⁵⁵ varying amounts for specialty and pay television services,¹⁵⁶ and 5 percent for broadcast distributors,¹⁵⁷ supplemented by “tangible benefits” levies of 6 percent of the value of a merger involving commercial radio stations and 10 percent of a commercial-television-related merger.¹⁵⁸

Local content requirements are either exhortatory or tied to advertising. Radio licensees are required, “at licence renewal time, to indicate and justify the levels and scheduling of acquired programming they intend to broadcast over their new licence term”¹⁵⁹ FM stations are held to at least one-third local programming, and lose the right to solicit or accept local advertising if they fail to meet it;¹⁶⁰ for community radio “[t]he Commission’s primary objective ... is that it provide a local programming service”: community stations are expected

¹⁵¹ *Broadcasting Distribution Regulations*, *supra* note 124 at ss. 17(5), 18, 37(b).

¹⁵² *Analogue Specialty/Pay Timetable*, *supra* note 107.

¹⁵³ *Digital Specialty/Pay Introduction*, *supra* note 108.

¹⁵⁴ *Broadcasting Distribution Regulations*, *supra* note 124 at s. 20; *Distribution and Linkage Requirements for Class 1 and Class 2 Licensees* (2004 July 29) Broadcasting Public Notice CRTC 2004-56.

¹⁵⁵ *Contributions by Radio Stations to Canadian Talent Development – A New Approach* (1995 Nov. 17) Public Notice CRTC 1995-196; *Commercial Radio Policy*, *supra* note 116 at 133.

¹⁵⁶ *New Flexibility With Regard to Canadian Program Expenditures by Canadian Television Stations* (1992 Apr. 8) Public Notice CRTC 1992-28; *The Reporting of Canadian Programming Expenditures*, Public Notice CRTC 1993-93, 22 June 1993. Expenditure requirements for conventional stations were removed in *Television Policy*, *supra* note 161 at para. 75.

¹⁵⁷ *Contributions to Canadian Programming by Broadcasting Distribution Undertakings* (1997 July 22) Public Notice CRTC 1997-98.

¹⁵⁸ *Application of the Benefits Test at the Time of Transfers of Ownership or Control of Broadcasting Undertakings* (1993 May 26) Public Notice CRTC 1993-68; *Commercial Radio Policy*, *supra* note 116 at para. 70; *Television Policy*, *supra* note 161 at paras. 22-26.

¹⁵⁹ *Radio Networks and Syndication Policy* (1989 Jan. 10) Public Notice CRTC 1989-3; *Community Radio Policy*, *supra* note 103 at paras. 12, 52, 55.

¹⁶⁰ *Policies for Local Programming on Commercial Radio Stations and Advertising on Campus Stations* (1993 April 19) Public Notice CRTC 1993-38; *Local Programming Policy for FM Radio – Definition of a Single-Station Market* (1993 Aug. 17) Public Notice CRTC 1993-121.

to engage in initiatives to promote local talent, and Type B stations where the community station is not the only alternative to the public broadcaster are required to “demonstrate that the network or acquired programs they wish to broadcast will complement, but not replace, their local programs.” Local television stations must “reflect the particular concerns of their local audiences, whether through local news or other local programming”;¹⁶¹ more specific requirements are imposed on community television stations and programming services, 60 percent of whose programming must be local, half of which must be “access” programming available to community members.¹⁶²

Priority programming is a television-specific term for underrepresented content genres the CRTC regards as important with regard to the goals of the Broadcasting Act, but which market forces have failed to produce. Priority programming includes drama; music, dance, and variety; documentary; regionally-produced programming, other than news and sports coverage; and entertainment magazines. The rules governing them, a “central element” of the television policy,¹⁶³ combine on-air quotas with regulatory incentives. On-air quotas require Canadian television networks to broadcast each week at least eight hours of priority programming during peak viewing hours.¹⁶⁴ Within the basket of priority programming, regulatory incentives are attached to drama programming, a particularly expensive genre made even more uneconomic by the availability of inexpensive U.S. drama programming in an language and accent familiar to Canadians and whose pricing reflects costs already amortized over the large American domestic market. These incentives for peak-time Canadian-produced drama exist in two forms: a 150 or 125 percent time credit is awarded against the station’s Canadian content requirements,¹⁶⁵ and an advertising time allotment beyond the 12-minute ceiling is further awarded for drama whose production cost exceeds a certain threshold, used as a proxy to indicate high-quality drama.¹⁶⁶ Quantitative commitments are not set out for news programming apart from the requirement of local programming to access local advertising—“[t]he Commission believes that, in the new television environment, there are sufficient market incentives to ensure that audiences will continue to receive a variety of local news without regulatory requirements”¹⁶⁷—but news diversity is considered at the licensing stage, radio merger applications must “address the impact on diversity of news

¹⁶¹ *Television Policy*, *supra* note 145 at para. 44.

¹⁶² *Community Media Policy*, *supra* note 110 at para. 26.

¹⁶³ *Implementation of TV Policy* (1999 Dec. 23) Public Notice CRTC 1999-206 at para. 2.

¹⁶⁴ *Television Policy*, *supra* note 161 at paras. 37-43; Definitions for New Types of Priority Programs; Revisions to the Definitions of Television Content Categories; Definitions of Canadian Dramatic Programs That Will Qualify For Time Credits Towards Priority Programming Requirements (1999 Dec. 23) Public Notice CRTC 1999-205.

¹⁶⁵ *Television Policy*, *supra* note 161 at paras. 48-61.

¹⁶⁶ Incentives for English-Language Canadian Television Drama (2004 Nov. 29) Broadcasting Public Notice CRTC 2004-93; Incentives for Original French-Language Canadian Television Drama (2005 Jan. 27). Broadcasting Public Notice CRTC 2005-8.

¹⁶⁷ *Television Policy*, *supra* note 161 at para. 47.

voices and the level of competition in the market”,¹⁶⁸ and the CRTC may impose conditions on television or cross-media mergers that go to news diversity, including newsroom separation between merging parties and a co-regulatory Statement of Principles as to continued editorial independence. In 2001, particularly, three separate mergers were proposed involving some of Canada’s largest television and newspaper conglomerates, respectively. The CRTC’s approval of each was conditional on the continuing separation of broadcast and newspaper newsrooms and creation of a monitoring committee to track that separation.¹⁶⁹ That approach has continued;¹⁷⁰ throughout, however, the CRTC has invited the Canadian Broadcast Standards Council (CBSC) to develop guidelines that would enable the regulation of cross-ownership to be carried out under a co- or self-regulatory regime. That has not occurred.

Structural Regulation

“Non-Canadians” are prohibited from holding Canadian broadcasting licenses by executive order. Canadian ownership is defined as 66 percent of holding companies and 80 percent of operating companies, or 53.3 percent overall.¹⁷¹ Although the Broadcasting Act does not grant explicit powers to regulate firms structurally, the CRTC’s broad jurisdiction over licensing grants it effective authority over the continuance of licenses to reorganized or merged firms. Licenses are in this sense not property rights, and no secondary market can exist in them: an act, agreement, or transaction that would result in a change or transfer of control over the licensee’s operations requires the CRTC’s prior approval.¹⁷²

The CRTC regulates horizontal, vertical, and cross-media integration. With regard to horizontal concentration, three commercial radio licenses (two in any one band, AM or FM) may be combined in a geographic and linguistic market with up to eight radio stations, or four (two in each band) in a geolinguistic market with eight or more radio stations;¹⁷³ only one over-the-air television station may be owned in a single geographic market,¹⁷⁴ and although a single owner may hold a theoretically unlimited number of specialty or pay licenses, stations

¹⁶⁸ Commercial Radio Policy, *supra* note 116 at para. 40.

¹⁶⁹ *Transfer of Effective Control of CTV Inc. to BCE Inc.* (2000 Dec. 7) Decision CRTC 2000-747 and *CTV Renewal Decision*, *supra* note 139; *Renewal of the Licences of the Quatre Saisons Television Network, Of CFJP-TV Montréal and its Transmitter CJPC-TV Rimouski, As Well As of CFAP-TV Québec* (2000 Oct. 7) Decision CRTC 2000-18 and *Transfer of Effective Control of TVA to Quebecor Média Inc.* (2001 Jul. 5) Decision CRTC 2001-384; *Global Renewal Decision*, *supra* note 139.

¹⁷⁰ For instance, *Transfer of Effective Control of Toronto One to TVA Group Inc. and Sun Media Corporation* (2004 Nov. 19) Broadcasting Decision CRTC 2004-503.

¹⁷¹ *Direction to the CRTC (Ineligibility of Non-Canadians)*, S.O.R./97-192.

¹⁷² *Radio Regulations*, *supra* note 120 at s. 11(4); *Television Broadcasting Regulations*, *supra* note 121 at s. 14(4); *Pay Television Regulations*, *supra* note 122 at s. 6(4); *Specialty Services Regulations*, *supra* note 123 at s. 10(4); *Broadcasting Distribution Regulations*, *supra* note 124 at s. 4(4).

¹⁷³ *Commercial Radio Policy*, *supra* note 116 at paras. 38-42.

¹⁷⁴ *Television Policy*, *supra* note 161 at paras. 17-18.

of a single genre are discouraged,¹⁷⁵ frustrating the possibility of horizontal concentration;¹⁷⁶ in all cases, each transaction is reviewable for its effect on the diversity of news voices and level of competition, and it is not unusual to see transactions restructured in response to CRTC rulings. With regard to vertical integration, production companies may hold broadcast licenses and cable undertakings may be combined with digital¹⁷⁷ and then analogue¹⁷⁸ stations undertakings, although such combinations are regulated by “undue preference” provisions capping self-dealing and governing pricing, packaging, promotion, and marketing/promotional costs, among other areas; whether a broadcasting distribution undertaking has given undue preference is determined according to a two-part test, first whether preference has been given, and second, the material adverse impact of that preference, including both undue disadvantage to another party and statutory policy considerations.¹⁷⁹ With regard to cross-media ownership, no formal restrictions exist, but the CRTC has been willing to regulate merged entities to correct negative repercussions on the diversity of voices.¹⁸⁰

Under the Competition Act, mergers whose combined parties represent Canadian assets or gross annual sales of at least \$400m, or in which the transaction is valued at \$35m on substantial transfer of ownership or else \$70m on an amalgamation, must be cleared with the Competition Bureau before proceeding. The Bureau may challenge the merger before the Competition Tribunal if it feels it anticompetitive, and will usually attempt first to negotiate with the parties to restructure the transaction in a way that addresses the Bureau’s concerns;¹⁸¹ the Bureau may also review firms’ market conduct for anticompetitive behaviour outside the merger context. Competition Bureau review of mergers and market conduct has at times intersected with the CRTC’s; whereas the CRTC regards diversity of voices and other criteria set out in the Broadcasting Act, however, Bureau review examines only advertising markets. Two instruments govern the bodies’ relationship, a negotiated Interface Agreement¹⁸² and a judicial doctrine known as the Regulated Conduct Defence. But the former provides little

¹⁷⁵ “To moderate the challenge of early digital launch, the Commission will license Category 1 services on a one-per-genre basis. Specifically, the Commission will not license a service that is directly competitive with another Category 1 service or with an existing pay or specialty service”: *Digital Pay/Specialty Framework*, *supra* note 108 at para. 23.

¹⁷⁶ The CRTC indicated that it took “diversity of ownership” into account in licensing Category 1 digital pay and specialty services, however: *Digital Specialty/Pay Introduction*, *supra* note 108.

¹⁷⁷ *Digital Pay/Specialty Framework*, *supra* note 100 at paras. 38-42.

¹⁷⁸ *Ownership of Analog Discretionary Services by Cable Undertakings* (2001 June 7) Public Notice CRTC 2001-66.

¹⁷⁹ As set out in *Complaint By CTV Television Inc. Alleging That Rogers Cable Communications Inc. Contravened Section 9 of the Broadcasting Distribution Regulations* (2004) Broadcasting Decision CRTC 2004-188 at para. 20.

¹⁸⁰ *Supra* note 167 to 170 and accompanying text.

¹⁸¹ Competition Act, *supra* note 87 at ss. 109-114.

¹⁸² CRTC and Competition Bureau, “CRTC/Competition Bureau Interface” (8 October 1999), online: <<http://strategies.ic.gc.ca/epic/internet/incb-bc.nsf/en/ct01544e.html>> [Interface agreement].

guidance as to how to manage the overlap, while the latter is largely untested and triggered only where a matter comes before the court. Competition Bureau staff therefore appear regularly before CRTC hearings to provide their view of the CRTC's regulation of market competition and application of competition policy, while the two agency's concurrent merger reviews have on at least one occasion yielded contradictory results—approval by one agency but conditions imposed by the other—introducing significant delays into the process.¹⁸³

1.1.3. Co- and Self-Regulation

Private Broadcasters

Co- and self-regulation with regard to broadcast programming is segmented into non-advertising and advertising content. Including the industry Action Group on Violence on Television (AGVOT)'s two standards, the Canadian Broadcast Standards Council acts as a non-judicial appeals committee for six non-advertising programming codes which establish basic standards with respect to ethical concerns: the CAB (Canadian Association of Broadcasters) Violence Code and CAB Sex Role Portrayal Code set out guidelines for all on-air broadcasting; the RTNDA (Radio-Television News Directors Association) Code of Journalistic Ethics create targets for public trust, truth, fairness, integrity, independence, and accountability in news programming; and the CAB Code of Ethics provides an omnibus 18-point baseline addressing educational guidelines, employee responsibilities, and basic tenets underlying the issues covered in specific non-advertising and advertising codes. Because the CBSC is linked with the CAB, all CAB members—the majority of Canadian broadcasters, and all major broadcasters—endorse the CBSC's function as a review board, but CAB membership is not required to take part in the CBSC. Where the parties are unsatisfied with the CBSC's decision or where one of the parties has failed to cooperate with it, the CRTC acts as an appellate body, but its standard of review is not that of judicial review but of “de novo appeal”, allowing it to review the matter in its entirety and collect new evidence from third parties; how this standard can coexist with any sense of administrative deference is unclear, however, and resolution of this apparent incompatibility has not been forthcoming on the rare occasion that it has been raised.¹⁸⁴

Alongside broadcast programming, the Cable Television Standards Committee (CTSC) provides a self-regulatory body for the cable distribution sector, still the predominant broadcast distribution mode in Canada. The CTSC administers three codes, of which one, the Cable Television Community Channel Standards, is incorporated by reference into CRTC regulation.¹⁸⁵ The community channel standards establish on-air guidelines for the single channel for whose content broadcast distributors are directly responsible, and include

¹⁸³ Télémédia's agreement in May 2001 to sell nineteen French-language radio stations in Quebec and New Brunswick to Astral Media kicked off a complex regulatory process which lasted more than two years and wound up in court, winding up in a consent agreement before the court could rule on the matter.

¹⁸⁴ See, in particular, dissenting opinion of Commissioner Langford in *Guérin letter*, *supra* note 136.

¹⁸⁵ *Cable Television Community Channel Standards* (1992 June 1) Public Notice CRTC 1992-39; *Community Media Policy*, *supra* note 110 at para. 55.

guidelines for community access programming, balance, abusive comment, and stereotyping, as well as training of volunteers and promotion of community programming.

With regard to advertising content Advertising Standards Canada (ASC), a not-for-profit industry body for advertising in all Canadian media, plays three roles. The first is to administer a baseline self-regulatory Canadian Code of Advertising Standards (CCAS), which addresses accuracy and clarity; truth in advertising issues like disguised advertising, price claims, guarantees, testimonials, and claims; imitation; safety; playing to superstitions and fears; advertising to children and minors; and “unacceptabl[y]” tasteless content; and the ASC Gender Portrayal Guidelines, addressing the portrayal of women as consumer decision-makers, the appropriate use of sexuality, and standards as to violence, diversity, and gendered language. The ASC’s second role is to act as a complaint mechanism regarding transgression of these standards, similar to the role played by the CBSC; because there is no formal relationship with the CRTC, however, both initial complaints and appeals are handled internally, the first by ASC staff and the second by a five-member Appeals Panel. Third, the ASC provides a clearing service to see that advertisements meet industry standards and guidelines before a full budget is spent on producing them and sending them to broadcasters; here the ASC acts in concert with other bodies to provide expert opinion on compliance with the ASC/CAB Broadcast Code for Advertising to Children and the CRTC Code for Broadcast Advertising of Alcoholic Beverages.¹⁸⁶ Clearing services are also provided in conjunction with Health Canada (HC) in respect of the Food and Drugs Act, as set out in four ASC/HC documents: Guidelines for Cosmetic Advertising and Labelling Claims; Advertising Code of Standards for Cosmetics, Toiletries and Fragrance; Guide to Food Labelling and Advertising; and Consumer Drug Advertising Guidelines. A separate industry group, the Pharmaceutical Advertising Advisory Board, coregulates prescription drug advertising with Health Canada under the same Act through a Code of Advertising Acceptance. In total, the ASC and PAAB therefore act with respect to nine individual codes of governance, of which six are regulated under the Food & Drugs Act.

Public Broadcaster

In addition to the legal requirements which govern it, the public broadcaster’s conduct is structured by standards adopted internally. The CBC’s Journalistic Standards and Practices are a comprehensive set of rules through which the Corporation regulates its non-advertising content and conduct. The document includes a preamble as to press freedoms and responsibilities and, after setting out the CBC’s legislative framework for informational purposes, includes sections on broad principles and production standards for information gathering and processing, including privacy, source protection, coverage of demonstrations and violent acts, good taste—language, sex, violence—and manipulation of public opinion, among others. Additional policies annexed to the Standards and Practices guide sex-role

¹⁸⁶ Incorporated by reference into *Radio Regulations*, *supra* note 120 at s. 4; *Television Broadcasting Regulations*, *supra* note 121 at s. 6; and *Specialty Services Regulations*, *supra* note 123 at s. 4.

portrayal and set out how the broadcaster reconciles its public interest mandate with its need to raise funds commercially.¹⁸⁷

Public complaints under the Journalistic Standards and Practices are heard by the Office of the Ombudsman, an internal non-judicial body which also undertakes its own review of the CBC's performance, including compliance with the Standards and Practices.¹⁸⁸ The CBC Ombudsmen—separate officers are named for the English- and French-language services—investigate public complaints where the CBC has either responded inadequately or failed to respond directly to the complainant, further establishing a registry of such complaints and reporting to the President and Board of Directors yearly. The Ombudsmen review CBC programming for accuracy, integrity, and fairness on a five-year cycle, undertaking their work with the help of advisory panels which they constitute.

The CBC Advertising Standards¹⁸⁹ set accuracy and taste criteria across all Corporation channels. While these are in the spirit of the Broadcasting Act itself, commercials will also not be aired that “depict as being desirable any activity that is contrary to widely held standards” or that “demand audience attention through use of the shock value of double entendre”. Infomercials are not accepted; nor are advertisements promoting registered political parties, except during elections. Consistent with Quebec's Consumer Protection Act,¹⁹⁰ advertisements targeted at children under 12 are not aired, while those targeted at other children are aired only in limited amounts in adjacent to children or family programming.

It is also relevant to note that the CBC's budget is allocated annually by the Governor in Council through an iterative process in which the public broadcaster submits a corporate plan, budget, and summary, including a five-year plan.¹⁹¹ The Broadcasting Act provisions governing this process stipulate that they are not be “interpreted or applied so as to limit the freedom of expression or the journalistic, creative or programming independence enjoyed by the Corporation in the pursuit of its objects and in the exercise of its powers.”¹⁹² The CBC has no formal long-term funding guarantee, however, outside the budget allocated it by political officials, making the relationship between government and public broadcaster an important part of the latter's governance framework.

¹⁸⁷ Available online: <<http://www.cbc.radio-canada.ca/accountability/journalistic/index.shtml>>.

¹⁸⁸ CBC, *The Ombudsman*, available online: <<http://www.cbc.radio-canada.ca/accountability/ombudsman.shtml>>.

¹⁸⁹ Available online: <<http://cbc.radio-canada.ca/policies/policies/advertising.shtml>>.

¹⁹⁰ *Supra* note 55.

¹⁹¹ *Broadcasting Act*, *supra* note 62 at ss. 54-55.

¹⁹² *Broadcasting Act*, *supra* note 62 at s. 52(1)(a).

1.2. Regulatory Authorities and Bodies

1.2.1. Authorities

CRTC

The CRTC is governed by the Broadcasting Act, the Telecommunications Act, and administrative guidelines outlined in the Canadian Radio-Television and Telecommunications Act, with additional responsibilities set out in the Canada Elections Act and Referendum Act. The regulatory scheme the Commission administers is further supported by provisions under the Radiocommunication Act and Copyright Act.

The Broadcasting Act requires that the CRTC regulate and supervise the Canadian broadcasting system in a “flexible manner” which takes into account English/French and regional asymmetries, technological change, and administrative burden. The Act also sets out the CRTC’s licensing, regulatory, and mandatory ordering, and research authority with respect to broadcasting.

Under its licensing function, the CRTC is empowered to establish classes of licenses;¹⁹³ attach conditions to them;¹⁹⁴ award or renew¹⁹⁵ them, following a public hearing,¹⁹⁶ for renewable periods of up to seven years;¹⁹⁷ and suspend or revoke them, again following a public hearing.¹⁹⁸ All broadcast distributors and broadcasters, including the public service broadcaster,¹⁹⁹ are either subject to licensing or exempted by the Commission from licensing;²⁰⁰ license conditions are at the Commission’s discretion, but must be in respect of the broadcasting policy set out in section 3 of the Act.²⁰¹

Under its regulatory function, the CRTC may bind licensees²⁰² under regulations that go to broadcast content and structure. Content regulations include Canadian content requirements, programming standards, and rules about advertising and partisan political content, including time.²⁰³ Structural regulations include the carriage of domestic and foreign broadcasting services, and may establish dispute resolution mechanisms and reporting and auditing regimes. The Commission may associate fees with licenses,²⁰⁴ and generally has broad discretion to make additional regulations “respecting such other matters as it deems necessary

¹⁹³ *Broadcasting Act*, *supra* note 62 at s. 9(1)(a).

¹⁹⁴ *Broadcasting Act*, *supra* note 62 at s. 9(1)(b).

¹⁹⁵ *Broadcasting Act*, *supra* note 62 at s. 9(1)(d).

¹⁹⁶ *Broadcasting Act*, *supra* note 62 at ss. 18(1)(a), (b).

¹⁹⁷ *Broadcasting Act*, *supra* note 62 at s. 9(1)(b).

¹⁹⁸ *Broadcasting Act*, *supra* note 62 at ss. 9(1)(e), 24.

¹⁹⁹ *Broadcasting Act*, *supra* note 62 at ss. 9(1)(b)(ii), 23.

²⁰⁰ *Broadcasting Act*, *supra* note 62 at s. 10(4).

²⁰¹ *Broadcasting Act*, *supra* note 62 at s. 9(1)(b)(i).

²⁰² *Broadcasting Act*, *supra* note 62 at s. 10(2).

²⁰³ *Broadcasting Act*, *supra* note 62 at s. 10(1).

²⁰⁴ *Broadcasting Act*, *supra* note 62 at s. 11.

for the furtherance of its objects.”²⁰⁵ All regulations of a general nature must be published in the Canada Gazette, the government’s omnibus legal registry.²⁰⁶

Under its mandatory order function, the CRTC may issue decisions and orders to persons, either due to non-performance or because the CRTC has determined that circumstances require it.²⁰⁷ Decisions and orders must be preceded by a public hearing process which includes mandatory publication of a public notice;²⁰⁸ in practice, the CRTC has made extensive use of this power to conduct the bulk of its day-to-day regulatory business, particularly through the dialogic use of hearings and Public Notices, so that many CRTC “rulings” therefore have the status of notices or advisory opinions to market participants and not formal orders under the Broadcasting Act. The CRTC also has broad discretion to “undertake, sponsor, promote or assist in” any research it feels appropriate.

Two external bodies, the judicial Federal Court of Appeal and the political Minister of Canadian Heritage, and may review or overrule the CRTC’s actions. Decisions and orders, including license decisions, may be reviewed by the Federal Court of Appeal under the principles of administrative law.²⁰⁹ The Governor in Council, in practice the Cabinet and particularly the Minister of Canadian Heritage to whom the CRTC reports, has broad powers to issue orders to the CRTC,²¹⁰ including setting aside licenses,²¹¹ hearing appeals,²¹² and ordering the CRTC to hold hearings and issue reports.²¹³ The Governor in Council may also order a private consultation with the Commission at any time²¹⁴ or, where there is a dispute between the CRTC and the public service broadcaster it regulates, act as an arbitrator to enforce a settlement.²¹⁵

Organisationally, the CRTC is divided into members and staff. Members are named by the Governor in Council, and include a Chair, two Vice-Chairs, and up to ten additional full-time members, totalling thirteen, as well as up to six additional part-time members. Members may exercise the Commission’s powers and duties, may not have any proprietary interest in a telecommunications undertaking, and must meet at least six times per year. Staff “necessary for the proper conduct of the Commission’s business” are supervised by the Chairperson and, in the Chairperson’s absence, the authorised Vice-Chairperson.²¹⁶ In practice, approximately

²⁰⁵ *Broadcasting Act*, *supra* note 62 at s. 10(1)(k).

²⁰⁶ *Broadcasting Act*, *supra* note 62 at ss. 10(3), 11(5).

²⁰⁷ *Broadcasting Act*, *supra* note 62 at ss. 12(1).

²⁰⁸ *Broadcasting Act*, *supra* note 62 at ss. 18(1)(d), 19.

²⁰⁹ *Broadcasting Act*, *supra* note 62 at s. 31.

²¹⁰ *Broadcasting Act*, *supra* note 62 at ss. 27-28.

²¹¹ *Broadcasting Act*, *supra* note 62 at s. 28(1).

²¹² *Broadcasting Act*, *supra* note 62 at s. 29.

²¹³ *Broadcasting Act*, *supra* note 62 at s. 15(1).

²¹⁴ *Broadcasting Act*, *supra* note 62 at s. 15(2).

²¹⁵ *Broadcasting Act*, *supra* note 62 at s. 23.

²¹⁶ *Canadian Radio-television and Telecommunications Commission Act*, R.S. 1985, c. C-22 at ss. 9(1), 6.

400 staff members divided into Broadcasting, Telecommunications, and several supporting directorates conduct much of the CRTC's day-to-day business, including the drafting of decisions, notices, and orders for members to review, discuss, and either promulgate or send back. While public hearings usually involve multiple participants in either a paper or live process, meetings of the members are closed-door.

Other Authorities

The Canadian Broadcasting Corporation is constituted under Part III of the Broadcasting Act.²¹⁷ The Act sets out the Corporation's programming mandate²¹⁸ and grants it the powers to undertake a full range of functions related to fulfilling that mandate, such as broadcasting programming produced in-house or acquired contractually, including news material; marketing its programming in Canada or abroad, in whatever medium; acquiring or purchasing shares in other broadcasting undertakings; and any other functions the CBC might think necessary.²¹⁹ Organisationally the CBC is, similarly to the CRTC, divided into directors and staff. Staff²²⁰ are hired at the discretion of the twelve directors, who are Canadian citizens not otherwise involved in the broadcasting industry during the time of the tenure,²²¹ appointed by the Governor in Council to five-year terms.²²² The twelve directors constitute a Board which must meet at least six times a year;²²³ they include a Chair,²²⁴ a President, and standing committees on the Corporation's English- and French-language programming.²²⁵ The Office of the Ombudsman is appointed in a special process by which the President names two members of the public, one representative of CBC's managerial staff, and one representative of its journalistic staff; like directors, the Ombudsman is named for a term of five years, but may not occupy any position outside the Office of the Ombudsman for the two years following the end of his term.²²⁶

²¹⁷ *Broadcasting Act*, *supra* note 62 at ss. 35-71.

²¹⁸ *Broadcasting Act*, *supra* note 62 at ss. 3(1)(l)-(m), 46(1).

²¹⁹ *Broadcasting Act*, *supra* note 62 at ss. 46(1)(a)-(r).

²²⁰ *Broadcasting Act*, *supra* note 62 at s. 44.

²²¹ *Broadcasting Act*, *supra* note 62 at s. 38.

²²² *Broadcasting Act*, *supra* note 62 at s. 36.

²²³ *Broadcasting Act*, *supra* note 62 at s. 50(2).

²²⁴ *Broadcasting Act*, *supra* note 62 at s. 41.

²²⁵ *Broadcasting Act*, *supra* note 62 at s. 45.

²²⁶ CBC, *The Ombudsman*, *supra* note 188.

2. PRESS

2.1. Regulatory Framework

2.1.1. Legal Provisions

Although two government commissions have prominently recommended it in the past,²²⁷ Canada has no framework legislation governing the press industry. State regulation of dailies, weeklies, and magazines therefore has two legal sources: general speech regulation,²²⁸ and the general application of statutory law into whose ambit the press falls. Four statutes are particularly relevant. Three promote Canadian ownership and content in a way that de facto regulates market entry. The other is the Competition Act, in respect of which the Competition Bureau considers the impact of mergers or, occasionally, of firm behaviour on advertising markets.²²⁹

The Foreign Publishers Advertising Services Act²³⁰ is a press-specific law. The Income Tax Act²³¹ and Investment Canada Act²³² are laws of general application into which culture-specific provisions have been set. The relevant provisions of each are administered under the Minister of Canadian Heritage's jurisdiction over "cultural heritage and industries, including performing arts, visual and audio-visual arts, publishing, sound recording, film, video and literature " and "the formulation of cultural policy as it relates to foreign investment".²³³

Under the Foreign Publishers Act, foreign publications may fill no more than 18 percent of their advertising space with Canadian advertising,²³⁴ with an exemption for those foreign publishers whose direct investments in Canadian publications the Minister deems to constitute a net benefit to Canada.²³⁵ Under the Tax Act, Canadian-owned newspapers²³⁶ and magazines with original Canadian editorial content²³⁷ are accorded tax exemptions from revenue earned on advertisements directed at Canadian markets. Under the Investment Review Act, foreign investors—including those from fellow WTO countries—may not directly acquire a controlling stake in Canadian publishers or distributors of print media, film, video, music, or

²²⁷ Special Committee of the Senate on Mass Media (Davey Commission), 1970. Royal Commission on Newspapers (Kent Commission), 1981.

²²⁸ *Supra* notes 25 to 61 and accompanying text.

²²⁹ See discussions *supra*, notes 37-40 and 181-183 and accompanying text.

²³⁰ R.S. 1999, c. 23 [*Foreign Publishers Act*].

²³¹ R.S.C. 1985, c. 1 (5th Supp.) [*Tax Act*].

²³² R.S. 1985, c. 28 (1st Supp.) [*Investment Canada Act*] at ss. 14.1(5), 15, 20(e), 24(2).

²³³ *Department of Canadian Heritage Act*, R.S. 1995, c. 11 at ss. 4(2)(d), 4(2)(j).

²³⁴ *Supra* note 230 at ss. 3(1), 21.1.

²³⁵ *Supra* note 230 at s. 21.2(1).

²³⁶ Canadians must hold at least 75 percent ownership: *Tax Act*, *supra* note 231 at s. 19(1).

²³⁷ Where 80 percent or more of non-advertising content is original Canadian editorial content, the tax exemption is at 100 percent; where it is below 80 percent, the tax exemption is at 50 percent: *Tax Act*, *supra* note 231 at s. 19.01(3)-(4).

broadcasting²³⁸ except by applying to have the proposed investment reviewed for “compatibility of the investment with national industrial, economic and cultural policies”, among other criteria.²³⁹ These statutory schemes are a mix of regulation and subsidy. But the blanket nature of the subsidies’ availability to qualifiers makes the qualifying conditions similar to a regulatory measure, and part of a web of legal provisions designed to create conditions in which it is favourable for the Canadian press to publish Canadian content.

2.1.2. Administrative Regulations and Rules

The Department of Canadian Heritage administers two additional programs, set out under administrative regulations, to subsidise the Canadian press. Both incorporate a set of qualifying conditions that are in the nature of regulations. The Postal Subsidy Program awards a postage rebate to some magazines and some small weekly newspapers that are owned and controlled by Canadians; designed, assembled, published, and printed in Canada; and rely on Canadian content for at least 80 percent of editorial content.²⁴⁰ At one time this subsidy was a blanket measure incorporated into the Canadian postal system and applied to both domestic and foreign publications, but a combination of budget cuts and an unfavourable WTO ruling have changed the program’s scope.²⁴¹ The Canada Magazine Fund includes programs which fund editorial content, business development, and industry development. To be eligible, magazines must be majority Canadian-owned and –controlled in the majority and have their principal place of business in Canada.²⁴²

2.1.3. Co- and Self-Regulation

Editorial Content

Most editorial content in Canadian dailies and weeklies is produced by journalists or for news outlets which have adopted self-regulatory measures. These self-regulatory codes derive from three sources: press councils, industry groups, and journalists’ associations and unions.

Canada’s six regional press councils (British Columbia, Alberta, Manitoba, Ontario, Quebec, Atlantic)—they are absent only in Saskatchewan and the northern territories—adjudicate complaints from the public regarding material published in participating news outlets. Three of the six have published formal regulatory guidelines for citation in complaints, while a fourth (Ontario) has stated that it prefers to proceed by caselaw and common sense. The

²³⁸ *Supra* note 232 at ss. 14.1(6), 15(a).

²³⁹ *Supra* note 232 at s. 20(e).

²⁴⁰ Minister of Canadian Heritage, *Periodical Publishing Policies and Programmes: Annual Report 2003-2004* (online: <http://www.pch.gc.ca/progs/ac-ca/progs/pap/pubs/report-rapport/annualreport2003-04/index_e.cfm>).

²⁴¹ Minister of Canadian Heritage, *Historical Overview: Canada’s Postal Subsidy* (online: <http://www.pch.gc.ca/progs/ac-ca/progs/pap/pubs/Postalsubsidy/index_e.cfm>).

²⁴² Minister of Canadian Heritage, *Canada Magazine Fund Guide* (online: <http://www.canadianheritage.gc.ca/progs/ac-ca/progs/fcm-cmf/pubs/guide_cmf_2005-06/tm_e.cfm>).

British Columbia and Alberta Press Councils' Codes of Practice²⁴³ each cover similar ground, canvassing accuracy, distinction between comment and fact, misrepresentation and subterfuge, public right of reply, individual privacy concerns, confidentiality, children, sexual assault victims, and insider trading by financial journalists. The Quebec Press Council's Rights and Responsibilities of the Press²⁴⁴ is more extensive, partly in light of its wider mandate to cover both press and broadcast journalists. The Quebec code's attempt to grant rights as well as responsibilities to its members is notable, implying the Council's responsibility to build support for it within the wider community.

The Canadian Newspaper Association (CNA), the industry group for daily newspapers, promulgates a Statement of Principles which "expresses the commitment of Canada's daily newspapers to operate in the public interest", and addresses freedom of the press, accuracy and fairness, community responsibility, and respect. The Canadian Community Newspaper Association (CCNA), the industry group for weekly newspapers, does not promulgate a similar statement, although it sponsors a Better Newspapers Competition (BNC) to "celebrate the achievements of its member newspapers" and, presumably, stimulate higher-quality journalism.

The Communications, Energy and Paperworks (CEP) Union of Canada adopted in 2004 a 25-point Journalism Code of Ethics. In addition, two major associations of journalists set out their own ethical codes. The Canadian Association of Journalists (CAJ), a bilingual organisation for Canadian print and broadcast journalists which is particularly active among English-language reporters, has adopted a Statement of Principles and Ethics Guidelines for Journalism, and similarly-named provisions relating specifically to investigative journalism. The Fédération professionnelle des journalistes du Québec (FPJQ), which is active among both French- and English-language print, broadcast, and online reporters in Quebec, asks its members to adhere to a Guide de déontologie, or code of ethics. Public debate as to the value of "professionalising" journalists in Quebec by entrenching the Guide de déontologie in law has not been conclusive.

Advertising

The self-regulatory codes applicable to broadcast advertising also apply to the press. The CNA, however, further provides an advertising agency accreditation service which, by pooling buyer market power, acts as a de facto regulator of advertising agencies. CNA agency accreditation collects data from all participating agencies through an Agency Accreditation Application and Credit Agreement.²⁴⁵ Based on a combination of the agency's financials as reported back to the CNA and "[s]upplementary information such as years in business, numbers and quality of clients and business record of principals", credit ratings are assigned. This has two benefits. One is informational: CNA members are able to gauge the ability of advertising space buyers to pay for that space within a reasonable period following its

²⁴³ Online: <<http://www.bcpressecouncil.org/code.html>> and <<http://www.albertapressecouncil.ca/code2c.html>>.

²⁴⁴ Online: <http://www.conseildepresse.qc.ca/content/_cpqfram.htm>.

²⁴⁵ Online: <<http://www.cna-acj.ca/client/cna/cna.nsf/web/accreditation/>>.

publication. The other is reputational, akin to an observer effect: because ratings are influenced by CNA members on an ongoing basis, additional incentive is provided for the agencies to ensure prompt payment.

3. ONLINE SERVICES

3.1. Regulatory Framework

3.1.1. Legal Provisions

General speech regulation applies to the Internet, establishing boundaries as to what can and cannot be said.²⁴⁶ On the opposite side of the coin, the Personal Information Protection and Electronic Documents Act safeguards certain freedoms on the part of speakers by extending private-sector personal data protection to target for protection any “information about an identifiable individual”, with the exception of name, title, business address, and telephone number of an employee of an organization;²⁴⁷ the Privacy Act plays a similar role with regard to the public sector,²⁴⁸ with additional provincial legislation to address public bodies in each province. A Privacy Commissioner and accompanying agency act as a first-instance, non-judicial ombuds office to mediate in cases where a private organization is alleged to have breached privacy rules, with appeals available to the Federal Court of Canada.²⁴⁹ No more general legislative framework exists governing online services in Canada, although the legal provisions surrounding online gambling and downloading of music have been the objects of important debate.

3.1.2. Administrative Regulations and Rules

With regard to e-commerce generally, a Canadian Code of Practice for Consumer Protection in Electronic Commerce was endorsed by federal, provincial, and territorial ministers responsible for consumer affairs in January 2004.²⁵⁰ The code addresses contract formation, online privacy, security of payment and personal information, redress and dispute resolution, unsolicited e-mail, and communications with children.

3.1.3. Co- and Self-Regulation

With regard to domain names, the dot-ca name space (“Canada”) is administered by the Canadian Internet Registration Authority (CIRA), a not-for-profit corporation governed by a 14-member board of directors of whom nine are elected by dot-ca domain name holders, three are appointed to represent users, Internet providers, and registrars, one is the CIRA President, and one is a representative of the Canadian government; the latter two members do not vote. CIRA operates basic infrastructure to maintain the dot-ca top-level domain, including a server

²⁴⁶ See discussion *supra* notes 25 to 80 and accompanying text.

²⁴⁷ R.S. 2000, c. 5 at ss. 2(1), 4(1).

²⁴⁸ R.S. 1985, c. P-21.

²⁴⁹ *Privacy Act*, *supra* note 248 at ss. 53-54.

²⁵⁰ Online: <<http://cmcweb.ca/epic/internet/incmc-cmc.nsf/en/fe00064e.html>>.

infrastructure and series of online databases, but acts chiefly as regulator of a market in dot-ca domain names, defining and distributing registrar licenses, and setting out the conditions under which licensed registrars may assign dot-ca names to registrants. Registrars must meet Canadian presence requirements and technical rules and specifications, among other details; registrants, too, must meet Canadian presence requirements, tying the dot-ca space to Canadian geography and preventing it from acting as a “global” top-level domain.

With regard to spam, Canada in 2004 convened a multi-stakeholder group incorporating government, industry, and civil-society representatives to develop an action plan. The group included a representative of CAUCE Canada—the Canadian branch of the Coalition Against Unsolicited Commercial E-mail, and an active lobby promoting a legislative tool for use against spam is the most visible of Canadian anti-spam efforts—and was still developing its action plan at this writing.

The Canadian Association of Internet Providers (CAIP), an industry association whose membership includes most Canadian Internet access providers, has promulgated a Code of Conduct, a Privacy Code, and a Fair Practices document.²⁵¹ The Code of Conduct commits adherents to refrain from hosting illegal content, and from taking reasonable steps where such hosting is brought to their attention. The Privacy Code protects Internet user information, including traffic data, by committing adherents to acting in accordance with existing privacy guidelines. The Fair Practices document reiterates these codes and sets them in a broader context, including commitments to responsible service and to resolving disputes in a timely manner.

4. FILM & INTERACTIVE GAMES

4.1. Regulatory Framework

4.1.1. Legal Provisions

The most visible legal provisions regarding film in Canada are promotional, not regulatory. The National Film Board (NFB) is governed by federal statute but operates as an arm’s-length production and distribution agency; Telefilm Canada and the Canadian Television Fund (CTF) are established as film production and promotion agencies to distribute funds; provincial funding agencies play a similar role. A complex battery of legal and regulatory provisions does, however, exist, combining tax incentives under the Tax Act;²⁵² Canadian content certification undertaken by the Canadian Audio-Visual Certification Office (CAVCO), both for Tax Act incentives and for Telefilm, CTF- and Canadian Heritage-administered funding programs whose regulatory effects are similar to those described above with regard to magazines; and the CRTC-regulated conveyance of funding by broadcast distributors and undertakings into film production funds, under annual expenditure requirements and “tangible benefits” levies on mergers.

²⁵¹ Online: <<http://www.caip.ca/issues/selfreg/subset.htm>>.

²⁵² *Supra* note 231.

A second level of film legislation governs provincial film classification boards, formerly known as film censorship boards and which generally have licensing power over theatrical releases and, in some provinces, either home movies and video games of an explicit nature, or all home movies and video games.

4.1.2. Administrative Regulations and Rules

Film classification boards are active in British Columbia, whose classifications are also adopted by the Yukon and Saskatchewan; in Alberta, whose classifications are also adopted by the Northwest Territories and Nunavut; in Manitoba; in Ontario; in Quebec; and in Nova Scotia, whose classifications are also adopted by New Brunswick and Prince Edward Island. Although classification boards have tended to exercise their prior restraint powers only very rarely—an increasing trend—licensing regimes adopted under such powers generally require that all theatrical releases, all home movies (videos, DVDs) and, in certain instances, be pre-screened and classified by the classification board, and that the classification assigned each film approve in advertising for the film and, in Quebec’s case, on stickers affixed to the videos. Although ratings are established by provincial boards, all but Quebec’s and Nova Scotia’s have harmonized their rating schemes to match the Canadian Home Video Rating System, a code developed by the Canadian Motion Picture Distributors Association (CMPDA)

4.1.3 Co- and Self-Regulation

The CRTC’s 1995 Policy Governing the Distribution of Video Games Programming Services²⁵³ pertained to interactive video games delivered over cable television facilities. The Policy exempted such games from regulation on the condition that certain co-regulatory undertakings be respected, including compliance with Canadian Broadcast Standards Council (CBSC) codes on TV violence, sex-role portrayal, and advertising to children, and the inclusion of classification indicating the games’ suitability for children and adolescents. The exemption order and, for all practical purposes, Policy itself was rescinded in a 2003 review noting that such services had failed to achieve any commercial foothold, the Internet having filled that role instead.²⁵⁴

In late 2004 the Retail Council of Canada (RCC) and the Entertainment Software Association of Canada (ESAC) announced a cooperative effort to promulgate the the Entertainment Software Ratings Board (ESRB) classification system. Under the agreement RCC members, including Canada’s largest retailers, would display signage explaining the system to parents and refuse to sell “mature”-rated software to minors. ESAC separately reported talks underway with legislators drafting statutes in British Columbia, Ontario, and Manitoba which would incorporate the rating system. A Film Classification Act, 2005 which would have

²⁵³ (1995 Jan 13) Policy Notice CRTC 1995-5.

²⁵⁴ *Review of exemption orders respecting experimental video-on-demand programming undertakings, video games programming service undertakings and teleshopping programming service undertakings* (2003 Mar. 6) Broadcasting Public Notice CRTC 2003-11 at paras. 9-11.

provided the Ontario Film Review Board with discretion to adopt and enforce ESRB classification was at this writing in the second of the three legislative readings required for a government bill to become law.²⁵⁵

ⁱ Information in this section is largely based on Kanellos, 2000.

²⁵⁵ *An Act to Replace the Theatres Act and to Amend Other Acts in Respect of Film*, Bill 158, Ontario.