

THE MEDIA AND
ENTERTAINMENT
LAW REVIEW

SECOND EDITION

Editor
Benjamin E Marks

THE LAWREVIEWS

THE MEDIA AND
ENTERTAINMENT
LAW REVIEW

SECOND EDITION

Reproduced with permission from Law Business Research Ltd
This article was first published in December 2020
For further information please contact Nick.Barette@thelawreviews.co.uk

Editor
Benjamin E Marks

THE LAWREVIEWS

PUBLISHER

Tom Barnes

SENIOR BUSINESS DEVELOPMENT MANAGER

Nick Barette

BUSINESS DEVELOPMENT MANAGER

Joel Woods

SENIOR ACCOUNT MANAGERS

Pere Aspinall, Jack Bagnall

ACCOUNT MANAGERS

Olivia Budd, Katie Hodgetts, Reece Whelan

PRODUCT MARKETING EXECUTIVE

Rebecca Mogridge

RESEARCH LEAD

Kieran Hansen

EDITORIAL COORDINATOR

Pawel Frydrych

PRODUCTION AND OPERATIONS DIRECTOR

Adam Myers

PRODUCTION EDITOR

Anne Borthwick

SUBEDITOR

Helen Smith

CHIEF EXECUTIVE OFFICER

Nick Brailey

Published in the United Kingdom
by Law Business Research Ltd, London
Meridian House, 34–35 Farringdon Street, London, EC4A 4HL, UK
© 2020 Law Business Research Ltd
www.TheLawReviews.co.uk

No photocopying: copyright licences do not apply.

The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients. Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided was accurate as at November 2020, be advised that this is a developing area.

Enquiries concerning reproduction should be sent to Law Business Research, at the address above.

Enquiries concerning editorial content should be directed
to the Publisher – tom.barnes@lbresearch.com

ISBN 978-1-83862-477-4

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

AL TAMIMI & CO

BIRD & BIRD

CMS VON ERLACH PONCET LTD

GRÜNECKER PATENT UND RECHTSANWÄLTE PARTG MBB

IWATA GODO

KEMP LITTLE LLP

KIM & CHANG

MAYER LEX

PINHEIRO NETO ADVOGADOS

PINTÓ RUIZ & DEL VALLE

SORAINEN

WEIL, GOTSHAL & MANGES LLP

CONTENTS

PREFACE.....	v
<i>Benjamin E Marks</i>	
Chapter 1	AUSTRALIA..... 1
<i>Sophie Dawson, Jarrad Parker, Joel Parsons and Natasha Godwin</i>	
Chapter 2	BELARUS 18
<i>Kirill Laptev and Pavel Lashuk</i>	
Chapter 3	BRAZIL..... 29
<i>Raphael de Cunto, Beatriz Landi Laterza Figueiredo and Luiza Rehder</i>	
Chapter 4	ESTONIA 39
<i>Mihkel Miidla and Kirsi Johanna Koistinen</i>	
Chapter 5	GERMANY..... 54
<i>Mark Peters</i>	
Chapter 6	ITALY 68
<i>Valentina Mayer</i>	
Chapter 7	JAPAN 90
<i>Ryohhei Kudo and Makoto Adachi</i>	
Chapter 8	LATVIA 100
<i>Gunvaldis Leitens and Andris Tauriņš</i>	
Chapter 9	LITHUANIA..... 116
<i>Stasys Drazdauskas and Paulius Mockevičius</i>	
Chapter 10	SOUTH KOREA 126
<i>Hyun Ho Eun and Jung-Chull Lee</i>	

Contents

Chapter 11	SPAIN.....	138
	<i>Yago Vázquez Moraga and Jordi López Batet</i>	
Chapter 12	SWITZERLAND	149
	<i>Dirk Spacek</i>	
Chapter 13	UNITED ARAB EMIRATES	161
	<i>Fiona Robertson</i>	
Chapter 14	UNITED KINGDOM	169
	<i>Joanna Conway and Rupam Davé</i>	
Chapter 15	UNITED STATES	180
	<i>Benjamin E Marks</i>	
Appendix 1	ABOUT THE AUTHORS.....	195
Appendix 2	CONTRIBUTORS' CONTACT DETAILS.....	205

PREFACE

I am pleased to serve as editor and US chapter author of this important survey work on the evolving state of the law around the world as affects the day-to-day operations of the media and entertainment industries.

By any measure, 2020 has been a highly unusual and especially challenging year, particularly for the media and entertainment industries, with large sectors devastated by the effects of the covid-19 pandemic. In many countries, live music, festivals, theatrical performances and sporting events were shut down entirely for much of the year (and, in many cases, remain so), ravaging the businesses that depend on in-person events for their success and the individuals that depend on them for their livelihoods. For other parts of the media and entertainment industries, the results have been uneven. The largest online distributors of books, for example, have generally fared quite well, while many independent bookstores that depend on foot traffic are in dire straits. In the music industry, touring artists, concert promoters, and theatre and venue operators have been particularly hard hit, but most streaming services, music publishers and record companies are continuing to flourish. It remains to be seen which changes to the media and entertainment industries are temporary and which will be permanent.

The pandemic is hardly the only global phenomenon accelerating changes to media and entertainment. We continue to see a rise in challenges to press freedom by repressive government regimes – a phenomenon, it should be noted, that has been testing the strength of free speech traditions in the world's most protective speech regime, the United States. The manifestations include increased censorship, reduced transparency, and more appalling acts of violence against journalists and editors. Around the world, businesses, governments and legal regimes continue to adapt to technological change, with the increased use of artificial intelligence and 'deep fakes' just a few of the examples at the forefront.

This timely survey work provides important insights into the ongoing effects of the digital revolution and evolving (and sometime contrasting) responses to challenges both in applying existing intellectual property laws to digital distribution and in developing appropriate legislative and regulatory responses that meet current e-commerce and consumer protection needs. It should be understood to serve, not as an encyclopedic resource covering the broad and often complex legal landscape affecting the media and entertainment industries but, rather, as a current snapshot of developments and country trends likely to be of greatest interest to the practitioner. Each of the contributors is a subject field expert, and their efforts here are gratefully acknowledged. Each has used his or her best judgment as to the topics to highlight, recognising that space constraints require some selectivity. As will be plain to the reader, aspects of this legal terrain, particularly as relating to the legal and regulatory

treatment of digital commerce, remain in flux, with many open issues that call for future clarification.

This work is designed to serve as a brief topical overview, not as the definitive or last word on the subject. You or your legal counsel properly should continue to serve that function.

Benjamin E Marks

Weil, Gotshal & Manges LLP

New York

November 2020

BELARUS

Kirill Laptev and Pavel Lashuk¹

I OVERVIEW

The dynamic development of the media and entertainment industry, and the development of new instruments and technologies, has resulted in legislative activities aimed at navigating the evolving landscape of the sector.

Recent trends include continuous improvement of the legislation. Special attention is devoted to the introduction of new regulation in the intellectual property sphere, and legislative developments focus on the issues of personal data protection.

The Strategy of the Republic of Belarus in the sphere of intellectual property for 2012 to 2020² sets forth key points for future activities, emphasising the development of institutional and legislative frameworks for the efficient functioning of a national intellectual property system.

The Information Security Concept of the Republic of Belarus 2019 (Concept)³ addresses the issue of harmful content dissemination in the informational sphere. The Concept is a system of official views on the nature of, and content relating to, ensuring national security in the informational sphere. It also defines strategic tasks and priorities in the field of information security. In particular, the Concept establishes that relations in the field of mass media are based on the principles of legality, reliability, respect for human rights and freedoms, diversity of opinions and protection of morality, among other things. Along with the constitutional provision of freedom of speech in Belarus, to comply with these principles, legislative requirements are established for the dissemination of mass media that are consistent with international practice and generally accepted social standards. There is public control over the dissemination of illegal and inaccurate information in the information space. At the state level, measures are being taken to prevent the dissemination of information that could harm national interests and inaccurate information, as well as to reduce anonymity in the information space. When broadcasting content, it is not permitted to use hidden technological methods that affect the subconscious of people or have a harmful effect on their health. State bodies and other organisations must follow the Concept in their practices.

Current legislation provides for the additional authorisation needed to carry out activities in the media sector. According to the Mass Media Law,⁴ mass media are subject to a state registration procedure. TV and radio broadcasting are additionally subject to obtaining

1 Kirill Laptev is a senior associate and Pavel Lashuk is an associate at Sorainen.

2 Adopted by Resolution No. 205 of the Council of Ministers of 2 March 2012.

3 Adopted by Resolution No. 1 of the Security Council of the Republic of Belarus of 18 March 2019.

4 Law of the Republic of Belarus of 17 July 2008 No. 427-Z 'On mass media'.

a licence, which may be obtained by a mass media editor or by a foreign organisation. However, a licence is not needed if the broadcasting is carried out by a telecommunications operator without changing the form or content of the broadcast product:

- a* under a permit to distribute the products of a foreign mass media;
- b* under a contract with a legal entity entrusted with the functions of the editor of the mass media; or
- c* if the foreign organisation has a licence in the field of broadcasting.

The Mass Media Law defines internet resource as a website, web page, forum, blog, application for a mobile device or other information resource (its component), located in the internet, through which mass media is distributed. As a general rule, the Mass Media Law applies to internet resources. An internet resource may be voluntary registered as an online edition and, consequently, be treated as mass media under the Mass Media Law, and its employees would be treated as journalists.

Certain regulations apply specifically to internet resources. The Mass Media Law provides for a number of duties for internet resource owners, including social network owners, which involve the introduction of additional measures for analysing and monitoring information on such internet resources. In particular, further to the Mass Media Law requirement, the Regulation on the procedure for preliminary identification of internet resource or online edition users approved by the Resolution of the Council of Ministers of the Republic of Belarus of 23 November 2018 No. 850 (Regulation on Pre-Identification) elaborates the requirements of user identification. The owner of an internet resource or online edition must identify users that leave a message in a comments section or forum, in particular, via the short message service verification mechanism.

II LEGAL AND REGULATORY FRAMEWORK

The main legislative acts regulating the media and entertainment sector in Belarus are:

- a* the Civil Code of the Republic of Belarus of 7 December 1998 No. 218-Z;
- b* the Mass Media Law;
- c* the Law of the Republic of Belarus of 10 November 2008 No. 455-Z ‘On information, informatisation and information (data) protection’;
- d* the Law of the Republic of Belarus of 17 May 2011 No. 263-Z ‘On copyright and related rights’ (Copyright Law);
- e* the Law of the Republic of Belarus of 5 February 1993 No. 2181-XII ‘On trademarks and service marks’;
- f* the Law of the Republic of Belarus of 29 December 2012 No. 8-Z ‘On publishing in the Republic of Belarus’;
- g* the Law of the Republic of Belarus of 10 May 2007 No. 225-Z ‘On advertising’ (Advertising Law); and
- b* the Law of the Republic of Belarus of 12 December 2013 No. 94-Z ‘On counteraction of monopolistic activity and development of competition’.

The President of the Republic of Belarus has also adopted a number of acts regulating the media and entertainment sector. In practice, they all have greater legal force than laws owing to the fact that, in accordance with Law of the Republic of Belarus of 17 July 2018 No. 130-Z

‘On normative legal acts of the Republic of Belarus’, in the event of divergence of presidential edict or decree with the law, the law has primacy only when the authority to issue an edict or decree has been granted by law.

The main regulatory presidential acts in the media and entertainment sector are:

- a* Edict of the President of the Republic of Belarus of 1 September 2010 No. 450 ‘On licensing of certain types of activities’;
- b* Edict of the President of the Republic of Belarus of 1 February 2010 No. 60 ‘On measures to improve the use of the national segment of the internet’; and
- c* Edict of the President of the Republic of Belarus of 6 February 2009 No. 65 ‘On the improvement of the work of public authorities, other state organisations with the mass media’.

The Council of Ministers of the Republic of Belarus has formed the legal framework for:

- a* the opening of correspondent offices (of both national and foreign mass media);
- b* accreditation procedures for journalists of foreign mass media; and
- c* authorisation for distribution of foreign media products.

On 21 August 2014, Resolution No. 810 was adopted, which established an expert committee for the evaluation of information products for signs of extremism.

The central management body responsible for state regulation, coordination of work and development of the mass media sector is the Ministry of Information of the Republic of Belarus (MinInform). MinInform has certain subordinate organisations, including two TV channels and an internet service provider (ISP).

MinInform, inter alia, carries out:

- a* state registration of mass media and print media publishers, manufacturers and distributors;
- b* the licensing of polygraphic (i.e., printing and print-related) and broadcasting activities;
- c* maintenance of state registers of:
 - the mass media;
 - print media product distributors;
 - distributors of TV and radio broadcasting media products; and
 - print media publishers, manufacturers and distributors of the Republic of Belarus;
- d* media monitoring;
- e* oversight of foreign mass media products to ensure compliance with Belarus legislation;
- f* the issuance of permits for purchases of printing equipment;
- g* the distribution of foreign mass media products in Belarus without changing its form or content;
- h* the issuance of measures for the prevention of unlawful restrictions on media freedom, censorship and distribution of information prohibited for distribution;
- i* events for the development of mass media, organisations and individual entrepreneurs carrying out publishing, polygraphic and distribution of printed media and media products;
- j* the development and adoption of regulatory legal acts and technical regulatory legal acts;
- k* the development of state programmes;

- l* international cooperation in the field of media, including interactions with international organisations and corresponding bodies of other states, ensuring the fulfilment of obligations under international treaties with Belarus;
- m* assistance in the organisation of correspondent offices, bureaus and other offices of state mass media outside the country;
- n* accreditation of journalists; and
- o* monitoring compliance with publishing and mass media legislation and licensing requirements in the sphere of publishing and broadcasting.

The National Centre of Intellectual Property is a state organisation ensuring the protection of intellectual property rights and exercising the functions of the patent body of Belarus.

III FREE SPEECH AND MEDIA FREEDOM

i Protected forms of expression

While the Mass Media Law guarantees the freedom of opinion, belief and expression to everyone in Belarus, it establishes certain restrictions on information that may be disseminated through mass media.

Taking into consideration provisions of the Code of Administrative Offences of the Republic of Belarus of 21 April 2003 No. 194-Z, the Criminal Code of the Republic of Belarus of 9 July 1999 No. 275-Z and other legislation, the following information, inter alia, is subject to a special regime of protection:

- a* state secrets;
- b* official secrets;
- c* secret of adoption;
- d* medical secrets;
- e* personal data;
- f* trade secrets;
- g* attorney–client privilege; and
- h* banking and tax secrets.

Among other things, the Mass Media Law also limits the dissemination of information about the system of organisation, sources, methods, plans and results of investigative activities, as well as materials of inquiry, preliminary investigation and court proceedings until the end of criminal proceedings.

ii Newsgathering

Under the Mass Media Law, journalists have certain rights, privileges and duties regarding newsgathering. Thus, they are entitled to gather, request and receive information from public authorities, political parties, other public associations and legal entities (in accordance with certain specific rules established by such organisations).

Information and materials gathered by audio and video recording, filming and photography of a person without his or her consent cannot be disseminated until the application of measures against the possible identification of that person. This dissemination is possible provided that it does not violate personal rights and freedoms and is needed for protection of the public interest or in cases of dissemination upon request of the criminal prosecution body or the court for a preliminary investigation or trial.

The Draft Law on Personal Data Protection specifies cases that do not require the consent of the data subject. In particular, the collecting, processing, dissemination or sharing of personal data for the purpose of a journalist's professional activities or mass media activities, provided they are aimed at the protection of public interest, do not require the consent of the data subject. Such public interests shall constitute society's need for detection and disclosure of information about threats to national security, public order, public health and the environment or information affecting the performance of public officials or public figures.

The Code of Administrative Offences states that unauthorised access to computer information and violation of the mass media legislation are punishable.

The Criminal Code outlaws the following methods of gathering information:

- a* the illegal collection or dissemination of information about private life, including the use of special technical means or by an official using his or her official powers;
- b* an invasion of privacy and other legal possessions of citizens;
- c* a violation of confidentiality correspondence, telephone conversations, telegraphic or other communications;
- d* the misappropriation of computer information; and
- e* the illegal production, acquisition or sale of means of obtaining secret information.

iii Freedom of access to government information

Access to government information may be limited at the government's discretion via the use of the accreditation mechanism. The Mass Media Law defines accreditation as a confirmation of mass media journalists' right to cover events organised by state bodies, political parties, other public associations or legal entities, as well as other events within and outside the country's boundaries.

Belarus journalists obtain accreditation for specific events. To pursue their professional activities, foreign journalists are subject to mandatory accreditation by the Ministry of Foreign Affairs under the procedure established by the Regulation on the procedure of accreditation of journalists of the foreign mass media in the Republic of Belarus, adopted by the Resolution of the Council of Ministers of 25 December 2008 No. 2015. A foreign journalist can achieve permanent (one year or more) or temporary (up to two months) accreditation, depending on his or her functions.

The Mass Media Law does not allow unjustified refusal of accreditation. However, since there are no unified criteria in the legislation, government agencies can make their own decisions in the absence of specific procedures for the appeal of refusals.

A journalist operating without accreditation may face a fine for illegally producing media content.

The general right and procedure for obtaining information or clarifications is established by the Law of the Republic of Belarus of 18 July 2011 No. 300-Z 'On applications from citizens and legal entities'. Therefore, journalists and the mass media may also use this general procedure for access to government information.

iv Protection of sources

Provisions of the Mass Media Law imply the rights to retain and disseminate information needed for professional activities. The dissemination may be carried out under a journalist's signature, under a pseudonym or without a signature. Journalists may specifically indicate the confidentiality of authorship.

The Mass Media Law establishes the following obligations for journalists:

- a* respect for the rights, freedoms and legitimate interests of others;
- b* checking the accuracy of obtained information, as well as providing reliable information for dissemination;
- c* indicating the authorship at the will of persons providing information;
- d* maintaining confidentiality of the information and its sources (with exceptions);
- e* obtaining consent of persons for the dissemination of information on their private life;
- f* obtaining consent of persons for audio and video recording, filming and photography, excluding in public places and during events and cases when measures against possible identification of the person are taken;
- g* refusing the task given by the founder or (chief) editor if this task or its performance violates Belarus law; and
- h* showing press credentials on demand.

Journalists and legal entities entrusted with the functions of an editor of mass media are not obliged to name a source of information and shall not disclose information about a source without its consent. However, this information shall be disclosed at the request of a criminal prosecution body or a court in connection with a preliminary investigation or trial.

v Private action against publication

Belarus legislation provides for certain types of infringements entailing different consequences.

Therefore, the Mass Media Law entitles individuals and legal entities (including foreign entities) that have been the subject of unjustified media reports damaging their honour, dignity or business reputation to demand editors to correct this information.

The Civil Code establishes that civil claims under these infringements imply a publisher's obligation to provide evidence that the disseminated information reflects factual information. Otherwise, the publisher is obliged to distribute a correction statement (amendment or clarification). The correction statement shall be published in the same place and font as the original article, or broadcast at the same time of the day and during the same (or similar) programme as the original programme. Moreover, the concerned parties have the right to disseminate their answer in the same media or internet resources.

Along with the correction of information, legal entities have a right to claim compensation for losses, and individuals have a right to claim compensation for losses and moral harm.

Belarus law contains provisions on liability for libel, insult and discreditation, as well as disclosure of information considered to be secret. The legislation stipulates offences against private individuals, legal entities, representatives of the state sector or even the state itself (the list of possible affected parties is different for each offence).

vi Government action against publication

Article 33 of the Constitution of the Republic of Belarus prohibits censorship, as well as the monopolisation of mass media by the state, public associations or individuals.

However, some critics claim that there is an uneven playing field for state and private mass media representatives. The critics mark a favourable status of the state mass media due to state support in the form of financial, administrative, regulatory and bureaucratic

mechanisms. In particular, these critics draw attention to accreditation mechanisms, the ability to obtain information from public administration bodies and access to the process of discussion and adoption of legislation.

MinInform, being the central management body responsible for the mass media sector, may issue written warnings, suspend the issuance of media products and file lawsuits for termination of issuance of media products in cases provided by law. MinInform also possesses the authority to restrict access to internet resources and online editions, as well as to grant access again in cases provided by law. Based on MinInform's press releases, in practice it mainly blocks websites containing information on the sale of drugs and inappropriate advertising. Certain online resources providing extremist materials are also subject to takedown based on court judgments. The procedure of access limitation is not fully transparent (e.g., the list of blocked internet resources is available to certain state bodies and ISPs only) and does not allow individuals to follow the practice of the regulator's decision-making to the full extent.

IV INTELLECTUAL PROPERTY

i Copyright and related rights

Belarus legislation on copyright and related rights is created taking into account provisions of the main international treaties in the sphere, including the Berne Convention. The Copyright Law recognises the supremacy of international treaties. Consequently, the Berne Convention prevails, and the Copyright Law defines protection of works of foreign nationals who are neither citizens nor permanent residents of member states of the Convention.

A number of amendments to the Copyright Law came into force on 27 May 2020 (Copyright Amendments). They deal with the following issues:

- a* the introduction of an open licence as a non-exclusive licence concluded via a simplified procedure triggered by the commencement of the use of a copyright or performance of other actions specified in the licence. The licence must be publicly available so that anyone can read it before using it. By default, an open licence is free of charge. If the licence term is not indicated, it equals the term of the exclusive right for computer programs and databases, and five years for other types of copyright and related rights objects. If the open licence does not stipulate a certain territory, it is considered to be worldwide. If the fee is established as a fixed amount, the agreement must also set a maximum number of reproducible copies of the work;
- b* the consolidation of a licence agreement and authors' agreement;
- c* the introduction of an author's right to conclude an oral licence agreement on the use of the work in periodicals, including a licensee's right to conclude a free sublicense agreement and subsequent use of this work;
- d* Belarus has joined the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Print Disabled (Marrakesh Treaty). The corresponding law on accession to the Marrakesh Treaty was adopted on 20 May 2020 (Law on the joining of the Republic of Belarus to the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Print Disabled of 20 May 2020 No. 19-Z) and came into force on 3 June 2020. Libraries, educational institutions and public associations of persons with disabilities, in accordance with the Law, have the right to conduct cross-border exchange of works in formats accessible to persons with disabilities. The State Committee for Science and Technology is responsible for coordination of the activities

- of state bodies and other organisations for the implementation of the Marrakesh Treaty. This has entailed amendments to the Copyright Law regarding the transformation of works into a special format;
- e* allowance of the use of small works and parts of legally published works to the extent justified for educational purposes;
 - f* reduction of the minimum compensation for copyright infringement from 10 to one basic unit;⁵ and
 - g* a new exception to personality rights (see Section IV.ii).

The information about a domain name owner may be hidden by the owner, which may complicate searches for an infringer (e.g., in cybersquatting cases). Previously, the registrar would refuse to disclose information because of personal data protection. The Edict of the President of the Republic of Belarus of 18 September 2019 No. 350 ‘On features of use of national network segment internet’ allows for disclosure of information about domain name owners provided the request concerns ‘the registered means of individualisation’ of the requesting party.

ii Personality rights

The Copyright Amendments have established additional regulation in respect of personality rights. In particular, the new provision regulating the use of an author’s name was introduced: the reference to an author’s name when a work is used in a radio programme may be made either during the respective radio programme or by other means, provided that the radio programme contains information about such means.

The Copyright Amendments have also limited authors’ rights to prevent the publication or the recall of an audiovisual work created in cooperation with a producer unless otherwise provided by the contract.

In a case regarding authors’ personality rights, an author found out that part of his poem was published in a newspaper and its online edition without his consent, appropriate award or an indication of his name as the author. The claimant sued for the infringement of the exclusive right to reproduce and distribute the work and the infringement of the exclusive right to communicate to the public. The respondent referred to the Copyright Law and claimed that the part of the poem was used to the extent justified by informational purposes. The court held that a free use of work in mass media to the extent justified by informational purposes is allowed only as part of a report of current events, if the work is seen or heard; moreover, authors’ personality rights must be respected when using the work. Thus, all claims were fully met by the court.⁶

iii Unfair business practices

The Belarus media and entertainment industry market faces the following most widespread unfair business practices in the sphere of intellectual property rights:

- a* using social networks’ content without an author’s consent;
- b* using mass media as a means for unfair competition;

⁵ The exact amount of basic unit is established by resolutions of the Council of Ministers of the Republic of Belarus. As of 30 September 2020, one basic unit equals 27 Belarusian rubles.

⁶ www.court.gov.by/ru/justice_rb/practice/intell/litera/a8fc7e69523849c1.html.

- c* posting or placing photos in articles without due attribution; and
- d* misattribution of articles themselves (i.e., signatures referring to groups of people), which contradicts the notion of author.

V COMPETITION AND CONSUMER RIGHTS

In general, mass media may be considered an instrument for unfair competition.

The Antimonopoly Law places a ban on the following unfair competition practices:

- a* discreditation;
- b* misrepresentation;
- c* flawed comparison;
- d* unauthorised acquisition or use of intellectual property;
- e* blurring; and
- f* illegal obtainment, use or disclosure of information constituting commercial, official or other secrets protected by law.

As a form of protection from unfair competition, state authorities (e.g., the Ministry of Antimonopoly Regulation and Trade) in practice may notify MinInform on inappropriate advertising placed on a particular website. Subject to MinInform's decision, access to such websites may be restricted.

Considering recent case law, owners of internet resources are obliged to post correction statements in the same place and font of an original article if such article posted on internet resources is recognised as damaging business reputation.⁷

VI DIGITAL CONTENT

Because the Mass Media Law generally applies to internet resources, general requirements on unlawful content also apply to internet resources. The following types of content are unlawful:

- a* inauthentic information that could harm state or public interests;
- b* false information that discredits honour, dignity or business reputation;
- c* information prohibited for distribution, in particular:
 - information shared on behalf of an unregistered entity, if registration is obligatory (e.g., registration as mass media) or an entity about which there is an effective decision of the authorised state body on its liquidation;
 - propaganda on the consumption of narcotic drugs and different analogues, as well as information on methods of their development, manufacture and use and purchase locations;
 - information regarding minors who have suffered a wrongful act, without the consent of their representatives;
 - information regarding methods of manufacturing explosive devices and explosives, as well as objects whose damaging effect is based on the use of combustible substances;
 - inappropriate advertising (e.g., for tobacco products, alcoholic spirits);

⁷ Decision of the Appellate Instance of Minsk Economic Court of 17 January 2018, No. 313-3/2017/1869A.

- information aimed at promoting war or extremist activity or containing calls for such activity, pornography, violence and cruelty, including propaganda or inducing suicide; and
- d* hidden materials affecting the subconscious or having a harmful influence on health.

Users may restrict access to certain sites voluntarily under a contract concluded with an ISP.⁸ Edict No. 60 clarifies that responsibility for the content placed in the national segment of the internet is borne by the persons who posted this information or the internet resource owners.

MinInform may block internet resources or online editions. To avoid this scenario, internet resource and online edition owners must:

- a* prevent the dissemination of restricted information, information that may harm the state or public interests, or unfounded information that is damaging to the honour, dignity or business reputation of individuals and legal entities;
- b* delete unlawful information; and
- c* not allow the posting of information by other users without their preliminary identification. For that purpose, the procedure for a user's pre-identification during account registration and activation by text message has been established. This requires that terms and conditions shall include a warning about the inadmissibility of posts and materials containing information that is prohibited from being disseminated.⁹

If internet resource or online edition owners fail to perform their obligations, MinInform may issue an order to eliminate these violations.

VII CONTRACTUAL DISPUTES

According to the statistics of Supreme Court, in the first half of 2020, 152 cases (27.7 per cent more than the same period in 2019) were in the proceedings of the judicial collegium for intellectual property, including 114 disputes in the field of copyright and related rights.

Typically, disputes concern the payment of debts, penalties and interest incurred for late payment. One recent case is the scandal of 2017 and 2018 in the music sphere. A national artist sued one of the main TV channels for not mentioning his name as music author either at a concert or in the credits. The internet version of the TV channel did not mention his name either. The court found that his copyright was not violated on television, as the titles contained information about the author. However, his name was not mentioned in the internet version. As a result, the author received compensation for moral damages.

VIII YEAR IN REVIEW

2020 has revealed practical issues with the interpretation of constitutional rights related to the guarantee of freedom of expression, the prohibition of censorship and the right to receive and disseminate information.

8 Regulation on the procedure for restricting (resuming) access to the internet resource approved by the joint Resolution of the Operational and Analytical Centre under the President of the Republic of Belarus, the Ministry of Communications and Informatisation of the Republic of Belarus and the Ministry of Information of the Republic of Belarus of 3 October 2018, No. 8/10/6.

9 Regulation on Pre-Identification (see Section I).

The development of the media and entertainment sector in Belarus precedes the development of respective legislation. The government is trying to maintain a balance between national interests and prevailing trends, and ensure national security by imposing pre-identification and other measures.

The latest amendments to the Mass Media Law define the position of internet resources and provide the option for sites to register as online editions. This registration enables the mass media status of internet resources and provides their employees with the status of journalists.

At the moment, there is still no court practice going into the particulars of the latest amendments to the Mass Media Law.

One of the latest cases was related to the accreditation of a foreign journalist. In February 2020, information about protesters against an increase in gasoline prices was posted on the news blog of the website of a foreign TV channel. The person who prepared the video claimed that the video was not a product of the media. However, the court rejected the argument and pointed out that the journalist had no accreditation. The professional activities of foreign journalists are prohibited in Belarus without accreditation. Therefore, the person was subjected to administrative liability.

IX OUTLOOK

As social networks are becoming more influential, accurate development of their legal status is an important task for the future. The government might need to change its perception of certain groups, communities, bloggers or social networks as a whole with regard to their powers in the spheres of both information and monetisation.

ABOUT THE AUTHORS

KIRILL LAPTEV

Sorainen

Kirill is head of the technology, media and telecommunications (TMT) sector group in Belarus, and leads most of the IT-related projects, coordinating the TMT team. Kirill's key areas of expertise include commercial contracts and regulatory matters. He is highly experienced in advising major international clients of the TMT sector in their distinctive projects involving Belarus on complex matters, such as the special regime for residents of Hi-Tech Park (a special economic zone to encourage IT development), including IT-related tax matters, new crypto regulations and blockchain projects, IP matters in IT, legal due diligence for IT companies and dispute resolution in IT, in which he has unique experience. Kirill has advised well-known international clients, including a broadcasting company regarding the international broadcasting of TV channels and a global social network platform regarding potential restrictions of access to the parts of the platform in Belarus, and he has represented a major company in the sports sector in a high-profile domain name infringement case.

Kirill is also one of the shortlisted specialists in the country for data protection and privacy matters on both a national level and from an EU perspective. He has a deep understanding of the General Data Protection Regulation. He also represents clients in their relations with higher state authorities in significant projects in the telecoms sector in Belarus.

Kirill is frequently invited as a speaker to IT-related events for lawyers and IT businesses, and writes on the topic of IT law. Due to his reputation as TMT sector group leader and being a key expert in the IT sphere, he has been recognised as one of the 'Next generation lawyers for commercial, corporate and M&A' by *The Legal 500*, along with nominations for arbitration, trade and customs by *Who's Who Legal*.

PAVEL LASHUK

Sorainen

Pavel Lashuk is an associate in the commercial and regulatory practice group at Sorainen who specialises in data protection and regulatory matters.

In his day-to-day work, Pavel assists both local and international TMT clients with developing their business in the Belarus region, taking the progressive involvement of technologies and fast-evolving laws into consideration. Pavel helps clients to derive the advantages of, and exercise modern technologies within, Hi-Tech Park (a special economic zone to encourage IT development). Pavel ensures proper legal support for clients engaged in software and database development, including providing intellectual property and data

protection advice. He has also advised international clients on a number of mass media-related matters, including international broadcasting and regulation of internet resources. Pavel is the author of a number of articles on TMT law topics.

SORAINEN

ul Internatsionalnaya 36-1
220030 Minsk
Belarus
Tel: +375 17 306 2102
Fax: +375 17 306 2079
kirill.laptev@sorainen.com
pavel.lashuk@sorainen.com
www.sorainen.com

an LBR business

ISBN 978-1-83862-477-4