

THE MEDIA AND
ENTERTAINMENT
LAW REVIEW

SECOND EDITION

Editor
Benjamin E Marks

THE LAWREVIEWS

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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

LATVIA

*Gunvaldis Leitens and Andris Tauriņš*¹

I OVERVIEW

The media in Latvia has won the recognition of their rights and privileges in opposition to the state and individuals. Investigative journalists working in print, online, radio and TV have managed to reveal groundbreaking violations and crimes. Public media, mainly owing to its digital presence, has been recognised as a legitimate, trustworthy and useful source of information. However, financial instability endangers its existence. Additionally, fake news, particularly, in terms of social networks, is an ever-growing problem. These issues diminish the overall image of the media in the eyes of society. Another issue is Russian-language TV channels, originating in Russia, which often violate the limitations of freedom of expression, distribute hate speech or ignore other principles of a free and responsible media.

One of the most important events of 2020, which drew major attention to the operation of media in Latvia was the Riga City Council emergency elections. The National Electronic Mass Media Council applied fines to several radio and TV channels claiming that they had organised covert agitations in the interests of some political parties.

In the field of entertainment, there have been cases of consumer rights infringements. However, the ongoing work of the Consumer Rights Protection Bureau, through both cooperation and law enforcement, has helped to improve the situation. In September 2019, one of Latvia's three mobile operators, Bite, announced the acquisition of the major cable TV operator Baltcom. The merger was cleared by the Competition Council at the beginning of 2020, thus following the trend of consolidating telecoms businesses with content creation and entertainment businesses.

One of the key milestones in Latvia in 2019 was the establishment of the Latvian Media Ethics Council, which is a self-regulatory, collegial mechanism for monitoring Latvian media ethics consisting of media companies and professional members of the Latvian Civic Alliance.²

During the 2020 covid-19 pandemic, state financial support was issued to the media to promote awareness of measures taken during the emergency situation. Support was primarily issued to commercial media and media for national minorities, which were the categories recognised as most severely affected by the pandemic.

1 Gunvaldis Leitens is a legal assistant and Andris Tauriņš is a partner at Sorainen. The authors express their gratitude to Madara Meļņika, Ērika Bužinska and Krista Niklase for their help in the research process.

2 Latvian Media Ethics Council, available at www.lmepadome.lv/home/.

II LEGAL AND REGULATORY FRAMEWORK

i Legal framework

Freedom of the press is established in Article 100 of the Constitution of Latvia.³

The main umbrella law for the media in Latvia is the Press Law (1990).⁴ Electronic media is regulated by the Law on Electronic Media (2010),⁵ which, inter alia, implements the EU Audiovisual Media Services Directive.⁶ The Electronic Communications Law (2004)⁷ regulates internet and intellectual property-based services, and provides the legal basis for the powers of the Public Utilities Commission (Regulator).⁸ Specific norms of the Law on Information Society Services (2004)⁹ apply to internet service providers.

Intellectual property issues are mainly regulated by the Copyright Law (2000).¹⁰

The sector is also regulated by general regulations, such as the Consumer Protection Law (1999), as well as Cabinet of Ministers regulations or decisions by the Regulator, relating to the above-mentioned laws.

ii Relevant regulators and their powers

The media and entertainment field is mainly regulated by the Regulator and the National Electronic Mass Media Council (NEMMC).¹¹

The Regulator is an institutionally and functionally independent autonomous body of public law, which regulates business activities in the electronic communications sector and protects users' rights from a technological perspective. The Regulator's actions are based on the Law On Regulators of Public Utilities (2001),¹² as well as on other legal acts covering specific regulated sectors. In the field of electronic communications, the Regulator monitors the services provided by electronic communications companies, including voice telephony, the transmission of data and electronic messages and internet access.

The NEMMC is an independent, autonomous institution that represents the public interest in the field of electronic mass media. The NEMMC supervises the compliance of the operations of electronic mass media with the Constitution, the Law on Electronic Mass Media (LEMM) and other relevant legislation. The NEMMC is responsible for producing the National Strategy for the Development of the Electronic Mass Media.

3 15 February 1922. *Latvijas Vēstnesis* (Official Gazette). Available at <https://likumi.lv/ta/en/en/id/57980-the-constitution-of-the-republic-of-latvia>.

4 20 December 1990. *Ziņotājs* (Official Gazette). Available at <https://likumi.lv/ta/en/id/64879-on-the-press-and-other-mass-media>.

5 11 August 2010. *Latvijas Vēstnesis*. Available at <https://likumi.lv/ta/en/en/id/214039-electronic-mass-media-law>.

6 Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32010L0013>.

7 28 October 2004. *Latvijas Vēstnesis*. Available at <https://likumi.lv/ta/en/en/id/96611-electronic-communications-law>.

8 www.sprk.gov.lv/en.

9 1 December 2004. *Latvijas Vēstnesis*. Available at <https://likumi.lv/ta/en/en/id/96619-law-on-information-society-services>.

10 11 May 2000. *Latvijas Vēstnesis*. Available at <https://likumi.lv/ta/id/5138-autortiesibu-likums>.

11 www.neplpadome.lv/en.

12 19 October 2000. *Latvijas Vēstnesis*. Available at <https://likumi.lv/ta/en/id/12483-on-regulators-of-public-utilities>.

III FREE SPEECH AND MEDIA FREEDOM

i Protected forms of expression

At the national level, the right to freedom of expression is enshrined in Article 100 of the Constitution. The Constitutional Court of Latvia has concluded that the term freedom of expression includes the term freedom of the press (in its wider definition) and the right of the public to receive information.¹³ This right covers, inter alia, the right of citizens to choose the language in which they would like to receive information or express their opinion,¹⁴ as well as the right to pre-election campaigning.¹⁵

However, this right is not absolute. Article 116 of the Constitution, interpreted in light of Article 10 of the European Convention on Human Rights, stipulates that these rights may be subject to restrictions in circumstances provided for by law to protect specific legitimate interests.¹⁶

Hate speech is absolutely excluded from protection under Article 100. The punishment for triggering national, ethnic or racial hatred can include imprisonment for a period of three to 10 years.¹⁷ Zero tolerance towards hate speech was highlighted by an NEMMC decision of 31 January 2019, which suspended the retransmission of Russian-language channel Rossiya RTR for three months. The decision was based on hostile statements against some Ukrainian nationals and the calls of Vladimir Zhirinovskiy, a Russian politician, for military action against the territory of Ukraine.¹⁸

In other cases, such as infringement of privacy, the colliding principles of freedom of expression and right to privacy must be balanced by a journalist before the publication of an infringing article, and by the court, if it needs to evaluate the case.

Commercial speech receives less protection. Here the regulations of the Law on Advertising (1999)¹⁹ and the Unfair Commercial Practices Prohibition Law (2007)²⁰ (regarding business-to-customer advertising) apply.

13 'On the compliance of Article 271 of the Criminal Law with Articles 91 and 100 of the Constitution'. Constitutional Court of Latvia, case No. 2003-05-01, 29 October 2003, Point 31.

14 'On the compliance of Article 19(5) of the Radio and Television Law with Articles 89, 91, 100 and 114 of the Constitution of the Republic of Latvia, Articles 10 and 14 in conjunction with Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Articles 19 and 27 of the International Covenant on Civil and Political Rights'. Constitutional Court of Latvia, case No. 2003-02-0106, 5 June 2003, Point 3.

15 'On the compliance of Article 33 of the Law on Pre-Election Campaigns Before Local Government Elections with Article 100 of the Constitution'. Constitutional Court of Latvia, case No. 2009-45-01, 22 February 2010.

16 'On the compliance of Article 271 of the Criminal Law with Articles 91 and 100 of the Constitution'. Constitutional Court of Latvia, case No. 2003-05-01, 29 October 2003, Point 22.

17 Criminal Law (Article 78). 1 April 1999. Latvijas Vēstnesis. Available at <https://likumi.lv/ta/en/id/88966-the-criminal-law>.

18 Petrova, A, 'NEPLP aizliedz retranslēt "Rossija RTR" Latvijas teritorijā', Latvian Public Media, 31 January 2019, www.lsm.lv/raksts/zinas/latvija/neplp-aizliedz-retranslet-rossija-rtr-latvijas-teritorija.a307935/.

19 20 December 1999. Latvijas Vēstnesis. Available at <https://likumi.lv/ta/en/id/163-advertising-law>.

20 22 November 2007. Latvijas Vēstnesis. Available at <https://likumi.lv/ta/en/id/167759-unfair-commercial-practices-prohibition-law>.

ii Newsgathering

The Press Law states that a journalist has the right to gather information by any method not prohibited by law and from any source of information not prohibited by law.

First, this statement means that the privilege of newsgathering is reserved specifically to journalists – persons who, in accordance with the institutional legal framework provided by the law, prepare materials for a mass medium and who have entered into an employment contract or perform such work upon the instruction of a mass medium, or are members of the Journalists' Union. Second, the law does not specify what journalistic methods, experiments and technical equipment are permitted or prohibited. However, any action must be proportionate to the privacy, data protection and public interest of an individual. Additionally, a journalist must take into consideration the prohibitions stated in the Criminal Law, such as the prohibition to illegally open or destroy mail.

It has been recognised that a journalist may use hidden camera or audio recordings if:

- a an issue is of public interest;²¹
- b this is the last resort and it is not possible to obtain the information otherwise; or
- c the journalist respects ethics; for example, by masking the interviewee's face or changing his or her voice by technical means.

Journalists may enter private property without permission only if they have reasonable suspicion of illegal activity. In private property, the procedures for taking photographs or filming should normally be determined by the owner or legal user of the equipment.

The use of drones is regulated by Cabinet regulations.²² It is essential that flights do not endanger human life, health, privacy or property, the environment or the interests of national security. In certain situations, permission to use drones is needed.

In terms of balancing the need to gather news with the duty to respect others' rights, a 2013 decision by the Supreme Court is considered important.²³ In that case, a photographer took photos in an Orthodox church during the baptism of a child, and publicised these photos in a newspaper with a circulation of 60,000. The Court decided that the journalist violated the law and the code of ethics, taking into account that the church specifically prohibits the media from intruding on ceremonies.

There has recently been a debate on journalists' rights to gather personal data under the General Data Protection Regulation (GDPR). Even though Article 32 of the Personal Data Processing Law (2018)²⁴ states journalistic work as one of the examples from the GDPR, the lack of understanding of the norms has led to some misunderstandings, such as prohibitions on journalists from taking photos at public events.²⁵

21 Court decision of City of Riga Latgale District Court in case No. C29776714, 27 January 2016, available at <https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/266270.pdf>.

22 Cabinet of Ministers Regulation No. 368 'Procedures on Flights of Unmanned Aircraft or Movement of Other Types of Airship', available at <https://likumi.lv/ta/id/308732-kartiba-kada-veicami-bezpilota-gaisa-kugu-un-cita-veida-lidaparatu-lidojumi>.

23 Supreme Court of Latvia, case No. SKC-11/2013, available at www.at.gov.lv/downloadlawfile/3035.

24 5 July 2018. Latvijas Vēstnesis. Available at <https://likumi.lv/ta/en/en/id/300099-personal-data-processing-law>.

25 Barisa-Sermule, L, 'Aizbildinoties ar jauno datu aizsardzības regulu, cenšas ietekmēt žurnālistus', Latvian Public Media, 21 May 2018, available at www.lsm.lv/raksts/zinas/latvija/aizbildinoties-ar-jauno-datu-aizsardzibas-regulu-censas-ietekmet-zurnalistus.a279188/; Data State Inspectorate, 27 September 2016, available at <https://lvportals.lv/e-konsultacijas/10239-personas-dati-jaapstrada->

iii Freedom of access to government information

The Press Law provides the media with the privilege to receive information from national and public organisations. It is obligatory for state officials to provide this information unless it falls under the scope of information not to be published as defined in the Law.

The Law states that the press cannot publish (and, therefore, neither receive) the following information:

- a* state secrets or any other secrets explicitly protected by law;
- b* materials from pretrial investigations without the written permission of the prosecutor or an investigator;
- c* the content of written correspondence or telephone calls without the consent of the person who received the message and the author of the message;
- d* information that injures the honour and dignity of natural persons and legal persons or slanders them;
- e* information concerning the state of health of citizens, unless they have provided their consent; and
- f* business secrets and patent secrets, unless their owners have provided consent.

In a 2019 case, the Supreme Court dealt with the question of the rights of a journalist to receive information about the state budget and its use. The journalist had asked a local municipality to provide data about the use of financial resources in one of its foundations. The municipality refused to provide the requested information, justifying its conduct with confidentiality requirements. The Court emphasised that journalists have a ‘great and fundamental impact’ since society receives information about matters relevant to each individual from and through the media. Inter alia, the media must give citizens a chance to follow the state’s fulfilment of its public functions and how it deals with public funds.²⁶ Therefore, this information had to be disclosed.

Amendments to the Criminal Procedure Law (Article 3751) were made to clarify journalists’ rights to obtain information from the materials of a criminal case.²⁷ These amendments provide that journalists may obtain material from criminal proceedings after a reasoned request, but only if this is necessary for public interest. Journalists may analyse material only after the criminal proceedings have concluded.

iv Protection of sources

The Constitution of Latvia does not explicitly recognise the right to source protection. However, this privilege is provided in Article 22 of the Press Law, which states that ‘A mass medium may choose to not indicate the source of information . . . For the purpose of protecting vital interests of other persons or the public, only a court, in accordance with the principle of proportionality, may request to produce the source of information.’ Additionally, Paragraph 1 of Article 154 of the Criminal Procedure Law indicates a broader understanding of the right to source protection, applying it not only to the mass media but also to journalists

godpratigi-likumigi-un-atbilstosi-merkim-2016; Grīnvalde-Iruka, A, ‘Ar datu aizsardzību joprojām pārspīlē’, *Aluksnesiem*, 14 March 2019, available at www.aluksnesiem.lv/vietejas-zinas/latvijas-zinas/ar-datu-aizsardzibu-joprojam-parspile-129268.

26 Supreme Court of Latvia, case No. SKA-917/2019, available at www.at.gov.lv/downloadlawfile/5791.

27 1 October 2005. *Latvijas Vēstnesis*. Available at <https://likumi.lv/ta/id/107820>.

and editors. The state authorities are prohibited from arbitrarily interfering with human rights when conducting criminal proceedings. The right to source protection may be restricted only according to the law.

Domestic courts case law also shows that journalists themselves may directly rely on Article 22 of the Press Law and claim the right to source protection.²⁸ However, Latvian law does not provide the right to source protection to persons who are not considered journalists (i.e., those who do not fall under the scope of the institutional definition (see Section III.ii)).

One of the most prominent European Court of Human Rights (ECHR) cases dealing with journalists' rights to the protection of sources, where the state police had overstepped its borders – the *Nagla* case²⁹ – comes from Latvia. However, this situation should not be seen as a norm, but rather an isolated misunderstanding, as there have been no similar matters in recent years.

In 2017, the head of the Corruption Prevention and Combatting Bureau wanted to access information acquired by a Latvian magazine; however, the Journalists' Association condemned this action.³⁰

v Private action against publication

Latvian law provides civil remedies against the publishers of unlawful content. While protection against defamation and privacy breaches is provided in the Civil Law (1992),³¹ the protection of trade secrets is regulated according to the Law On Trade Secret Protection (2019).³²

Protection against defamation is enjoyed not only by natural persons but also by legal entities.³³ The circumstance that information is false itself is not sufficient for commencing defamation proceedings,³⁴ and the attitude and actions taken since the first appearance of the information in question are also taken into account.³⁵ The remedies offered by the Civil Law are withdrawal of information and payment of non-pecuniary damages. If the content is disseminated by mass media, actions for withdrawal of information must be brought against the disseminator of the information, not the source providing it.³⁶

Defamation is also punishable as a crime under Article 157 of the Criminal Law. Usually, the author him or herself can be held liable for the defamatory content. The only exception is when there is adequate proof of a publisher's intent to harm reputation.³⁷

28 European Court of Human Rights decision. Application No. 8283/07. *Uldis Dreiblats v. Latvia*, available at www.at.gov.lv/downloadetclawfile/858.

29 European Court of Human Rights: *Nagla v. Latvia*, available at <http://hudoc.echr.coe.int/eng?i=001-122374>.

30 'LŽA: Izmeklēšanas iestādēm pilnā mērā jārespektē žurnālistu avotu aizsardzība', *Diena*, 05 July 2017, available at www.diena.lv/raksts/latvija/zinas/lza-izmeklesanas-iestadem-pilna-mera-jarespekte-zurnalistu-avotu-aizsardziba-14175711.

31 1 September 1992. *Valdības Vēstnesis*. Available at <https://likumi.lv/doc.php?id=225418>.

32 1 April 2019, available at <https://likumi.lv/ta/id/305532-komercnoslepuma-aizsardzibas-likums>.

33 Supreme Court of Latvia, case No. SKC-40/2019, available at www.at.gov.lv/downloadlawfile/5945.

34 Supreme Court of Latvia, case No. SKC-61/2018, available at www.at.gov.lv/downloadlawfile/5471.

35 Supreme Court of Latvia, case No. SKC-233/2017, available at www.at.gov.lv/downloadlawfile/5381.

36 Supreme Court of Latvia, case No. SKC-86/2018, available at www.at.gov.lv/downloadlawfile/5405.

37 Supreme Court of Latvia, case No. SKK-270/2007, available at www.at.gov.lv/downloadlawfile/4151.

Regarding trade secrets, the court emphasises the responsibilities of the operators themselves to take reasonable steps for protecting secrets and preventing their disclosure.³⁸ Although detailed argumentation is required, the court holds the right to decide whether information should not be considered and protected as a trade secret.³⁹

vi Government action against publication

In recent years, there have not been any publicly discussed cases regarding governmental attempts to suppress publications or retaliate against journalists. Article 4 of the Press Law prohibits any interference in the operations of the mass media.

However, the concerns of the public arose in May 2019 when the media supervisor, the NEMMC, initiated an administrative case against private channel TV3, arguing that it had breached the duty to distribute only true facts.⁴⁰ As this case was initiated as a response to a news broadcast that repeated the criticism expressed by the State Audit Office on the work of the NEMMC itself, it seemed that the NEMMC used the norms of the Law on Electronic Media to take revenge for the criticism expressed against it. After this decision and the motivation underlying it were criticised by several ministers,⁴¹ the NEMMC terminated the proceedings. This situation has led to debates regarding the actions of the NEMMC having a censoring nature and the Council itself being politically influenced.⁴²

Nevertheless, not all NEMMC decisions towards the media can be seen as arbitrary.

Some Russian-connected media have expressed an opinion that the prohibition to retransmit the channel Rossija RTR has been censorship;⁴³ however, this NEMMC decision was taken because of repeated expressions of hate speech.

From another point of view, the government can influence the media without any specific attacks, but rather by inaction (i.e., non-allocation of funds). In 2019, public media, particularly Latvian Radio, announced a financial crisis.⁴⁴ Without sufficient budget, investigative work and the creation of new content cannot continue, and there is a risk that the Latvian media sector will start to collapse.⁴⁵ Many participants believe this issue must be resolved at the highest political levels.

However, during the covid-19 crisis on the first half of 2020, National Electronic Mass Media Council (NEMMC) has reported the provision of a wide range of financial support

38 Supreme Court of Latvia, case No. SKA-168/2010, available at www.at.gov.lv/downloadlawfile/4729.

39 Supreme Court of Latvia, case No. SKA-29/2017, available at www.at.gov.lv/downloadlawfile/5224.

40 'NEPLP sākusī administratīvo lietu pret "TV3"', *LA.lv*, 3 May 2019, available at www.la.lv/neplp-sakusi-administrativo-lietu-pret-tv3.

41 For example, 'Rinkēvičs: Pēc NEPLP vērsšanās pret TV3 jāizvērtē izmaiņas mediju uzrauga darbā', *Apollo*, 4 May 2019, available at www.apollo.lv/6675496/rinkevics-pec-neplp-versanas-pret-tv3-jaizverte-izmainas-mediju-uzrauga-darba.

42 Kupčs, E, 'Žurnālistu asociācija par NEPLP un kritisko situāciju mediju vidē sūdzēsies EBU', Latvian Public Media, 16 May 2019, available at www.lsm.lv/raksts/zinas/latvija/zurnalistu-asociacija-par-neplp-un-kritisko-situaciju-mediju-vide-sudziesies-ebu.a319236/.

43 'VGTRK: Latvija no mums pieprasa iepriekšēju tiešā ētera cenzūru', *Sputnik News*, 1 February 2019, available at <https://sputniknews.lv/Latvia/20190201/10810370/Neplp-aizliedz-rossija-rtt-ep-velesanu-prieksvakara.html>.

44 Letter of the board of Latvian Radio on 15 July 2019, available at <https://static.lsm.lv/documents/p1.pdf>.

45 'Žurnālistu asociācijas vadītāja ceļ trauksmi – mediju ekonomiskie modeļi grūst', Latvian Public Media, 11 April 2019, available at www.lsm.lv/raksts/zinas/latvija/zurnalistu-asociacijas-vaditaja-cel-trauksmi-mediju-ekonomiskie-modeli-grust.a325278/.

for commercial television⁴⁶ and media for national minorities.⁴⁷ The financial support was aimed towards supporting news and other information broadcasts necessary for raising the awareness of pandemic-related state measures and educate the society on the avoidance of covid-19.

IV INTELLECTUAL PROPERTY

i Copyright and related rights

The Latvian copyright regime generally corresponds to the regime provided under the Berne Convention. In Latvia, copyright does not need to be registered; nor does it depend on the fulfilment of any other formality to be effective. Copyright arises automatically upon creation of work once it is fixed in a material form, regardless of whether it has been completed. Neighbouring rights also do not require any formalities to be valid. The rights protected under the Latvian copyright regime can be divided into economic and moral rights.

The most notable divergence between Latvian legislation and the Berne Convention is with regard to the term of copyright. As a general rule, copyright is valid until the death of the author and 70 years after his or her death. However, for authors whose works were prohibited in Latvia or the use of which was restricted from June 1940 to May 1990, the years of prohibition or restriction are excluded from the term of the copyright.

Recent changes to Latvia's regulation were made to comply with EU Directive 2017/1564;⁴⁸ specifically, amendments to the Copyright Law in 2013 and 2018 include permission to make and distribute copies in a customised format without the permission of, or payment to, an author in the interests of persons who are blind, visually impaired or otherwise print-disabled.

ii Personality rights

Article 96 of the Constitution states that everyone has the right to respect for their private life. In accordance with ECHR case law, this right also includes the right of an individual to determine whether or how he or she would like his or her identity to be commercialised.⁴⁹ However, Latvian law does not explicitly provide the rights of a person to object to commercialisation of his or her image.

46 "Krīzes pārvarēšanai NEPLP piešķir 100 000 eiro komerctelevizijām", 14 May 2020, available at <https://www.neplpadome.lv/lv/sakums/padome/padomes-sedes/sedes-sadalas/krizes-parvaresanai-neplp-pieskir-100-000-eiro-komerctelevizijam.html>.

47 "NEPLP: krīzes apstākļos reģionālie un mazākumtautību TV un radio saņems 237 000 eiro valsts atbalstu", 28 April 2020, available at <https://www.neplpadome.lv/lv/sakums/padome/padomes-sedes/sedes-sadalas/neplp-krizes-apstaklos-regionalie-un-mazakumtautibu-tv-un-radio-sanems-237-000-eiro-valsts-atbalstu.html>.

48 Directive (EU) 2017/1564 of the European Parliament and of the Council, of 13 September 2017, on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled, and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32017L1564&from=LV>.

49 ECHR, *Reklos and Davourlis v. Greece*, available at <http://at.gov.lv/files/files/reklos-un-davourlispret-griekiju-15042009.docx>.

The grounds for opposing such activities arise from the Personal Data Processing Law. Publishing a photo is data processing that must be done in accordance with this Law (i.e., with a legitimate reason for the processing). If such does not exist (e.g., the data subject has not given consent or the processing is not based on a contract between both sides), the person whose image has been commercialised has the rights to turn, at first, to the infringer and then to the Data State Inspectorate. In any case, the right to privacy and the right to freedom of expression will be balanced, inter alia, on the basis of ECHR case law.

In 2017, a second-hand clothing store network carried out an advertising campaign in women's magazines in Latvia featuring photos of several famous persons without their consent. As a result, the individuals, without their knowledge, became the faces of second-hand clothing advertising.⁵⁰ Not only does such an act infringe upon the right to use one's own image, but it can damage a person's reputation by causing moral harm. In this situation, the individuals had both the right to stop the use of their image and to claim compensation for the non-material damage suffered.

In 2019, the name of a popular theatre director was used in advertisements for cryptocurrency trading programs.⁵¹ The advertisements contained the confusing statement 'It is all over for Mr X'. Although the director expressed his outrage in social media, it is not known whether he used any legal remedy against the advertiser.

iii Unfair business practices

Most cases involving unfair business practice in Latvia have been infringements of personality rights or clickbait articles the content of which, in most cases, is fake news. In light of this, the Centre of Investigative Journalism, Re:Baltica, created a blacklist of fake news generators with three categories of false information found in Latvia:⁵²

- a fake news and disinformation;
- b clickbait news with intriguing 'You will never believe what happened afterwards . . . ' headlines; and
- c news with a political orientation.

Under all categories, Re:Baltica provides examples and explanations regarding the well-known Latvian internet sites. This list should help internet users to understand whether they can trust published information.

It is a tough challenge to fight against these websites because there is not always a legal ground to do so. To date, there has only been one case of the police stopping the publication

50 'Sabiedrības dāmas, pašām to nezinot, reklamē uzņēmuma "Humana" drēbes', *Delfi*, 26 May 2013, available at www.delfi.lv/business/biznesa_vidē/sabiedrības-damas-pasam-to-nezinot-reklame-uznemuma-humana-drebes.d?id=43347103.

51 "'Alvim viss ir beidzies" režisora Alvja Hermana vārdu nelietīgi izmanto melīgās kriptovalūtas reklāmās', *Jauns*, 11 May 2019, available at <https://jauns.lv/raksts/zinas/330763-alvim-viss-ir-beidzies-rezisorsa-alvja-hermana-vardu-nelietigi-izmanto-meligas-kriptovalutas-reklamas>.

52 Žilde-Krēvica, K, Vilcāns, R M, 'Viltus ziņas. Tu nekad neticēsi, kas notika pēc tam . . .', Re:Baltica, 20 August 2018, available at <https://rebaltica.lv/2018/08/tu-nekad-neticesi-kas-notika-pec-tam/>; black list: https://docs.google.com/document/d/1HMTYCxlqFtaAW3v_QfDWvJbdKdOs1-8sz3eQ2xiVhWM/edit.

of fake news: in 2018, criminal proceedings were initiated against the owner of several websites who intentionally published fake news about subjects who are important to the citizens of Latvia. Where fake news is seen as infringing the personal rights of an individual, it should be possible to initiate a private action against the infringing publication.

An interesting case concerned a false attribution of fake news. The news broadcaster TV3 had created a news story in which it explained to viewers the necessity of re-checking the news because stories can be false and defamatory. In addition to the use of images from multiple Facebook sites, which should have been recognised as fake news distribution channels, TV3 inserted a screenshot of the Rīta Kafija Facebook page, which had not posted any falsifications. However, by connecting this news broadcast with other fake news sites, the channel made viewers think that Rīta Kafija is a source of fake news.

The defendant did not provide any evidence that the news site ritakafija.lv had ever circulated any false information, fiction, rumours or defamation. Therefore, the Court ordered TV3 to retract this news without delay.⁵³

Outside the digital world, there has been a controversy that could also be considered as an unfair practice. In 2018, J K Rowling's agent pointed out that there should be no Latvian-translated Harry Potter books in Latvian bookstores because the licence term of the Latvian publisher, Jumava, had ended. However, the bookstores were full of the books, which were still being bought by fans. The competing publishing house was economically hindered in publishing these translations, despite being offered this by the agent.⁵⁴

While debating how to solve this situation, it was concluded that the Copyright and Communications Consulting Agency/Authors' Union of Latvia (AKKA/LAA)⁵⁵ deals with the reuse of works and, therefore, did not have the right to intervene in this situation. Publishing houses organise translation and book publishing rights themselves; this was, therefore, a matter between the two sides. Whether there will be legal proceedings depends on the activity of J K Rowling's agent, but there has been no news regarding any legal dispute as yet.⁵⁶ However, this dispute has recently ceased to appear on media, thus encouraging a belief that a solution has been found without any court interference.

In light of these events, the Association of Latvian Book Publishers had to analyse whether Jumava should be allowed to participate in national stands at big industry events focused on the foreign market. It came to the conclusion that there was no legal basis for rejecting Jumava's participation in the London Book Fair, but rather, that the objection was of

53 Judgment of City of Riga Vidzeme District Court, Case Archive No. C-1849-18/5, available at <https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/355193.pdf>.

54 'Zvaigzne ABC: Harija Potera grāmatu tirgošana Latvijā ir nelicencēta', *Diena*, 2 February 2018, available at www.diena.lv/raksts/latvija/zinas/_zvaigzne-abc_-harija-potera-gramatu-tirgosana-latvija-ir-nelicenceta-14190267.

55 www.akka-laa.lv/en/about-akka-laa/about-us/who-are-we/.

56 'Zvaigzne ABC: Harija Potera grāmatu tirgošana Latvijā ir nelicencēta', *Diena*, 2 February 2018, available at www.diena.lv/raksts/latvija/zinas/_zvaigzne-abc_-harija-potera-gramatu-tirgosana-latvija-ir-nelicenceta-14190267.

an ethical nature.⁵⁷ On 26 November 2019, new publications of Harry Potter books started being sold by the approached publishing house, Zvaigzne ABC.⁵⁸

V COMPETITION AND CONSUMER RIGHTS

i Competition

The general Latvian merger control framework applies to the technology, media and telecommunications sector. The Competition Council must be notified about every merger, and provisions on market participant mergers can be found in the Competition Law; mergers are considered to be transactions that result in the acquisition of influence in another undertaking, or even only of the assets of a company or the right to use them. Specific rules apply to electronic mass media, which state that they may not abuse their dominant position. Within the meaning of the LEMM, a dominant position is created when the market share of an electronic mass medium in a particular Latvian market exceeds 35 per cent.

One of the leading cases of 2019 was the cooperation between two telecommunications providers, Bite and Tele2, which established a common company for the development of 5G networks. This cooperation is being scrutinised by the competition authorities.

In September 2019, telecommunications company Bite announced that it had signed a purchase contract to acquire cable TV company Baltcom.⁵⁹ As a result of this, the company would be able to provide not only mobile communication services and information and communications technology solutions, but also home internet and a variety of TV channels. In February 2020, the Competition Council cleared the merger. The merger affected a wide range of markets:

- a* the market for phone services in a fixed communications network;
- b* the market for internet connection and data transmission services;
- c* the market for pay television programme distribution in retail; and
- d* the market for television programme distribution in wholesale.⁶⁰

No new mergers in the media and telecommunications sector have been announced in 2020; however, a tendency towards concentration of service provision can still be observed.

ii Consumer protection

The Consumer Rights Protection Centre (CRPC) is active in protecting the rights of consumers on all digital media. Retail websites are under particular scrutiny. Most concerns relate to the lack of information or problems with information being understandable (i.e., in the national language).

57 'Potera skandāla dēļ apdraudēta "Jumavas" dalība Londonas grāmatu izstādē', *Jauns*, 13 February 2018, available at <https://jauns.lv/raksts/zinas/269795-potera-skandala-del-apdraudeta-jumavas-daliba-londonas-gramatu-izstade>.

58 'Latvijā klajā nāk jauns Harija Potera grāmatu sēriju izdevums', *LSM.lv*, 3 October 2019, available at www.lsm.lv/raksts/dzive--stils/vecaki-un-berni/latvija-klaja-nak-jauns-harija-potera-gramatu-seriju-izdevums.a333957/.

59 www.bite.lv/lv/bite-latvija-nosledz-ligumu-par-uznemuma-sia-baltcom-kapitaldalu-iegadi.

60 Competition Council decision No. 4, 20 February 2020, available at: https://www.kp.gov.lv/files/documents/KP_lemums_Bite_publiskojava.pdf.

In the field of entertainment, in 2019, the CRPC signed a memorandum with the Ministry of Economy, the Latvian Event Producers' Association and industry merchants with the goal of eradicating unfair commercial practices within the organisation of events and ticket purchasing. The CRPC provides information to the industry regarding cases of unfair commercial practice, and industry members are then able to stop any cooperation with an offending merchant. This can be seen as a good example of a state institution that chooses cooperation rather than penalties only.

An interesting decision with long-reaching consequences relates to the amendments to the Consumer Protection Law, which prohibit public broadcasting institutions from gaining any income from advertising connected to consumer loans. The amendments were intended to protect consumers from hot-headed borrowing that might put them in financial difficulty. However, in addition to other factors, these amendments have contributed to the very poor financial situation of the public media.⁶¹

iii Net neutrality

To meet the requirements of the Regulation on Open Internet Access,⁶² the General Authorisation Regulations in the Electronic Communications Sector entered into force on 1 January 2019. The Regulations control:

- a* the sending of registration or termination notifications regarding activities of electronic communications merchants;
- b* the prevention of violations of the General Authorisation Regulations; and
- c* the discontinuation of the provision of electronic communications networks or the provision of electronic communications services in cases of violations.

The rules regulate connection speeds in more detail than that found in the Regulation on Open Internet Access.

The Regulator ensures compliance with the principles of the open internet and, therefore, monitors the compliance of the internet service provided by merchants with the requirements of the Regulation. The Regulator's quality report for electronic communications services for 2018 concludes that to ensure open internet requirements monitoring, the Regulator:

- a* sets minimum quality requirements for internet service;
- b* provides technical supervision of quality of services;
- c* analyses user complaints; and
- d* conducts merchant surveys on the compliance of operations with the requirements of the Regulation on Open Internet Access.

VI DIGITAL CONTENT

According to the Law on Information Society Services,⁶³ intermediary service providers do not have a duty to supervise the information that they transmit or store, or to actively search for facts and conditions that indicate possible violations of the law. Legal liability for digital

61 'Aicina atbalstīt priekšlikumus LR un sabiedrisko mediju situācijas stabilizēšanai', NEMMC, 14 August 2019, available at <https://lvportals.lv/dienaskartiba/307044-aicina-atbalstit-priekslikumus-lr-un-sabiedrisko-mediju-situacijas-stabilizesanai-2019>.

62 Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015.

63 1 December 2004, Latvijas Vēstnesis. Available at www.likumi.lv/doc.php?id=96619.

content rests with the author or the person who posts the content.⁶⁴ All major news portals in their terms of use put the liability for created content on the user. However, if news portals show gross negligence and do not take down offending commentary even after they have been informed of its illegal content, the conclusions established by the ECHR in the *Delfi* case would apply.

Additionally, internet websites may be registered as mass media to acquire the journalistic privileges provided in the Press Law. However, even if a website is not registered as mass media, the restrictions provided in the Press Law might still apply if, in its activities, the website is identical to a mass media provider, as established by the Supreme Court in 2012.⁶⁵ Therefore, websites could theoretically be prosecuted for the distribution of fake news. In practice, this judge-made-law has only been applied regarding defamation.

Deliberate publishing of disinformation is recognised as hooliganism under the Criminal Law. One of most recent cases still pending relates to criminal proceedings against the owner of a website who knowingly published disinformation and disseminated it on social media.⁶⁶ No proceedings were initiated against any of the social media platforms that were used for spreading the information, as there were no grounds for actions; however, the question regarding the fight against fake news websites is brought to light every couple of months.

Since 2018, the owners of electronic media have a new obligation to disclose the ultimate beneficial owners of legal persons. This obligation is carried out within the process of obtaining a broadcasting and retransmission authorisation. In this way, the state tries to control the Latvian information space and to protect it from propaganda.

VII CONTRACTUAL DISPUTES

Many contractual disputes are solved between the parties themselves. If an issue cannot be solved in such a way, it gets brought before the court. The procedure for adjudication of civil cases, including licensing disputes, royalty disputes, supplier–distributor disputes, contractual disputes with artists and performers and other disputes is specified in the Civil Procedure Law (1998)⁶⁷ and the Law On Judicial Power (1992).⁶⁸ Chapter 3 of the Civil Procedure Law determines which court is to be served with the documents for the settlement of a civil dispute, while Chapter 4 sets out the exact amount of expenses, the principles for determining expenses, the reimbursement of legal costs and the exemptions from payment.

Most of the publicly debated contractual disputes in Latvia so far have been connected to intellectual property rights.

An interesting decision was taken in 2017 by the Supreme Court. The Court stated that the copyright of films produced by Riga Film Studio during the Soviet era is owned neither by the state nor the film studio. Copyright belonging to legal persons had ceased

64 Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services, available at <https://eur-lex.europa.eu/legal-content/LV/TXT/PDF/?uri=CELEX:32019L0770&from=EN>.

65 Supreme Court of Latvia, case No. SKC-637/2012, available at www.at.gov.lv/downloadlawfile/3096.

66 'Lietu par viltus ziņu portālu uzturēšanu nodod tiesai', *Delfi*, 18 July 2019, available at www.delfi.lv/news/national/criminal/lietu-par-viltus-zinu-portalu-uzturesanu-nodod-tiesai.d?id=51289067.

67 14 October 1998, Latvijas Vēstnesis. Available at www.likumi.lv/ta/en/en/id/50500-civil-procedure-law.

68 15 December 1992, Latvijas Vēstnesis. Available at www.likumi.lv/ta/en/en/id/62847-on-judicial-power.

to exist in 1993 with the Latvian legislator's failure to adopt a law that would ensure the continued existence of these rights. The rights of authors – individual persons whose creative work resulted in the production of films mentioned above – continue to exist, and protection of these rights can be implemented according to general procedures.⁶⁹ This decision solved decades-long debates on these rights.

The activities of the AKKA/LAA, which has filed several complaints against the media regarding unauthorised use of copyrighted music and other materials, are also noteworthy. In 2015, the AKKA/LAA won a case against Latvian Television, recovering €644,732 for copyright infringement and damage.⁷⁰ In 2019, however, the Supreme Court annulled the judgment of the Riga Regional Court, which upheld the claim of the AKKA/LAA against the foreign merchant Viasat AS for copyright damages, copyright infringement and a ban on the use of copyright works.⁷¹ This case is currently being reviewed again in the court of appeals.

VIII YEAR IN REVIEW

Developments in the fields of media and entertainment from 2018 to 2020 emphasise the connection between both sectors and digitalisation, as the following examples show.

The NEMMC has started a major screening of internet sites to reveal illegal channels that disseminate illegal content in Latvia. On the basis of the newly amended LEMM, the NEMMC has the right to limit access to websites that retransmit audiovisual programmes without receiving a retransmission permit. First administrative procedures on the basis of these norms were initiated in August 2019.

On 12 April 2018, the NEMMC unanimously adopted the National Media Strategy for the Electronic Media Sector for 2018 to 2022.⁷² The new Strategy foresees the creation of a single public media platform (uniting Latvian Radio, Latvian Television and internet webpage lsm.lv, with all three companies creating their content in cooperation), which will include a strong digital presence.

During 2020 the NEMMC has issued several administrative fines to TV and radio broadcasters in relation to covert agitation for political parties during the Riga City Council emergency election period. The fines varied between €10,000 and €15,000. The NEMMC has announced that it plans on implementing severe punishments now and also going forward.⁷³

69 Supreme Court of Latvia, case No. SKC-69/17.

70 Žukova, K, 'LTV saņems pusmiljonu eiro, lai segtu zaudējumus strīdā par autortiesību pārkāpumu', *Delfi*, 21 March 2017, available at www.delfi.lv/news/national/politics/ltv-sanems-pusmiljonu-eiro-lai-segtu-zaudejumus-strida-par-autortiesibu-parkapumu.d?id=48647927.

71 Tomšone, D, 'AKKA/LAA ar "TV Play Baltics" tiesājas par autoru darbu satelīta apraidi', *Delfi*, 19 August 2019, available at www.delfi.lv/news/national/politics/akkalaa-ar-tv-play-baltics-tiesajas-par-autoru-darbu-satelita-apraidi.d?id=51380969&fbclid=IwAR3vgo5-RYIPGS6tHnS4Mxw3_1OMwWZRu76XgtZaKOPDjIAffBUi5nHqJ5k.

72 The National Media Strategy for the Electronic Media Sector for 2018 to 2022, available at https://neplpadome.lv/lv/assets/documents/Normativie%20Akti/Strategija/EPL%20strate%CC%84g%CC%A7ija_120418.pdf.

73 "Par slēptu priekšvēlēšanu aģitāciju NEPLP ar 10 500 eiro soda "RīgaTV 24"" , available at <https://www.neplpadome.lv/lv/sakums/padome/padomes-sedes/sedes-sadalas/par-sleptu-priekšvelesanu-agitaciju-neplp-ar-10-500-eiro-soda-%E2%80%9Crigatv-24%E2%80%9D.html>; "Par slēptu priekšvēlēšanu

In July 2019, All Media Baltics, the largest media group in the Baltic countries, and Atende Software entered into a multi-jurisdictional cooperation agreement for the launch of the next generation of over-the-top platform services across Lithuania, Latvia and Estonia. The new service will feature the widest range of local and international sports and entertainment content in the Baltics, including live TV channels, news, premium sports, original films and series and exclusive access to All Media Baltics' flagship TV shows for subscribers to view on smartphones, tablets, Android set-top boxes and smart TVs.⁷⁴

However, this is only one side of the coin. In 2019, the Latvian public media announced a crisis, and if there is no action regarding sufficient financing, the situation in the field of media will deteriorate. Disagreements between Latvian Radio's employees and its board are an example of the problematic situation within the media.⁷⁵ This proves that attention must be paid towards financial and organisational issues.

Financing-related issues have become even more relevant during 2020 due to the covid-19 pandemic. State financial support has been issued to several media in order to decrease the financial consequences of the virus and also involve media in the organisation of covid-19 preventive measures and education of the general public.

IX OUTLOOK

As 2019 and 2020 have been years of crises in public media in terms of finance, cooperation with the NEMMC and inner conflicts, it is clear that policymakers need to actively work on this issue. Without strong public media and with the fabrications distributed both by fake news websites and propaganda channels, the independence and integrity of the state may also be endangered. Therefore, there is a need to establish the public media's financial independence, especially after it has left the advertising market. The public media budget must not be connected to the political party in power. The competencies of the NEMMC and other institutions must be better divided. Some of these ideas are already included in draft laws, and it is hoped that the situation will improve. However, only the coming year will show how the plans will look in practice.

From another perspective, even more developments in 5G technologies are expected in coming years. Since the end of 2019, local telecommunications service providers have actively built 5G network towers. The implementation of a 5G network has also been publicly supported by the government, evidencing that Latvia is interested in moving towards being one of the first countries to use the full potential of opportunities offered by 5G technologies. However, most 5G operating devices are still in development.⁷⁶ Additionally, the field of entertainment will become even more diverse. Currently, Latvia can be proud of a variety of theatres, concert venues

agītāciju NEPLP ar 11 400 eiro soda "Baltkom radio", available at <https://www.neplpadome.lv/lv/sakums/padome/padomes-sedes/sedes-sadalas/par-sleptu-priekšvelesanu-agitaciju-neplp-ar-11-400-eiro-soda-%E2%80%9Cbaltkom-radio%E2%80%9D.html>.

74 'All Media Baltics chooses red Galaxy for their next generation OTT platform', available at <https://allmediabaltics.eu/newsstream/all-media-baltics-chooses-redgalaxy-for-their-next-generation-ott-platform/>.

75 'Latvijas Radio Ziņu dienests izsaka neuzticību radio valdei', Latvian Public Media, 10 July 2019, available at www.lsm.lv/raksts/zinas/latvija/latvijas-radio-zinu-dienests-izsaka-neuzticibu-radio-valdei.a325190/#3.

76 "'5G Techritory' forumā vērtēs pirmā gada pieredzi 5G paaudzes tehnoloģiju ieviešanā", Kursors.lv, 14 August 2020, available at <https://kursors.lv/2020/08/14/5g-techritory-foruma-vertes-pirma-gada-pieredzi-5g-paaudzes-tehnologiju-ieviesana/>.

and other entertainment facilities that are affordable to citizens. This diversity has explicitly grown within recent years. However, the challenge is to ensure the balance of development and opportunity throughout Latvia, not only in the capital city of Riga.

This has become an even bigger challenge due to the severe effects of the covid-19 pandemic: theatres and concert venues have experienced high amounts of financial losses during 2020, raising some public concern and questions regarding their quality of operation in future.

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