

Research, analysis and opinion on international media law

Poland's legal reform prompts EU fear over media censorship



While the EU tries to eradicate borders with a single digital market, jurisdictions around the world assert their autonomy with legal reform

Poland's media law reform, which gives the government sweeping powers to appoint management at state-run radio and television stations, has become one of Europe's most controversial media law amendments.

Despite EU concerns, the law was enacted on 8 January by Poland's recently elected government and gives the treasury minister the power to hire and dismiss broadcasting chiefs – a role that was formerly handled by the media supervisory committee.

The EU Commission warned that Poland could be violating European common values in what became a war of words between

Germany and Poland. Straining relations between Poland and its western neighbour, German Commissioner Günther Oettinger told Germany's Frankfurter Allgemeine Zeitung newspaper, "There is a lot to be said for activating the mechanism on the rule of law and putting Warsaw under supervision."

A coalition of press freedom groups filed a complaint against Poland at the Council of Europe over the law. The complaint was signed by the Association of European Journalists, the International Federation of Journalists, the European Federation of Journalists and the Committee to Protect →

Russia limits foreign ownership of media

Russia's media law restricting foreign ownership to 20 per cent, which became effective on 1 January this year, will lead to complex restructuring say lawyers.

The amended law prohibits direct or indirect ownership, control, or operation of any Russian mass media organisation. To bring their holdings into compliance, media owners will be required to amend their ownership structure by 1 February 2017.

Media lawyer Natalia Gulyaeva, at Hogan Lovells' Moscow practice, explained: "Foreign media companies are currently focused on the restructuring of business because of a need to comply with shareholding structure." She added: "It's very challenging. Of course some companies may simply decide to find a Russian partner that runs the business entirely and we have seen such cases as well."

Foreign ownership of radio and television outlets was previously capped at 50 per cent and only applicable to print publications with a circulation of more than one million. While Vadim Dengin and other Russian MPs say stricter ownership control would protect Russia from western influence, editors and publishers of independent media outlets view the controversial amendment as a threat to diversity of opinion in the Russian media.

Divestments and exits are also redefining the local market as television broadcasters and print publishers sell their assets. In September last year CTC Media, part owned by Sweden's Modern Times Group, announced the sale of 75 per cent of its assets to UTH Russia for USD 255 million. In the same month German Axel Springer and Swiss Edipress also relinquished Russian assets. ■

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Singapore's media regulators merge to strengthen industry

Singapore's media regulators will merge in April this year to strengthen industry growth and streamline the legislative and licensing framework that governs media.

The merger of the Media Development Authority and Infocomm Development Authority, which was announced on 18 January, will create converged regulator Infocommunications Media Development Authority. The single entity will drive digital transformation and focus on the convergence of media and telecommunications markets.

In a written statement, Minister for Communications and Information Yaacob Ibrahim explained: 'The convergence of the infocomm and media sectors has accelerated in recent years. It has brought up considerations to merge the infocomm

and media's development and regulatory functions from time to time. Thus far, we have managed the coming together of the sectors through closer collaborations between the IDA and MDA.'

The restructure follows the introduction of the Infocomm Media Masterplan 2025, which was announced on 11 August 2015. Recognising the acceleration of convergence, the initiative will enhance regulatory capabilities and encourage greater development by emphasising talent, research, innovation and enterprise.

Andrew Scott, lawyer at Olswang, said: "Singapore could be, and the government wants it to be, a test bed for convergence. There are constant convergence conversations driven by government support." ■

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← Journalists. The complaint highlighted concerns over the 'shift to direct government control over the strategic and editorial stance of the public broadcasters, which is wholly unacceptable in a genuine democracy.'

Media law is constantly evolving around the world, often with controversial outcomes. In this context, Poland's recent legislative implementation affecting public broadcasters prompted demonstrations across Poland by

thousands of protestors who say the law will give the ruling Law and Justice party power to restrict media freedom and independence.

Legislative changes around the world mark continued global efforts to localised legal and business developments. While Russia limits foreign ownership of media, India, conversely, raises the rate for foreign direct investment in broadcast media sectors. While Australia grapples with ownership

Bell Media acquires Cogeco's OOH advertising division

Canadian multimedia company Bell Media has acquired Métromédia, an out-of-home (OOH) advertising business, from Montreal-based Cogeco for an undisclosed sum.

Métromédia specialises in traditional and digital public transit advertising and was purchased by Cogeco in 2011 for USD 41 million. Although the sale price has not been revealed by Cogeco its president and CEO Louis Audet described the transaction as profitable for the company.

The acquisition strengthens Bell Media's OOH asset base, which includes Astral. The transaction was announced on 05 January by Cogeco, which operates in the communications and media sectors. According to Cogeco's president and CEO Louis Audet the sale was motivated by company's need to focus on its radio segment.

In a written statement, Mr Audet explained: "Our experience with Cogeco Métromédia has been both positive and profitable." He added: "We have been in the media industry since Cogeco's inception in 1957. We are very satisfied with the results of our radio segment and intend to pursue our efforts to strengthen our position in this industry."

The purchase adds to Bell Media's extensive portfolio which includes assets in television, radio and digital media. The company owns 30 local television stations led by CTV, 34 specialty channels, including TSN and RDS and four pay television services. Bell Media is also the largest radio broadcaster in the country. ■

concentration Ireland warns of libel tourism after a landmark defamation case made the jurisdiction attractive to plaintiffs. China censors foreign entertainment and the UAE criminalises breaches of privacy. While the global and local challenges faced by the media industry are numerous, there are also many developments, which together makes media one of the most controversial and lucrative industries worldwide. ■

Denmark's restrictive guidelines on commercial blogging

Martin Dahl Pedersen



Denmark issues strict guidelines on the use of camouflaged advertising on social media

Blogging is no longer just a hobby. To many it's an actual job. It puts a roof over their head and food on the table. A lot of people now actually make good money out of having a blog. Not only by way of an actual pay cheque, but also because they receive gifts from companies, who wish to have their products marketed by a particular blogger. Often the bloggers become well-known, followed by thousands on Instagram, Facebook and/or Twitter. The followers often want to buy the same things as the blogger, or they visit a blog to find out which stroller to buy for their child or where to go on vacation next. Thereby the fact of being mentioned on a blog becomes a priceless opportunity for a company to have its products exposed and marketed in a subtle way, by way of an endorsement by a well-known blogger.

In Denmark there is no law specifically governing blogs, bloggers and blogging. However, the Danish Marketing Practices Act (implementing the EP/Rfo 2006/2004 directive on Unfair Commercial Practices) also applies to blogging and according to Section 4 of the Act "an advertisement shall be designed in such a way that it will be clearly understood to be an advertisement irrespective of its form and irrespective of the medium in which it is presented." The extent of this rule was recently tested by the Danish Consumer Ombudsman.

The case involved the dairy company, Arla. Arla was introducing a new product, Bubble Latte, and had sent an email to a blogger asking if she would want to taste the product. In the email Arla wrote that if the blogger said yes, she was more than welcome

to write about the product on her blog and post pictures of it on her Instagram account, even though Arla emphasised this was not a requirement. The blogger confirmed and Arla replied that they would then send the products. The Consumer Ombudsman got involved in the case and stated that the three emails as a whole in fact constituted an agreement between Arla and the blogger agreeing that she would write about the product. Therefore, the information on the blog was camouflaged advertisement contrary to Section 4 as it was not clear to the consumers that the information about the product was in reality an advertisement for Bubble Latte (Arla).

In the wake of the Arla case, the Consumer Ombudsman recently issued some guidelines to bloggers about camouflaged advertisement on social media. Therein, the Consumer Ombudsman describes in which situations an agreement has been concluded and how the Consumer Ombudsman believes that it must appear from the blog that an entry is in fact an advertisement. This includes that it has to appear from each page, on the top of the entry, that it is sponsored/an advertisement. Furthermore, the Consumer Ombudsman lists four different wordings that in her opinion will make that clear and emphasises that the wording must be written in the same font and size as the headline.

There is no doubt that these guidelines go beyond what can be derived from the actual language of Section 4, as this provision does not set up any requirements on, for example, wording, font and size. Therefore, the guidelines might be best practice according to the Consumer Ombudsman, but we have yet to see how the Danish courts will interpret Section 4 and whether the courts might accept another way to make sure that it appears clear that an entry on a blog is an advertisement. ■

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Controversial changes to public radio and television

Poland has sparked fear of political influence over public radio and television after legislators introduced a controversial media law amendment

On 8 January 2016, an amendment to the fundamental legal act regulating the activity of the media in Poland – the Broadcasting Act of 29 December 1992 (Journal of Laws of 2015, item 1531, as amended) – came into force, introducing a number of revolutionary changes in the organisation of the activities of public radio and television companies. Below we discuss the landscape after this upheaval and try to predict trends for the future. The amendments introduced

recently and those have evoked huge controversies and fears concerning the future immunity of public media from political influence.

In the Polish legal system, the right to broadcast radio and television programmes is granted to public radio and television entities and to other bodies that have obtained a licence for such activity (or an entry in the register of

programmes broadcast exclusively in ICT systems). Freedom of speech on radio and television, the independence of media service providers and the interests of the audience are safeguarded by the National Broadcasting Council. The role of the Council is also to ensure the open and pluralistic nature of radio and television. Public media in Poland operate exclusively in the form of joint-stock companies wholly owned by the Treasury and are financed mainly from subscription fees, trading in broadcasting rights, as well as advertising and sponsored broadcasts. The primary task of public broadcasters is to pursue their public mission by offering diverse programmes and other services comprising news, journalism, culture, entertainment, education and sport, all of which should be characterised by pluralism, impartiality, thoughtfulness and independence. The recent amendment, however, challenges the principle of independence of the public media of governmental policy.

The amendment has changed how public radio and television companies are organised and managed. Prior to the amendment, the managing board members of public media companies (including the president) were selected in public contest and were appointed by the National Broadcasting Council through a resolution at the request of the supervisory board. They were dismissed in the same way at the request of the supervisory board or the general meeting.

Furthermore, the Act laid down the quotas for members of the supervisory boards of Telewizja Polska – Spółka Akcyjna and Polskie Radio – Spółka Akcyjna; they had to be composed of seven members: five selected in a competition conducted by the National Broadcasting Council, one appointed by the minister for culture and national heritage protection and one appointed by the minister for the Treasury. The Act also provided for term limits for both the management board (four years) and the supervisory board (three years).

The recent changes significantly restricted the authority of the National Broadcasting Council in this area. Members of the management board (including the president) and the supervisory board of a public broadcaster are now appointed and dismissed exclusively by the minister of Treasury. The number of members of the supervisory board has been reduced to three, and the term limits for these bodies have been stricken.

The amendment has introduced general requirements to be met by persons appointed as management board members, replacing the previous detailed list. Attention should also be drawn to the fact that the new law fails to specify the grounds for dismissal of management board and supervisory board members. Moreover, with the entry into force of the Act, the terms of the current members of the management and supervisory boards of Telewizja Polska – Spółka Akcyjna and Polskie Radio – Spółka Akcyjna →

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Poland's public media and political influence



← were shortened and their mandates expired. In addition to the amendment mentioned above, which is already in force, certain more far-reaching amendments to the Broadcasting Act are planned to be introduced (although the bill as such has not yet been officially presented to the public). In accordance with this so-called “large amendment”, the national media will include: the Polish Press Agency (PAP) and national radio and television broadcasting institutions (Telewizja Polska, Polskie Radio and 17 regional stations). National media will become state legal persons (currently, they are commercial companies) and will be represented by their directors (who will also be the editors-in-chief).

The Act also specifies that the mission of national broadcasting institutions will be *inter alia* to cultivate national traditions, patriotic and humanistic values, and to promote the achievements of Polish and international science and arts, to facilitate access to objective information and to create favourable conditions for a pluralistic debate on public issues.



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The activity of the national media will be supervised by the National Media Council. The Council will consist of five members appointed by the Sejm (two), the President (two), and the Senate (one) for six-year terms and its powers will include e.g. examining complaints against the activity of the national media and managing the National Media Fund. The speaker of the Sejm will confer the function of chairman upon one of the members of the Council. Dismissal of the chairman will be possible only as a result of his resignation. The chairman of the Council will, among other things, appoint and dismiss the directors (and their deputies) of the national media entities.

The amending Act will also appoint social programme boards, which will work in the public media and will aim to inspire actions relating to the fulfilment of the public mission. Members (between nine and 15) of the programme boards will be appointed by the National Media Council from among candidates proposed by public benefit organisations, the Catholic Church and other churches and religious organisations, trade unions, employers' organisations, farmers' organisations, universities and the Polish Academy of Sciences (the term will be three years). The national media will be themselves responsible for the management of their finances, which will come for example from the proceeds of the National Media Fund or from advertising.

As highlighted in the substantiation of the bill of the above mentioned Act, the National Broadcasting Council will lose its influence over the appointment of public media governing bodies or the allocation of the subscription money. According to the authors of the bill, curtailing the authority of the National Broadcasting Council does not violate the constitutional tasks of this body, which is supposed to safeguard the freedom of expression, the right to information, and the public interest in radio and television broadcasting. ■



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