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Protection of Minors from Harmful Information in the Law of Post-Soviet States

by Anna Belitskaya

EDITORIAL

What is pornography? Are not there limits to showing violence on television screens? What mass media content endangers morality?

If it is already difficult to answer these questions for oneself, how much more of a challenge is it to answer them for and on behalf of our children?

Obviously, finding the right yardstick for what to prohibit is crucial. Yet when it comes to measuring morals and values the phrase "different folks, different strokes" holds very true. That global mass media meet with a huge variety of cultural, religious, historical and political backgrounds makes what already varies within a homogenous environment even more diverse.

Once the yardstick is found, the procedures for monitoring and enforcing the standards must be determined. It is necessary to decide who is responsible for the control envisaged, what media outlets are to be monitored and what control system is suitable for the different technologies in use.

And this is still not the end of the story. The need to limit media content in order to protect minors arises only because information flow exists in the first place. And that it exists reflects the welcomed implementation, in principle, of the Human Right to receive and impart information. This very right, however, has to be balanced with conflicting interests such as the physical and moral well being of children. At the same time, the right to information has to be protected against unjustified curtailment, or – to put it more bluntly – against states exercising censorship under the pretext of the protection of youth.

In short, writing on the protection of minors from harmful information in the law can cover many angles. The angle chosen in this IRIS *plus* is to inform about the difficulties of establishing standards, procedures and justified limits to the right to information in countries with a more recent tradition of free mass media and the challenges they pose for protecting the youth.

Strasbourg, June 2006

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IRIS *plus* is a supplement to **IRIS,** *Legal Observations of the European Audiovisual Observatory,* **Issue 2006-06**

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Protection of Minors from Harmful Information in the Law of Post-Soviet States

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Protecting minors from the influence of harmful information has been high on the agenda of lawmakers in many post-Soviet countries for more than a decade. They believe that violence, cruelty and pornography, regularly depicted on television screens and on the pages of magazines and newspapers, are not conducive to the healthy development of children and are detrimental to their mental and moral upbringing. Indecent or cruel pictures form skewed stereotypes of reasoning in the consciousness of minors thereby increasing the risk of future antisocial behaviour. This also concerns these nations in general because their destiny directly depends on the behaviour of the future generations of their citizens.

How a state regulates problem areas depends on each state's traditions and its social, economic and political situation; however, in certain matters lawmakers from different countries display an enviable unanimity of opinion. This seems to be the case with protecting minors from harmful information, the topic of this piece. The lawmakers of the Commonwealth of Independent States (CIS) and the Baltic countries believe that this problem can be solved by governmental actions. In treating this problem they have been using different methods, trying to find the most effective one. The analysis of these methods will follow.

The Freedom of Mass Media and the Inadmissibility of Misuse of the Freedom of Mass Communication

The constitutions of most countries of the Commonwealth of Independent States (CIS) and the Baltic states guarantee freedom of mass communication and/or freedom of the press. For instance, Article 29 of the Constitution of the Russian Federation, parts 4 and 5, state: "Each person has the right freely to seek, receive, pass on, produce, and disseminate information by any legal method. The list of information constituting a State secret is determined by federal law. The freedom of mass information is guaranteed. Censorship is prohibited".[1]

On the other hand, in the mass media legislation of some of the countries of the CIS and the Baltic States there is an article about the inadmissibility of misuse of the freedom of mass communication. For example, Article 5 of the Law of Republic of Belarus "On the Mass Media" includes distribution of pornography among cases of misuse of the freedom of mass communication.[2] So does Article 5 of the Mass Media Law of Turkmenistan.[3] The Law of the Russian Federation "On Mass Media" (1991) states in Article 4: "No provision shall be made for the use of mass media for purposes of committing indictable criminal actions, divulging information constituting a state secret or any other secret protected by law, the carrying out of extremist activities, and also for the spreading of broadcasts propagandising pornography or the cult of violence and cruelty".[4] In the latter case the existing legal restrictions aimed in particular at protecting minors from materials of pornographic nature are formulated too generally (no explanation is given as to what "propaganda" is) and refer only to broadcasts. Misuse of the freedom of mass communication potentially leads to the closure of a mass media outlet.

In other parts, the mass media laws refer to temporal restrictions and restrictions on "erotic mass media", described, for example, in the Kazakhstan Law "On the Mass Media" (1999) as "a periodical edition or a program, which in general and systematically exploits public interest in sex" (Art. 1).

By imposing a ban on the dissemination of pornography or in addition, in some cases, "propaganda of the cult of violence and cruelty", lawmakers seek to protect public morality. Such a possibility is provided for in a number of constitutions. For instance, Article 19 of the Constitution of Turkmenistan says that realization of rights shall not violate moral standards,[5] and the Constitution of Armenia (Art. 43) says that constitutional rights of people can be restricted in the interests of public morality.[6] The constitutions of the former Soviet republics also overwhelmingly provide as follows: the exercise of the rights of a person may not violate the rights of other persons. Part 3, Article 17 of the Constitution of the Russian Federation stipulates that the "exercise of rights and liberties of a human being and citizen may not violate the rights and liberties of other persons". It is this provision that makes it necessary to discuss the possibility of imposing restrictions on the free flow of information in order to protect the morality and health of minors, provided that the applicable laws explicitly allow such restrictions. Part 3, Article 55 of the Russian Constitution explicitly provides that the rights and liberties of persons and citizens may be restricted by the federal law to the extent required for (among other things) the protection of … morality, health, rights and lawful interests of other persons". Such restrictions might, however, be considered quite often as violating the freedom of the mass media and even as an attempt to impose censorship. But in view of the above, imposing restrictions on the mass media for the protection of the moral health of minors appears to be justified. The question is what legal means are to be used to impose such restrictions and how adequate and proportionate are such means in light of the constitutional values of the freedom of expression and the constitutional rights of others. Only restrictions or limitations that would not violate respective constitutional principles may be imposed.

"Illegal" and "Harmful" Information: General Restriction on Pornography

Government control over mass communication is typically grounded on the idea of "illegal" and "harmful" information. To protect minors from these types of information the government bans or restricts its distribution. Dissemination of "illegal" information can give rise to sanctions according to the national criminal codes. The word "harmful" is somewhat vague: it signifies materials that are not banned by national criminal codes, but can harm the interests and values of other people, especially minors.[7]

Pornography is probably the most typical case of illegal information in the region. Participation in the making or distribution of pornographic material and items was illegal in the USSR, although possession and use of such material and items was allowed. What exactly constituted pornography and its harm was determined in each particular case by special commissions of experts that consisted of representatives of local authorities, local public health institutions, local departments of culture, professional sexologists and psychologists, law enforcement officials and representatives of the local prosecutor's office.[8]

Today dissemination of pornography is still restricted by the criminal law of most of the countries of the former Soviet Union. For example, Article 343 of the Criminal Code of the Republic of Belarus establishes criminal responsibility for the distribution of pornographic materials or items. Acts constituting this offence include the making or keeping with a view to distribute or advertise pornographic material, meaning "printed material, images or other items of pornographic nature", as well as public showing of cinematographic and video films having pornographic content.[9]

Definitions of "Pornography" and other Information of Sexual Nature

To protect minors from harmful information one should firstly find out what types of information it includes. Thus the question of definitions is central. Accordingly, the main problem associated with the implementation of protective laws is to determine not *how specifically to curtail* the dissemination of information but rather *which information* should be thus restricted.

In this context, even a most widely used definition of "pornography" still makes a coherent and predictable evaluation of the phenomenon in question difficult, and reaching agreement on definitions has remained a severe obstacle to meaningful regulation of pornography in the mass media. The first attempt anywhere in post-Soviet countries to give legal definitions to the notions of "pornography" and "products of sexual nature" was made by Russian lawmakers in 1996, when adopting in the first reading the Bill entitled "On Restricting the Circulation of Products, Services and Spectator Events of Sexual Nature in the Russian Federation". In this draft law material with pornographic or sexual content were treated differently. Article 4 provided their definition:

- "products, or output, of sexual nature shall mean the products or output of mass media outlets... satisfying needs related to sexual desire, except for medications and products for medical use";
- "pornographic material or items shall mean a special kind of products of sexual nature whose main purpose is to represent in detail the anatomical and/or physiological aspects of sexual activities".

This draft law was passed by the State Duma in the first reading but the President disagreed with the draft law and returned it for further discussion. As a result of further discussions in the State Duma the draft law was amended and retitled "On State Regulation and Control over the Distribution of Products of Sexual Nature". Article 2 of the revised draft law stipulated that "the distribution (circulation) of pornographic material and items within the territory of the Russian Federation shall not be permitted". Unlike the first version, it contained a more specific differentiation of sexual activities, erotica and pornography and provided a separate definition of pornography in general: "Pornography shall mean products, or output, of the mass media, other print and audio- and video products, including advertising, and also communications and material transmitted via communication lines containing a self-serving, rudely naturalistic, cynical representation and/or description of violent activities of sexual nature, including those involving minors, sexual activities the objects of which are bodies of deceased persons and also sexual activities involving animals" (Article 4). The second version of the Bill also introduced the concept of state and public expert review and defined the principles for holding such review. Overall this version appeared to be a more carefully elaborated document but it still contained many of the contextual defects of the original version. The revised draft law was adopted by the State Duma in the second and third readings but was vetoed by the President in 1998. This ended the first post-Soviet attempt to regulate the issue of pornography in detail.

The Ukraine's Law "On Protecting Public Morality" (2003) is the first *actual* statute in post-Soviet states purporting to regulate relations in the sphere of morality and providing a definition of "pornography".[10] According to the law, "pornography" means the "vulgar-naturalistic, cynical, obscene fixation on sexual acts; the self-serving, special demonstration of genitals, unethical scenes of sexual acts, sexual aberrations, nudity not conforming to moral criteria, denigrating human dignity and respect and intended to arouse vile instincts" (Article 1). It is worthwhile noting that the definition contains many judgmental notions and subjective elements. Like in Russia, Ukrainian lawmakers did not stop with defining "pornography" but also introduced the distinction between sexually explicit materials of three categories: "products of *pornographic* nature", "products or output of *sexual* nature" and "products or output of *erotic* nature". All three were separate from the above notion of "pornography". The distinctions between these notions are as follows: Products of erotic nature "aim at producing an aesthetic effect and are meant for adults, do not arouse vile instincts among their audience and are not insulting or denigrating", products of pornographic nature contain "a particular representation of the anatomical or physiological details of sexual activities or information of pornographic nature", products of sexual nature "are designed for the gratification of individual sexual needs." However, the need to distinguish between sexual, erotic and pornographic products in the Ukrainian law is not evident since most of the strict restrictive norms provided by the law are required to be applied not only to pornographic but also to sexual and to erotic products.[11]

Several countries in their laws on the mass media also made an attempt to separate pornography from other material of sexual nature by instituting the category "erotic material". These materials are not prohibited but may only be aired on certain channels or if the signal is coded. These laws also impose certain restrictions on erotic print publications.[12]

In addition to laws, one can find regulations developed by the executive branch of the government. For example, the Belarus Ministry of Culture in 1997 adopted rules containing detailed definitions of "erotic art" and "pornography" which were supposed to be used as guidelines by government agencies and cultural and information bodies whenever it is necessary to determine if a media product or publication is illegal. "Pornography means a vulgar-naturalistic, detestably cynical, obscene fixation on sexual intercourse; self-serving and intentional demonstration of mainly uncovered genitals, anti-aesthetic scenes of sexual acts, sexual perversions, sketches of nude models not complying with moral criteria, offending the honour and dignity of a human being, bringing a human being down to below base animal instincts. Erotic art means the representation of a human being in all the richness of his/her feelings taking into account the sex-specific and individual characteristics of people. It builds the world it depicts based on the laws of beauty, spiritualizes sexuality, does not contain rude and cynical naturalism, and promotes truly human qualities in the relationships between the sexes".[13] In distinguishing between pornographic and erotic material in Belarus an important role is played by the Republican Expert Commission for Preventing Propaganda of Pornography, Violence and Cruelty, established by Decree of the President and consisting of public officials.[14] From a legal viewpoint, the use of qualifiers such as "vulgar", "detestably cynical" and "anti-aesthetic" are highly subjective concepts, offering both wide discretion and potential for abuse.

International Standards on Protecting the Rights of the Children

Besides constitutions and general legislation on the mass media, attempts to develop special legal acts concerning the protection of minors were undertaken in a number of countries of the former USSR. Most of them have used existing European and other international statutes as a model.

As far back as 1959 the United Nations proclaimed its Declaration of the Rights of the Child and subsequently adopted its Convention on the Rights of the Child of 1989. The Convention (1989)[15] obliges the States Parties to guarantee the protection of the child from all forms of sexual exploitation (see Article 19 of the Convention).

On the other hand, in accordance with Article 17 of the Convention, any State Party that has ratified the Convention recognizes the important function performed by the mass media and is required to ensure that the child has access to information and material from a diversity of national and international sources. This refers particularly to sources that are aimed at the promotion of the spiritual and moral well-being of the child, and his or her physical and mental health. States Parties shall further encourage the mass media to disseminate information and material of social and cultural benefit to

the child and the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being.

Article 12 of the Convention obliges the States Parties to "ensure to the child who is capable of forming his or her own views, the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child". Article 13 provides for the right of the child to freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice. Since the notion of "child" includes persons under 18 years of age, one can argue that a person at the age of 16-17 can be mature enough to choose "harmful" programmes for himself. Also, products of sexual nature, especially containing material on sex education, are necessary for the development of minors. So according to the Convention the child should not be viewed as a passive entity acted upon by adults, the UN Convention also protects its rights as an individual.[16] The child is not just an object to be protected, but is a subject, a personality with its own opinion and ambitions. And it definitely has the right to have its private life. The problem is how to protect the child from really harmful information. On the one hand, the Convention seeks to protect children from the corrupting influence of pornography while, on the other hand, it tries to ensure the right of children to freedom of expression (Article 13 of the Convention).

National Legislation to Protect Minors

Instruments to control the flow of information in order to protect minors may be of different types.

Legal definitions conferring upon the competent court or the government the power to decide if the information is harmful or not (see above) are only one variety. In addition, regulatory instruments include:

1. The establishment of a special body that determines what information may or may not be disseminated among minors;
2. Rating of films and programmes and time watersheds in broadcasting;
3. Regulation of advertising aimed at minors or affecting morality.

Various countries of the former Soviet Union use different approaches to lawmaking in this sphere. Practically all countries of the Commonwealth of Independent States (CIS) and the Baltic States adopt general laws on the protection of the rights of children based on the UN Convention. They are very similar and only a few have some original provisions.

In addition, in Georgia and Lithuania there are special laws where the emphasis is on the protection of minors from harmful information. This is quite an original approach to the problem in this region.

A peculiar way has been chosen in Ukraine and some regions of Russia. The Ukrainian parliament created the law on the protection of public morality. This Act does not aim to protect minors but helps to create an overall legal climate that leads to stronger protection of minors from harmful information.

1. General Laws on Protection of the Rights of the Child

Based on the UN Declaration and Convention, almost all of the former Soviet republics adopted their own laws on the rights of the child. Such laws were passed, for instance, in Armenia, Azerbaijan, Belarus, Kazakhstan, Lithuania, Russia and Turkmenistan. Despite such profuseness of similar laws few are examples for actually lending protection to minors, especially in the mass information sphere. The reason is that the provisions of these laws are to a large extent declaratory. Most of the laws do not envision specific regulatory mechanisms or means to ensure compliance.

Typical is Armenia's Law "On the Rights of the Child" (1996), which contains only one article dealing with the problem under review. Article 18 provides that "the dissemination of mass information and literature glorifying violence and cruelty, debasing human dignity, adversely affecting the child and being conducive to the commission of offences shall be punishable according to the law". The lawmaker provides no clarification as to what exactly is meant by "adversely affecting" or "information … conducive to the commission of offences". These terms are rather vague. Undoubtedly, the vagueness of the terms leaves enormous discretion to the enforcing authorities. However, I have no information on instances where this provision of the law has been enforced.

In its turn, Article 11 of Azerbaijan's Law "On the Rights of the Child" (1998) prohibits "the dissemination among, and demonstration or making available to, children of films, literature and other items promoting violence, tyranny, erotic or pornographic products injurious to the mentality and moral development of children and also the involvement of children in the making of such products". The wording of the provision is interesting in view of the fact that it purports to distinguish between products of erotic and pornographic nature. At the same time the law lacks criteria for the differentiation and appears to attach the same regulatory consequences to the two types of products. The right of the child to have access to information is upheld in Article 15: "in accordance with the laws of the Republic of Azerbaijan, every child has the right to seek, obtain, transfer and disseminate any information necessary for his or her mental or physical development". The law contains no criteria that require the accessibility of specific information necessary for the development of the child. The law does not specify who or what body is to determine what is prohibited and what is allowed. Therefore Azerbaijan's law does not solve the problem it purports to deal with, but just formally declares Azerbaijan's agreement with the aforementioned international treaty.

The Law of Turkmenistan "On the Guarantees of the Rights of the Child" (2002) contains Article 29 addressing "protection of the child from obscenity". It provides as follows: "In Turkmenistan it shall be prohibited to make or distribute pornographic printed material, films or other items of pornographic nature. The State shall ensure the protection of children from all encroachments of sexual nature". The law, thus, prohibits all materials of pornographic content but contains no definition of pornography. Article 30 provides for the possibility of holding expert review: "In order to protect the life, health and morality of the child, and to protect him or her from harmful influences, expert review shall be held in accordance with a procedure determined by the Cabinet of Ministers of Turkmenistan of material and items harmful to the spiritual and moral development of the child". The conditions under which the expert review is to be held, as we see, are elaborated by the Cabinet of Ministers.

The Law "On the Rights of the Child" in the Republic of Kazakhstan (2002), in addition to provisions copied from the UN Convention on the Rights of the Child, contains a number of original articles. For example, Article 36 reads: "state agencies and bodies, individuals and legal entities shall be required to protect the child from the adverse impact of the social environment, information, propaganda and agitation injurious to his or her health, moral and spiritual development". The law vests responsibility for protecting minors not only with competent government agencies and bodies and specially created organizations but also with individuals and legal entities. In other words, every citizen is responsible for the health of the younger generations. Whoever makes it possible for a child to be exposed to improper material should be responsible. "It is prohibited to demonstrate to and among children, to sell, give, reproduce and rent toys, cinema films, audio- and video recordings, to distribute literature, newspapers, magazines and other mass media products… containing… pornography or otherwise being injurious to the spiritual and moral development of the child… Any such activities shall entail responsibility according to the laws of the Republic of Kazakhstan" (Article 39).

2. Laws on Protection of Minors from Harmful Information

Two post-Soviet countries – Georgia and Lithuania – adopted laws that belong to a different category to those described above because the lawmakers were concerned not just with the general rights of the child, but with protecting the rights of the child in the sphere of information.

The Law of Georgia "On the Protection of Minors from Harmful Influence" (2001) is aimed at protecting minors (i.e., persons under 18 years of age) from harm that may be caused by films, video recordings, TV broadcasts and print publications. The law provides definitions and also some mechanism for ensuring compliance. Different from the laws so far reviewed, Article 3 of Georgia's law defines "harmful influence" as "the impact created by a film, broadcast or publication on the physical and/or mental health of a minor as well as on his or her moral, intellectual and social development".

According to Article 1 of the Lithuanian Law "On the Protection of Minors from the Detrimental Effect of Public Information" (2002), it is aimed establishing (i) the criteria for singling out mass information which may be physically, mentally or morally harmful to the development of minors, (ii) the procedure for making such information available to the public and for disseminating it and (iii) the rights, obligations and liability of producers, distributors and owners of distribution outlets, journalists and institutions regulating their activities. Article 3 explains that, "in establishing the provisions for the protection of minors from the detrimental effect of mass information and liability for violations thereof, the following shall be taken into consideration: the interests of minors and society, the self-regulation duties of public information producers, distributors and owners of distribution outlets, journalists and their unions, the principle of the adequacy, efficiency and proportionality of punishment".

This is not the first attempt to protect minors from adverse information distributed by the mass media in Lithuania. The basic law that regulates the activities of the mass media in Lithuania – the Law "On Public Information" (1996) has a norm dedicated to the protection of minors (Article 18), that prohibits broadcasts that can harm physical, mental or moral development of minors. It also establishes a watershed of 11 p.m. for such programmes.

According to the Lithuanian Law "On the Protection of Minors from the Detrimental Effect of Public Information", to the information which may be detrimental to the physical, mental or moral development of minors belongs mass information, including information erotic in nature, that is: "when sexual desire is aroused, sexual intercourse or an imitation thereof or other sexual gratification and genitals and sex paraphernalia are displayed" (Article 4 (3)).

3. Laws on Protection of Public Morality

The key example here is Ukraine which adopted the Law "On the Protection of Public Morality" in 2003.[17] This Act regulates not just the protection of minors but mainly concerns public morality in general. An extreme provision of the Ukraine's Law "On the Protection of Public Morality" concerns licensing. The law provides for additional licensing of virtually all activities – importing, making, demonstrating, distributing – with sexually explicit and erotic products. Additional licensing is explicitly mandated for television companies, if they have activities with sexually explicit and erotic products, with such companies already being required to obtain at least two other licenses (for broadcasting and for frequency use).

Apart from this, the Law "On the Protection of Public Morality" is in part devoted to the protection of minors. Article 7 of the Law says that propaganda of media products of sexual and erotic nature, pornographic materials among minors is banned. There is a difference between the protection of morality for all of society and the protection of children. Erotica and sexual products propaganda are allowed for adults, but not for minors.

Some attempts to pass a law on protection of public morality have been made in Russia. The Bill "On Restricting the Circulation of Products, Services and Spectator Events of Sexual Nature in the Russian Federation"(1996) concerned this field (see above). Like the Ukrainian law, the Russian Bill was not just about minors, but about society in general. Igor Ivanov, one of the authors of the draft law, wrote: "We were faced with a serious problem of selection. The draft law represented an attempt on our part to deal with existing problems associated with a semi-legal but actually ongoing circulation of products, services and spectator events of sexual nature and to do it sensibly and honestly, without duplicity or hypocrisy. We thought it self-evident that ... there was a sex industry in Russia as there was an actual need for the products of such industry. And outlawing such an industry was tantamount to deliberately and irresponsibly aggravating existing problems. The authors prioritized other considerations: by honestly acknowledging the existence of certain social phenomena, to try to legalize the distribution of products and services of sexual nature, with the elimination of the very possibility of unhealthy aberrations (such as prostitution or universal free trade in pornography), to subject such distribution to governmental control and establish a system of conditions restricting the importation, making, advertising, distribution of products and services of sexual nature".[18] On the whole the approach was very bold but not without some common sense. The draft law suggested that governmental control would make it possible to protect minors from the potential negative effects of the envisaged legalization of the circulation of products, services and spectator events of sexual nature.

Since the Bill was never enacted by the President of Russia, several attempts to solve problems in controlling the information environment and protecting minors from harmful information and material have been undertaken by the legislatures of the subjects of the Russian Federation with respect to the local mass media.[19] They target erotic publications and programmes and touch upon, and solve, certain problems.

Local regulations also envisage establishing commissions in order to have them determine the presence of erotic or pornographic content in specific mass media products, compile lists of banned films, etc. In some of Russia's regions, such commissions do actually work.

Today statutes and resolutions dealing with this problem exist in the Altai Territory (Statute of 4 December 1995. "On the protection of public morality"), the Bryansk Region (Statute of 15 October 1999 "On the regulation of the distribution and advertising of erotic production"), the Voronezh Region (Statute of 26 July 1995 "On the procedure of distribution of erotic production in the Voronezh Region"), the Ivanovo Region (Statute of 26 July 1995 "On the procedure of distribution, public demonstration of erotic publications films and similar products in the territory of the Ivanovo Region"), the Magadan Region (Statute of 1 July 1996 "On the protection of public morality"), the Omsk Region (Statute of 8 February 1995 "On the control of the distribution and advertising of erotic production in the Omsk Region"), and the Orenburg Region (Statute of 24 April 1996 "On the control of the distribution and advertising of erotic products in the Orenburg Region").[20]

As an example let us consider the Magadan Region's Statute "On the protection of public morality". Though the title of the statute says that it regulates public morality in general, in fact it is mainly devoted to the protection of minors. It includes the age limits for watching and reading media products of sexual nature. It is curious that the limit is 16, not 18 years of age and at this age one is allowed to access to erotic materials. According to this law the Magadan Region establishes governmental and "self-governmental"[21] bodies to protect minors. One is established at the Administration of the Region, others at "self-governments" and all are entitled Supervision Councils. Such councils comprise of "recognized representatives of public organizations, cultural figures, figures in literature, science, arts, representatives of law-enforcement agencies, governmental commissions on the affairs of minors, as well as psychologists, medical doctors, teachers, and other experts". There is still no such body at the national level.

The Body Responsible for the Protection of the Minors from Harmful Information

Exactly who is responsible for controlling the flow of information to minors and determining what materials are harmful is one of the most important questions here. Such an entity would not solve all problems, but the fact that the law contains procedures for the activities of a supervisory body or agency represents a major step towards finding a practical solution to the problem of protecting minors from the harmful influence of the environment.

There are different approaches to creating an entity responsible for the protection of minors from harmful information in the post-Soviet states. Ideally it should be a public (non-state, non-governmental) body and self-regulation system. But, unfortunately, none of the countries in this region has such a system, though Lithuania is somewhat close to it (see below).

In most of the CIS countries and the Baltic States there are state bodies, which are formed by the governments and consist of public officials (for example, in Armenia[22] and Latvia[23]). Such bodies meet infrequently, — in some cases, almost never.

In some post-Soviet countries there are special expert commissions. They are comprised of public officials but also include representatives from NGOs, like in Belarus[24] (see above) and Ukraine (see below). In most CIS countries and the Baltic States, there are also special National Commissions for the Protection of Rights of Children. These bodies meet whenever necessary, typically twice a year. They are created by presidential decrees or governmental ordinance, and are not usually mentioned in the laws. The approaches to establishing such bodies are varied.

In one of the countries (Georgia) there is a permanently functioning body, which is a branch of the government and specifically provided for in the Law of Georgia "On the Protection of Minors from Harmful Influence". It is important to note that no such body is expressly named in the above-reviewed laws of other countries. The Law of Georgia makes the Ministry of Education *and/or* the Ministry of Labour, Health and Social Protection of Georgia responsible for this sphere. The Law states that most material reflecting sexual relations can be banned, while films that contain sexual scenes, violence and instances of drug use may be considered harmful to minors (Article 5). In exceptional cases, however, it is permitted to broadcast films that contain sexual scenes, provided such films are of scientific, educational or instructive nature and the details of the sexual relationships are presented in an educational manner. Permission to broadcast such films is issued by the Ministry of Education or the Ministry of Labour, Health and Social Protection of Georgia. Similar procedures apply to print materials (Article 11). By enacting this provision, the Georgian lawmaker succeeded in making a specific body responsible for tackling the problem.

In another country (Ukraine) there is a special expert commission which does not stop at providing expertise but even prosecutes those who spread propaganda of pornography, violence and cruelty. The National Expert Commission for the Protection of Public Morality was established in Ukraine by the Law "On the Protection of Public Morality". This body deals with the protection of public morality in general, but it protects mainly minors from harmful information, and not just from mass media products of sexual or erotic nature, but also from mass media products glorifying or promoting violence, cruelty and pornography. It also establishes criteria by which such mass media products can be distinguished. Decisions of the Commission made within its competence are mandatory for consideration by all central and local government agencies, which must comply with the decisions.[25]

The National Expert Commission is designed as an interdepartmental government expert and supervisory agency. Article 18 of the Ukraine Law "On the Protection of Public Morality" provides that the members of the National Expert Commission are approved by the Cabinet of Ministers of Ukraine on the nomination of the Chairman of the Commission. One of the main powers of the National Expert Commission according to the law is to conduct an expert review of all products of erotic/sexual/pornographic nature in order to determine the category to which these products belong. Consequently, if products are classed as pornography, the distribution of such products will be prohibited.

Set up in the second half of 2004, the Commission consisted of 16 persons, among whom were writers, artists, psychologists and professors of medicine. Still, there are not many traces of its activity. In late September 2005 Ukrainian President Victor Yushchenko dismissed Yuri Boiko, head of the commission, and directed the Cabinet of Ministers to vest the powers of the expert commission in other executive agencies and bodies. Soon thereafter, however, on 7 February 2006, the President appointed Natalia Sumskaya, a well-known actress and TV presenter, as chairperson of the Commission and practically re-launched the activity of this body. In her words, "matters of providing us with some premises and staff are currently being dealt with. The Commission has its work cut out for it. After all, if there is no censorship, we will get complete anarchy".[26] Nothing is known about decisions made by the Commission as of yet.

A lower ranking and somewhat competing expert body was established in 2004 by the Ukraine's governmental State Committee for Television and Broadcasting (DKTRU) and charged with supervising the compliance of commercial television channels with norms of public morality. The Council consists of human rights activists, journalists, film experts, officials from the Ministry of Culture and Arts, the DKTRU itself and the State National Television Company - 25 persons in all. The Public Expert Council for the Protection of Public Morality (as the body is named) and the DKTRU in 2004 conducted 274 different expert reviews of the mass media (electronic, print material, etc.) and 88 cases were brought before the courts.[27] Acting on its own initiative the DKTRU effectuates monitoring of television and radio mass media products.

Experts say, that given the subjective elements of the definition in Ukraine of the term "mass media products of erotic nature" (see above), virtually any mass media outlet may be accused of illegally disseminating information without obtaining the required permission, while the established system for obtaining preliminary permission to print and broadcast material has all the characteristics of a state censorship system although censorship is outlawed by Article 15 of the Constitution of Ukraine. [28]

The Russian legislator also made an attempt to form such a body. The draft law "On the Supreme Council for Protecting the Morality of Television- and Radio Broadcasting in the Russian Federation" (1999) was the first proposition for regulating the activity of a government body charged with control over morality. This was at the same time a clear advantage and a huge defect of the Bill. Even a cursory look at its text reveals that the law focuses rather on the operation of the relevant government agency than on the protection of morality. But as elsewhere it is doubtful that one can resolve any issue of morality by dealing with the regulation of the institution of an agency responsible for dealing with the morality issue first. A new agency creates a method to resolve the issue of morality which may or may not prove to be effective but the method itself does nothing to address the underlying problems and therefore cannot correct the situation.[29] The draft law successfully passed through three readings in the State Duma, was approved by the Federation Council (upper chamber) but vetoed by the President of Russia.

As an example of public control let us examine the institution of the Inspector of Journalistic Ethics from the Lithuanian Law "On the Protection of Minors from the Detrimental Effect of Public Information". As already mentioned it is not an ideal model of the self-regulation system, but it is somewhat closer to a self-regulation system than regulation mechanisms instituted in other countries under review.

Article 7 of the Law describes how the dissemination of information injurious to the development of minors can be restricted. It is prohibited "to directly make available to members of the public or to

disseminate to minors, offer to them, transfer or otherwise permit personal use of information with erotic content". Compliance with the law is supervised by an Inspector of Journalistic Ethics, to whom individuals and legal entities may complain.

In accordance with the earlier Law "On Public Information" (Article 50), the Inspector is appointed by the *Seimas* (parliament) on a proposal from the public Ethics Commission of Journalists and Publishers. The duties of the Inspector of Journalistic Ethics are set out in more detail in Article 9 of the Law "On the Protection of Minors from the Detrimental Effect of Public Information" (2002) and Article 51 of the Law "On Public Information" (1996).

All interested natural or legal persons may send to the Inspector reports or appeals regarding violations of the 2002 Law (Article 9, part 2 paragraph 8). Obviously the Inspector alone, even with other interested legal entities and individuals, will be unable to supervise compliance with the law by all the mass media outlets of Lithuania. Part 6 of the same Article provides that "a group of persons of unblemished reputation" who are experts having specialist knowledge shall work under the Inspector and shall assess the effect of mass information on minors and submit their findings to the Inspector. The group works on a rotation principle in accordance with working regulations adopted by the group itself and approved by the Inspector. Experts are appointed by the Inspector himself or herself who is required to take into account proposals submitted by the Lithuanian Radio and Television Council; the Lithuanian Radio and Television Commission; the Ministry of Culture; the Lithuanian Ethics Commission of Journalists and Publishers; the Office of the Controller for the Protection of the Rights of the Child, and also executive agencies of local authorities. These bodies are also responsible, within the scope of their competence, for supervising the implementation of the provisions of the 2002 Law (Article 9, part 7). They may address the Inspector with regard to the assignment of public information to specific categories of information detrimental to the development of minors and shall cooperate and exchange information and, within the scope of their competence, shall hold liable under the law individuals or legal entities who fail to adhere to the provisions of this Law. According to data obtained from the administrative office of the Inspector, in 2005 the Inspector reviewed 82 cases, roughly half of which dealt with protecting minors.

Ratings of Films and Videos

The simplest way to protect minors is to institute a procedure for informing potential consumers of the degree of erotic content in specific mass media. The procedure shall include recommendations on the advisability of making such output available to specific age groups. On a national level, for the first time in post-Soviet Russia, an age-specific rating system for audio and video products was created by Degree No. 192 of the Ministry of Culture of the Russian Federation "On Approving the Guidelines for Age-Specific Classification of Audio and Video Works, the Rules and Member Composition of an Interdepartmental Conflict Resolution Commission for Age-Specific Classification of Audio and Video Works", dated 15 March 2001.[30] It should be noted that to the best of my knowledge the conflict resolution commission, envisaged by the said degree, has never reviewed any conflict.

In the Ukraine, the rating system uses three different visual symbols: a green circle stands for "no restrictions"; a yellow triangle means that "minors are recommended to view the material in question only with their parents or with parents' permission"; and a red square means "recommended only for adult audiences". The system was instituted by the National Council of Ukraine for Television and Radio Broadcasting (a licensing and controlling agency) in 2003 and is used on Ukrainian television. The ratings awarded by the National Council only regulate the broadcasting of movies and are based on information contained in distribution certificates issued in their turn by the Ministry of Culture. The underlying system of distribution certificates had already been instituted for all feature films in 1998.[31] The Ministry of Culture rates all films and issues distribution certificates specifying the rating category to which a particular film belongs. During subsequent distribution in cinemas or on television, a distributor is required to comply with rules established for films belonging to the respective rating category.

The Law of Georgia "On the Protection of Minors from Harmful Influence" (2001) also contains such an important provision. The law reflects the need to rate films according to how harmful they are to minors (Article 6).

Under the law films should be rated according to four categories:

- Restricted to persons of 18 years of age and older;
- Restricted to persons of 15 years of age and older;
- Restricted to persons of 12 years of age and older;
- Films suggested for general audiences.

Special ratings are assigned accordingly: the digits 18 in a circle, the digits 15 in a circle, the digits 12 in a circle, and the letter U in a circle. Films are rated by the Head of the State Department of Youth Affairs of Georgia (a branch of the government).

It is also necessary to note in this context the latest Russian draft law entitled "On the Protection of Children from Information Injurious to their Health and Moral and Spiritual Development" (2005). On the whole, the draft law contains an integrated conceptual system and reflects a certain vision of problem solution. The proposal to use a whole range of legal instruments confirms the trend of using modern means and methods of regulation for laws on information matters. The following are examples of applying best practice methods:

– the introduction of rating systems ("age-specific classification" in the draft law) for information products;
– the creation of registers of information products that contain data on information products prohibited from dissemination;
– the taking into account of the criterion of whether specific television programs are accessible to children when restricting the dissemination of information via broadcast mass media;
– supporting the concept of voluntary expert review of potentially harmful information.

According to the Bill, TV broadcasters are banned from airing films that are restricted to viewers of 18 years of age and older between 7:00 and 24:00, films restricted to viewers of 15 years of age and older should not be aired between 7:00 and 23:00, and films restricted to viewers of 12 years of age and older, between 7:00 and 22:00. This restriction does not apply to *encoded* TV channels.[32]

Protection of Minors in Advertising Law

Finally, I would like to review advertising material as another type of information that might be injurious to the moral and spiritual development of minors.

Advertising laws in all post-Soviet countries (Turkmenistan has no such law) contain a separate article concerning the specifics of distributing advertising addressed to minors. Their provisions are in harmony with Article 11 paragraph 3 of the European Convention on Transfrontier Television that provides as follows: "Advertising and tele-shopping addressed to or using children shall avoid anything likely to harm their interests and shall have regard to their special susceptibilities", and also with Article 6 of the Cooperation Agreement of States Members of the Commonwealth of Independent States in the Sphere of Regulation of Advertising Activity (2003) that requires governments to protect minors from any abuse of their credulity or lack of experience.[33] Most of the advertising laws of the CIS states ban textual, visual or audio use of images of minors in advertising not directly relevant to goods for minors.

Most of these laws – with varying levels of detail – stipulate the need to protect the moral and mental health of minors in distribut-

ing advertising. For example, the most recent advertising law, the Law "On Advertising" of the Russian Federation of 13 March 2006, in Article 6 ("Protection of Minors in Advertising") stipulates:

"With the object of protecting minors against abuse of their credulity and lack of experience, the following shall not be allowed in advertising:

1) discrediting the authority of parents and educators or undermining minors' trust in them;
2) direct inducement of minors to convince parents or other persons to purchase the advertised goods;
3) creation among minors of a distorted notion of what is actually attainable within a family budget;
4) efforts to draw the attention of minors to the suggestion that the possession of various goods gives them any advantages over other minors or that the absence of such goods has the opposite effect;
5) creation of an inferiority complex in minors who are not in possession of advertised goods;
6) showing minors in hazardous places or situations;
7) understatement of the requisite level of skill in the use of the goods advertised among minors; the advertising must give information on what is actually attainable for minors of the age group for which the goods are intended;
8) creation of an inferiority complex in minors by promoting in them a negative outlook".

In almost all countries of the former Soviet Union, advertising laws contain a provision prohibiting pornography in advertising and likewise prohibiting advertising of pornography (for example, Article 6 of Uzbekistan's Law "On Advertising" (1998)). The Law of the Republic of Estonia "On Advertising" (1998) contains a provision prohibiting "indecent" advertising. Advertising is deemed indecent specifically if it "contains the visual or verbal representation of a sex act, inappropriate nudity or anti-social sexual behaviour" (Article 5, paragraph 2.5). The Republic of Moldova's law (1997) adds, *inter alia*, a provision making it inadmissible for advertising to contain "propaganda of the cult of brute physical force, permissiveness, violence and sadism" (Article 23, paragraph "f").

Many laws impose restrictions on, or even ban, advertising which is thought to offend public morality.[34] For example, in Ukraine advertising must not contain information or images violating aesthetic, humanitarian or moral norms, nor may it include information violating decency.

Conclusions

In summary, it should be noted that, in the countries of the former Soviet Union, legal statutes do not provide concrete forms for governmental and public control over the flow of information nor do they provide mechanisms for holding individuals and entities distributing information responsible. There is a need to adopt a system of measures to restrict the mass media with respect to the distribution and dissemination of information of sexual nature and images of violence. Such measures should be mainly preventative. However, complete legislation for this delicate sphere, for which the most active proponents of morality call, is hardly appropriate as it would represent a veiled threat to individual liberties and the freedom of the press. Nor is it workable in practice, as the large number of draft laws that were never adopted in Russia prove. It is important to ensure that measures aimed at preventing abuses of the freedom of information and the mass media cannot be misused in order to suppress this very freedom. In the words of a well-known Russian legal expert Alexandr Ratinov, the placing of taboos on manifestations of sexuality and concealment of information about sexual life for being "dirty", "sinful" or "indecent" can produce the opposite effect when the need for information on sexual issues that young people feel is satisfied by using questionable sources.[35]

1) http://www.medialaw.ru/e_pages/laws/russian/russian.htm
2) http://www.medialaw.ru/exussrlaw/l/by/media.htm
3) http://www.medialaw.ru/exussrlaw/l/tk/media.htm
4) http://www.medialaw.ru/e_pages/laws/russian/massmedia_eng/massmedia_eng.html
5) http://www.medialaw.ru/exussrlaw/l/tk/const.htm
6) http://www.medialaw.ru/exussrlaw/l/am/const.htm
7) Monroe E. Price, Масс-медиа и государствеииый суверенитет: глобальная революция и ее вызов власти государства , Moscow, 2004, p. 141
8) A. G. Richter, Правовые основы журналистики, M. Moscow University Press, 2002, - p. 230.
9) N. Dovnar, „За порнографию придется ответить" // Законодательство и практика масс-медиа. Белоруссия. No. 1 (9), 2005, http://www.mediastatute.ru/publications/zip/national/new/by/9.htm#1
10) T. Shevchenko, „Защита общественной морали в Украине" // Законодательство и практика масс-медиа.Украина. No. (4), 2004, http://www.mediastatute.ru/publications/zip/national/new/ua/4.htm#1
11) Ibid.
12) Законодательство о СМИ стран бывшего СССР, Moscow, 2004, http://www.medialaw.ru/exussrlaw/a/1/20.htm
13) Polozhenie „о порядке публичной демонстрации кино, аудиовизуальных произведений, выпуска печатной продукции эротического характера, а также продукции сексуального предназначения, их распространения и рекламирования физическими и юридическими лицами", April, 2000, http://www.kaznachey.com/doc/64209/
14) Natalia Dovnar, „За порнографию придется ответить" // Законодательство и практика масс-медиа. Белоруссия. No. 1 (9), 2005, http://www.mediastatute.ru/publications/zip/national/new/by/9.htm#1
15) See the full text in: http://www.unhchr.ch/html/menu3/b/k2crc.htm
16) See: D. D. Temnyuk, Государственное регулирование и контроль оборота продукции сексуального характера (2001), available at http://www.xyq.ru/l/statute/7.htm
17) http://www.medialaw.ru/exussrlaw/l/ua/moral.htm
18) I. Ivanov, „Порнография ... по-российскиі" // Законодательство и практика масс-медиа. No. 27, November 1996, http://www.mediastatute.ru/publications/zip/27/po-russki.html
19) http://www.artconstitution.ru/text_e.asp
20) "Medienrecht im Vergleich. Deutschland – Russland. Eine Initiative des Petersburger Dialogs" Unter der Leitung von Prof. Dr. h.c. Albert Scharf und Prof. Dr. jur. Michail Fedotov . - Petersburger DIALOG, 2004 p.285
21) Note of the Editor: the term "self-government" is used in the Russian law with a meaning similar to "local government".
22) http://www.kavkaz-uzel.ru/newstext/news/id/965429.html
23) http://hrlibrary.ngo.ru/russian/crc/Rlatvia_2001.html
24) http://www.kaznachey.com/doc/16089/
25) Ibid.
26) Kommersant newspaper, Kiev, 9 February 2006.
27) http://www.versii.com/newss.php?pid=67278
28) T. Shevchenko, „Защита общественной морали в Украине" // Законодательство и практика масс-медиа. Украина. No. 1(4), 2004, http://www.mediastatute.ru/publications/zip/national/new/ua/4.htm#1
29) See: Commentary by the Moscow Media Law and Policy Center "On the Higher Council for the Protection of Morality in Television and Radio Broadcasting in the Russian Federation", 5 April 1999 at: http://www.medialaw.ru/e_pages/research/commentary.htm as well as: S. Sheverdiaev, „Высший совет: синица уже в руках?" // Законодательство и практика масс-медиа. No. 1(4), 2004, http://www.mediastatute.ru/publications/zip/55/tomtit.htm
30) The decree was superseded by Decree No. 112 of the Federal Agency for Culture and Cinema, dated 15 March, 2005.
31) Resolution No. 1315, dated 17 August, 1998, of the Cabinet of Ministers of Ukraine "On Approving the Provisions on the State Distribution Certificate for the Right to Distribute and Show Films".
32) Golovanov, D, Kitaichik, „Заключение на проект федерального закона «О защите детей от информации, наносящей вред их здоровью, нравственному и духовному развитию"", Законодательство и практика масс-медиа. No. 4, April 2005, http://www.mediastatute.ru/publications/zip/128/4.htm
33) See: http://www.medialaw.ru/exussrlaw/l/sng/38.htm
34) Законодательство о СМИ стран бывшего СССР, Moscow, 2004, http://www.medialaw.ru/exussrlaw/a/1/20.htm
35) A. Ratinov, „О любителях "Клубнички" " // Законодательство и практика масс-медиа. April, 1998.