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The Regulatory Framework for Audiovisual Media Services in Russia

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Special

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The Regulatory Framework for Audiovisual Media Services in Russia

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The Regulatory Framework for Audiovisual Media Services in Russia

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Published by the European Audiovisual Observatory

2009 saw a steady flow of information on the EU's Audiovisual Media Services Directive and one does not need a crystal ball to predict the next wave of information that will spill over our desks in 2010, be it to tell us about transposition and implementation or about EU enforcement measures. The European Audiovisual Observatory has already analysed some of the core questions that the Directive raises, concentrating especially on those that are likely to continue to trouble legislators, regulators and the industry. As a result, we published in June 2009 the IRIS Special entitled "Ready, Set... Go? – The Audiovisual Media Services Directive".

What we did not do so far is to inform about the legal framework for audiovisual media services outside the scope of EU legislation. The wider Europe as covered by the Council of Europe and thus the Observatory goes far beyond the geographic reach of the Directive. To have its media industry unfold, more and different information is needed. One huge territory, home to around 17 percent of the European citizens and thus a significant amount of (potential) recipients of audiovisual media services, is Russia. Yet despite the economic potential of this sizable market, it seems that at least outside of Russia little has been published on the legal conditions that the audiovisual industry must meet.

Thanks to our long-standing partnership with the Media Law and Policy Institute in Moscow, we can help fill this gap with this publication. Andrei Richter, the author of this IRIS Special on "The Regulatory Framework for Audiovisual Media Services in Russia" gives us an overview of general aspects such as national media policy, key notions of regulation and their interpretation, licensing requirements, the role of state versus public service broadcasting, media ownership and concentration as well as foreign property rules. This IRIS Special also explains the legal framework for specific questions such as the right to reply, product placement, the right to short reporting, the safeguard of public morals, the protection of minors, rights of national minorities and restrictions to counter extremism. Last but not least it explains the regulatory means used within this legal framework, which includes charters and codes as well as regulation by the national regulatory authority, especially in the field of advertisement.

The structure of this IRIS Special follows closely and deliberately the questions treated in the IRIS Special on the Audiovisual Media Services Directive. This facilitates the comparison of the underlying legal systems as well as the legal rules applied to the various areas. If this publication focuses mostly on broadcasting it is because in Russia other audiovisual media services, and corresponding their regulation, are still in their infancy. This IRIS Special is very telling in this regard as it describes in some detail the difficulties to adapt the existing framework to on-demand service that are still not as developed as in other European countries.

We would have also liked to report in this context on the adoption of the Protocol for the Council of Europe Convention on Transfrontier Television that would have had the potential to cover the whole of Europe and include even non-European countries. Russia has already signed (though not yet ratified) the current version of the Convention and it was hoped that it would adhere to the Protocol. However, events took a different turn and whether and indeed if ever the Convention will be aligned to the Directive or could apply in Russia will truly require the aforementioned crystal ball.

Strasbourg, 23 December 2009

Wolfgang Closs
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TABLE OF CONTENTS

I. General aspects	9
1. National policy and general problems in the regulation of audiovisual services ...	9
<i>a. General approach</i>	9
<i>b. Applicability of traditional requirements to new audiovisual media services</i>	12
<i>i. Mass character</i>	12
<i>ii. Periodicity</i>	13
<i>iii. Dissemination</i>	13
<i>iv. Further reasoning</i>	14
<i>c. Attempts to introduce a separate law for online services</i>	14
<i>d. Development of new services: the State policy and “soft law”</i>	15
<i>e. Russia’s position with regard to the Convention on Transfrontier Television</i>	20
2. Key notions of the regulations and their interpretation	20
<i>a. Freedom of broadcasting</i>	20
<i>b. Jurisdiction over audiovisual media services originating from third countries</i>	21
<i>c. Development of broadcasting</i>	21
<i>d. Government-private sector partnership</i>	21
<i>e. Uniform licensing for all audiovisual media services</i>	22
<i>f. Must-carry rules</i>	22
3. Licensing requirements for audiovisual media services	23
<i>a. System of dual licences</i>	23
<i>i. Broadcasting licence</i>	24
<i>ii. Communications licence</i>	24
<i>b. Legal instruments of television licensing today</i>	25
<i>c. Registration of media outlets</i>	26
<i>d. Specific aspects of the current licensing system</i>	26
<i>i. Status of the competition body</i>	26
<i>ii. Criteria for competitions</i>	28
<i>iii. Programme policy</i>	29
<i>iv. Duration of a licence</i>	29
<i>v. Transfer of a licence</i>	30
<i>vi. Revocation of a licence and case law</i>	31
<i>e. Line-up in the digital era</i>	33
4. State versus public service broadcasting	34
<i>a. Ideology of state broadcasting</i>	34
<i>b. State broadcasting as an alternative to public service broadcasting</i>	35
<i>c. Content obligations for state broadcasting</i>	36
5. Media ownership and concentration	37
6. Foreign property	39

II. Specific areas	41
1. Right of reply	41
2. Product placement	43
3. Right to short reporting	45
4. Protection of public morals	46
5. Protection of minors	47
6. Rights of national minorities	49
7. Restrictions to counter extremism	51
III. Regulatory means	53
1. Self-regulation and co-regulation	53
<i>a. Self-regulation mechanisms: charters and codes</i>	53
<i>b. Self-regulation and co-regulation bodies</i>	55
<i>c. Public control through boards at state-run channels</i>	56
<i>d. Obstacles to self-regulation</i>	57
2. Regulation by the national regulatory authority: the case of advertising	58
<i>a. Regulation of commercial speech</i>	58
<i>b. Monitoring and control of compliance with advertising rules</i>	59
3. Co-operation with authorities outside of Russia	62
IV. Summary and Outlook	63

The Regulatory Framework for Audiovisual Media Services in Russia

by *Andrei Richter*,
the *Moscow Media Law and Policy Centre*

I. General aspects

1. National policy and general problems in the regulation of audiovisual services

a. General approach

In Russia the practice of state regulation of broadcasters began on 14 July 1990, when the *Decree of President Mikhail Gorbachev On Democratisation and Development of Television and Radio Broadcasting in the USSR* was issued. It gave the Councils of People's Deputies (or Soviets) at all levels, as well as public organisations, the right to open television and radio facilities and studios, and formulated the need for legislation on television and radio broadcasting. This decree and the government resolution that followed it provided the legal basis for the country's first non-state television and radio programmes.

The *Statute of the Russian Federation On the Mass Media of 27 December 1991 (No. 2124-1)*¹ laid down several major components of the post-Soviet system for regulating media (including audiovisual media). They consist of:

- a ban on state censorship,
- the general freedom to establish media outlets,
- State registration of media outlets,
- special rights and duties for journalists, including editorial independence from the founders (owners),
- a state licensing obligation for radio and television broadcasters.

The Statute On the Mass Media still constitutes the main legal basis for regulating broadcasting, but it is in fact a very limited basis and problematic with regard to its implementation. To avoid collision with governmental discretion, the few key provisions on broadcasting in the Statute were subsequently abolished or made less precise. Through these amendments in 2004 licensing and regulation of broadcasting were put under the control of governmental bodies.

1) The text is available in English at: http://medialaw.ru/e_pages/laws/russian/massmedia_eng/massmedia_eng.html

Today the Russian audiovisual sector, though economically viable,² is still in need of clear and stable rules for its functioning, in the interests of the public and business. Notwithstanding the repeated attempts of the parliament³ during the 1990s to develop a legal system for electronic media,⁴ the Russian regulation of broadcasting still presents many unsolved problems. Russia remains one of the few European countries without a parliamentary statute on broadcasting or the audiovisual media. Moreover an unannounced moratorium for the preparation of a draft law on television and radio broadcasting exists since 2000 (see below). If a statute were to be drawn up, it should aim at regulating the relationship between Government, broadcasters, programme producers, and technical service providers, as well as serving as a legal framework for broadcasting activities and regulatory instruments. While a first draft for such a statute was in fact submitted to the Supreme Soviet (parliament) of the USSR in 1991, neither this bill nor those prepared later for consideration by the Russian parliament have ever been adopted and/or promulgated because of the different political positions of the stakeholders on this issue.

That does not mean that Russia lacks legal regulation of broadcasting. The relationships in this sphere are regulated by 15 federal statutes that, in part, refer to broadcasting issues (e.g. Statutes On the Mass Media, On Communications, On Advertising), as well as by four international covenants (the European Convention on Transfrontier Television⁵ – signed but not ratified by Russia – , the Constitution and Convention of the International Telecommunication Union,⁶ and the Okinawa Charter on the Global Information Society⁷), three decrees of the President of Russia, 20 decrees and resolutions of the Government, dozens of ordinances of different ministries as well as the *gosudarstvennye standarty* (State Standards). Seventeen of the State Standards refer exclusively to digital TV, while 50 more are currently being developed just for this very aspect of broadcasting.⁸ The regulation of broadcasting falls almost exclusively under federal jurisdiction. Few of the existing regional acts are relevant and only to the extent that they do not conflict with federal legislation (e.g. local subsidies or benefits to state-run companies).

The very definition of the mass media has remained unchanged in the Statute On the Mass Media since its adoption in 1991. It stipulates that they “shall be understood to mean a periodical printed publication, a radio, television or video programme, a newsreel programme, and any other form of periodical dissemination of mass information” (Art. 2). The key elements of the notion are *periodicity*, *dissemination*, and *mass use* of the information (understood in Russia in the widest possible sense). We shall discuss their meaning below.

The Statute requires all mass media to be registered by their founders (whose legal status resembles in many ways that of owners of the media outlet) at the special executive office, which is currently *Roskomnadzor* (the Federal Service for Supervision of Communications, Information Technologies and Mass Media under the Ministry of Communications and Mass Communications). The Statute also stipulates that violations of some of its provisions may lead not just to the liability of the journalists and editors at fault, but also to the liability of the particular media entity as such. Possible sanctions are written warnings from the Federal Service. After two warnings within 12 months, a third violation will lead to the forced closure of the outlet.

The general position of the Russian government regarding law and policy for audiovisual media services is represented in the words of President Dmitry Medvedev. He pronounced them in Berlin on 5 June 2008, in response to questions from German political, parliamentary and civic leaders:

2) See: Digital Television in Russia. Edited by Groteck Co., Ltd. for the European Audiovisual Observatory. Moscow, 2008.

2) The parliament tried to overturn the opposition of the upper chamber (appointed by the President) or the presidential veto on a number of occasions but failed each time.

4) See an earlier (October 2003) report by Sklyarova Ya. (The Moscow Media Law and Policy Centre) The Russian System of Licensing of Television and Radio Broadcasting (Edited by Irene Gentile, European Audiovisual Observatory), available at: http://www.obs.coe.int/online_publication/reports/ru_sklyarova.pdf.en

5) See: <http://conventions.coe.int/Treaty/EN/treaties/Html/132.htm>

6) See: <http://www.itu.int/net/about/basic-texts/index.aspx>

7) See: <http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan002263.pdf>

8) Mayzuls R. and Yu. Shavdia. Развитие нормативно-правовой и нормативно-технической базы современного телерадиовещания / “Broadcasting. Телевидение и радиовещание” No. 3, 2008, pp.31-36. See: <http://broadcasting.ru/articles2/Regandstan/progress-tv>

"I think that television should be an independent institution within civil society. It should be an institution that is both independent and at the same time responsible before the country and before the people that receive its products. Television can be in state hands and in private hands, but it needs to be truthful.

Television can be funded by advertising revenue or it can be publicly funded, that is, funded by donations made by citizens. I think that we could develop all of these different types of television broadcasting. But it was not by chance that I referred to the technological revolution that is now entering every home.

I talked about this with Mrs. Merkel today. I am absolutely sure that in five years time there will be practically no difference between computers and television sets. All countries, Russia and Germany included, will be confronted first and foremost not so much with television company regulation and licensing issues, taxation issues, and even less so ownership issues, but with the content issue, the question of what is broadcast in the global media space and how.

At the same time, we need to understand that humankind has not yet found the answers to a number of challenges that confront us in this area. To explain what I mean, as you know, over the last century the world has developed an extensive system of rules regulating copyright. This system is built on a number of international conventions. But the emergence of a global environment for television broadcasting and information and communications technology in general will see the end of this system. We have to work out how the world is going to settle these issues, not to mention the need to address more conventional issues such as security and morality. I think these are all things we need to work on together.

As for media development in Russia, our media is maturing and, as I have said, the television channels we have today have come a long way since the early 1990s. Today we have more mature, more developed television. This applies to both the state and private channels. In this sense I am sure that everything will continue to develop without problems."⁹

In a nutshell this position is quite clear: (1) to be independent, television should be accountable not only to the audience but also "to the country"; (2) content regulation is much more important than licensing regulation and other issues, as the platform may change while the content will remain; (3) wherever possible (copyright, security, public morals) Russia welcomes international assistance; (4) state as well as private television will keep their places and freedom to develop in Russia; and (5) no public television is envisioned (for a comparison between state and public service television see below, I.4.). Nevertheless, according to the position of business and legal experts today there are five key problems concerning legal regulation of the audiovisual media in Russia. They are:

- inadequate absorption of international trends in modernising the law and practice of the audiovisual media;
- contradictions within the legal framework of the broadcast media as well as within the pending fragmented broadcasting acts;
- lack of uniformity in the terms used for, on the one hand, the issues addressed by regulations and, on the other hand, the different types of activities of the various players of the audiovisual field;
- a voluminous and controversial regulatory system that hampers the development of the new audiovisual media services and business activities;
- long delays for processing licence applications and for obtaining permissions to use frequencies and transmission equipment.¹⁰

In this contribution we will tackle these and other issues concerning the regulation of audiovisual media services in Russia.

9) http://www.kremlin.ru/eng/text/speeches/2008/06/05/2239_type82914type84779_202294.shtml

10) See footnote 8.

b. Applicability of traditional requirements to new audiovisual media services

The appearance of what have become known as non-linear audiovisual media services (hereinafter also referred to as “new media services”), including Internet-based services, has invoked neither new nor specific regulation under the 1991 Statute On the Mass Media. The key reason relates to the difficulty of squeezing the new media services into the statute’s definition of a mass medium and consequently the issue of whether or not these services come within the scope of the statute. New non-linear audiovisual media services are understood to cover interactive and converged information services based on digital computerised and networked communication technologies. They are mostly represented by Internet-based services, although mobile audiovisual services are also making their way into Russian life.

If non-linear audiovisual media services came within the scope of the Statute On the Mass Media then its rules on the special system of registration of all media outlets would apply. Furthermore, the new media services would have to respect numerous obligations regarding the content supplied by their authors (who would be considered as journalists), they would come under the control of the governmental media and advertising watchdogs, and could be subjected to sanctions for specific violations caused by the dissemination of mass information. The possible sanctions would include the ultimate annulment of the registration of a mass medium. Additional restrictions imposed by the election law, the advertising law, the defamation law, etc. on the dissemination of information through mass media would also apply.

On the other hand, if acknowledged as regular (traditional) mass media, such as the press and broadcasting, the new media services would enjoy the benefits of access to information and have a number of specific rights conferred by the Statute On the Mass Media and other pieces of legislation upon journalists.

In the remaining part of this section, we shall examine the applicability of the existing definition of mass media (see I.1.a) to the new media services. To this end, we must first of all check whether these services meet the definition’s criteria.

i. Mass character

The first element of the mass media is their “mass” character. The Statute On the Mass Media defines mass information as “printed, audio and audiovisual and other messages and materials intended for an unlimited range of persons” (Art. 2).

It is true that the new media services are spreading rapidly. In the law we can see a positive sign for the advancement of these changes: Art. 57 of the Federal Statute On Communications adopted by the State Duma on 18 June 2003 requires that among the universal services the supply of which is guaranteed in the Russian Federation are the services for data transfer and providing access to the Internet from points of multiple access. The Statute stipulates especially that in settlements with a population equal to or above 500 people there shall be, at least, one network point arranged for providing multiple access to the Internet.¹¹

Thus the “mass” in “mass media” is not a numerical sum of the total of readers and viewers or a breakthrough number beyond a threshold of a thousand or a million people. Mass refers to the fact that a medium is not reserved to a certain elite. So far, almost anywhere in Russia, the ability to go online at home or even at work tells something about one’s social standing in a way that being able to watch television, listen to the radio or read the newspapers does not.

11) See the text of the Statute (in English) at: http://medialaw.ru/e_pages/laws/russian/communications.htm

12) See Russian Periodical Press Market: 2008. Situation, Trends and Prospects. A report by the Russian Federal Agency for the Press and Mass Communications, Moscow, March 2008. An English version of the report is available at <http://www.chtenie-21.ru/readers/news/2324>

13) See: Digital Television in Russia. *Op. cit.*

In July 2007, the Levada Centre, an agency for sociological research, conducted a study, which showed that one in four Russians had a home computer; 61% had a cell phone; and 17% could use it to access the Internet. At the same time, 6% of the country's population knew nothing about the Internet, and 73% never had an opportunity to use it.¹²

Mobile delivery of TV is even more an elite, if not an experimental, service for the population: just 0.2 million households have access to this service.¹³ On-demand audiovisual services are also very limited and spread only through some cable and satellite networks. Digital terrestrial television is available to just 60 000 Russians.¹⁴

Thus we should not think that new media services are accessible to the bulk of the Russian population. However, we should accept that the time will soon come, when falling computer prices and network tariffs coupled with the removal of remaining political and legal obstacles will turn them into a popular source of "messages and materials" for the *masses*, that is, an unlimited and incalculably vast range of persons. It is then, but only then, that they will have a "mass" character.

ii. Periodicity

Another powerful argument against accepting that the new media services are covered by the legal definition of mass media is that they lack (at least in general) the "periodicity" that is inherent in the traditional media – newspapers, magazines, TV and radio programmes. In other words, if on 1 January 2010 you access online information intended for public consumption you cannot always be sure that the supply of information will have a "continuation" to be consumed the next day (as in a daily news programme) or next week (as with a TV magazine) or even on 1 January 2011 (as with a New Year's traditional TV ball or concert).

That is not the only thing meant by periodicity. Equally relevant is that the audience expects all media outlets to renew their content in full, retaining only their identifying features such as name, principal design, regular participants, signature tunes, screen logos, and so on. Such a renewal is expected to occur at certain fixed regular intervals: hours, days, weeks, etc.

Exceptions to this are the online versions of traditional media outlets, on the one hand, and Internet-only publications and news agencies, on the other hand. Yet the former are essentially just considered a new form of "old" media rather than new media, even if the online versions differ, and the latter two account for a tiny proportion of the web.

iii. Dissemination

The third element of the legal definition of mass media deals with the understanding of what "dissemination" is. In order to bring new media into the scope of regulation, we need to elucidate whether or not the Statute On the Mass Media covers also the dissemination of mass information (see the discussion in I.1.b. i) through other forms of telecommunications than traditional broadcasting (radio and television). For example, can transmission over the Internet be qualified as dissemination? The forms of dissemination regulated by Russian law are all listed in the statute (Art. 2). They comprise sale, subscription, delivery, distribution, broadcast, newsreel screenings. Some clauses in the same statute though allow for "the rules established for radio and television" to be applied "to periodical dissemination of mass information via teletext and videotext systems and other telecommunications networks" (Art. 24). Some legal scholars believe that this reference allows the Internet to be classified as a mass medium.¹⁵ In our view, however, the reference only encompasses so-called supplementary information, i.e., information that *complements* a television or radio programme transmission. It does not allow to treat Internet transmission as another form of dissemination that would satisfy the definition of mass media.

14) See interview of Aleksey Malinin, director-general of RTRS, to Itogi magazine 3 August 2009, No.32, available at: <http://www.itogi.ru/hitech/2009/32/142821.html>

15) See, for example, *Моргунова Е. А. и др. Комментарий к Закону РФ «О средствах массовой информации» / Под общ. ред. Погуляева В. В. Изд. 2-е, перераб. и доп. – М., 2005. С. 89. Волчинская Е. К., Терещенко Л. К., Якушев М. В. Интернет и гласность. – М., 1999. С. 77.*

iv. Further reasoning

Applying the rules laid down by the Statute On the Mass Media for radio and television to the Internet would raise a number of unresolved policy matters. For instance, if a television station broadcasts defamatory content, the person whose personal or professional name has been impugned can demand the right of retraction. As provided by the Statute, the refutation has to be broadcast at the same time of day as the offending allegations (Art. 44). Clearly the same should apply in the case of the online media, but it is impossible to “broadcast” and then immediately remove a denial on the web, so the exercise becomes pointless. If the denial were to be kept there, how long should it remain on the site, and where? Can a story and its denial coexist on the same webpage? If defamatory allegations have to be removed from a site, can they remain in an online archive in a way equivalent to a library’s bound folders of newspaper editions? And if they can, then is an online service entitled to link to them? There are no answers to these questions in the Russian law and without them any refutation or reply in online media can quickly descend into farce.

Thus, the lack of mass accessibility, periodicity (renewal) of content and dissemination according to a traditional legal understanding suggests that applying the current regime of the Statute On the Mass Media to the new media services would be premature. These constraints could possibly be solved and the Gordian knot be cut by changing the meanings of the definitions so that they encompass the new services. This is exactly the solution adopted in the mass media statutes in Belarus and Kazakhstan amended in 2008 and 2009 respectively. As a result, all or almost all Internet messages and materials can now be controlled under the general legal regime of the mass media.¹⁶

Nevertheless, Russia’s state regulator for the media, *Roskomnadzor* (Federal Service for Supervision of Communications, Information Technologies and Mass Media under the Ministry of Communications and Mass Communications), broadly encourages the registration of audiovisual and other services that are offered exclusively online thereby treating them as mass media entities (see on the registration of the mass media I.3.c). As many as several hundred, maybe thousands of services have been registered so far. The registration of online services is voluntary, although there was at least one instance in which the courts attempted (in 2006-2007) to penalize the online publication *Novyy Fokus* (New Focus, an Internet newsmagazine based in the Khakassia province¹⁷) for “dissemination of content from an unregistered medium of mass information”.¹⁸

c. Attempts to introduce a separate law for online services

Most of the attempts to regulate Internet-based and other new media services within or outside the Statute On the Mass Media yielded no practical results. For example, in 2008, a draft Model Statute On the Internet for the Commonwealth of Independent States was discussed by the upper chamber of the Russian parliament. The bill aimed at regulating state aid for Internet-based services, functions and duties of participants in Internet activity, jurisdiction and self-regulation matters, etc.¹⁹ The chamber decided to postpone the bill which effectively buried the initiative. When the new President of Russia Dmitry Medvedev, an Internet addict, rose to power brutal attempts to restrict it seemed to become futile. The current position of the Russian government regarding the regulation of the Internet is reflected in the words of Medvedev published on his video blog on 22 April 2009, the opening day of the Russian Internet Forum. He said:

“The Internet has developed over these last years into a full-fledged self-regulated system that has a substantial influence in all different areas of our lives. Social networks and blogs have become centrepieces in this system [...]

Primitive attempts to regulate this system face enormous difficulties. The Internet has its own laws, and these are the laws we, as users, need to follow. I think that in this respect there is work to be done, and this is something in which we all need to be involved.

16) See Belarus: New Media Law Adopted by Andrei Richter, IRIS 2008-8: 7, available at: <http://merlin.obs.coe.int/iris/2008/8/article9.en.html> and Kazakhstan: Amendments to Information and Communication Law by Andrei Richter, IRIS 2009-10: 15, available at: <http://merlin.obs.coe.int/iris/2009/10/article20.en.html>

17) See <http://khakassia.info/static/contacts.html>. The website eventually registered as a mass medium in 2007.

18) See, e.g. http://telnews.ru/QL_dar_Kudinov/c35854

19) See more on this in: Richter A. *Правовые основы журналистики*. М.: 2009. P. 315-316.

The Internet should not be an environment dominated by rules set by one country alone, even the strongest and most advanced country. There should be international rules drawn up through collective effort, and the worldwide web should continue to develop as it has done so far – as a common environment. Only this way can we counter terrorism, xenophobia, and other unlawful activity on the Web. Finally, only through collective agreements can we protect copyright. I consider, and indeed insist, that this is all very important.

What can our countries' authorities do to develop the Internet here in Russia? I think that our main task is to create the right conditions for maximum access to Internet services. I can assure you that given our country's size, this is no easy undertaking [...]

Another no less important task for the authorities at all levels is to establish an open presence on the net. The situation with openness and readiness to provide various state services through the Internet is still far from ideal here, and to be frank, very little has been done at all in this area. But we are starting to see the first steps in this direction. Many state institutions have created quite good sites of theirs, and there are some successful examples of electronic government in practice, in Tatarstan, for example. I began this blog, and many senior officials could not resist and have followed my example. Information on the incomes of the countries' senior government officials was published just recently on the Internet.

In my view, these two tasks – guaranteeing equal access to the Internet (provision of good quality service at a reasonable price for our country), and having the authorities establish a full and open presence on the net and give the public convenient access to information – are the key tasks for the authorities in this area”.²⁰

In this and other addresses President Medvedev has stressed with persistence that development of information and communication technologies, first and foremost of the Internet, is the key to economic progress in Russia. The Internet is also an instrument that would help the country emerge from the current economic crisis and combat governmental corruption and other vices. Russia cannot boast that it has reached an especially advanced level for these types of technology. But in the President's words the country certainly has all the prerequisites to achieve a breakthrough in this area. Information in the information society is a product for mass consumption and a powerful economic resource.

d. Development of new services: the State policy and “soft law”

Dmitry Medvedev also made the point that the development of information technologies directly advances science and technology, the efficiency of public administration and even the political system because it increases access to political institutions, and it thus extends democracy.²¹ In his own words, “today it is obvious that any sort of progress or modernisation is impossible without information technology. This is the case in the scientific and technical spheres, but not only there: it is also obligatory for dealing with administrative issues and even the strengthening of democracy in the country”.²²

The problems of public access to new media services are acknowledged by the authorities. In his Opening Address at a Meeting of the State Council Presidium²³ on 17 July 2008 with the *Agenda On the Implementation of a Strategy for the Development of the Information Society in the Russian Federation* President Medvedev enumerated the challenges faced by the country in this field.

20) http://www.kremlin.ru/eng/text/speeches/2009/04/22/1001_type207221_215341.shtml

Regarding President Medvedev's reference to “international rules drawn up through collective effort” it should be noted that Russia is not a party to the Cybercrime Convention of the Council of Europe.

21) http://www.kremlin.ru/eng/text/speeches/2008/07/17/2220_type82912type82913_204259.shtml

22) http://www.kremlin.ru/eng/text/speeches/2009/02/12/0935_type82912type82913_212854.shtml

23) The State Council is made up of the heads (governors and presidents) of Russia's constituent territories. Other persons may be appointed to the Council at the President's discretion. See more on the State Council (in English) at: <http://eng.kremlin.ru/articles/council.shtml>

The first challenge he mentioned was the transition to electronic government, which, if it were achieved, could increase the transparency of government services and help reduce corruption. Currently, the goal of an electronic government is no more than a vision for the future. "One reason for this state of affairs is the very low level of computer literacy on the part of public and municipal employees. This is not the only reason: there are also financial and organisational ones. But it is the most difficult to deal with because it involves people's mentality. And it is precisely these people who should be leading the way in this area. I am talking about our colleagues, the government employees. This is that much more urgent because most documents will be in electronic form as early as 2010."

Another major problem is closely related: a lack of computer literacy that extends throughout the population. The difference in the amount of information and the information opportunities that exist among people living in Russia has created what is called the information gap or the digital divide. The President admitted inequalities between those who live in large metropolitan areas and have every opportunity to get access to the Internet and to use mobile forms of communication, and those who live in small settlements and have almost none. The government took the first steps to address this situation when it decided to computerise all the schools in the country and connect them to the Internet.

The third challenge, as the President put it, is the accessibility of the Internet for the Russian population. There is a need for broadband access and the necessary technology, and the main aspect of this challenge is first and foremost financial. The government is considering a system of support for the purchase of computers for certain categories of people, like students and pupils. Another aspect of this challenge is the development of various kinds of distance learning technologies, primarily in education and medicine. These are very relevant to people with disabilities. They include access to telemedicine consultations, receiving distance education, and potentially having access to new job opportunities.

The fourth problem is the creation of the so-called National Accessibility Standards. An example for such a standard was adopted as part of the work to connect schools to the Internet within the national project "Education". The President finds that there is a need to develop and adopt similar standards for all key areas, including for a number of television and radio services.

Improving infrastructure links is the government's fifth important task. And in this regard it must promote and prioritize the development of orbiting civilian communications satellites, broadcasting satellites, and satellites for the conversion of the radio frequency spectrum, which are essential for developing promising technologies.²⁴ The issue of infrastructural constraints, including the so-called conversion of radio frequency spectrum, has been on the agenda since 2006. Here all the heads of the relevant departments of the government need to work out a schema to harmonise cooperation between their offices: this can be carried out at the inter-departmental level or by holding meetings of the cabinet.²⁵ According to Dmitry Medvedev, it is obvious that in all these processes not only the state but also the industry must be fully involved.

And finally, security remains another issue in the development of information technologies. The government, Medvedev believes, must provide all users with a secure mode for operations on the Internet, and a system which keeps state secrets, commercial secrets and personal secrets safe.²⁶

The implementation of the *Development Strategy for the Information Society* signed into law by the Presidential Decree of 7 February 2008 requires accomplishing all these tasks.²⁷ It plans, *inter alia*, to provide broadband online access for three-quarters of Russian households by 2015.

24) http://www.kremlin.ru/eng/text/speeches/2008/07/17/2220_type82912type82913_204259.shtml

25) http://www.kremlin.ru/eng/text/speeches/2009/02/12/0935_type82912type82913_212854.shtml

26) http://www.kremlin.ru/eng/text/speeches/2008/07/17/2220_type82912type82913_204259.shtml

27) Its text is available in Russian at: <http://www.rg.ru/2008/02/16/informacia-strategia-dok.html>

In November 2008, a Presidential Decree established a special coordinating body in this area, the Presidential Council for the Development of the Information Society. The reason for the new body to be set up was formulated by the President as being the “terrible” backwardness of Russia by all the key indicators if compared with the most developed nations in this regard.²⁸

What is even more problematic, the gap between Russia and the leading countries is not diminishing. An example of this is given by Russia’s ranking in the category of electronic government: in 2005 Russia was 56th, and in 2007 it ranked 92nd. “What does this mean?” – asked Medvedev rhetorically. And he replied: “This means that we don’t even have an electronic government. All that is a chimera.”²⁹

The first meeting of the Council for the Development of the Information Society was held on 12 February 2009 in the Kremlin and was chaired by the President of Russia, who made the opening remarks. He indicated as the main task of the Council and the main function of the governmental departments concerned to create in the next two years the informational and institutional prerequisites for Russia’s integration into the global information society despite the difficulties caused by the current economic crisis.³⁰

On 9 February 2009, the eve of the meeting, President Dmitry Medvedev signed into law the *Federal Statute On Provision of Access to Information on Activity of the State Bodies and Bodies of Local Self-Government* (No. 8-FZ), earlier adopted by the State Duma. The Statute enters into force on 1 January 2010. It is viewed by the President as a major step for the development of the Internet and Internet services.

The main aims of the new Statute are transparency of the activities of governmental and municipal authorities, a wide use of new technologies, and objective and full information for the public on the activities of the state. The Statute foresees the establishment and regular updating of official Internet websites of state bodies and bodies of local self-government. To this end, these bodies as well as public libraries and other places open to the public shall offer access points to the Internet. Art. 13 of the Statute enumerates the types of information that may be provided on the Internet. It includes, *inter alia*, technical standards, information on the results of inspections conducted by the authorities, statistical data, information on the expenditures of public money, and on vacancies. The exact type of information to be provided on official Internet websites, though, shall be determined by the authorities that own these websites. In fact, the only obligatory items for official websites (according to the Statute) are the address of the official e-mail for inquiries, working hours and news updates.³¹

On a doctrinal level, the Internet and the new technologies depend on two major vectors. One is the Development Strategy for the Information Society, which underlines the most pressing tasks (see above).

The second is embodied in the *Doctrine of Informational Security*. Adopted on 23 June 2000 by the Security Council of the Russian Federation it was signed into effect by then President Vladimir Putin on 9 September of the same year.³² Although the document covers everything from the development of the national telecommunications market to questions of intellectual property, it is united by a single idea: the need to increase governmental control over the flow of information by establishing a legal basis for such control.

While nominally committed to freedom of the media and the prohibition of censorship, the document includes language which appears to subvert these general principles. According to the Doctrine, individual Russian citizens currently face a number of threats from the media including “the

28) http://www.kremlin.ru/eng/text/speeches/2009/02/12/0935_type82912type82913_212854.shtml

29) *Ibidem*.

30) *Ibidem*.

31) For more on the statute see “Russian Federation: Access to Information Law Adopted” by *Andrei Richter*, in IRIS 2009-3: 19, available at: <http://merlin.obs.coe.int/iris/2009/3/article31.en.html>

32) Published in *Rossiyskaya gazeta* on 29 September 2000. Its full text is available in English at: http://www.medialaw.ru/e_pages/laws/project/d2-4.htm

use of the mass media for restriction of the human right for the freedom of thought", "the propaganda of mass culture based on a cult of violence and values in violation of norms accepted by Russian society," and "the misuse of freedom of information" by the media.

Russians, the document continues, face even greater threats from abroad, including "the activity of foreign states, international terrorist and other criminal entities, organisations, and groups directed at infringement of the interests of the Russian Federation in the information sphere, reduction of the State influence on the life of society, and diminishing economic ability of the State to protect the lawful interests of citizens, society, and state in the informational sphere," and even "growing dependence of the spiritual, political, and economic life of the country on foreign information structures."

Another threat is the increase in the technological lead of the foreign countries and the build-up of their potential to counteract the creation of competitive Russian technologies. To safeguard against this threat, the Doctrine sets a priority on the development of domestic modern information and telecommunications technologies, the production of hardware and software capable of improving the national telecom networks and their integration into global ones. Though the Doctrine has no legal power, it points to the concerns of the Kremlin.³³ Thus we can formulate its message as: develop technologies to stop hostile foreign influence on Russia.

Meanwhile, according to a recent governmental report, "Russia keeps up with the latest global Internet trends, and in many respects leads the world."³⁴ That happens despite, in the words of the same report, "the slow spread of the Internet" which is the main factor holding back not only the market for digital content, but also the market for information and communications technologies (ICT).

According to the same source, there is a clear trend in Russia for the Internet to be preferred as a medium for accessing news than the press or traditional broadcasting. Only 2% of the population with Internet access use television as a news source, although in Russia television remains the main media channel. The rest of the Internet users watch television only for entertainment. In contrast, on the Internet most users seek news, or 93% of those between the ages of 15 and 24, and 98% of those between the ages of 40 and 60. This is hard to interpret as anything other than a local Internet victory over television.

The Internet users mainly come from the educated section of society with a basic knowledge of the Internet, enough time and money to engage in such a pastime, and a desire to read independent and often contradictory media, the report says. The main user of Internet information is one who is affluent, has an intellectual job, and a steady source of income. Usually, these are people between the ages of 16 and 45, with a higher or technical college education. They are active in their communities, and have their own perspective on key social issues.

According to the 2008 *Report of the Federal Agency for the Press and Mass Communications*, the Internet is currently experiencing a boom in user generated content (blogs or live journals). In the past few years, blogs have not only incorporated text, but also images and video. The services MySpace, which is part of Rupert Murdoch's News Corporation empire, and YouTube, the leading user video site belonging to Google, are flagship projects of the Web 2.0 Internet era among Russians.

A factor contributing to the Internet market growth is the introduction of broadband access in large cities. Broadband access makes it possible to download "heavy" content (films, games, software), while "light" content (music, books, etc.) is distributed today mainly through cell phones, communicators or smart phones. Most Russian users still continue to access the network predominantly through dial-up connections. Modern Internet technologies begin to pay their way only when a certain visiting threshold is crossed. For Internet use to spread faster, broadband rather than dial-up connections are needed.

33) See for a discussion of the doctrine "Russian Media Policy Likened to Soviet Era" by David Hoffman, *The Washington Post*, September 14, 2000; A24.

34) See Russian Periodical Press Market: 2008. Situation, Trends and Prospects. A report by the Russian Federal Agency for the Press and Mass Communications, Moscow, March 2008. P. 75. An English version is available at: <http://www.chtenie-21.ru/readers/news/2324>

In 2008, the Independent Media Sanoma Magazines launched a mobile version of the Russian edition of Cosmopolitan magazine, available at wap.cosmo.ru. Using their cellular phones, magazine readers are not only able to read what the magazine's issues offer (news, articles, advertisements and trend predictions), but can also post their views on forums. They may comment on materials, take part in votes, polls and competitions, download free content, etc.

In view of its mobile format, the developers added a Photoblog service to the general structure of the "wap site" in order to enable visitors to upload photos or images from their phones and have them participate in a vote on the best content. Registered "wap visitors" can also obtain personalised data on their phones in the form of text messages. For example, they may request a weather forecast for a specific city and a daily horoscope, including a daily personal horoscope.

The Cosmopolitan was followed by the Maxim magazine which started in 2009 Maxim TV video service.³⁵

However, while cellular communication advancement in Russia has been a success, the same cannot be said of the spread of computers and the Internet. According to the latest figures released by the Russian Ministry of Communications and Mass Communications, only 25 million people (18% of the population) use the Internet fairly regularly. Statistics experts from the Internet World Stats give a somewhat higher estimate of Internet use in Russia, namely 19.8%.³⁶

By comparison, according to the same data from the Internet World Stats, the Internet use in Belarus is 56.3% or, put differently, more than in France (54.7%). Among the former Soviet republics, Estonia leads the field (with 57.8%). Russia is fifth, behind Latvia and Lithuania, but ahead of Moldova, Ukraine and the former South Caucasian and Central Asian republics of the Soviet Union. In the words of the governmental report, it is too early to speak of the Internet "in Russian villages that are not yet mapped."³⁷

The 2008 Russian report on the mass media points to five trends that stand out among a host of developments that transformed the Internet since 2000. Their effect is felt today and they have the potential to change the Internet beyond recognition:

- At the beginning of the 21st century, the world network spawned search engines on such a grand scale that they brought a lot of advertising and spam to the Internet.
- Following a boom in user content and the emergence of behaviour analysis systems, the Internet became more social.
- New technologies are now spreading content over file-exchanging networks and their popularity is a source of worry for traditional media and a cause of the large-scale war against piracy.
- There is a trend away from conventional and costly programmes, such as Microsoft Office, and towards network freeware, such as the one provided by Google.
- Millions of people are increasingly slipping into virtual reality, and, vice versa, virtual reality is invading the real world.³⁸

35) See Российский рынок периодической печати. Состояние, тенденции и перспективы развития 2009. Russian Periodical Press Market: Situation, Trends and Prospects. 2009. A report by the Russian Federal Agency for the Press and Mass Communications (ed. by Vladimir Grigoriev). Moscow, 2009. P. 32. Available (in Russian) at http://www.fapmc.ru/files/download/Press2009_Block+AF_New!.pdf

36) See Russian Periodical Press Market: 2008. Situation, Trends and Prospects. A report by the Russian Federal Agency for the Press and Mass Communications, Moscow, March 2008. P. 79. The English version is available at: http://www.fapmc.ru/files/download/445_file.doc

37) *Ibidem*.

38) See Russian Periodical Press Market: 2008. *Op. cit.* P. 80-81.

e. Russia's position with regard to the Convention on Transfrontier Television

Russia is a member state of the Council of Europe. On behalf of the Russian Federation the Minister of Foreign Affairs, Sergey Lavrov, signed the revised European Convention on Transfrontier Television (ECTT) on 4 October 2006. This event was followed by a representative seminar in Moscow, sponsored by the Council of Europe and the Russian Government. Since then, the only practical public steps towards its ratification were made by the Ministry of Culture and Mass Communication (the predecessor of the current Ministry of Communications and Mass Communications) at the end of 2007. Back then, the Ministry prepared for the Government of the Russian Federation two bills to be introduced by the latter for consideration by the State Duma.

The first bill proposed amendments to the Statutes On Advertising and On the Mass Media. In particular, it suggested adapting the current legal rules for advertising, tele-shopping, and sponsorship in broadcasts to the standards of the Convention (regarding their frequency and intervals, restrictions, etc.). The Statute On the Mass Media was amended by the introduction of a separation (in legal terms) of transmission and retransmission activities, and limitations on sponsorship. Changes were also proposed to the definition of the right of reply.³⁹ Overall the Russian law is not dissimilar to the norms of the Convention and could be easily harmonised with the ECTT.⁴⁰

The second bill should have served to ratify the Convention. It contained a reservation that the rules for advertising of alcohol products would be as in the advertising law of the Russian Federation (that standard is stricter than in the ECTT).⁴¹ The bills were drafted so as to enter into force after their adoption and official publication but not earlier than 1 January 2009.

The government did not consider the bills, at least not publicly. They were not introduced in the State Duma. The Ministry of Culture and Mass Communication that drafted the bills was disbanded in 2008, and as of today no practical plans exist to have the Convention ratified in any foreseeable future. One of the reasons could be the unwillingness of the television industry to be restricted by rules outside of its influence and control, especially in the area of advertising and sponsorship and especially in times of crisis.

2. Key notions of the regulations and their interpretation

a. Freedom of broadcasting

The Russian statutory law stipulates very few principles and notions concerning audiovisual media. Art. 29 of the Constitution, which was adopted by a national ballot on 12 December 1993, states that "everyone shall have the right to freely seek, obtain, transmit, produce and disseminate information by any legal method." This is the principal definition of *freedom of information* in the Russian legal system. The same article states: "The freedom of mass information shall be guaranteed. Censorship shall be prohibited."⁴² Thus freedom of mass information can be interpreted as the right to freely seek, obtain, transmit, produce and disseminate mass information by any legal method. As was noted above (I.1.b) mass information is in turn defined in the Statute On the Mass Media as "printed, audio and audiovisual and other messages and materials intended for an unlimited range of persons" (Art. 2).⁴³

The Constitution does not specifically refer to television broadcasting in this or any other context. Thus all legal measures governing the broadcasting system are based on the provisions of the Statute On the Mass Media (1991). As was also said above, the Statute defines *mass media* in particular as "a television or video programme ... and any other form of periodical dissemination of mass information". The dissemination of mass media products is understood *inter alia* as "broadcasting of ... TV programmes" (Art. 2).

39) See its text (in Russian) at: <http://medialaw.ru/publications/zip/162/4.htm>

40) See, e.g. Рихтер А. Последствия присоединения РФ к Европейской конвенции по трансграничному телевидению (ЕКТТ) и Протоколу поправок. *Телефорум* (Москва), 2001, № 10-11. <http://broadcasting.ru/articles2/humanit/tv-bez-granic>

41) See its text (in Russian) at: <http://medialaw.ru/publications/zip/162/5.htm>

42) <http://constitution.ru/en/10003000-03.htm>

43) See: http://medialaw.ru/e_pages/laws/russian/massmedia_eng/massmedia_eng.html

b. Jurisdiction over audiovisual media services originating from third countries

Art. 54 (Dissemination of Foreign Information) of the Statute On the Mass Media states, in particular, that “citizens of the Russian Federation shall be guaranteed unimpeded access to reports and materials of foreign mass media.” The same article also provides that: “The reception of programmes of direct TV broadcasting shall be limited not otherwise than in cases provided for by interstate treaties and agreements concluded by the Russian Federation.”⁴⁴ That means that direct TV may not be interrupted unless there is such an agreement. No such treaties and agreements have been concluded by Russia.

c. Development of broadcasting

The Resolution of the Government of the Russian Federation of 29 November 2007 (No. 1700-r) approved a *Concept Paper for the Development of TV and Radio Broadcasting in the Russian Federation in 2008-2015*.⁴⁵ This document was elaborated by the high-level Governmental Commission on Development of TV and Radio Broadcasting then headed by Dmitry Medvedev in his capacity as First vice-chair of the Government. The Commission, which is still active today, was established by the Resolution of the Government of 22 May 2006 (No. 304) and mandated to coordinate activities of different governmental ministries and agencies and other stakeholders in the switch-over process to digital television.⁴⁶

The importance of the Concept Paper for the Development of TV and Radio Broadcasting in the Russian Federation in 2008-2015 is underlined by an extensive bill to amend the Statute On the Mass Media, which a group of experts chaired by a vice-speaker of the State Duma prepared in 2009 for the ruling political party United Russia. The bill aims to change key notions of the Statute On the Mass Media. In a strange twist of the law-making logic, the bill has been justified in particular with the necessity to bring an existing parliamentary act in conformity with the governmental concept paper.⁴⁷

The Concept Paper seeks to facilitate citizens’ enjoyment of their “constitutional right to obtain socially important information”. The main instrument to develop broadcasting is seen in the switch-over from analogue to digital TV and radio by 2015.

The Resolution of the Government of the Russian Federation “On the Concept of the Federal Target Programme ‘Development of TV and radio broadcasting in the Russian Federation in 2009-2015’” allocated the maximum amount of RUB 76,366 million from the federal budget for its implementation. The Concept targets 6 500 state-owned telecommunications units to be upgraded for digital broadcasting purposes.

The switch-over to digital TV will be implemented gradually by five zones from the Far East to the European part of Russia with a special focus on the regions bordering foreign countries. The switch-off will take place when more than 90% of the households have set-top boxes to be purchased individually at their own expense.⁴⁸

d. Government-private sector partnership

The ideology of how to develop the audiovisual field in the Russian Federation is similar to that in other branches of the national economy and can be described as a form of partnership between the state (or, the government) and private business.

44) *Ibidem*.

45) Concept of development of TV and radio broadcasting in Russian Federation in 2008-2015 (*Концепция развития телерадиовещания в Российской Федерации на 2008 – 2015 годы*) available in Russian at: <http://merlin.obs.coe.int/redirect.php?id=11089>

46) The text of the Resolution is available in Russian at: <http://www.government.ru/content/governmentactivity/rfgovernmentdecisions/archive/2006/05/25/4260828.htm>

47) The text of the bill with the memorandum is available in Russian at: <http://ruj.ru/2009/090504-10.htm>

48) See Russian Federation: Government adopts pre-plan for digital switch-over by Andrei Richter, IRIS 2009-10: 18.

The Concept Paper for the Development of TV and Radio Broadcasting in the Russian Federation in 2008-2015 specified that: “Construction of the TV broadcasting networks shall be performed on the basis of the market players’ funds, and the government shall develop an easily understood and acceptable legal framework that meets the requirements of broadcasters, operators and consumers of TV broadcasting services”. In other words, it is planned that the infrastructure and networks necessary to develop digital TV and radio will be built at the expense of the communication companies, while the government takes on the burden of working out the legislative basis for such development. The government’s task will consist of drafting amendments to three statutes (on licensing, on communications, and on the mass media), as well as issuing a set of governmental resolutions.

Business experts confirm, that the Government of the Russian Federation chose the model of a government-private sector partnership in the Concept Paper in spite of the intentions of many influential players (in particular, the federal state unitary enterprise Russian Television and Radio Broadcasting Network – RTRS) to obtain funds for the modernisation of “on-land” (in the sense of terrestrial) infrastructure used to distribute TV signals.⁴⁹ Later developments, however, demonstrated that RTRS will lead such partnerships in broadcasting (see below).

e. Uniform licensing for all audiovisual media services

Licensing remains the main instrument of the state’s policy in broadcasting and will continue to be performed by the executive branch of the government. There will be no limit as to the number of licences provided to a given broadcaster, but there will be limit to the spectrum of licensees (see below). The Concept Paper for the Development of TV and Radio Broadcasting in the Russian Federation in 2008-2015 underlines that, in order to reach its aim, the government will in particular “define uniform rules of licensing of broadcasting despite the differences of methods and technologies of transmission”. When the Concept Paper was originally adopted by the Commission on Development of TV and Radio Broadcasting on 7 November 2007, Mr. Leonid Reyman, then Minister of Information Technologies and Communications, underlined its universal character as it “does not require different rules for different technologies of the signal delivery. Such an approach is particularly timely taking into account appearance of the new services for dissemination of TV signals such as the Internet and mobile networks of the third generation.”⁵⁰

Thus the uniformity of licensing rules is a fundamental notion in this regard. The licensing rules were drafted by the Ministry of Information Technologies and Communications (another predecessor of the current Ministry of Communications and Mass Communications) in 2008 and took the form of a bill, amending the Federal Statutes On Licensing of Certain Types of Activities, On Communications (see more on the Statutes below), and On the Mass Media.⁵¹ The bill basically added several articles to the Statutes that had been copied from the governmental regulations on licensing broadcasters. The draft was not approved by the government. Currently its fate is unclear.

f. Must-carry rules

Until recently Russian law had no must-carry rules except for very few provisions in regional legislation. The Concept Paper for the Development of TV and Radio Broadcasting in the Russian Federation in 2008-2015 assigned the government to develop a “socially-important package of channels” whose transmission to the public via all platforms would be obligatory and without any charge or for a nominal fee. In other words, the government had to bundle a package of must-carry programmes. The government agreed to cover the costs for its transmission, while the delivery of all channels not included in the package will be left to the free market.

49) Digital Television in Russia. Edited by Groteck Co., Ltd. for the European Audiovisual Observatory. Moscow, 2008. P. 49. If the Russian government wishes to finance a project, it first of all drafts and confirms a “concept”, then a Federal Target Programme and then allocates financing. The Concept of the Federal Programme, approved in December 2008 by the Governmental Commission on Television Broadcasting, was enforced by the Government on 21 September 2009. It is not yet the final Programme as such.

50) The report is available on the website of the Ministry at: <http://minkomsvjaz.ru/news/xPages/entry.6603.html>

51) See the text of the bill at: <http://www.medialaw.ru/publications/zip/165/1.htm>

The line-up of this package was developed by the government and approved by the *Decree of the President On National Mandatory Free Television Channels and Radio Stations* of 24 June 2009. The decree aims at “pursuing the objectives of ensuring freedom of information and guaranteeing that people everywhere in Russia have access to socially important information”. It sets out a list of television channels and radio stations that must be broadcast nationwide and free of charge.

The package, namely a line-up of eight mandatory free national TV channels, includes seven state-run channels: the Kultura (the culture and arts channel), Sport, Vesti (24-hour news channel) and Russia channels, all part of the All-Russian State Television and Radio Company (VGTRK), a yet to be formed channel for children and youth (to be established by 1 January 2011), Channel One, Petersburg - Channel 5, as well as a private channel, NTV, owned by *Gasprom-Media*. No public tender or competition was held for this selection. No explanation has been provided as to why, for example, a sports channel was prioritized over an educational programme, or why NTV was picked from an array of other private networks. No room was reserved for regional broadcasters, with the exception of the St. Petersburg’s channel, although according to the Concept of the Federal Target Programme “Development of TV and radio broadcasting in the Russian Federation in 2009-2015” regional branches of the RTRS will be allowed to make local informational inserts into these programmes.⁵²

The Presidential Decree states that these channels will be broadcast in mandatory fashion throughout the entire country, and at no cost to consumers. Their transmission will be the responsibility of the federal state unitary enterprise Russian Television and Radio Broadcasting Network (RTRS). According to RTRS no other operator will supposedly have this right.⁵³

These TV channels in effect become must-carry channels all over Russia on all platforms, including cable and satellite services. The TV channels shall be in one common multiplex once the switch-over to digital television takes place.

The Government of the Russian Federation shall be obliged to provide these TV channels with all necessary licences and to subsidise their dissemination via analogue and digital means in the market areas with a population of less than 200 000 (till 2011) and less than 100 000 (starting from 2011).⁵⁴

3. Licensing requirements for audiovisual media services

a. System of dual licences

As was the case with the introduction of media registration (see I.3.c) by the *USSR Statute On the Press and Other Mass Media* of 12 June 1990, the licensing of television and radio brought into practice by the Decree On democratisation and development of television and radio broadcasting in the USSR (see I.1.a) of President Gorbachev could be viewed as a curtailment of the freedom of mass information because not all applications for a licence to broadcast are granted. However, given the letter and spirit of international agreements⁵⁵ and the way broadcasters around the world operate in practice, it may be argued that the opposite could also apply. In a democratic state licensing *per se* does not obstruct the freedom of mass information and, moreover, it can and should promote it because it is in the public interest to allocate frequencies to those who offer the optimum service. Licensing can also ensure that broadcasters comply with defined social objectives, for example to protect minors and guarantee diversity in political debate and information. So there is a need for the sector to be properly regulated in order to balance freedom of mass information (as guaranteed by the Russian Constitution) against other legitimate rights and interests.

52) See Russia: Government adopts pre-plan for digital switch-over by Andrei Richter, IRIS 2009-10: 18, available at: <http://merlin.obs.coe.int/iris/2009/10/article26.en.html>

53) See interview of Aleksey Malinin, director-general of RTRS, to Itogi magazine 3 August 2009, No.32, available at: <http://www.itogi.ru/hitech/2009/32/142821.html>

54) See: Russia: Must-carry Channels Approved by President by Andrei Richter, IRIS 2009-10: 18, available at: <http://merlin.obs.coe.int/iris/2009/10/article25.en.html>

55) See, e.g., Recommendation Rec(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector.

Broadcast licensing has a dual nature in Russia in that two licences must be obtained: one (to actually disseminate television and radio programmes) from the licensing authority, and another (to use a frequency for broadcasting) from the state authority that administers communications. Today both authorities are part of the Ministry of Communications and Mass Communications.

i. Broadcasting licence

The official name for the first type of licence is “permission for terrestrial over-the-air television and/or radio broadcasting with the use of a radio channel”. This euphemism is explained by the fact that licensing of broadcasting is not envisioned in the main act regulating licensing, namely the *Federal Statute On Licensing of Certain Types of Activities* of 8 August 2001 (No. 128-FZ). This law replaced the act with the same name, which had been adopted on 16 September 1998. For less than three years, the earlier statute had introduced a degree of order to the licensing process by regulating basic elements of awarding licences to broadcasters.⁵⁶

Another reason to avoid labelling broadcasting licences as such was that the Statute On Licensing of Certain Types of Activities set caps for licence fees to be collected by all governmental agencies. The fees are far below those actually imposed by the Ministry of Communications and Mass Communications for its “permissions”. By not labelling the latter as broadcasting licences, the Ministry avoids challenges for violating the Statute.

The Ministry of Communications and Mass Communications announces the amount of the fee two months before the competition. The request for licence fees is justified by the necessity of preventing those who are financially unable to maintain broadcasting operations from participating in the competitions.

According to paragraph 6 of the governmental Regulation On the System of Broadcasting Competitions, the amount of the fee depends on how much the Ministry of Communications and Mass Communications spends on technical preparations, the maintenance of the frequency and the organisation of the competition.⁵⁷ Other features of the broadcasting market, such as the predicted volume of advertising revenues and the population density of the territory covered by the frequency, are also taken into account. The revenues from the fee are currently distributed between the Federal Treasury (60%) and the Ministry of Communications and Mass Communications (40%). In practice this sum ranges (mostly reflecting the audience reach and type of broadcasting) from RUB 1,000 to 30 million (1 EUR equals about 44 RUB).

The Ministry spends the fee on the work of the competition commission (see below), the certification of frequencies, the control of the abidance to licence conditions and on the production of “socially useful programmes”. According to an official report of the Ministry of Communications and Mass Communications, in the period from September 2008 to March 2009 the federal budget received RUB 155.5 million from licensing fees.⁵⁸

ii. Communications licence

As to the second licence, its issuance is regulated by the *Federal Statute “On Communications” of 7 July 2003 (No. 126-FZ)*. According to this law the grounds for issuing a broadcasting licence are established by a permission to use a radio frequency provided by what is today the State Commission on Radio Frequencies (GKRCh) (or the Government Spectrum Commission) at the Ministry of Communications and Mass Communications.⁵⁹ Having obtained the first – broadcasting – licence, the applicant has the right to receive the second – communications – licence without any additional tender or competition.

56) See: Russian Federation: New Licensing Act Is Adopted by Theodor D. Kravchenko and Pavel V. Surkov, in IRIS 1998-10: 10, available at: <http://merlin.obs.coe.int/iris/1998/10/article16.en.html>

57) See its text (in Russian) at: <http://base.garant.ru/180606.htm>

58) See “Итоги работы отрасли связи, информационных технологий и массовых коммуникаций Российской Федерации за 2008 год” available at: <http://www.minkomsvjaz.ru/.cmsc/upload/docs/200905/18073415we.pdf>

59) See its text (in English) available at: http://medialaw.ru/e_pages/laws/russian/communications.htm

The sequence of the licensing procedure may be summarised as follows: the Ministry of Communications and Mass Communications “identifies” a frequency and then announces a competition for broadcasting. The winner takes the broadcasting licence and demands the communications licence, which is automatically issued.

b. Legal instruments of television licensing today

The Regulation On Licensing was introduced by the *Resolution of the Government of the Russian Federation No. 1359* of 7 December 1994 as a transitional measure to regulate broadcasting until the adoption of a parliamentary statute on television and radio broadcasting. Based on the Decree of the President of the Russian Federation No. 2255 of 22 December 1993 On Improvement of State Administration in the Sphere of the Mass Media⁶⁰ this legal instrument is still in force, although on a number of matters it collides with newer governmental ordinances and regulations dealing with the licensing procedure.

The 1994 Regulation On Licensing describes the general licensing procedures, lists the application requirements and explains the possible reasons for refusals. It also outlines the means that the regulatory authority (currently Roskomnadzor) may use to supervise licensees’ activities and to ensure their compliance with the law. It establishes that only legal entities can apply to the regulatory authority for a broadcasting licence.

The Regulation On Licensing authorised the executive branch to organise open competitions when several operators apply for one and the same frequency, but it failed to set out the specific procedural aspects of this process.

The Resolution of the Government of the Russian Federation of 26 June 1999 (No. 698) approved the Regulation On the System of Broadcasting Competitions,⁶¹ which modified the licensing procedure. In particular, a compulsory competition procedure for the award of broadcasting licences in cities with a population of more than 200 000 inhabitants was established.

The Regulation On the System of Broadcasting Competitions obliges the licensing authority to publish an informational statement on the forthcoming competition in an official publication (currently, the *Rossiskaya gazeta* daily). The winner of the competition obtains the right to both the licence for broadcasting and the licence for activities in the communications’ field.

The adoption of the licensing competition procedure entailed the creation (in 1999) of the Federal Competitions Commission on Broadcasting (FCC), a separate body within the executive branch. The FCC aims to guarantee transparency and legal certainty regarding the procedure.

According to the official report for 2008, by 1 January 2009 the Register kept by Roskomnadzor noted 4 965 acting licences, including:

- over-the-air television – 2 705;
- digital television – 19;
- satellite broadcasting – 14;
- over-the-air and cable broadcasting – 2.⁶²

60) See its text (in Russian) available at: <http://base.garant.ru/101763.htm>

61) See its text (in Russian) available at: <http://base.garant.ru/180606.htm>

62) The full text of the Roskomnadzor Report is available at: <http://www.rsoc.ru/docs/20090514160353Lk.pdf>

c. Registration of media outlets

Along with the request for the broadcast licence the applicants must submit a registration certificate, as well as a number of documents proving their technical and financial qualifications.

According to the Statute On the Mass Media (Art. 8), a mass medium shall carry on its activity after its registration. An application for registration is subject to consideration by the registration authority. A mass medium shall be deemed to be registered since the issue of a registration certificate. The founder of the medium shall retain the right to offer his products/services for one year since the day when the certificate was issued. If the production and dissemination of the mass medium does not start within the year the registration certificate shall be deemed null and void.⁶³ The practice of mass media registration in Russia was considered by the European Court of Human Rights as violating Art. 10 of the European Convention on Human Rights.⁶⁴ Today Roskomnadzor is the registration authority for all mass media outlets totalling 100 000.

d. Specific aspects of the current licensing system

i. Status of the competition body

Today it is generally accepted that any state authority empowered to regulate the media must be completely independent of the government and protected against interference from political and business circles. Otherwise, regulation of the media might easily become subject to abuse for political or commercial purposes. The three special representatives on the right to freedom of expression noted that:

“All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by a process for appointing members that is transparent, allows for public input and is not controlled by any particular political party.”⁶⁵

Freedom of broadcasting does not prevent public authorities in Europe or in our context in Russia from licensing television companies. Originally, Art. 30 of the Statute On the Mass Media foresaw the establishment of an independent authority (namely the Federal Commission on Broadcasting) to design and implement state policy for broadcasting licensing. Such a Commission has never actually been set up because of political controversies. The article itself was abolished in 2004. At the same time, Art. 31 of the Statute was amended to rename the Commission into “a federal executive authority appointed by the Government of the Russian Federation” (currently – Roskomnadzor). Roskomnadzor has been granted the right to either issue licences at its discretion or to organise competitions among different applicants for conferring licences.⁶⁶

The key decisions to be taken through regulation concern the organisation of the licensing authority and the selection of powers with which it shall be vested. In fact, whereas the Statute On the Mass Media (Art. 30) stipulated the creation of a regulatory authority with wide powers in relation to licensing, the follow-up bill on television and radio broadcasting attempted to reduce this power to a mere advisory status. According to the 1995 draft statute, the regulatory authority would have consisted of eight representatives, of whom two would have been appointed by the President of the Russian Federation, two by each chamber of the Parliament (Federal Assembly) and two by the government. The Russian President vetoed this bill. The next bill addressing the regulation of a

63) The text of the Statute is available in English at:

http://medialaw.ru/e_pages/laws/russian/massmedia_eng/massmedia_eng.html

64) Application no. 30160/04. Case of Dzhavadov v. Russia, judgement of 27 September 2007. See:

<http://cmiskp.echr.coe.int////tkp197/viewhbk.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=22389&sessionid=42705602&skin=hudoc-en&attachment=true>

65) Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 18 December 2003. The text is available in English on the website of the Office of the OSCE Representative on Freedom of the Media at:

http://www.osce.org/documents/rfm/2003/12/27439_en.pdf

66) The text of the Statute is available in English at:

http://medialaw.ru/e_pages/laws/russian/massmedia_eng/massmedia_eng.html

licensing authority passed the first reading in 1997, but in 2000 – instead of being tabled for the second reading – was returned by the Duma to the stage of the first reading and voted then down. That was the last attempt to legislate broadcasting at large at the parliamentary level. Moreover, according to the Concept Paper for the Development of TV and Radio Broadcasting in the Russian Federation in 2008-2015 adopted by the government, the executive does not expect, encourage or envision such a parliamentary statute in principle.

While licensing of broadcasting itself, that is the actual dissemination of television and radio programming, remains the primary factor in regulating the audiovisual media in Russia, its procedure is defined through presidential decrees and government resolutions in the absence of an overall parliamentary statute.

Although Roskomnadzor remains the licensing authority for all broadcast media outlets, until recently the Federal Competitions Commission on Broadcasting (FCC) also played a very important role in the licensing process, namely for television broadcasters.

The current Regulation of the FCC (which regulates its composition and tasks) was approved on 23 July 2008 by an order of the Ministry of Communications and Mass Communications.⁶⁷ The FCC consists of nine members. However, when the licence is to be issued for the territory of only one province (subject) of the Russian Federation, the panel includes also *ad hoc* delegates from the regional legislative and executive bodies, and a delegate from the office of the Russian President's representative in the relevant federal district, thus comprising 12 members. All of its core nine members and chair are appointed by order of the Minister of Communications and Mass Communications at his/her will. The Commission works directly at the Ministry of Communications and Mass Communications which provides it with the necessary technical, financial and administrative support.

The current composition of the FCC was originally approved on 18 December 2007 and then reconfirmed in September 2008. Five of its core nine members were newly appointed in 2007: Sergei Sitnikov (chair), currently the Head of Roskomnadzor; a deputy director of the governmental department on mass communications; the director of the Russian Museum in Saint Petersburg; the director-general of the Russian Television and Radio Broadcasting Network (RTRS); and a famous comedian, now the director of the Variety Theatre in Moscow. The remaining four members of the FCC are: the head of the governmental agency that administers the media assets of the state and public subsidies to the press (*Rospechat*); a renowned film critic; a secretary of the Russian Union of Journalists; and a Russian advisor to the UNESCO director-general in Paris.

At least a third of the core members of the FCC are to rotate each year. This rule was introduced in late 2007 in order to “raise the quality of the Commission’s work, provide impartiality of the voting, and facilitate a maximum of effectiveness of the use of the limited natural resource of frequencies allocated for broadcasting purposes”.⁶⁸ Interestingly enough, despite the provision to rotate the members its composition has not changed for two years.

If a licensing authority and a competition body are to be independent, they should conduct their work transparently. Open meetings with records available to the public and (or) journalists are a central feature of society’s control over the decisions taken by such important bodies. The legislation, however, contains no provision to achieve this sort of transparency. The maximum degree of openness provided for herein is the opportunity for licence applicants or their representatives to be present during the evaluation of bids in a competition.

According to an official report of the Ministry of Communications and Mass Communications, during the period from September 2008 to March 2009 the FCC decided to award 61 broadcast licences in 75 competitions.⁶⁹ All licences were issued for radio broadcasting because of the moratorium for analogue television (see below).

67) The text (in Russian) is available at: <http://medialaw.ru/publications/zip/168/2.htm>

68) Russian Federation: Regulations of the Licensing Body Amended by Andrei Richter, IRIS 2008-2: 18, available at: <http://merlin.obs.coe.int/iris/2008/2/article29.en.html>

69) See Итоги работы отрасли связи, информационных технологий и массовых коммуникаций Российской Федерации за 2008 год, available at: <http://www.minkomsvjaz.ru/.cmsc/upload/docs/200905/18073415we.pdf>

ii. Criteria for competitions

The FCC is primarily responsible for considering applications. In addition to the technical and financial data provided in order to prove the broadcaster's ability to fulfil its proposal, the FCC in making its decision considers mainly the programme policy. The programme policy is a blueprint document in which the broadcaster should conceptualise and describe the range of programmes it proposes to offer and include a preliminary schedule.

The criteria that a licensing authority applies when choosing the winning bids in a competitive process are an important indication of whether or not the interests of society and freedom of mass information are being served. But it is difficult to determine the criteria by which a broadcasting model is to be judged as the best proposal. The FCC is bound to apply a set of criteria recently approved by Roskomnadzor. They are:

- the audience's need for specific programmes;
- the necessity to support socially significant television and radio projects;
- originality inherent in the programme proposals;
- cost analysis concerning the acquisition of broadcast equipment and the studios, the sources of investments and the terms to pay them back;
- estimated period after which the equipment could start functioning.

Generally, the regulatory instruments by no means always provide for a clear, unambiguous and detailed definition of these criteria.⁷⁰ For example, the FCC is expected to promote "socially significant" programmes but no legal instrument defines what they are. While the Commission, in practice, usually considers public affairs, cultural and children's programmes as part of this category, it has not yet established any formal definition. Furthermore, in the overwhelming majority of cases, the Ministry of Communications and Mass Communications (and its predecessors) has called competitions without specifying any particular target market for broadcasting models (the so-called "free" programme policy). This practice was highlighted in 2002 by Prof. Mikhail Fedotov, who posed the following question: "This [practice] *de-facto* means the sale of frequencies, since all competitions are run on free-concept lines. So what, then, is the State's policy on licensing broadcasters?"⁷¹ In addition, the opinions of the FCC members on some of the listed criteria are naturally quite subjective, while Roskomnadzor and the Ministry hesitate to articulate any priority among the different criteria.

The FCC also lacks established criteria to assess the applicants' financial proposals. It is difficult to predict the volume of capital necessary to maintain a station for several years. In addition, financial instability in Russia hinders the establishment of guidelines for the business plans of broadcasters. All this invites subjectivity as well as political or economic pressure on the competition body.

A research project aimed at assisting independent Russian television and radio broadcasters by creating a favourable legislative and regulatory environment for licensing the electronic mass media was carried out in 2000, with the author of this IRIS Special as participant and project leader. As a result of the project it was possible to establish and describe in detail the following criteria that should be used for selecting successful bidders in a competitive process:⁷²

- contribution to the diversity of media ownership on the market in question;
- account of the viewing public's interests;
- the proposed programme policy;
- experience;

70) According to the lawyer Sergey Pyankov, "this issue has been one of the most acute problems since unclear criteria for selection of the winner to a large extent lead to the non-transparent character of the competitions which contradicts the standards of the Civil Code of the Russian Federation". See Лицензирование телерадиовещания в Российской Федерации на конкурсной основе: актуальные вопросы теории и практики // Законодательство и практика масс-медиа, № 11, 2005 г.

71) Федотов М. А. Право массовой информации в Российской Федерации. – М., 2002. С. 210. Mikhail Fedotov later joined the FCC as a secretary of the Russian Union of Journalists.

72) In detail see Винокуров Г. В., Рихтер А. Г. Предложения для Минпечати: Экономико-методологическое обоснование расчета платы телерадиовещателей за лицензию на вещание // Правовые вопросы лицензирования телерадиовещания (Под ред. А.Г. Рихтера). – М., 2000. С. 104-106.

- efficient use of the frequency;
- possession of own autonomous electricity generator (for radio stations);
- retention of existing broadcasting;
- originality and initiative;
- previous broadcasting on the given frequency.

iii. Programme policy

When preparing the programme policy as part of their application, the bidders are expected to classify the proposed programmes (in percentage to the total time of broadcasting or rebroadcasting) using the twelve categories provided by the guidelines of Roskomnadzor's advisory memo. The categories are:

- news/current information;
- specialized news (single topic or profile), including election programming;
- information and analysis programmes commenting on current affairs and news that are of importance to the audience and form public opinion;
- social and political journalism (publizistik);
- cultural enlightenment, including theatre dramas;
- educational, including training and documentary films;
- children's fare;
- sports;
- music, including concerts and programmes about music;
- entertainment, including circus performances, talk shows, game shows, quiz shows, TV series, erotic programmes;
- feature films, including series up to 12 episodes;
- religious programmes, including services and theological talks.⁷³

The legal weight of the proposed programme policy is that its violation is equal to a breach of other licence requirements, such as the technical characteristics of broadcasting or the statutory prohibitions of existing legislation. Any modification of the programme policy triggers the need for a reissuing of the licence or its amendment (see below). Because the programming schedules are changed regularly by most broadcasters (especially on radio) the requirement of reissuing/amending the licence leads to a significant restriction of the broadcasters' operations. They are obliged to apply for a modification of their licence whenever they decide to alter their programme schedule.

iv. Duration of a licence

In Russia, like elsewhere in the world, the right to use a given frequency for television or radio (or indeed other purposes) is granted for a definite period of time. The existing scarcity of electromagnetic spectrum means that not everyone who wants to put his programmes on the air can, either now or in the future, enter the market. Moreover, the radio frequencies use the airspace that belongs to the public. Accordingly, the rights to operate on them are temporary.

Apart from the criteria for choosing the broadcasters which should have a right to use frequencies, the control of how they use this right and the safeguard of the independence of the competition body (the FCC), as well as the duration of the licence and the conditions for its renewal, are also significant elements for a democratic media system.

A short licence not only hampers a broadcaster from recouping its initial investment but also makes that broadcaster excessively dependent on the licensing authority if the extension or renewal of the licence is uncertain. Given that the competition body in turn is dependent on the state authorities, that the licensing criteria are vague and that the law gives no preference to existing broadcasters, a short licence results in a dependency of commercial broadcasters on the political considerations of the circles ruling the country.

⁷³ See: http://www.rsoc.ru/docs/Pojasnenija_k_blanku_Programmnaja_koncepcija_veshhanija_23.09.09.doc

Short licences are detrimental not only to broadcasters' business interests but also, and more importantly, to the development of the freedom of mass information. This is not only because of the aforementioned dependence of broadcasters on the state. Long-term planning and heavy investment in making and buying programmes is necessary to create a stable relationship with the viewing public. To maintain that relationship of trust, the broadcaster strives to meet audience demand as best it can and primarily by developing information and ideological diversity and highly professional journalism.

It is not surprising, therefore, that the industry is pushing for the existing licence term of a maximum of five years to be extended. For example, Eduard Sagalayev, the president of Russia's National Broadcasters Association (NAT), has often called for precise and transparent licensing rules and regards longer licences as the primary aim because the current limitation of five years is not enough to achieve any kind of commercial success in the media business. On behalf of the industry he advocated a ten-year maximum licence term.⁷⁴

The duration of a licence would, of course, not be so important were its renewal not tied up with excessive or vague requirements. "The licence renewal procedure remains the most controversial aspect of the broadcasting regulation in Russia since 1991", says researcher Yana Sklyarova.⁷⁵ The Statute On the Mass Media does not contain any provisions dealing with this procedure and the Regulation on Licensing of 1994 refers to the "established" order for a licence renewal and recommends the competition body "to take into account the audience's opinion on the programming quality" of an incumbent broadcaster.

The licensing authority (Roskomnadzor) has adopted the regular practice of renewing "automatically" an existing licence though formally it has no legal authority to do so. In cases when the registration authority for the mass media (also Roskomnadzor) issues warnings or notices of non-compliance with Art. 4 of the Statute On the Mass Media that forbids any abuse of the freedom of mass information (see more on it below), automatic renewal becomes problematic, if at all possible.

According to the official report of Roskomnadzor for 2008,⁷⁶ during that year the authority was petitioned 3 651 times on different issues of licensing. As a result of these petitions it issued, reissued or amended 2 475 licences (or supplements to them) for TV and radio broadcasting. Of the 2 475 licences, 539 licences were renewed, 1 242 licences were reissued or amended. Most of the recent petitions for reissuing licences, said the report, dealt with requests of broadcasters to be allowed to temporarily cut the amount of broadcasting due to their severe financial and economic situation (a change in the number of hours of broadcasting is a formal reason to reissue the licence). Other reasons to request the changes in a licence were: the change of the name of the legal entity; the transfer of a licence to a different legal entity; the change of the address of the broadcaster; the change of the capacity of the transmitter and its zone of broadcasting; changes in the programme policy.

v. Transfer of a licence

There are problems in applying the existing rules on the transfer of broadcast licences. For example, point 13 of the Regulation on Licensing of 1994, renders illegal the transfer of a licence to another person without the permission of the regulatory authority (as does Art. 31 of the Statute On the Mass Media) but it does not, however, provide a definition of such a transfer. In the government's view the transfer implies a change of the legal entity holding the licence but it is still unclear if the reorganisation of such an entity could fall under this offence. Under the provisions of the Statute On the Mass Media, if you get permission for transfer from the regulatory authority the transfer of licences is apparently acceptable in all cases.

74) *Независимая газета*, 3 марта 2006.

75) Sklyarova Ya. (The Moscow Media Law and Policy Centre) *The Russian System of Licensing of Television and Radio Broadcasting*. *Op. cit.*

76) The full text of the Report is available at: <http://www.rsoc.ru/main/about/960/>

vi. *Revocation of a licence and case law*

Art. 32 of the Statute On the Mass Media stipulates the potential reasons for the revocation of licences (see below).⁷⁷ Among the reasons are the violation of licence terms and conditions as well as other unlawful practices because a main requirement of a licence is the broadcaster's strict "adherence to all applicable law". The licence can only be revoked after the issuing of a written warning by the licensing authority. Such a notification usually includes the requirement to cease violations and desist from any further unlawful practice.

In 2008 the licensing authority Roskomnadzor found violations of licences and "applicable law" by broadcasters in 145 cases and issued warnings accordingly.

These cases may be detailed as follows:

- violations of the programme policy – 90 warnings;
- failure to broadcast within a given period – 52 warnings;
- violations of Art. 4 of the Statute On the Mass Media – 2 warnings;
- other violations of the mass media law – 1 warning.

During 2008 seven broadcast licence holders had their licences withdrawn for minor violations of licence conditions.⁷⁸

As Roskomnadzor is also the *registration* authority for all mass media outlets it controls in addition their abidance by the mass media law. According to the official report of Roskomnadzor for 2008,⁷⁹ the Federal Service issued 47 written warnings to various media outlets for violation of Art. 4 ("Inadmissibility of abuse of the freedom of mass information") of the Statute On the Mass Media. The only warning that had been issued during this year to a TV broadcaster concerned the "2x2" channel in Moscow for having broadcast the U.S.-made cartoons "Happy Tree Friends" and "The Adventures of Big Jeff" that were considered as propaganda of the cult of violence and cruelty. If a violation of Art. 4 is repeated twice and followed by a third violation within a 12-months span, the registration office will bring the matter to a court of law demanding the withdrawal of the registration certificate of the mass media outlet and its eventual closure.

In the past, warnings issued by Roskomnadzor led to a number of court cases. For example, the Moscow-based channel TV-Tsentr (TVC) was denied the renewal of its licence in spring 2000, after two written warnings during the previous broadcasting period. The first warning had been issued for a violation of electoral regulations in December 1999, the second for a change in the company's address without formal notification to the licensing authority. In May 2000, TVC appealed to the Moscow City Court of Arbitration, which found the official warnings null and void. Since then, numerous petitions aimed at overruling such decisions have been filed in the courts, but TVC remains one of the few broadcasters that was able to obtain a court ruling declaring a written warning issued by a governmental authority to be illegal. At one point, the registration authority claimed that the very occurrence of a situation resulting in a warning presented sufficient evidence of violation, regardless of the subsequent outcome of the court litigation.⁸⁰

The case of Parus-TV is of a particular significance because it dealt with both the transfer of a broadcasting licence to another entity and warnings of the licensing authority. Parus-TV, a closed stock company, founded the "Obyedinyonnoe televidenie" (United Television) programme which was broadcast in St. Petersburg and the suburbs terrestrially since 2003 and was affiliated with the TV network Rambler. Its licence had been granted on 16 April 2003 for 5 years. According to its programme policy, 90% of airtime was to be taken by Moscow-based Rambler-Teleset TV Company.

77) The text of the Statute is available in English at:

http://medialaw.ru/e_pages/laws/russian/massmedia_eng/massmedia_eng.html

78) See the official report at: <http://www.minkomsvjaz.ru/.cmsc/upload/docs/200905/18073415we.pdf>

79) See the full text of the Report available at: <http://www.rsoc.ru/main/about/960/>

80) See: Sklyarova Ya. (The Moscow Media Law and Policy Centre) *The Russian System of Licensing of Television and Radio Broadcasting. Op. cit.*

On 3 January 2005, Rambler-Teleset started broadcasting in the market via its own terrestrial channel; this led to the annulment of the affiliation contract between this company and Parus-TV. Parus-TV then reached a new affiliation agreement with the TV-Tsentr (TVC) network and started broadcasting its programming the same day, 3 January 2005. In accordance with the law, it petitioned within a month of the change in the programme policy the licensing authority (then named *Rosokhrankultura*) to note the change in the licence. The petition was supplemented by the necessary forms and explanations, amounting altogether to 41 pages. The licensing authority thereafter presented the papers to the FCC which recommended to Rosokhrankultura on 29 June 2005 to make the necessary modification of the licence. However, later, during the court proceedings the licensing authority could not provide any proof of having made the necessary changes in the licence. Meanwhile, on 11 April and on 1 June 2005, Rosokhrankultura issued written warnings to Parus-TV for violations of the licence provisions because it broadcasted TV-Tsentr programming instead of Rambler-Teleset. Both warnings demanded that the *status quo* be restored within 30 days.

Parus-TV immediately contested the warnings in the Moscow City Arbitration Court but lost the case, as well as the appeal in the Ninth Arbitration Court of Appeals. In 2006, the Federal Arbitration Court of the Moscow District (court of cassation) struck down the lower courts' decisions and returned the case to the first instance (Moscow City Arbitration Court). The judge of the Moscow City Arbitration Court rendered his decision on 12 April 2006.⁸¹ He found that Parus-TV had undertaken all necessary actions in accordance with the relevant law. The licensing authority violated the terms (calculated by the court as a maximum of 60 days) as regards timing for deciding on the petition, which equals a failure to act. There was neither any legal ground to bring the petition to a session of the FCC, nor to consider the change of a rebroadcasting station an essential element of the licence as this was not envisioned by the law. The internal procedures and documents of the licensing authority or the FCC did not have the force of a law because neither entity had law-making authority in the area of licensing. The court judged that "a change of the programme policy in the form of replacement of one rebroadcast programme with another does not lead to a change of the volume of rights of the licensee to conduct television broadcasting obtained through corresponding licence". Under the circumstances, said the court, there were no grounds to review the petition of Parus-TV under the same procedure as an application to obtain a new licence (that is, under a full competition procedure). Moreover, in the opinion of the court the relevant law did not require a detailed programme policy as a condition to participate in a competition. According to the announcements on competitions held previously and reviewed by the court, the only condition for obtaining a licence was to present a free or a thematic programme policy. In the given case, it had been a free policy requirement, on which the change in a rebroadcasted programme had no impact.

The court held that Parus-TV had had no alternative to rebroadcasting the TVC programming as an interruption of broadcasting for three months or more would have led to the annulment of the licence according to the relevant Regulation approved by the government. Thus Art. 31 of the Statute On the Mass Media had not been violated and the warnings issued lacked legal grounds. Considering the belatedness of the recommendation of the FCC, it had been the inaction of the licensing authority that had caused the reasons for the violations noted in the warnings. The warnings put on the broadcaster the burden of acting by asking it to return to the *status quo*. The rebroadcasting of new programming had become impossible, however, due to the inaction of the licensing authority itself, which had not registered the change in the licence.

The judgement concluded that the warnings of the licensing authority were null and void. The latter was directed by the court to take a decision on the petition of Parus-TV to change its licence. The judgement was upheld by the appeals court and finally by the Federal Arbitration Court of the Moscow District (on 7 November 2006).⁸²

81) The decision of the Moscow City Arbitration Court is available in Russian at: http://www.sclj.ru/court_practice/detail.php?print=Y&ID=1290

82) See the decision (in Russian) available at: <http://arbitration.consultant.ru/ams/doc76272.html> . Parus-TV was eventually sold to TV-Tsentr several months after the court decision entered into force, see: <http://www.spbgid.ru/index.php?news=114803>

e. Line-up in the digital era

The Ministry of Communications and Mass Communications stopped the allocation of bands for analogue television broadcasting in December 2007. The reason for this moratorium was the necessity to adopt the new plan of spectrum allocation for digital television broadcasting. This plan was approved by a decision of the State Commission on Radio Frequencies (GKRCh) on 19 March 2009, but only in part – for the first multiplex of eight programmes (channels). These programmes were denoted by type (like “cultural programming channel”), but not named individually according to their providers. The plan was based on the results of the work of the Governmental Commission on Development of TV and Radio Broadcasting and the Concept Paper for the Development of TV and Radio Broadcasting in the Russian Federation in 2008-2015.⁸³ When ready to be broadcast, said the decision of GKRCh, these eight digital programmes would need no further permissions from the State Commission on Radio Frequencies provided that their over-the-air transmissions corresponded to the relevant technical standards. As was already mentioned, the exact line-up for the first multiplex was confirmed by the 24 June 2009 Decree of the President.

The proposals for the second and third multiplexes were to be developed by a “working group” established by the Ministry of Communications and Mass Communications together with the Ministry of Defence by the end of 2009. The existing analogue TV broadcasting channels incompatible with the digital plan in progress were to be repositioned to different frequencies. Criteria for the selection of new frequencies for analogue TV programmes to be continued until 2015 were to be developed by Roskomnadzor by mid-2009 but failed to materialise.⁸⁴

In a way, the moratorium was the first sign that under the new system for regulation of broadcasting licensing of television programmes the role of the Federal Competitions Commission would become negligible. This impression was confirmed on 21 September 2009 when Prime Minister Vladimir Putin signed the Resolution of the Government of the Russian Federation No. 1349-r “On the Concept of the Federal Target Programme ‘Development of TV and radio broadcasting in the Russian Federation in 2009-2015’”. It contains certain guidelines and key features of the Federal Target Programme (FTP) that still need to be finalised. Once the FTP is fully developed, the government will approve it by another Resolution.⁸⁵

More specifically, the Concept assigns to regional branches of the state-owned Russian Television and Radio Broadcasting Network (RTRS) the task to set up the hubs (administrative centres) entrusted with shaping the line-up of the second and third multiplexes of digital TV. The hubs should include in the multiplexes local programmes of their choice. The hubs shall be federal property and be part of the system to implement the general state broadcasting policy. For the line-up process, the document envisions neither a tender or competition, nor any criteria for what programmes ought to be included, nor any role of the FCC.⁸⁶

Thus the president and the government without formally changing the licensing rules and regulations *de facto* removed the FCC from the sphere of digital television. While the line-up of the first multiplex was determined by the president, the second and the third will now depend on RTRS-led hubs acting within the framework of a yet undefined national policy.

This immediately creates legal problems and loopholes. An interesting precedent is set by the analogue TV channel Sport of the VGTRK which has obtained its place in the first digital multiplex under the President’s decree after the government decided that a programme on sports was necessary for the “social package”. The Sport channel originally got its right to broadcast in 2003 when it took

83) Concept of development of TV and radio broadcasting in Russian Federation in 2008-2015 (*Концепция развития телерадиовещания в Российской Федерации на 2008 – 2015 годы*) available in Russian at: <http://merlin.obs.coe.int/redirect.php?id=11089>

84) See <http://minkomsvjaz.ru/ministry/170/174/6882.shtml>

85) Note of the editor: on 4 December 2009 the Prime Minister approved the FTP. The text, however, was not yet available at the time of the release of this report. We expect to offer a detailed description of its content in the forthcoming IRIS *plus* 2010-1.

86) See Russian Federation: Government adopts pre-plan for digital switch-over by Andrei Richter, IRIS 2009-10: 18.

over the frequency of a TVS Company oppositional to the Kremlin. At the time, the decision was justified to the public by a need for informing about, and advertising, sports as a way of promoting a healthy lifestyle. In October 2009, however, the VGTRK announced that from 1 January 2010 Sport will be transformed into the Rossia-2 channel with sports taking up just one-third of its programming. This shall be done in order to cut costs for the purchase of rights to sports events and to attract those young potential viewers who so far prefer to “spend most of their time online”.⁸⁷

Under the established regime of licensing, the FCC would have to review the change of name and programming policy. But even this would be a pointless exercise given that the moratorium prevents the Commission from holding a new competition for an analogue TV frequency. Any demand for an annulment of the licence would lead just to a vacant nationwide terrestrial frequency. The FCC also has no say in the licensing of digital terrestrial TV where Sport (or Rossia-2) will soon offer its programme. The FCC neither regulates cable or satellite TV where the channel is already broadcast in digital form, nor are there rules allowing the FCC to review the line-up of the digital multiplex in case the name and programme policy of a channel change. To change any of the facts established by the decree of the President, one should logically review the Concept Paper for the Development of TV and Radio Broadcasting in the Russian Federation in 2008-2015 as well as other governmental decisions such as that taken by GKRCCh (above). The TV channel Sport cannot be replaced in the first multiplex by a similar TV programme because there is no other channel that can fit the standards of a general sports channel. Moreover, the powerful VGTRK would do anything not to lose its place in the line-up.

Who will determine the line-up of the fourth and further multiplexes remains unclear. The government will not make any financial investment to develop the next multiplexes but is likely to appoint RTRS or Roskomnadzor as the quasi-licensing authority. It is not only the FCC that loses its function: licensing at large becomes irrelevant because there are no conditions set for obtaining a spot in the line-up of multiplexes (at least none that are publicly spoken), no programming policy has been declared, no ratio or quotas of different types of programmes are provided, nor has the time during which a channel may keep its position in the line-up been determined. All prerequisites for licensing digital television broadcasting can be changed anytime by a decision of the executive. But as we see in the case of the Sport channel the state authorities also become hostages to the situation.

4. State versus public service broadcasting

a. Ideology of state broadcasting

Prior to 1990, all broadcasters in the Soviet Union belonged to the state and were part of the USSR State Committee for Television and Radio Broadcasting (or *Gosteleradio*), which from 1978 was under direct supervision of the head of state (at the time the Chairman of the Presidium of the Supreme Soviet of the USSR) and the communist party.

In the period from 1990 to 1991, private radio and television stations began to spring up practically everywhere after obtaining local terrestrial or cable rights. A particular feature of these “alternative” broadcasters, as they were called at the time, was their heavy use of pirated western films and entertainment programmes combined with locally-produced and incisive political reporting. Alternative broadcasters rapidly overtook their local state-run counterparts in popularity and posed a challenge to the staid Soviet and post-1991 official state broadcasters.⁸⁸

In Russia, state broadcasters are in effect controlled by the President (and regional broadcasters by the corresponding regional authorities), who hires and fires the top executives. This is exactly how the director of the *VGTRK* Company is appointed or dismissed. This practice continues the Soviet tradition of appointing the *Gosteleradio* chairman after debates behind closed doors at the Soviet Communist Party’s central committee. Post-Soviet history of Russian broadcasting counts a number of examples of the head of a state broadcasting company being dismissed because of dissatisfaction with

87) State’s Sport Channel Retired as Costs Soar by Ksenia Boletskaya, *The Moscow Times*. 2 October 2009. P. 7.

88) See: more on this in: Anna Kachkaeva and Andrei Richter. The Emergence of Non-State TV in the Ukraine, *Canadian Journal of Communication*, 4, Vol. 17 (1992). P. 520.

its programming or simply because a programme annoyed the country's top leaders. Such removals usually took place without elucidating the reasons and without public debate of the possible replacements. Analysts traditionally say that state broadcasting chiefs are selected for their political reliability and personal loyalty to the President.⁸⁹ The practice of the state controlling national broadcasting in post-Soviet countries has been condemned by international organisations on numerous occasions.⁹⁰

Russian state broadcasters pursue a programming policy that is based on the interests of the state – which generally means those of the country's leadership. As in other countries with state broadcasters (for example in Central Asia), the conception prevails that the state media belong primarily to the ruling elite or party; the notion of a public asset created with and operating on public funds is very much secondary. Accordingly, one of the most important functions of state television and radio is to shape public opinion in support of the authorities.

Another important aim of the programming policy in state broadcast media is to attract commercial advertising revenues. To this end, state broadcast media favour mass entertainment and often down-market output. Apologists for the “statist” approach to media policy may claim an identity of interest between the elite and society, but the way in which state broadcasters function in Russia tells a different story. For example, the Krasnodar Territory (a region in Russia) is regarded as a “frontrunner” in serving the interests of the Russian state, and the regional government's *Novoye televideniye Kubani* station in the course of 2004 took off-air virtually all its public service programmes: “Where are you, Mum?”, which was about orphans and had a real impact; “Cossack Herald”, which was the only programme covering Cossack issues; and “Health Formula”. Children's programming had already been done away with earlier. The reason was the same throughout – these programmes were not bringing in advertising profits. They were replaced by night-time chat shows of a purely commercial nature and three soft-porn shows, one of them produced locally.⁹¹

With the exception of the rights of candidates to free and paid access to state broadcast media during the four weeks prior to balloting and equal access of the national political parties (see I.4.c), no public obligations exist in law or practice for the state-run broadcasters to broadcast certain information. At the same time, alongside advertising revenues, state broadcasting is financed directly by the state. The necessary sum is requested annually by the government and approved by the parliament. The money for the VGTRK – the country's main state broadcaster – is a separate item in the federal budget. There are no obstacles to correlating the level of funding for state media to its loyalty to the authorities; this applies to state broadcasters unless, of course, other and especially administrative ways of influencing them are available.

b. State broadcasting as an alternative to public service broadcasting

We note that in the Council of Europe's opinion, “public service broadcasting is a vital element of democracy in Europe”.⁹² No wonder that the drafting activity on a regulation of public service broadcasting, slow in the early 1990s, was briefly boosted by the admission of the Russian Federation to the Council of Europe in 1996 and the subsequent short lived joint work of Russian and European media experts. It reached its peak in 1997 when the State Duma adopted in the first reading a bill “On Television and Radio Broadcasting”, which *inter alia* called for the establishment of public service broadcasting in Russia, alongside state and private broadcasting. The bill stated that regulations on public service radio and TV would be set by a separate statute.⁹³ In 2000, as was mentioned above, the bill was resubmitted for a first reading and voted down by parliament.

89) *Media Sustainability Index 2004. The Development of Sustainable Independent Media in Europe and Eurasia.* – Washington, 2005. P. 206.

90) See, e.g., Parliamentary Assembly of the Council of Europe. Resolution 1372 (2004): <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta04/eres1372.htm>

91) *СМИ в информационном взаимодействии власти и общества. Материалы всероссийской конференции.* – М., 2005. С. 146.

92) See: Point 1 of the Recommendation 1641 (2004) “Public Broadcasting” of the Parliamentary Assembly of the Council of Europe at: <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta04/erec1641.htm>

93) For its text (in Russian) after the first reading, see: *Законодательство и практика СМИ.* No. 9, 1997.

This situation caused the Parliamentary Assembly of the Council of Europe to urge the Russian authorities to create conditions for pluralist and impartial broadcasting media by means of “establishing an independent public service broadcaster and an independent regulatory authority for the broadcasting sector in line with Council of Europe standards.”⁹⁴

Experts believe that in the 1990s the authorities viewed the creation of a system of strict supervision of state-run broadcasters by independent boards as a realistic and fast way to introduce a specific Russian model of public broadcasting. But as we shall see below these expectations have failed (see III.1.c).⁹⁵

Even though up until now legislation in this field has not been successful, several additional attempts to introduce public service broadcasting laws have been undertaken. The latest bill on public service broadcasting was drafted by Prof. Mikhail Fedotov and set forward for public discussion by the Russian Union of Journalists (RUJ). It was officially introduced to the Duma in 2002 by a group of liberal deputies.

From 2001, the RUJ supported the public Foundation to Develop Public Broadcasting, a lobbying and research centre, which had for a brief period of time a board of trustees that included Mikhail Gorbachev, German Gref (then Minister of Economic Development) and a number of cultural and political figures.⁹⁶ Unfortunately, the active life of the Foundation was short and resulted in no progress for the bill on public broadcasting. In 2003, the draft law was rejected by the State Duma.

At about the same time, a number of local bills on public broadcasting were developed with the assistance of the Foundation in the constituencies of the Russian Federation (including the Moscow and Tomsk regions). They envisaged either the creation of a public TV production company funded by a percentage of the regional budget, or the transformation of a local state controlled broadcaster into a public TV company. All bills were rejected in 2006 by regional legislatures on the grounds that the regulation of broadcasting activities came within the exclusive competence of the federal authorities. The Foundation itself has been defunct since about that time.

c. Content obligations for state broadcasting

*The Federal Statute On the Order of Covering the Government Authorities' Activities in the State Media of 13 January 1995*⁹⁷ obliges state-run national audiovisual companies to provide coverage for a number of public events (President's addresses, inauguration ceremony, State Duma's opening sessions, etc.). They must inform the public of the most important actions of national public bodies (exercising the constitutional authority vested in the Duma and the President, etc.) on the day these happen. They should offer information on their daily activities as a separate item of the news programmes. The Statute introduces an obligation for state-run television to provide a comprehensive, objective and unbiased coverage of the activities of the national government, parliament and courts. The Statute is not being implemented in practice, since the Federal Broadcasting Commission that was supposed to oversee and control the implementation of the act has never been established. Similar acts were adopted in several regions of Russia and to the same effect.

Just recently, on 12 May 2009, President Dmitry Medvedev signed into law *the Federal Statute On Guarantees of Equality of Parliamentary Parties as to the Coverage of their Activities by the State-Run General TV and Radio Channels*. The Statute deals with the coverage of the political parties represented as factions in the State Duma (the national parliament) by state-run broadcasters other than special

94) Resolution 1455 (2005) “Honouring of obligations and commitments by the Russian Federation”. See: <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta05/eres1455.htm>

95) See: Public Service Broadcasting Regulation in the Commonwealth of Independent States. Special Report on the Legal Framework for Public Service Broadcasting in Azerbaijan, Georgia, Moldova, Russia and Ukraine by Andrei Richter & Dmitry Golovanov, edited by Susanne Nikoltchev. European Audiovisual Observatory, Strasbourg, France. November 2006. See http://www.obs.coe.int/online_publication/reports/publicservicebroadcasting_cis.pdf.en

96) See more on the draft in: Public Service Broadcasting Regulation in the Commonwealth of Independent States. Special Report on the Legal Framework for Public Service Broadcasting in Azerbaijan, Georgia, Moldova, Russia and Ukraine by Andrei Richter & Dmitry Golovanov. *Op. cit.*

97) Available in Russian at: http://www.medialaw.ru/laws/russian_laws/txt/3.htm

sports, culture, music and children's channels. The Statute shall not apply during the period of election campaigning in the mass media (which means for the period of 28 days prior to the ballot day) when the Federal Statute On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of the Citizens of the Russian Federation takes precedence.

The Statute, that entered into force on 1 September 2009, deals with the activities of the party administrative bodies, factions and the deputies at all levels of state and municipal authorities. If party members are not explicitly identified in this function (e.g. the Prime Minister or Cabinet ministers) in a broadcast, the time allotted to them shall not be counted. Information about the parliamentary parties shall be equal as to the time allocated to them (computed on a month-by-month basis) on national TV, national radio channels, regional TV, as well as on regional radio channels. The Central Election Commission (CEC) shall oversee the adherence to the Statute. If equal time is not allotted, the CEC makes a decision to compensate the shortage of the coverage within the next 30 days. The CEC shall publish an annual report on the observance of the Statute in the official journal.⁹⁸ According to the first monthly reports on the implementation of the law there were no problems in equal distribution of air time. For example, in St. Petersburg each party got roughly six minutes a month on the local VGTRK TV channel.⁹⁹

The electoral law foresees that during election campaigns broadcasters that are either (i) funded (or co-funded) by state or municipal bodies, or (ii) subsidized completely or partially from the state budget or administered by the bodies of local self-government, as well as (iii) those whose stock belongs to the state or municipal bodies, shall provide equal conditions for election campaigning to registered candidates and electoral associations. The airtime shall be provided during the periods when TV and radio programmes are viewed and listened to by the highest number of persons (e.g., Arts. 47, 50, 51 of the 2002 Federal Statute On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum).

The electoral law sets out the policy for granting equal free airtime to individuals and political parties running for office. The system strives for fairness and for the most part it has been implemented in an even-handed way, giving opposing voices a certain degree of opportunity to reach the public during election campaigns. However, news and political affairs shows on state television during election campaigns far outweigh any public service provided for by offering free airtime (given that free airtime political advertisement achieves far lower ratings than the regular news and current affairs shows).¹⁰⁰

5. Media ownership and concentration

As regards the ownership of broadcasting licences, the Regulation on Licensing of 1994 is the only piece of Russian law imposing specific restrictions on the award of a broadcasting licence. Point 13 of this Regulation prevents a legal entity from obtaining "a television and/or a radio broadcasting licence for more than two broadcasting channels covering the same territory, if the zones served overlap completely, or for more than two-thirds of each zone, unless an existing law of the Russian Federation stipulates otherwise". However, this provision neither clarifies the use of different bands (AM, FM, SW, MW, etc.) by the same station, nor restricts any cross-ownership between broadcasting and press. As a result, it does not achieve its objective.

In a way, this provision reflects Art. 10 of the Statute On the Mass Media that requires the founders of any media outlet to inform the regulatory authority about other media outlets "in which the applicant is a founder, owner, editor-in-chief in the editorial office or distributor".

98) Russian Federation: Equal Rights Law Passed by Andrei Richter, IRIS 2009-7: 32. See the text in Russian available at: <http://pda.rg.ru/2009/05/15/zakon-dok.html>

99) See: <http://www.lenizdat.ru/a0/ru/pm1/c-1079791-0.html#1>

100) Public Service Broadcasting Regulation in the Commonwealth of Independent States. Special Report on the Legal Framework for Public Service Broadcasting in Azerbaijan, Georgia, Moldova, Russia and Ukraine by Andrei Richter & Dmitry Golovanov. *Op.cit.*

However, as Art. 10 does not stipulate any legal repercussions for an applicant arising from this data, this information has no effect on the decision to grant the registration certificate. Recently, Roskomnadzor seems to have adopted a policy of ignoring possible violations of Point 13 of the Regulation. And this provision is likely to be abandoned soon.

Moreover, there is no specific antitrust regulation in regard to media, and the existing general antitrust framework is not applicable in this context.

The regional legislative bodies tried to compensate for this legal omission by adopting their own antitrust regulations in the mass media field.¹⁰¹ This is no longer possible as all regional acts on the mass media were either abolished or watered down in the early 2000s.

When exploring the regulation on media concentration in the television sector, it is hard to bypass the issue of state property and control. The Russian TV sector was considered as a top priority sphere of ideological influence on the general public during the era of President Vladimir Putin.¹⁰² This remains true today. More than a quarter of the population can still watch just two terrestrial TV channels and those channels are likely to be state-run: according to TNS Gallup Media the combined yearly audience share of just two channels – state-owned Rossia and state-run Channel One – is 40.9%.¹⁰³ The state-run TV channels dominate the Russian market in the coverage of territory, volume of advertising, and they enjoy beneficial tariffs for dissemination of signal.

At the same time, deficiencies in the mass media law and in anti-monopoly legislation make it almost impossible to regulate media concentration, including for the broadcasting sector. Hence, it is no wonder that only a couple of cases where concentration of broadcasting was invoked led to the intervention of the Federal Antimonopoly Service (FAS). They are, all the more so, of interest.

The first case dealt with the monopolisation of terrestrial signal dissemination by a national monopoly. It concerned the Russian Television and Radio Broadcasting Network (RTRS) which owns 14 478 television transmitters, or 90.9% of the total number. Its general director is appointed by the President of the Russian Federation. Established as a state broadcasting company by presidential decree in 2001, the network disseminates TV and radio signals throughout Russia and ensures Russia's audiovisual presence abroad. RTRS has also been assigned a major role in making the transition to a common national standard for digital television and radio broadcasting.¹⁰⁴

The case started when Anatoly Greshevnikov, a deputy of the State Duma, complained to the FAS claiming that the Federal State Unitary Enterprise "Main Radiofrequency Centre"¹⁰⁵ in the Yaroslavl region tried to prevent entrepreneurial activities of the communications company Bintel in the city of Rybinsk. Greshevnikov alleged in particular that RTRS prevented Bintel from using radio frequencies, necessary to provide the transmission of 12 over-the-air TV programmes in Rybinsk using the MMDS system.¹⁰⁶

In November 2003, Bintel had legally obtained the right to use the frequencies assigned for transmitting the 12 programmes, by winning a tender organised by the Ministry of Communications. The company though had to wait for almost four years to get the actual permission from the local RTRS unit to use the relevant radio frequencies, without which it could not start offering the above services. Bintel repeatedly approached the Radiofrequency Centre on the issue but the permissions were granted only in March 2007. On 26 July 2007, FAS found that the RTRS unit had breached Art. 10 para. 1 (abuse of a dominant position) of *the Federal Statute of 26 July 2006 On Protection of Competition (No. 135-FZ)*.¹⁰⁷

101) See examples in: Sklyarova Ya. (The Moscow Media Law and Policy Centre) *The Russian System of Licensing of Television and Radio Broadcasting*. *Op. cit.*

102) *Digital Television in Russia*. *Op. cit.* P. 41.

103) *Ibidem*. P. 60.

104) See: <http://www.kremlin.ru/eng/text/news/2008/10/208317.shtml>

105) A unit of RTRS which consist of a technical service to provide dissemination of the signal.

106) See also Russian Federation: Order to Hold MMDS Competitions by Olga Motovilova, IRIS 2003-6: 14, available at: <http://merlin.obs.coe.int/iris/2003/6/article29.en.html>

107) See the press release of 26 July 2007 "Main Radiofrequency Centre" at: http://www.fas.gov.ru/english/news/n_14389.shtml?print. For the text of the Federal Statute No. 135-FZ of 26 July 2006 "On Protection of Competition" in English (non-official translation) see: <http://www.fas.gov.ru/english/legislation/8955.shtml>

Another peculiar incident had to do with the monopolistic dominance of a local cable TV network. In January 2006, the private cable network "Altair" in the city of Tula abruptly switched off the local TV programme Plus-12 despite the contract that existed between the two companies. The cable network alleged that the reason for terminating their services were capacity limitations due to a switch-over from analogue to digital television. Nevertheless, two weeks later, three new programmes were added to the basic package of Altair. The case became widely known when Plus-12 turned out to be the only channel oppositional to the local authorities. A local Arbitration Court turned down the complaint from Plus-12, but the company also complained to the FAS and the Public Chamber of the Russian Federation (see more on the Chamber below). More than three months later, the Tula regional office of FAS decided that Altair had abused its dominant position and ordered it to conclude within a month a new contract with the company that owned the Plus-12 TV channel.¹⁰⁸ Unfortunately, by that time the TV company had gone bankrupt and had ceased to exist.¹⁰⁹

6. Foreign property

Media ownership rules are much more precise on the legality of foreign investments in broadcasting than on media concentration. Russia utilises various legal instruments to limit foreign ownership and control of the mass media. Thereby, it aims to protect the national sources of information against political influence from abroad and also domestic businesses against the power of transnational corporations. Of all the types of mass media, the one that enjoys the highest level of protection against foreign expansionism is the most influential and accessible: television.

Art. 7 ("On Founders") of the Statute On the Mass Media was adopted in 1991 to ban the establishment of media outlets by non-resident foreign nationals or stateless persons. In essence, however, it allowed foreign legal entities to start media outlets. Ten years later, this provision seemed to be internally controversial and not strict enough. The Federal Statute of 4 August 2001 (No.107-FZ) then added to the Statute On the Mass Media a new Art. 19.1 ("Limitations Regarding Founding of Television, Video Programs, as well as of Organisations (Legal Entities) that Carry on Television Broadcasting") that extended the ban for foreign citizens to foreign companies and "dual citizens". The new article prescribed that:

"A foreign legal entity, as well as a Russian legal entity with a foreign participation, wherever the share (input) of the foreign participation in the stock (joint) capital equals or exceeds 50 percent, a citizen of the Russian Federation with a dual citizenship, may not act as founders of television, video programs.

A citizen of another state, a stateless person and a citizen of the Russian Federation with a dual citizenship, a foreign legal entity, as well as a Russian legal entity with a foreign participation, wherever the share (input) of the foreign participation in the statutory (joint) capital equals or exceeds 50 percent may not act as founders of organizations (legal entities) that carry on television broadcasting of their programs over a half or more of the subjects of the Russian Federation, or the territory where a half or more of the population of the Russian Federation lives.

No provision shall be made for giving away its stock (shares) by the founder of a television, video program, – also if that happens after its registration, or by the organisation (legal entity) that carries on television programmes to half or more of the subjects of the Russian Federation, or over the territory where half or more of the population of the Russian Federation live, if this would lead to the appearance in its statutory (joint) capital in shares (input) of foreign participation that equals or exceeds 50 percent."¹¹⁰

108) See: http://www.fas.gov.ru/news/п_7248.shtml

109) See: Richter A. Правовые основы журналистики. Учебник. М., 2009. P. 187-188.

110) The text of the statute is available in English at:

http://medialaw.ru/e_pages/laws/russian/massmedia_eng/massmedia_eng.html

The addendum seemed to put in danger the very possibility of broadcasting via cable and satellite hundreds of foreign programmes. The reason is that to be broadcast in Russia, a programme must be registered as a mass medium outlet. To do that it must have founders who provide the necessary papers to Russian federal authorities. Activities concerning the retransmission or rebroadcasting of programmes do not have a separate legal status under Russian media law. Broadcasting according to Art. 2 of the Statute On the Mass Media equals the dissemination of mass media products. In practice, the application of this provision has established a legal tradition whereby the authorities, on the one hand, do not press foreign programmes to be registered in Russia (with some exceptions), and, on the other, are in no hurry to clarify the status of rebroadcasting in Russian law. This might change as in September 2009 Roskomnadzor suddenly announced its wish to check all cable operators in the country in order to establish if the foreign stations that rebroadcast through their systems had Russian media registration certificates.¹¹¹

For the time being, numerous western cable and satellite channels are widely available in Russia without being licensed or formally established there as registered mass media outlets. At the same time, cable and satellite networks withhold access or set up prohibitive entry fees (up to EUR 30 million annually) for channels “dangerous to national security”. Among the programmes which, for example, cannot get access to viewers in Moscow and other key markets are lively Russian-language general interest programmes such as Belarus-TV¹¹² and the RTVi, which is oppositional to the Kremlin and belongs to a political émigré, Vladimir Gusinsky.¹¹³

Further restrictions on foreign ownership in broadcasting came on 7 May 2008 with the entry into force of the *Federal Statute On the Procedures of Foreign Investments in Commercial Joint-stock Companies that Present Strategic Importance for the Defence and Security of the Nation (No. 57-FZ of 29 April 2008)*. Among the activities that are considered to have strategic importance for the defence and security of the nation, are television and radio broadcasting transmitted to a territory where half or more of the population of any given province (subject) of the Russian Federation live. This includes the cities of Moscow and St. Petersburg (paras. 34 and 35 of Art. 6).

If a foreign investor is involved in such a business, he shall inform the governmental agency (currently the Federal Antimonopoly Service) of any contract that results in obtaining five or more percent of the stock of a strategic company (Art. 14). The procedure differs with respect to deals that provide a foreign investor with 50 percent or more of ownership, as well as those that give foreigners rights to appoint the management of a strategic company. Such deals need a prior permission from the governmental agency (Art. 7). Prior permission becomes obligatory also for deals that provide foreign governments, international organisations, as well as entities under their control with a direct or indirect right to 25 percent of the stock of a strategic company or any other means to block decisions of its management, but no permission shall be granted for deals leading to the acquisition of a majority of the company's shares (Arts. 2 and 7). Deals and contracts concluded without following the necessary prior procedure will be declared null and void.¹¹⁴

However, the practice in Russia demonstrates that foreign companies and individuals actually enjoy much greater freedom to run and own media outlets than the law allows. This issue is handled by the government with a sideways glance at the law but more often with political and economic expediency in mind. “Expediency” in this context means allowing investment in the entertainment and politically neutral media and activities that do not impinge on crucial aspects of the state's information security. For example, one of the popular national networks *Ren-TV*, which mostly runs entertainment fare, belongs for 30% to the German company RTL and the foreign company can definitely influence its policy.¹¹⁵

111) See: <http://lenta.ru/news/2009/10/05/channels1/> . According to the same report currently only BBC and Euronews have such certificates among all foreign broadcasters.

112) According to news reports, see: http://naviny.by/rubrics/society/2009/04/10/ic_news_116_309378/ , http://naviny.by/rubrics/society/2009/04/01/ic_articles_116_161957/ and <http://www.sputniktv.at.ua/news/2009-04-10-431#>

113) See, e.g. *Novaya gazeta* report, available at: <http://www.novayagazeta.ru/data/2008/41/11.html>

114) See: Russian Federation: New Statute to Curb Foreign Investments in Media by *Andrei Richter*. IRIS 2008-8: 18, available at: <http://merlin.obs.coe.int/iris/2008/8/article32.en.html>

115) Digital Television in Russia. *Op. cit.*

An example of how the regulatory authority interfered into a foreigner's acquisition of a broadcasting company was that of "Catalpa Investments". The company was reported in the Russian press to represent The Walt Disney Company.¹¹⁶ On 11 October 2008, Catalpa petitioned the Federal Antimonopoly Service to clear the acquisition of 49% of shares of a Russian private liability company "MO-TV Holdings Limited" for USD 233 million.¹¹⁷ The plan was to establish a free over-the-air children's television network in Russia. MO-TV Holdings Limited is related to Media-One TV which owns 30 to 40 regional TV stations according to different reports. It turned out that the deal would have enabled the purchaser to determine the terms of the business activity of economic entities operating in the Russia Federation. Documents submitted with the petition to FAS reportedly contained incorrect information and pointed to a possibility of putting "MO-TV Holdings Limited" under control of a foreign company.

Under the *Federal Statute On Protection of Competition* of 26 July 2006 (No. 135-FZ), the antimonopoly authority shall dismiss a petition if the information, presented in the petition and important for the authority's decision-making, is incorrect (Art. 33 para. 5 section 2).¹¹⁸ The Catalpa petition was dismissed on 12 February 2009.¹¹⁹ Andrei Kashevarov, deputy head of FAS, explained then that the incorrect information related to the issue of how far the influence of Disney would reach in the operations of the future company. There were also misprints and discrepancies in English and Russian texts.¹²⁰

Subsequently Robert A. Iger, President and Chief Executive Officer of The Walt Disney Company, lobbied to meet with Prime Minister Vladimir Putin, but the meeting did not take place.¹²¹ At that time, observers believed that the decision of FAS was motivated not by legal technicalities but by a political decision and concern for "information security".¹²² In May 2009, Disney officially walked away from the deal, and MO-TV Holdings Limited now reportedly plans to merge with the company of the Russian media mogul Alisher Usmanov.

II. Specific areas

1. Right of reply

Art. 43 ("The right of refutation") of the Statute On the Mass Media vests every natural or legal person with the right to demand retraction of information that does not correspond to reality and denigrates the person's honour and dignity from the editorial office of the print or broadcast media that spread the information. The same right belongs to the lawful representatives of the person, if he himself has no opportunity of demanding refutation (for example, parents of minors). If the editorial office of a mass medium does not possess evidence of the fact that the information it has disseminated corresponds to reality, it shall be obliged to refute this information in the same mass medium. In order to comply with such an obligation, the editorial office may either withdraw the information and state that it is false/not proven or prove in court that the information is correct.

If a natural or legal person targeted by false information has submitted a text of refutation to the responsible editorial office, the latter shall disseminate this text provided it complies with the requirements of the Statute On the Mass Media (meaning, for example, it does not abuse freedom of mass information). The editorial office of the radio or television programme, which is obliged to disseminate the refutation, may enable the person or the representative of the legal person who demanded the refutation to read out his own text and then transmit its recording.

116) See, e.g. ФАС не разрешила Walt Disney купить долю в российском медиахолдинге, <http://lenta.ru/news/2009/02/24/disney> or Микки-Мауса не ждут в России. *Ведомости* 24 февраля 2009.

117) Детскому телеканалу показали \$233 млн. *Коммерсант* 5 февраля 2009

118) See its text (in English) at: <http://www.fas.gov.ru/english/legislation/26940.shtml>

119) Press release of 20 February 2009 "Catalpa Investments Limited". See:

http://www.fas.gov.ru/english/news/n_22424.shtml?print

120) Микки-Мауса не ждут в России. *Ведомости* 24 февраля 2009.

121) Disney отключили от телевизора. *Коммерсант* 5 февраля 2009.

122) ФАС не разрешила Walt Disney купить долю в российском медиахолдинге, <http://lenta.ru/news/2009/02/24/disney/>

Art. 44 (“The Order of Refutation”) of the Statute stipulates that the refutation shall indicate which information does not correspond to reality, when and how it was disseminated by the given mass medium. On television, the refutation shall be transmitted at the same time of day and, as a rule, in the same periodic programme that contained the refuted report or material.

The length of refutation may not exceed twice the length of the refuted fragment of the report or material. The refutation transmitted over television shall take at least the airtime required for the announcer to read out one standard page of typewritten text.

The refutation shall take place:

- in mass media that are aired at least once a week – within ten days after reception of the demand for refutation or of its text;
- in other mass media – in the issue in course of preparation or in the next planned issue.

Within one month of having received the demand for refutation or its text, the editorial office must notify in writing the interested natural or legal person about arrangements for the precise time scheduled for the dissemination of the refutation or about the refusal to disseminate it. In the latter case, the grounds for such a refusal must be explained.

According to Art. 45 a refusal of refutation is not only legal but even mandatory, if a demand or the submitted text for the refutation:

- represents an abuse of the freedom of mass information in the sense of the first section of Art. 4 of the Statute On the Mass Media;
- contradicts a court decision on the case in question provided that the decision has entered into legal force; or
- is anonymous.

The refutation may also be denied:

- if it refutes information that has already been refuted by the given media outlet (for example in a different programme or context); or
- if the demand for refutation or the submitted text was received by the editorial office a year or more after the day of the dissemination of the refuted information by the given media outlet.¹²³

In accordance with the civil procedure legislation of the Russian Federation, the refusal of refutation or an infringement of Art. 44 of the Statute On the Mass Media may be challenged in court within one year of the day when the contested information was disseminated.

In addition to the right of refutation, Art. 46 of the Statute On the Mass Media provides for the right to answer. It stipulates that a natural or legal person, in respect of whom a mass medium has disseminated information that runs counter to reality or impinges on the rights and lawful interests of the citizen, shall have the right to present an answer (commentary or retort) in the same mass medium. The procedure of the right of refutation applies in full to the right to answer.

The Civil Code of the Russian Federation, adopted three years after the Statute On the Mass Media, stipulates in Art. 152 (“Defamation and Business Reputation”) that (para. 1) “A citizen can demand in a court trial the refutation of the information denigrating his honour and dignity and business reputation, if the person responsible for disseminating this information does not prove that it corresponds to reality.” Upon request of interested persons, the protection of a deceased person’s dignity and honour can be admitted. It further clarifies that (para. 2) “if information denigrating a citizen’s honour, dignity and business reputation was disseminated by a mass media outlet, it shall be refuted in the same outlet of mass media.”

123) This term of expiration for a refutation still allows a person to file a civil law suit on defamation in accordance with Art. 208 of the Civil Code which establishes no time limit for protection of non-material values.

A citizen, whose rights or other interests protected by law have been denigrated in a mass media outlet has the right to reply in the same mass media (Art. 152 para. 3 Civil Code).

Finally, the Civil Code clarifies that the provisions of Art. 152 about the protection of the business reputation of a natural person apply correspondingly to the protection of the business reputation of a legal person.¹²⁴

It should be noted that the right to refutation is used in broadcast media,¹²⁵ while we are not aware of instances of the (legally possible) use of the right to answer.

2. Product placement

The Federal Statute On Advertising (2006) provides for nine types of advertising to be exempted from the rule of the law (Art. 2 para. 2). Product placement is the last in the list of exceptions and is characterised as “references to products, means of its identification (e.g. name or trademark), to its producer or to the seller of the products, which are organically integrated into works of science, literature or arts and are not *per se* information of advertising nature”. This in essence means that product placement does not fall under advertising legislation and thus is unrestricted in all media.

In this regard, the viewpoint of Andrei Koshevarov, a deputy head (in charge of advertising) of the Federal Antimonopoly Service (FAS), is important. The FAS functions as the governmental watchdog for advertising. Koshevarov believes that the “issue of legal regulation of this phenomenon [product placement] remains open”.¹²⁶ He and other experts quote a single case in 2003 when the FAS supposedly made a decision on product placement. In this matter, Channel One broadcasted a New Year show “Zolushka” (Cinderella) thereby displaying a vodka bottle of a particular brand. The FAS fined Channel One RUB 40 000 and directed the TV company to cut the scenes with the bottle and when the show was re-broadcast the next season, references to the vodka were indeed excluded.¹²⁷ In fact, the decision was justified by the fact that the original broadcasting had violated the total ban on advertising of alcohol drinks on TV. It did not relate to product placement as a phenomenon. Because this is the only and additionally a rather old case (decided under the previous Federal Statute On Advertising) where product placement was part of the facts and because the decision did not turn on judging the product placement, we cannot really speak of a governmental policy in this regard.

In theoretical discussions,¹²⁸ there have been attempts to put product placement under the category of *subliminal* advertising.¹²⁹ The Statute On Advertising categorises the latter as advertising, which affects the consumers’ consciousness in a subliminal way and introduces the following clarification: “in particular by means of use of special video inserts (double audio recording) or by other means”. Such advertising in audiovisual media is banned (Art. 5 para. 9). These expert opinions, tacitly supported by the FAS, conclude that product placement is one of the “other means” of subliminal advertising mentioned in this norm. They also stress that in the case of product placement the most difficult task is to determine whether or not the alleged product placement was *organically* integrated into works of science, literature or arts. The way out of subjectivism here, experts say, is to get either

124) See the text of the relevant articles of the Civil Code available in English at:

http://medialaw.ru/e_pages/laws/russian/ccde-en.htm

On 24 February 2005 the Plenum of the Supreme Court of the Russian Federation issued a Decision “On Judicial Practice At Disposal Of Cases on Protection of Honour and Dignity of Persons, and also Business Reputation of Persons and Legal Entities” which further detailed these provisions. Its full text is available in English at:

http://medialaw.ru/e_pages/laws/russian/supc-24-2005.htm

125) See, e.g.: <http://www.fssp06.ru/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=164&cntnt01returnid=51>

126) Кашеваров А. Б. Актуальные вопросы практики ФАС России в сфере рекламной деятельности и защиты конкуренции, *Арбитражное правосудие в России. №3, 2008*. See also:

http://www.fas.gov.ru/article/a_17729.shtml, <http://drr.ru/news.php?idnews=57>, and

http://www.fas.gov.ru/article/a_6956.shtml

127) Ibidem. See also: Чубукова, И. Product Placement vs закон о рекламе, *Управление компанией*. 7 February 2008. See http://www.fas.gov.ru/article/a_17149.shtml and <http://www.utro.ru/articles/2004/07/14/329647.shtml>

128) See, e.g.: Романов А. А. Закон и индустрия скрытой рекламы. *Реклама и Право, № 2, 2006*, or Чубукова, И. Product Placement vs закон о рекламе. *Управление компанией*. 7 February 2008. See http://www.fas.gov.ru/article/a_17149.shtml

129) The Russian term *скрытая реклама* – hidden advertising – includes both notions of subliminal and surreptitious advertising.

evidence from “authoritative specialists” or results of sociological polls. If the evidence obtained confirms an artificial character of the inserts of products and trademarks, then product placement falls under the advertising legislation. In that case, all rules of the Statute On Advertising must apply. For example, if the law allows for beer to be advertised on TV accompanied with a warning message from 10 p.m. to 7 a.m. only, then this should apply to works of art with non-organic artificial product placement of beer products. Likewise, because the law prohibits displaying beer drinking in advertising, there should be no such scenes in non-organic product placement. Smoking of brand cigarettes, if non-organic, shall also be banned in films, etc. Overall time limits on advertising in the mass media should then be calculated including the time used for product placement.¹³⁰

Irina Chubukova, a lawyer with a major law firm in Moscow, identifies three criteria for product placement that in the context of Russian legislation and international experience allow it to be labelled as advertising:

- The object – a product or trademark – can be pulled out from the works without any loss to its creative value.
- The placement presents advertising value, that is, it promotes or advances interest in a product or service, trademark, producer or seller of the product (or service).
- The placement of a product or a service, trademark, or name of a producer is remunerated and the fact of remuneration of product placement can be confirmed by a contract between the authors and advertisers.

Whether it is possible to apply these criteria of product placement to films and TV series remains an open question too, a question without positive or negative answer in the advertising legislation. A special challenge for any method of advertising consists in defining at what point advertising begins and where it ends. When advertising becomes an integral part of a work of art, it becomes difficult to frame those of its fragments which are pure advertising.

It must be recalled, that this is just a discussion without any immediate impact on product placement. The FAS has not yet taken a clear position on this question, although the increase in product placements might expedite changes to this situation.

There were also attempts to label product placement as *misleading* advertising. This is hardly possible because by law “misleading” is understood exclusively as the withholding of essential information on the product and distortion of such information in advertising (Art. 5 para. 7 of the Federal Statute On Advertising).

The absence of an accurate legal understanding and any regulation of product placement generates one more practical problem, namely uncertainty as to the *contractual* regulation of product placement. It is very difficult to formulate the subject matter and essential contract provisions for arranging a product placement. While currently relations between advertisers and advertising agencies lie within the established and legally well-developed framework of agency contracts or contracts on the rendering of services, the issue of creating and placing a product in a work of art demands a new kind of contract, which still needs to be developed. There is no template that might be copied, and lawyers use any type of contract that seems convenient for their purpose. And even more often, obligations exist only at the level of oral arrangements. This considerably complicates the possibility for an exact fulfilment of any obligation.

As a matter of fact, contracts on product placement are agreements on rendering services and are therefore regulated by Chapter 39 of the Civil Code of the Russian Federation. According to a typical contract on rendering of advertising services for compensation, the service provider undertakes to take certain actions or to carry out a certain activity according to the instructions of the customer. The customer, in turn, is obliged to pay for the services rendered. Thus for the customer the following provisions are essential:

130) Чубукова, И. Product Placement vs закон о рекламе. *Управление компанией*. 7 February 2008. See: http://www.fas.gov.ru/article/a_17149.shtml

- Definition of the subject matter of the contract, i.e. those actions which the service provider is obliged to carry out within the framework of the preparation of an advertising campaign and how they are to be carried out;
- The timeframe for launching the advertising campaign given that the customer might be interested in the advertising to take place only during a particular period of time.

A contract for advertising services may cover any kind of product placement as it regulates the main contractual relations and aims – rendering of services to promote a company, its brand, its product and services.¹³¹

3. Right to short reporting

Russian law speaks of a phenomenon similar to the European right to short reporting in Art. 1274 (“The free use of a work for information, scientific, educational or cultural purposes”) of Part 4 of the Civil Code of the Russian Federation (Chapter 70 – Copyright Law). This article stipulates the admissibility of using works on current economic, political, social and religious issues as well as reproducing these works in broadcasts or cable programmes, unless such a reproduction or announcement has been specifically prohibited by the author or other right holder. The law does not require the consent of the author or other right holder and does not impose the obligation of paying for the use. It requires merely that references to the name of the author whose work is used and to the source be made. The law also allows, under the same conditions, reproducing in broadcasts or cable programmes publicly pronounced political speeches, addresses, reports and other similar works to an extent justified by information purposes; furthermore, it allows the communication to the general public (by means of broadcasts or cable programmes reviews) of works which are seen or heard in the course of current events if justified for information purposes.¹³²

The development of Russian online resources with the capability to disseminate video materials has just recently led to law suits on illegal copying and distribution over the Internet of audiovisual works originally broadcast on TV. In particular, the VGTRK TV Holding Company sued on 22 October 2008 the communications portal Mail.ru and the social network Vkontakte.ru for illegal distribution of the works “pirated” from its TV channels. It demanded that Mail.ru and Vkontakte.ru stop the illegal dissemination of copyrighted works and that they each pay RUB 3 million in compensation. In November 2008, the VGTRK reached an out-of-court agreement with Mail.ru pursuant to which the latter will share advertising profits in exchange for the legal permission to continue the disputed distribution.

But the company that owns Vkontakte.ru refused to adhere to the demands of the VGTRK. The most recent reports say that in June 2009 court proceedings in an Arbitration Court of St. Petersburg continued. In particular, the court acknowledged a notary verification that a Russian feature film “Ostrov” (Island) broadcast by the VGTRK had been made available on a webpage of the social network.

In February 2009, the VGTRK struck an out-of-court deal with the search engine Rambler.ru according to which the latter is permitted to disseminate TV broadcasts in exchange for free advertising of the news website Vesti.ru run by the VGTRK.¹³³

Earlier, on 17 April 2008, the VGTRK led a group of major news outlets in an informal initiative to work out a legal mechanism for combating piracy by Internet websites and Internet-based media.¹³⁴ The campaign resulted in a bill amending the Statute On the Mass Media and the Code of Administrative Violations of the Russian Federation of 30 December 2001 (No. 195-FZ). The bill was supported by the Ministry of Communications and Mass Communications on 10 June 2009 when it was discussed at the

131) Чубукова, И. Product Placement vs закон о рекламе. *Управление компанией*. 7 February 2008. See: http://www.fas.gov.ru/article/a_17149.shtml

132) See the full text of Chapter 70 of the 4th Part of the Civil Code available in English at: <http://civil-code.narod.ru/chapter70-copyright-law.html>

133) See news report at: <http://interfax.ru/society/txt.asp?id=40987> and <http://www.infox.ru/business/media/2009/06/26/VGTRK.phtml>

134) <http://www.urisconsult.spb.ru/info/45/>

inaugural meeting of the Council on Mass Communications, a professional advisory body at the Ministry. The bill suggests considering Internet platforms as mass media, and provision of public access to Internet content as a form of dissemination of mass information. It also introduces administrative liability for violation of copyright of news agencies.¹³⁵

4. Protection of public morals

The Statute of the Russian Federation On the Mass Media states in Art. 4 (“Inadmissibility of Abuse of the Freedom of Mass Information”):

“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, for dissemination of materials that contain public calls to carrying out terrorist activities or that publicly justify terrorism, other extremist materials, and also materials propagating pornography or the cult of violence and cruelty.”¹³⁶

For the latter type of materials, the existing legal restrictions aimed in particular at protecting minors from materials of a pornographic nature are formulated too generally. For example, the law contains no explanation as to what “propaganda” is. At the same time, any case of abuse of the freedom of mass information registered by Roskomnadzor potentially leads to the closure of a mass media outlet (see above).

By imposing a ban on the dissemination of pornography and “propaganda of the cult of violence and cruelty”, lawmakers seek to protect public morals. The constitutional rule that a person may not exercise his rights in a way that violates the rights of other persons makes the ban possible. Art. 55 para. 3 of the Constitution explicitly stipulates that “the rights and liberties of persons and citizens may be restricted by the federal statute to the extent required for (among other things) the protection of ... morality, health, rights and lawful interests of other persons”.

Art. 242 of the Criminal Code of the Russian Federation of 13 July 1996, No. 63-FZ, establishes criminal liability for the illegal distribution of pornographic materials or items. Acts constituting this offence include making pornographic material with a view to distributing or advertising it, and illegal trade in printed publications, film or video materials, pictures or other items of pornographic character. The penalty is a fine of RUB 100 000 to 300 000, or the wages or other revenue of the convicted person over the period of one to two years, or imprisonment for up to two years.¹³⁷ According to statistics of the Ministry of the Interior of the Russian Federation, in 2008, 1 794 cases of illegal distribution of pornography were registered (compared to 3 128 in 2007 and 2 876 in 2006). Under a separate article of the Criminal Code (Art. 242.1), 223 crimes concerning distribution and production of child pornography were registered in 2008 (compared to 137 in 2007 and 248 in 2006).¹³⁸

Several attempts to pass a statute on protection of public morality have been made in Russia. On the other hand, the *Federal Statute On Restricting the Circulation of Products, Services and Public Events of Sexual Nature in the Russian Federation* (1996) was never enacted by the President of Russia.¹³⁹ Several attempts to solve problems in controlling the information environment and protecting the public 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. They target erotic publications and programmes and solve certain problems.

135) The text of the bill with a commentary is available in Russian at: <http://medialaw.ru/publications/zip/177/index.html>

136) The text of the Statute is available in Russian at: http://medialaw.ru/laws/russian_laws/txt/2.htm

137) See for the text in: http://medialaw.ru/laws/russian_laws/txt/34.htm

138) According to information of the State Duma:

http://www.familycommittee.ru/parlamentskie_slushaniya_kruglye_stoly_i_inye_meropriyatiya/vyrabotannye_rekomendacii/rekomendacii_parlamentskih_slushanij_na_temu_o_overshenstvovanii_zakonodatelstva_napravlenogo_na_borbu_s_detskoj_pornografiej/

139) See information about the bill in: Protection of Minors from Harmful Information in the Law of Post-Soviet States by Anna Belitskaya, IRIS *plus*, a supplement to IRIS, *Legal Observations of the European Audiovisual Observatory*, Issue 2006-6.

Today, 17 subjects of the Russian Federation have statutes dealing with this problem. Dozens of pertinent local decrees and resolutions of the executive and municipal bodies exist as well. They typically establish governmental bodies to protect morals. Such councils are usually comprised of representatives of public organisations, cultural personalities, prominent figures in literature, science and the arts, representatives of law-enforcement agencies and of governmental commissions on the affairs of minors, as well as psychologists, medical doctors, teachers, and other experts. The councils were established according to local regulations in order to determine the presence of erotic or pornographic content in specific mass media products, compile lists of banned films, etc.

There is still no such body at the national level, although the State Duma made an attempt to form it by adopting the draft Federal Statute On the Supreme Council for Protecting the Morality of Television and Radio Broadcasting in the Russian Federation in 1999. The bill successfully passed through three readings in the lower chamber, was approved by the Federation Council (upper chamber) but was eventually vetoed by the President of Russia.¹⁴⁰

5. Protection of minors

Protecting minors from the influence of harmful information has been high on the agenda of law-makers in Russia for almost two decades. 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 images form skewed stereotypes of reasoning in the consciousness of minors thereby increasing the risk of future antisocial behaviour.¹⁴¹ Western researchers have proven that Russian news programmes show twice as much violence as similar programmes in the U.K. or Germany.¹⁴²

Based on the United Nations Declaration of the Rights of the Child (1959)¹⁴³ and subsequent Convention on the Rights of the Child (1989),¹⁴⁴ the Russian Federation adopted its own statute on the rights of the child. The provisions of the law are to a large extent declaratory and do not envision specific regulatory mechanisms or means to ensure compliance. *The Federal Statute On the Basic Rights of the Child of 24 July 1998 (No. 124-FZ)*, contains only one provision (Art. 14) dealing with the problem under review. It reads:

“State bodies of the Russian Federation shall take measures to protect the child from the information, propaganda and agitation injurious to his or her health, moral and spiritual development, including protection from ethnic, class, social intolerance, advertising of alcohol and tobacco products, from propaganda of social, racial, ethnic and religious inequality, as well as dissemination of ... audio- and video products, promoting violence and cruelty, pornography, drug addiction, addiction to inhalants, anti-social behaviour.”¹⁴⁵

It is thus no wonder that the pressure to introduce practical steps for protecting interests of minors in the mass media has only continued to increase. On 24 June 2009, the State Duma passed in the first reading the Bill On the Protection of Minors against Information Detrimental to their Health and Development.¹⁴⁶

140) See for discussion of the Bill in: Protection of Minors from Harmful Information in the Law of Post-Soviet States by Anna Belitskaya. *Op. cit.* P. 6.

141) Protection of Minors from Harmful Information in the Law of Post-Soviet States by Anna Belitskaya. *Op. cit.* P. 2.

142) See: Petzold, Thomas. Gewalt in Internationalen Fernsehnachrichten: eine comparative Analyse medialer Gewaltpraesentation in Deutschland, Grossbritannien und Russland, VS Verlag fur Sozialwissenschaften, Wiesbaden 2008. P. 44, 109. Quoted in: Dubina, Tatyana. An Economic Analysis of the Russian Television System, Working Papers of the Institute for Broadcasting Economics at the University of Cologne. No. 259. Cologne, 2009. P. 100.

143) See <http://www.cirp.org/library/ethics/UN-declaration>

144) See <http://www2.ohchr.org/english/law/crc.htm>

145) The text of the Statute is available in Russian at: http://medialaw.ru/laws/russian_laws/txt/52.htm

146) The text of the bill О защите детей от информации, причиняющей вред их здоровью и развитию (On the Protection of Minors against Information Detrimental to their Health and Development) after the first reading is available in Russian at: <http://medialaw.ru/publications/zip/178/1.htm>

The future federal statute shall regulate “products of the mass media, printed materials, movies, TV and video films, electronic and computer games, other audiovisual products in any material form, including that disseminated in the information-telecommunication networks of general access (including the Internet and mobile telephony)” (Art. 2 para. 8).

The Bill defines seven categories of information that are banned from dissemination to minors (persons of below 18 years of age). They range from pornography to “propaganda of negation of family values”. Pornographic information is defined in the bill as “materials and objects of no artistic value and no scientific, medical or educational purpose that contain description or photographic, video or other portrayal (*inter alia* created by means of computer graphics, animation or other pictorial means) of: 1) either genitals of a human, 2) or intercourse or an imitation thereof, 3) or other action comparable to sexual intercourse, *inter alia* with an animal or a dead human” (Art. 5 para. 2 no. 7).

The Bill protects the “information security of children” defined in Art. 2 as the “condition under which there is no risk of harmful impact on the physical, psychological, social, spiritual and moral health and development of children”.

The following ratings for “informational products” relating to the age of their consumers shall be applied: universal (all ages), below 6 (years old), 6+, 12+, 16+ and 18+. The bill envisions the introduction of a mandatory specific labelling system for all audiovisual products and services, including TV programmes (other than news, current affairs, entertainment and live broadcasts), in accordance with the age rating. Airing of products labelled 16+ shall be allowed on TV only from 9 p.m. to 7 a.m., and those labelled 18+ only from 11 p.m. to 6 a.m.

The future statute will oblige facilities, like Internet cafes, that provide customers with access to audiovisual content to use technical and programming means to protect minors from accessing detrimental information.

Producers and distributors shall be responsible for marking their products in accordance with the guidelines of the new statute. In particular, it encourages them to solicit an expert opinion on the age rating as well as on the specific rules and legal consequences also foreseen in the bill. To seek expert opinions for computer and other games becomes mandatory.¹⁴⁷

Currently, an age-specific rating system for audio and video products applies (mostly feature films for exhibition) according to the Ordinance of the Federal Agency on Culture and Cinematography (now incorporated into the Ministry of Culture of the Russian Federation) of 15 March 2005. The Ordinance approved Guidelines for Age-Specific Classification of Audiovisual Works.¹⁴⁸

Under the Ordinance films should be rated according to five categories:

- Restricted to persons of 18 years of age and older;
- Restricted to persons of 16 years of age and older;
- Restricted to persons of 14 years of age and older;
- Restricted to persons of 12 years of age and older with parental guidance;
- Films suggested for general audiences.

So far, the monitoring of violations of the rights of minors has presented a practical problem. There might be a change with the recent establishment of an Ombudsman on the Rights of Children.¹⁴⁹ Temporarily, his office will be at the Public Chamber of the Russian Federation.

147) Russian Federation: Draft Law on the Protection of Minors against Information Detrimental to their Health and Development by Andrei Richter, IRIS 2009-8: 18.

148) The text is available (in Russian) at: <http://www.medialaw.ru/publications/zip/141/4.htm>

149) The position was established by the Decree of the President of Russia No. 986 of 1 September 2009 “On Ombudsman at the President of the Russian Federation on the Rights of Children”. Published in *Rossiyskaya gazeta* official daily on 4 September 2009.

Art. 6 of the Cooperation Agreement of the Member-States of the Commonwealth of Independent States (CIS) in the Sphere of Regulation of Advertising Activity (2003) requires governments to protect minors from any abuse of their credulity or lack of experience.¹⁵⁰ In Russia such protection is less strict than in the law of other CIS countries. The Federal Statute On Advertising contains an article (Art. 6) concerning the specifics of distributing advertising addressed to minors. It 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 of 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) portrayal of 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”.¹⁵¹

Enforcement of these advertising norms is not a rare case. For example, on 25 December 2007, a regular meeting of the Expert Council of Enforcement of the Advertising Legislation at the Federal Antimonopoly Service discussed whether the slogan “Father Frost [an equivalent to Santa Claus] does not exist!” used by the “Eto” store chain for advertising purposes discredits parents, day care providers and child minders and undermines confidence in them in the eyes of minors. As a result of the discussion, the experts concluded that the method of conveying “breaking news”, used in the advertisement, could be perceived ambiguously by children. Minors were an audience targeted by the advertisement because of the advertising schedule. In the “Eto” case, the Council noted violations of Clauses 2, 4, 5, and 8 of Art. 6 of the Federal Statute On Advertising (see above). To prevent further violation of the advertising legislation of the Russian Federation, the Council recommended that the advertiser and TV channels stop broadcasting the advertisement containing the slogan.¹⁵²

Experts believe that so far legal statutes in Russia do not provide a comprehensive system of measures to restrict the mass media with respect to the distribution and dissemination of information of a sexual nature and images of violence. Such measures should be mainly preventive. However, comprehensive legislation of this delicate sphere, which is called for by the most active proponents (defenders) of morality, is hardly appropriate as it would represent a veiled threat to individual liberties and the freedom of the press.¹⁵³

6. Rights of national minorities

In the Russian Federation, the main sources of law on the issue of languages in broadcasting are the Constitution and the norms of international law and intergovernmental treaties. The Constitution, adopted on 12 December 1993,¹⁵⁴ guarantees equality regardless of nationality (ethnicity) (Art. 19). The language-related provisions of the Constitution are developed in federal and regional statutes.

150) The text is available (in Russian) at: <http://www.medialaw.ru/exussrlaw/l/sng/38.htm>

151) The text is available (in Russian) at: http://medialaw.ru/laws/russian_laws/txt/11.htm

152) FAS Press release of 27 December 2007 “Expert Council of Enforcement of the Advertising Legislation”, see http://www.fas.gov.ru/english/news/n_16790.shtml?print

153) Protection of Minors from Harmful Information in the Law of Post-Soviet States by Anna Belitskaya. *Op. cit.* P. 8.

154) Available (in English) at: <http://www.constitution.ru/en/10003000-01.htm>

In Art. 69, the Constitution guarantees the rights of indigenous peoples with a numerically small population. To follow the Constitution, *the Statute On the Guarantees of the Rights of Numerically Small Indigenous Peoples of the Russian Federation* of 1999 establishes a special regime regarding such peoples (living in communities of fewer than 50 000 people) and the peoples of the Far North.¹⁵⁵ The Statute confers upon them the right to their own autonomous socio-economic and cultural development and obliges the government to provide assistance by devising programmes for providing support, allocating funds, etc. It guarantees the right to preserve and to develop native languages as well as to receive and disseminate information in native languages and to establish mass media.

At the same time, no normative act on regulation of broadcasting specifies the conditions of minority participation in establishing and managing broadcasting, whether the minorities belong to small indigenous peoples or not.

The Constitution (Art. 26 section 2) confirms the right of everyone to use his/her native language, and to have the free choice of language for communication. It further establishes that while Russian is the state language of the Federation, the national republics have the right to determine their state languages. These state languages thereby become parallel official languages of the territories (Art. 68). In fact, while Russian remains the dominant language and also the language for communication between all ethnic groups in the country, other languages are widely spoken and are actively promoted in the 21 national republics of the Federation, as well as in ten autonomous territories and one autonomous province, and in other areas densely populated by ethnic groups.

The use of the state language and other languages in the territory of Russia is more explicitly regulated by *the 1991 Statute On the Languages of the Russian Federation*.¹⁵⁶ Its Art. 20 deals with language use by the mass media. In particular, it states that broadcasts of the all-Russian TV and radio programmes are conducted in Russian as the state language of the Federation.

Art. 5 of *the Federal Statute On the State Language of the Russian Federation* of 1 June 2005, No. 53-FZ specifies that the rule prescribing Russian as the language of the national, regional and municipal mass media does not cover media outlets established specifically to broadcast in the state languages of the constituent republics of the Russian Federation, in other languages of the peoples of Russia or in foreign languages.¹⁵⁷

In practice, the Russia national TV channel provides for short broadcasting windows by regional state-owned stations, and whenever possible they broadcast in the national languages. These regional stations are part of the Moscow-based VGTRK company, thus giving rise to a certain degree of friction between the central authority and the authorities of the provinces.

For example, in October of 2003 the State Committee on Minorities and a number of cultural minorities' organisations of the Karelia Republic in the North-West of Russia formally complained to Russia about the disappearance of broadcasting in the Karelian, Finnish, and Veps languages in the regional windows. The broadcasting in these languages had stopped because in early 2003 there had been a change in the programme policy of the state channel for the territory – without consideration of the opinion of provincial authorities and non-governmental organisations. The protest was joined by authorities from nine other national regions.¹⁵⁸ In 2004, the programming in national languages was also cut in the Kabardino-Balkaria region in the North Caucasus.¹⁵⁹ In the Ulyanovsk region (on the Volga), broadcasting in national languages by the regional branch of VGTRK ceased upon orders from Moscow in 2006.¹⁶⁰

155) No.82-FZ of 30 April 1999. See its text (in Russian) at: <http://base.garant.ru/180406.htm>

156) No. 1807-1 of 25 October 1991 (as amended), available in English at:

http://www.mintelres.lv/NationalLegislation/Russia/Russia_Languages_English.htm

157) Its text is available (in Russian) at: http://medialaw.ru/laws/russian_laws/txt/46.htm

158) See the report of 2 February 2004 by the Izvestia newspaper, available at: <http://www.izvestia.ru/russia/article43779>

159) See the report of Regnum news agency at: <http://www.regnum.ru/news/441186.html>

160) See the report of the Centre for Journalism in Extreme Situations at: <http://www.cjes.ru/bulletins/?lang=rus&bid=1978>

In all cases, VGTRK conditioned the return of non-Russian languages into national broadcasting on the provision of regional financing or co-financing. In some instances (Chuvash Republic and Mari-El Republic), this demand was met by provincial authorities and cultural foundations.¹⁶¹ Several rich national republics (Tatar, Ingush, etc.) even established state-run broadcasters that are not subordinate to Moscow; their national language programmes claim a large share of the local audience.

The Statute On the Mass Media envisages that the language in which a mass medium will be disseminated (print or broadcast) should be indicated during the registration process (Art. 10). However, the choice of language(s) is made by the founder of a mass media outlet. The language indication does not influence the outcome of the registration process, though the Statute requires re-registration if the language is changed (Art. 11). The mass media shall be re-registered according to the same procedures applied to the original registration, which is a longer process than a simple notification procedure, such as, e.g., in the case of a change in the location of the editorial office.

While there are no legal obstacles to obtaining licences for broadcasting in a language other than Russian, the issue of the language of broadcasts may be considered during a competition for a licence award as a means of satisfying socially-significant interests. On the other hand, to the best of our knowledge, the licensing authority has never adopted special measures in order to facilitate access to television broadcasting for persons belonging to national minorities (e.g., by announcing a competition for minority language TV broadcasting with a reduced licence fee).¹⁶²

One of the recent country-specific Resolutions adopted by the Committee of Ministers (CM) of the Council of Europe in the context of the Second Monitoring Cycle of the Framework Convention for the Protection of National Minorities (FCNM) concerned the Russian Federation. It contains a number of provisions regarding the (audiovisual) media. The CM recommends that the Russian authorities “further improve access to the media of persons belonging to national minorities” and – more generally – increase awareness-raising measures concerning “the dangers of hate speech and the importance of tolerance and respect for diversity”.¹⁶³

7. Restrictions to counter extremism

The major instrument for regulating political speech in broadcasting and other mass media in Russia is the *Federal Statute On Countering Extremist Activity* of 25 July 2002 (No. 114-FZ).¹⁶⁴ Its central purpose as regards the media was to ban them from engaging in extremism or being used to spread extremist material. The penalties for defying the ban culminate in the closure of the media outlet. Henceforth, the key issue for broadcasters would be in what circumstances their actions could be deemed extremist.

Originally, the Statute defined extremism by listing acts already classified as offences under the Russian Criminal Code. But it added new attributes, mostly by linking them to violence or calls to violence. As part of extremism, the Statute included “planning, organising, preparing and committing acts directed at the violent ... breach of the Russian Federation’s territorial integrity; seizure or usurpation of power; creation of illegal armed formations; perpetration of terrorist activities” and so on.

The list was significantly expanded by amendments passed in July 2006. According to analysts, the main idea behind the changes was to shield the authorities from the discontent of its own people.¹⁶⁵ Extremism now included spreading material that explained or justified extremism, disseminating

161) See the reports at: http://gov.cap.ru/list4/publication/rec.aspx?gov_id=82&pos=2&id=119051 and <http://www.rg.ru/2005/08/16/markelov.html>

162) Regulation of Minority-Language Broadcasting by Tarlach McGonagle and Andrei Richter, IRIS plus, a supplement to IRIS, *Legal Observations of the European Audiovisual Observatory*, Issue 2004-2, available at http://www.obs.coe.int/oea_publ/iris/iris_plus/iplus2_2004.pdf.en

163) Resolution ResCMN(2007)7 on the implementation of the Framework Convention for the Protection of National Minorities by the Russian Federation, 2 May 2007. See: Committee of Ministers: Media-specific Provisions in New Resolutions on Minorities by Tarlach McGonagle. IRIS 2007-8: Extra, available at: <http://merlin.obs.coe.int/iris/2007/8/article104.en.html>

164) See its original, not updated, text (in English) at: http://medialaw.ru/e_pages/laws/russian/extrimist.htm

165) *Нагорных И.* Подрыв веры в государство - это и есть экстремизм // *Коммерсантъ-Власть*, 24 июля 2006 г.

public calls to engage in it and also promoting or facilitating it through the media. Publicly defaming state officials by maliciously accusing them of committing acts of an extremist nature also became an act of extremism.

On 24 July 2007, the Federal Statute On Countering Extremist Activity was further amended. In contrast to the previous wording, the new wording of its Art. 13 (which prohibits the production and dissemination of extremist materials) no longer provides any definite criteria for the recognition of materials as extremist, although it establishes that materials are extremist once a court decision on it enters into force. The revised Arts. 9 and 10 contain provisions on the federal list of extremist organisations. The decision to add an organisation to this list will be taken by the state agency in charge of the registration of non-commercial organisations and must be based on a court decision.

As regards penalties for the media, extremist acts or dissemination of extremist content (as well as acts of disseminating calls to commit acts of terrorism or justifying them) result under this Statute and the amended (2002) Art. 4 of the Statute On the Mass Media in a warning by Roskomnadzor or one of its regional bodies. In some cases of threats to public security, even the first warning may lead to the suspension of disseminating the media and could be a step in the procedure for closure. The Statute On Countering Extremist Activity and amendments to the Statute On the Mass Media allow also the public prosecution to use the procedure of warnings and closure if in their view the media are used for extremist purposes. In particular, a provision points to information on the activity of organisations, whose functions are forbidden by a final court decision and which are included in the Federal Register of Extremist Organisations. The media may not disseminate information on them without making the appropriate reference to such a decision.

We consider that the Statute's most dangerous consequence for freedom of mass information is that not only can reporters and editors be penalised for spreading extremist material (including defamation of state officials),¹⁶⁶ but also editorial offices and broadcasting companies can face sanctions including closure.

The definitions of extremism and terrorism in the law are so broad and vague that they could be used to stifle debate in the media with regard to issues that are of increasing public interest. The authorities use the extremism law to suppress the views of radical political opponents and the state rarely seeks a balance between the needs to eradicate terrorism and respect journalists' rights. By and large, it favours the easier path of curbing the flow of information and the circulation of opinions.¹⁶⁷

In most appeals against warnings issued for dissemination of extremist materials the courts take the side of the prosecutors and/or Roskomnadzor. Still, there is a rare case when a warning to the media outlet was successfully overruled in court, although the case itself seems not to concern political speech but rather a commercial dispute over a frequency. The 2x2 television channel, owned by the Russian private holding company ProfMedia, is constantly attacked by fringe public organisations and individuals for offering cartoons for adults during daytime. Beyond accusations of spreading the cult of violence and cruelty, as well as pornography (see above), the petitions of these critics allege the crime of extremism in the religious strife that the company purposely spreads. In turn, the company states that this array of attacks is motivated by the purely commercial interests that its opponents have in the channel's precious frequency serving the people in St. Petersburg.

The 2x2 channel broadcasts via cable networks throughout Russia and in St. Petersburg over the air, a 24hr programme of cartoons for adults. Acting on private complaints, a district prosecutor's office ordered and obtained an expert opinion that claimed in particular that an episode titled "Mr. Hankey's Christmas Classics" from the "South Park" cartoon series (produced in the U.S. by Comedy Central) was

166) For example the Code of the Russian Federation On Administrative Offences of 30 December 2001 (No. 195-FZ) now has an Art. 20.29 which refers to liability for the production and dissemination of extremist materials. It provides for serious fines for persons and organisations found guilty of this offence. Also, the Criminal Code of the Russian Federation of 13 July 1996 (No. 63-FZ) and the Criminal Procedure Code of the Russian Federation of 18 December 2001 (No. 174-FZ) provide liability for crimes committed with extremist and xenophobic motives. See: Russian Federation: Anti-extremism Amendments, by Nadezhda Deeva, IRIS 2007-9: 19.

167) See more on that issue in Richter, A. *Post-Soviet Perspective on Censorship and Freedom of the Media*. – Moscow: UNESCO, 2007.

extremist in the sense of the 2002 Federal Statute On Counteraction of Extremist Activity because it promoted hatred between religions. That served as the basis of a warning issued in accordance with this statute.

In addition, a separate criminal investigation on suspicion of excitement of religious strife was opened in the Basmanny court by the same prosecutor in September of 2008. In a further motion, the prosecutors asked the court to declare the series extremist material that would involve criminal prosecution of those who disseminated it. After two new expert opinions had been provided that denied existence of extremist materials in the cartoon series, the investigation was closed and the court motion was withdrawn by the prosecutor's office. However, that did not prevent the prosecutors from defending the legality of their warning in the court. Based on the expert opinions, the Basmanny District Court in Moscow on 2 June 2009 adopted an important judgement on a case of a broadcaster against the prosecutor's office. It overruled the 22 August 2008 warning issued by the Basmanny Inter-District Prosecutor to the 2x2 television channel and annulled the warning. The District Court decision was appealed by the prosecutor's office in the Moscow City Court. The City Court upheld the lower court's decision on 28 August 2009.¹⁶⁸

III. Regulatory means

1. Self-regulation and co-regulation

a. Self-regulation mechanisms: charters and codes

Adoption of codes of ethics and self-regulation systems in Russia has resulted in the past – and still does today – from the threat of legal restrictions on the media. This is not in itself reprehensible, or unique to the region. But this carrot and stick approach causes the following danger to real self-regulation: if media professionals adopt a code of ethics only to pre-empt an imminent threat of new legislative curbs, they lose their interest in the new code as soon as that threat disappears.

For example, the Russian journalistic community's drafting of a "counterterrorism convention" was directly linked to the State Duma's proposed (in November 2002) amendments to the terrorism and media statutes that would have regulated media coverage of so-called counterterrorism operations. If adopted, the amendments would have banned the media from reporting anything that might obstruct such an operation or endanger human life or health. They would also have outlawed reports containing remarks intended to obstruct a counterterrorism operation or to encourage or justify opposition to it. They would have forbidden information revealing personal details of members of the security forces or operational Head Quarters or of anyone helping them, without these persons' consent. The amendments also contained an implied ban on reports about how weapons, ammunition or explosives are made.

Faced with these potential and other similar restrictions, the editors of influential Moscow media outlets signed an appeal urging then President Vladimir Putin to veto the amendments. A few days later, they went to meet him and were asked to find a balance between restrictions during emergencies and the need to keep the public fully informed. "It seems to me that the journalistic community needs to draw up corporate standards of behaviour for extreme situations," Putin told them. One of the editors present was Konstantin Ernst, general director of the Channel One TV Company, who replied that journalists and media executives were already "willing to work with the legislators to draw up such rules".¹⁶⁹ That very day, the amendments were vetoed.

The promised code of conduct – the *Counterterrorism Convention (Rules for Media Conduct in Event of Acts of Terrorism or Counterterrorism Operations)* – was drafted and signed on 8 April 2003. It places a number of restrictions on journalists¹⁷⁰ and states in particular that they should not:

168) See Russian Federation: Warning to broadcaster annulled, by Andrei Richter, IRIS 2009-8: 18.

169) Путин предлагает журналистскому сообществу выработать корпоративные нормы поведения в экстремальных ситуациях // Сообщение агентства Интерфакс. 25 ноября 2003 г.

170) See its translation into English at: <http://www.medialaw.ru/selfreg/3/14.htm>

- initiate interviews with terrorists during an act of terrorism, unless requested or permitted to do so by the “operation’s Head Quarter”¹⁷¹;
- provide terrorists with live airtime without prior consultation with the operation’s Head Quarter;
- independently assume a role as mediator, and so forth.

As soon as the Counterterrorism Convention was adopted, it was quickly forgotten by both the media and the authorities. Despite the duty to “be tactful and attentive to the feelings of relatives and loved ones of victims of terrorism” and “to avoid excessive realism when showing the site of an incident and those involved”, the attacks on the Hotel National and Moscow metro in late 2003 and early 2004 were reported in gruesome detail. The code of ethics remained a “paper tiger”. Its purpose was not to rein in the professional community but to pacify officialdom, at least for the time being.

The ineffectiveness of the code of ethics helped to revive the idea of legislation. Almost all the measures that the law-makers had originally wanted were incorporated into a new terrorism statute signed on 6 March 2006.¹⁷²

This story was largely repeated when the Charter “Against violence and cruelty” was adopted. The chiefs of the country’s biggest television networks signed it at the State Duma on 8 June 2005, with the leaders of the parliamentary factions looking on. Nobody doubted that this new code of ethics was a direct result of the Duma’s debates in late 2004 and early 2005, when the parliamentarians considered a number of amendments to the media statute in order to curb violence and cruelty on television. The press dubbed it a “charter for subservience” and suspected that it had been signed “for reasons far removed from the well-being of the viewer”.¹⁷³

Under the Charter the national broadcast networks “voluntarily” assumed duties that had mostly to do with observing “the rights of children to protection and assistance and, above all, their right to receive information that does not harm their physical and moral health”, especially during the showing of violence and cruelty.

The signing ceremony was widely covered by the press. Over the time that has passed since then, however, not one of the TV companies that signed the Charter (Channel One, Rossia, NTV, TV-Tsentr and Ren-TV) has even posted it on their websites. Nor did the text appear in any newspaper. Unsurprisingly, the Charter “Against Violence and Cruelty” has also had nothing more than an ephemeral effect – something that MPs have themselves pointed out.¹⁷⁴

In this context, we should also mention the so-called *Broadcasters’ Charter of April 1999*, in which the top executives of Russia’s largest national and regional television companies undertook to provide truthful information, uphold the rights and legitimate interests of individuals and organisations and protect public health and morality. They also defined behaviours that were incompatible with civilised journalism. The reason behind the adoption of this document is believed to be the enactment, on the day before, of the Statute “On the Supreme Council for Protection of Morality on Television and Radio in the Russian Federation” (see above). The TV chiefs who signed the Charter decided to set up their own public broadcasting council to oversee compliance. But the statute got a presidential veto, and the alternative council was never created. “The position taken by the leaders of the Russian television channels clearly shows that they saw the document that they had signed as a forced agreement with society on the rules of the game. But when the danger of regulation through the law passed, the TV companies lost interest in the very idea of a Charter. To them it represented merely a framework for limiting freedom of self-expression, a moral compass that journalists did not need.”¹⁷⁵

171) “Operation’s Head Quarter” refers to the ad hoc Head Quarter of anti-terrorist squads and forces of different security agencies brought to the scene.

172) Federal Statute No. 35-FZ of 6 March 2006 On Counteraction of Terrorism. The text is available in English at: http://medialaw.ru/e_pages/laws/russian/terrorism.htm

173) *Новые Известия*, 8 июня 2005 г.

174) See, e.g., *Госдума приняла обращение к руководителям телеканалов / РИА Новости* — 2 ноября 2005 г. *Фаризова С., Бородина А.* Людоеды не показались депутатам. НТВ обвинили в нарушении хартии телевещателей // *Коммерсантъ*, 1 ноября 2005 г.

175) See: *Авраамов Д.С.* Профессиональная этика журналиста (Сущность, основные функции, становление в России): Дис. в форме научного доклада ...докт. философ. наук. — М., 2000. С.42-43.

This assessment by the Russian researcher of journalistic ethics, Dmitry Avraamov, is correct, except for the fact that the agreement was not reached with society but the authorities. In other words, in the desperate days when a clampdown is in the cards, proprietors and managers play along with the authorities and try to persuade them to drop their plans. And the game is often opened by the state leaders themselves, who do not wish to be later seen by the public as persecutors of the media. They prefer to blame journalists for the newer and tougher rules of the game. All these and similar documents deserve the definition applied to one of them by Vladimir Bakshtanovsky, a researcher of applied ethics. He described them as “the act of tokenising an already token form of the press’s social responsibility”.¹⁷⁶

b. Self-regulation and co-regulation bodies

The self- or co-regulatory mechanisms that apply (at least in theory though less often in practice) have another prominent feature: self-regulation bodies are sometimes set up with state involvement and under a legislative instrument designed to ensure (to whatever extent) that their rulings are adhered to. An interesting example of this approach was the *Judicial Chamber for Information Disputes*, which was set up by the Presidential Decree of 31 December 1993. Its remit was to rule on any dispute concerning the media, giving priority to those that could affect not only individual outlets but freedom of mass information in general.

The chamber was only called “judicial” because of the way in which it handled disputes; it was not a part of the Russian court system. But under the Presidential Decree its rulings were binding on state authorities and also state media. The chamber had the right to publish its most important rulings in the government newspaper *Rossiyskaya gazeta*, to facilitate their implementation.

The chamber comprised former state officials and members of the parliament, journalists and also higher-education lecturers and even college students (*sic!*) of media law. During its life it heard several hundred disputes and based its rulings not only on the law but also on ethical standards. Its members often emphasised that they were not part of President Boris Yeltsin’s administrative machinery but that the Judicial Chamber was part of the *institution* of the presidency. Any interference by Yeltsin, if it occurred, was insignificant. This is borne out by verdicts that condemned state officials or media loyal to the authorities. Many of the chamber’s rulings protected journalists against unlawful interference by state officials. The situation changed when Vladimir Putin was elected as president: the presidency’s administrative structure was revamped in summer 2000 and the Judicial Chamber was scrapped.

The bodies created thereafter with the use of resources of the Russian Union of Journalists (RUJ) failed to be in any way close to the Chamber in authority, effectiveness or scope. Just a few conflicts are adjudicated by them each year. A recent Russian governmental report on the mass media made a special point on the importance of self-regulation measures and in particular highlighted a body called the *Public Board on Complaints against the Press* (Public Board),¹⁷⁷ set up by the RUJ, but at the same time noted its “still largely untapped potential”.¹⁷⁸

The Public Board positions itself as an “alternative body” to the courts of justice. Anybody filing a complaint with the Public Board has to sign an agreement recognising its jurisdiction over professional and ethical matters and declaring not to take the case to a court of justice. In the strict legal sense, a waiver of access to the courts of justice is not valid, but then the Public Board speaks the language of ethics and not the language of law. If the petitioner decides nevertheless to go to court he/she challenges public morality and the respondent’s representative will be quick to take advantage of this in order to argue that the plaintiff has abused the law.

176) Бакштановский В. И. Бремя и счастье моральной ответственности журналиста // Социальная ответственность журналиста: опыт современного прочтения проблемы / В 2-х чч. Ч. 1. / Под ред. Ю. В. Казакова. — М., 2003. с. 91-118.

177) See its webpage at: <http://www.presscouncil.ru/>

178) See, Russian Periodical Press Market: 2008. Situation, Trends and Prospects. A report by the Russian Federal Agency for the Press and Mass Communications, Moscow, March 2008.

There have been attempts to shed the obligations assumed. For example, Andrei Karaulov, the popular author and presenter of “The Moment of Truth” TV programme, unhappy about how the Board ruled on his complaint against the newspaper *Moskovsky Komsomolets*, asked permission to go to court. But the Board demanded that all the parties in the conflict comply with its ruling. It explained that compliance with the obligation not to bring the conflict to a court of law is assured “not only by the decency of the people who have willingly assumed these obligations, but also by the emerging public consensus that moral obligations cannot be broken.”¹⁷⁹ In another recent decision,¹⁸⁰ the Board accused the TV channel Russia of the VGTRK of disseminating hate speech and questioned its adherence to basic principles of journalism ethics.

c. Public control through boards at state-run channels

As early as 1993, the time of an acute political crisis, the President and the Supreme Soviet (Parliament), were competing for the right to be the voice of the nation. Each state organ passed a separate legal act providing for the establishment of supervisory boards at the state channels.

The *Presidential Decree of 20 March 1993 On Guaranties of the Informational Stability and Broadcasting Requirements*¹⁸¹ envisaged the transformation of the broadcasting system. It aimed at generating competition between state, public service and private television and radio. It also prescribed governmental authorities to establish *guardian councils* in order to resolve conflicts concerning the misrepresentation of political parties, attempts to introduce censorship or other unlawful forms of control. The Decree, still in force, was ignored by all governmental bodies, as well as by the state broadcasters.

On 29 March 1993, the Congress of People’s Deputies of the Russian Federation (Parliamentary Assembly) adopted the *Resolution On Measures to Support Free Speech in State Broadcasting and in Information Services*.¹⁸² This Act introduced the right for legislatures (both federal and regional) to establish supervisory boards at the state broadcasting channels. The goals of these boards were to guarantee objective information by state broadcasters on political and economic events, to provide access for various political organisations to broadcasters’ programmes, and to counteract political monopolisation of the airwaves. The Resolution did not specify the powers of the boards. For that reason its compliance with the Constitution was challenged in the Constitutional Court. Complainants argued that the Act introduced censorship. The Constitutional Court in its Decision of 27 May 1993 ruled that the enactment of the Resolution had been procedurally incorrect and therefore annulled it.¹⁸³ It is important to note that the possibility *per se* to establish supervisory boards was not rejected by the Constitutional Court.

The story continued when by the *Decree of the President of the Russian Federation of 31 October 1997* a supervisory board at the national state-run channel “Kultura” was established together with the channel.¹⁸⁴ The Board was given wide-reaching competences, including the right to form the programme policy and control other activities of “Kultura”. The Board included experts in the sphere of culture and media appointed by the President, and was chaired by the President *in person*. However, after one or two meetings the Board ceased its activity.

The *1998 Charter of the Russian State Television and Radio Company* (VGTRK) envisaged a public council at the office of its Chairman, whose members should have been selected from among “outstanding personalities of science, culture and arts” and approved by Ordinance of the government. The body was to be established in order to guarantee public control over state broadcast media. The Charter provided that the council members be selected by the Chairman alone. There is no public record of meetings of the council.

179) See Russian Periodical Press Market: 2008. Situation, Trends and Prospects. *Op. cit.*

180) See: http://www.presscouncil.ru/index.php?option=com_content&task=view&id=202&Itemid=31&limit=1&limitstart=5

181) Available in Russian at: <http://pawa.ru/j.ru/pravcenter/ukaz1.html>

182) Available in Russian at: http://www.businesspravo.ru/Docum/DocumShow_DocumID_55709.html

183) Judgment of the Constitutional Court of the Russian Federation of 27 May 1993 N 11-P “По делу о проверке конституционности постановления Съезда народных депутатов Российской Федерации от 29 марта 1993 года “О мерах по обеспечению свободы слова на государственном телерадиовещании и в службах информации” (On the case of constitutionality of the decree of the Congress of People’s Deputies of the Russian Federation of 29 March 1993 “On Measures to Support Free Speech in State Broadcasting and in Information Services”).

184) Available in Russian at: http://www.businesspravo.ru/Docum/DocumShow_DocumID_53842.html

By 2000, the whole idea of state-run television had been revised. The government as well as parliament no longer considered new attempts to introduce public control over state broadcasting. In 2004, the government approved the new Charter of the VGTRK. Now it contains no mention of guarantees of editorial and/or financial independence of the state broadcaster.¹⁸⁵ The Company has the status of a regular federal unitary enterprise. Its assets are considered state property. The Chairman of the VGTRK is appointed by the President of Russia and is the only authority to manage the state broadcaster. The Charter recognises the right of the Chairman to set up consultative bodies, although no use of this right has ever been publicly recorded.

In a twist of the trend, the *Charter of the State Unitary Enterprise "Russian Television and Radio Network" (RTRS) of 2001* provides for a Supervisory Board. But the Board is set up as a governmental watchdog and not as a body of public representation. The Board, about which no records exist as yet, should consist of representatives of the Cabinet, several governmental ministries, and the Administration of the President of the Russian Federation.¹⁸⁶

d. Obstacles to self-regulation

Closely connected to the role of boards at state-run channels is another feature of self-regulation of journalists in Russia, namely that generally speaking, shop-floor journalists have no input in the adoption and elaboration of codes of ethics. This has mainly been a process initiated from above and driven by the authorities and media proprietors and managers. Rarely does it bubble up from below, upon the initiative of journalists themselves, trade unions or editors. In fact, the trade union of journalists in Russia, established in 1998, has only about 60 (*sic!*) paying members.¹⁸⁷ The rank and file of the profession sees the introduction of codes of ethics merely as a move to curb their freedoms instead of a means of furnishing the needed system of moral values. This attitude and the nearly complete absence of codes independently adopted by journalists, testifies to how broad the views on the mission of journalism are even among the staff of a single media outlet.

There is a reason why ethical charters and conventions are generally drawn up, adopted and signed by media proprietors and executives rather than by journalists. The top people are *de facto* supplanting professional with corporate solidarity and ethics, and they ask their employees to reconcile these professional and corporate interests to an often highly conditional form of "in-house censorship" in order to avert pressure from the state. All of this together may be seen as a process of "compulsory self-regulation" in journalism, the element of compulsion being the threat of legislation to restrict media content.

Directly or through media proprietors and executives, the state authorities clearly wish to keep an eye on professional issues and self-regulation in the journalistic community and not to let them take their own course. Realising that they are dealing with an area that has its own specific features, the state authorities are not vesting judicial powers in self-regulatory bodies or the force of law in codes of ethics. Only when industry measures prove ineffective and the codes are ignored, the state authorities begin the process of "compulsory self-regulation" all over again. As a result of this official policy, the self-regulation bodies either become totally discredited or are wound up if the authorities do not like being told what to do as happened to the Judicial Chamber for Information Disputes (see above III.1.b).

In 2008, quite unexpectedly, the speaker of the upper chamber of the Federal Assembly (the parliament), Sergei Mironov, introduced a bill "On the Public Council of the Russian Federation for Television". The draft was enthusiastically discussed in the parliamentary hearings and treated by the government as a priority, but then was, just as suddenly, put on hold.¹⁸⁸

185) The text of the Charter (approved by the Resolution of the Government of the Russian Federation of 16 February 2004, No. 111) is available in Russian at:

http://www.inforeg.ru/db/components/doc.html-goto=-L2RiL2JpYmxpb3Rla2EvMTIvMjQ=%5E&card_id=1452.htm

186) Available in Russian at:

http://dostup.scli.ru/ru/search_advanced/printable.php?act4=1&docID4=4162e26c-f119-4284-aea5-9d787217544a

187) *Медиаэксперт*. Российско-белорусский правовой бюллетень, №1, 2004. С. 17.

188) See, e.g.: <http://www.minkomsvjaz.ru/.cmsc/upload/docs/200905/18073415we.pdf>

Today there are several obstacles to self-regulation. The main one is the self-destructive nature of the existing market for mass information. In Russia tens of thousands of printed publications and broadcast programmes exist mainly because of the lack of a free market. Omnipresent state media enjoy public money and official favours in the gathering and dissemination of information, which are denied to private media.

In turn, private corporations often do not see the potential of media as successful commercial undertakings in their own right but view them rather as in-house PR departments to promote the business interests of their masters and favoured politicians, and to settle scores with rivals. The situation is such that many media outlets do not depend on their ratings and sales or audience loyalty; more important for them are ongoing cash injections from proprietors and the ability to influence their perceived key readers (viewers, listeners). In this environment, ethical conduct can be detrimental and even dangerous for a journalist.¹⁸⁹

Another barrier to a type of journalism that could naturally regulate itself is the poorly-developed collective sense of identity of journalists and media workers and their lack of professional spirit and professionalism. Membership of the “old” journalistic unions like RUJ is melting away, many do not pay their dues. For the “written-off” generation of Soviet journalists, membership in these unions brings no longer any social safeguards or benefits. In a number of cases, local union branches are fronted by the heads of the media and press departments of regional governments, state broadcasters or newspapers. Therefore they are unlikely to provide protection against officialdom. At the same time, the debates on media freedom that take place within journalistic unions elicit no response from the media elite or authorities. The unions’ public role and civic voice is little noticed. And this is compounded by the fact that the new generations of journalists regard these and other associations as remnants of the token bodies that were discarded when the Soviet system collapsed.¹⁹⁰

Another sign of this underdeveloped sense of professionalism is the media’s intolerance of criticism and pressure from not only the state but also from readers (viewers, listeners), public organisations and academics. Unwillingness to accept critical rulings by self- or co-regulators shows that managers poorly understand their responsibility to society. And when these rulings are so blatantly flouted, their relevance and authority can only decline further.

Finally, it deserves to be mentioned that society seems to lack a concept of what journalism is and what the press should do. What are the journalistic profession’s purposes and terms of reference? Do journalists themselves accept the ideals of a civic society as a guide in their work, or are they trying to replace a civic society with a “fourth estate”? Should journalists serve to inform, educate, enlighten and entertain society, or should they engage as a profession in the moulding (or manipulation) of public opinion, or seek maximum profit from their work? Should journalism operate in such a way that society imbibes its values from and shares them with the media?

2. Regulation by the national regulatory authority: the case of advertising

a. Regulation of commercial speech

According to Art. 4 of the Federal Statute On Advertising,¹⁹¹ the advertising legislation of the Russian Federation would consist exclusively of the federal statute. However, the legal relations concerning production, placement and distribution of advertisements can also be governed by other federal statutes or by regulatory acts of the President and the Government of the Russian Federation that are passed in accordance with the Federal Statute On Advertising.

189) There are testimonies that media owners consider journalism ethics as something that hampers their business. See: *Вначале было слово. Свободное // Телефорум (Москва)*. 2005, №2. С. 18. See also: *Media Sustainability Index 2004. The Development of Sustainable Independent Media in Europe and Eurasia*. – Washington, 2005. P. 228.

190) See, e.g., *Media Sustainability Index 2004. The Development of Sustainable Independent Media in Europe and Eurasia*. – Washington, 2005. P. 147.

191) Of 13 March 2006, No. 38-FZ; prior to its entry into force advertising in the Russian Federation was regulated by the Federal Statute “On Advertising” adopted in 1995.

In accordance with the *Regulation On the Federal Antimonopoly Service of the Russian Federation*, approved by the Resolution of the Government of the Russian Federation (No.331 of 30 June 2004), the *Federal Antimonopoly Service (FAS)* is the authorized federal executive authority in this field. It is responsible, in particular, for supervising and controlling adherence to the legislation on advertising.¹⁹² It reports to the Government of the Russian Federation and operates directly and through its regional offices.

Within the limits of its authority, the antimonopoly body prevents, identifies and terminates violations of the advertising legislation of the Russian Federation by physical or legal persons.¹⁹³ The antimonopoly authority may investigate facts indicating violations of the advertising legislation of the Russian Federation on its own initiative or act upon complaints submitted by citizens, legal entities or other government agencies.¹⁹⁴

In compliance with the Federal Statute On Advertising, the Government of the Russian Federation passed the *Resolution On Approving the Rules of Legal Investigation by the Antimonopoly Service of the Cases Initiated for Breaching the Advertising Legislation of the Russian Federation*.¹⁹⁵ It effectively established the procedures for considering complaints about violations of the advertising legislation and procedures for how to conduct related legal investigations.

If a violation of advertising law is revealed, the FAS or competent regional antimonopoly authority (which is part of the federal system) must initiate a case for breach of the advertising legislation. The case will then be considered by a Commission comprising officers of the respective antimonopoly authority and chaired by the Head or Deputy Head of the FAS or its regional office.

The Commission may find the advertisement improper and in breach of certain statutory provisions, and issue the order to stop violating the antimonopoly legislation with the disputed activity. The addressee of the order must eliminate the violations in the advertisement within the period fixed in the order. Failure to follow the order leads to administrative charges – a fine from RUB 200 000 to 500 000.

In addition to an order aimed at stopping the violation, the Commission can initiate an administrative violation case for improper advertisements if it considers this justified by the facts of the case in question. Administrative cases are considered by an antimonopoly officer (the Head or Deputy Head of an antimonopoly authority) single-handedly. Based on the circumstances, (s)he decides on imposing a fine for violating the advertising legislation. The sum of the fine is determined in accordance with the Code of Administrative Violations of the Russian Federation and can range between RUB 40 000 and 500 000 .

The Commission can also file a lawsuit seeking a binding court order by which the person who violated the advertising legislation would be obliged to retract the advertisement in question (the retraction is called a counter advertisement).

b. Monitoring and control of compliance with advertising rules

When investigating alleged breaches of the Federal Statute On Advertising, the antimonopoly authorities often need to obtain various expert opinions or research findings supporting or contesting the advertising statements. Such research can be undertaken by the complainants who brought the violation before the FAS but also by the advertisers who wish to confirm the well-founded nature of the statements used in their advertisements. In addition, the antimonopoly authorities can independently commission research or expert examination by a specialised organisation.

192) Prior to April 2004, these functions belonged to the Ministry of the Russian Federation for Antimonopoly Policy and Support to Entrepreneurship abolished in the process of restructuring the government.

193) The Resolution of the Government of the Russian Federation of 7 April 2004, No. 189 "Issues of the Federal Antimonopoly Service" of 9 April 2004, No. 553. The complete text is available in English at: <http://www.fas.gov.ru/english/legislation/5920.shtml#print>

194) FAS Russia's activity on enforcement of the advertising legislation (October 2007), Official report available on the website of FAS at: <http://www.fas.gov.ru/english/legislation/15838.shtml#print>

195) Of 17 August 2006, No. 508. The text is available in Russian at: <http://www.fas.gov.ru/adcontrol/8187.shtml>

When dealing with cases of advertisements that require an understanding of how consumers perceive an advertisement, sociological surveys (public opinion polls) can be organised. For instance, there may be a need to analyse advertisements that use trademarks of goods which are forbidden for advertising, or limits may exist for advertising trademarked goods at a particular time or in a particular place. A need for public opinion polls may also arise when under the guise of advertising drinking water, sweets or entertainment, the advertisers promote alcoholic beverages with the same title, which is forbidden. Here advertisers often claim that they do not advertise forbidden goods, but display the advertisements of other goods, for which advertising is not prohibited. In such circumstances, sociological surveys help define consumers' perception of the advertisement with more certainty and specify the object which is actually advertised.

Another way to learn how advertisements are perceived by consumers is to discuss them at a meeting of the Expert Councils, formed by the antimonopoly authorities. Such Councils are advisory and consultative bodies called together as and when necessary by the FAS and its regional offices. They are comprised of representatives of the antimonopoly authorities and experts in various fields such as psychology, linguistics, and sociology, and they include representatives of public associations as well as professional associations of advertising companies. Decisions made by the Expert Councils are nonbinding for the antimonopoly authorities; however they provide weighty arguments in the investigation of cases on particular advertisements.¹⁹⁶

The following examples illustrate on what grounds the FAS supervises and controls adherence to the advertising legislation.

Under Art. 5 of the Federal Statute On Advertising, an advertisement must be *bona fide* and accurate. Unfair and false advertising is forbidden. *Unfair* advertising contains an incorrect comparison of the advertised goods with goods in circulation that are produced by other manufacturers. It may also discredit or defame a person or taint somebody's business reputation.

In this context, the Statute also forbids discrediting persons who do not use the products advertised. For example, the advertising company Spektr placed on the national TV channels NTV and THT a commercial using the "Technosila" trademark. The advertisement showed various products at a certain price, accompanied by a text that included a man's name and the words "... is a fool! Bought more expensive" ("Sanyok is a fool! Bought more expensive", "Andryukha is a fool! He bought more expensive!", etc.). Taking into consideration the findings of a sociological survey on consumer attitude towards the advertisement and the opinion of the Expert Council on Enforcing the Advertising Legislation, the Commission of the FAS found the commercial improper and in violation of the Federal Statute On Advertising. The advertisement created a negative attitude towards the persons who do not use the advertised goods. FAS issued an order directing the advertiser to stop violating the legislation of the Russian Federation on advertising.

Spektr appealed the decision and order issued by the antimonopoly authority, in court. On 19 May 2008, the Moscow Arbitration Court dismissed the appeal and upheld the FAS' decision and order.¹⁹⁷

In its turn, *false* advertising means that the advertising message contains incorrect data regarding various aspects, for instance:

- advantages of the advertised goods over the goods in circulation produced by other manufacturers;
- any product characteristics, including, its nature, composition, conditions of use, and shelf life;
- product range and complete set;
- cost and price of goods, payment procedures, discounts, conditions of goods delivery, exchange, repair and maintenance;
- research and test findings;
- actual demand for a particular advertised product;
- manufacturer or seller of the advertised goods.

196) The FAS's activities on enforcement of the advertising legislation (October 2007).

197) Press release of 21 May 2008, available at: http://www.fas.gov.ru/english/news/n_19140.shtml?print

To give an example: in September 2008, the FAS found that a TV commercial of the “Tez Tour” travel agency with the slogan “No.1 Tour Operator”, broadcast by Channel One, violated the Federal Statute On Advertising because it contained unfair advertising in the form of an incorrect comparison of the advertised services with other services on the market. But the commercial was inadmissible also because it contained false information about the advantages of the advertised services over services provided by other companies. The decision was appealed but was upheld by an arbitration (business) court of lower instance and also – after a further appeal – by the Federal Arbitration Court of the Moscow District.¹⁹⁸

Advertising should not encourage unlawful activities, violence and cruelty (Art. 5 para. 4 no. 2). An interesting case in this regard was decided on 29 January 2007 by the FAS. The case concerned violations by a 2006 TV commercial for the beverage Pepsi-Cola. The advertising portrayed a group of young people at night in a courtyard surrounded by high-rise apartment buildings playing musical instruments and drinking Pepsi-Cola. Their loud music disturbed inhabitants who were trying to get some sleep and one of them asked the youngsters to stop playing the musical instruments. The group, however, increased the volume of their music by using an amplification system. The youngsters’ actions portrayed in the advertisement can be considered as an administrative offence – breaching peace and quiet at night time – under the statutes of various provinces of the Russian Federation. Taking this into consideration, the FAS issued an order to PepsiCo Holdings Ltd. (the advertiser) to stop these violations of the advertising legislation.¹⁹⁹

Advertisements that lack part of substantive information about the advertised goods such as the terms for their purchase and usage may result in distorting the meaning of information and may mislead customers. They are therefore also forbidden. In May 2009, the FAS found that advertisements of “Rastishka” food products by its manufacturer Danone were improper and violated the Federal Statute On Advertising. The complaint came from Wimm-Bill-Dann Foods. It turned out that a number of TV channels (NTV, TNT, 7TV, Daryal-TV, STS, St Petersburg–Channel 5, REN-TV, TV-Tsentr, Rossia, Channel One, and others) aired commercials of the food products with the slogan: “Rastishka – grow well!”. The complainant argued that the content and the form of presenting the Danone advertisements were aimed at persuading consumers that those products were baby food, did not contain preservatives and had special (useful) ingredients that stimulate the growth and overall development of children. The information about protein and carbohydrates, put on the packages of the advertised goods, did not meet the requirements specified in Clause 3.1.1.5 of the “Hygienic Safety and Nutrition Value Requirements for Food Products. SanPiN 2.3.2.1078-01” (State Sanitary Standard) for baby foods. The package also lacked information on the purpose and conditions of using baby foods, required under Part 3 Art. 18 of the Federal Statute “On Quality and Safety of Food Products”.

Having investigated the case, the FAS concluded that the lack of essential information in the advertisements for food products under the “Rastishka” trademark misled consumers with regard to the purpose and consumer qualities of the products. The FAS ordered Danone to stop the dissemination of the commercials.²⁰⁰

Special restrictions exist for the advertising of banking, credit, insurance or other financial services. If an advertisement specifies any terms and conditions of offering relevant services that affect the amount of income to be gained or the amount of expenditures to be incurred by the persons who will use the services, the advertisement must make mention of all relevant terms and conditions.

On 21 February 2008, the Federal Antimonopoly Service imposed an administrative fine of RUB 40 000 on the GE Money Bank for improper credit advertising. The advertisement of the consumer credits was shown in 2007 from October to December on television, namely by Channel One, Rossia and STS. It contained the following information: “Simply take up to 300.000 RUB cash on your terms, from 15% interest per annum”. The advertisement specified the minimum credit interest rate and the maximum sum for a credit; however, other terms and conditions defining the cost of credits were only shown in small, unreadable print during the last second of the commercial. This prevented consumers

198) Press release of FAS of 5 June 2009, available at: http://www.fas.gov.ru/english/news/n_24577.shtml?print

199) See the press release of FAS dated 30 January 2007 at: http://www.fas.gov.ru/english/news/n_10834.shtml?print

200) See the order of FAS at: http://www.fas.gov.ru/adcontrol/adm_practice/a_25484.shtml and the press release of FAS of 3 June 2009 at: http://www.fas.gov.ru/english/news/n_24479.shtml?print

from comprehending this important information. In other words, the information was presented in such a way that consumers would not understand it. This, according to the Federal Antimonopoly Service, meant that the information was practically absent in the commercial. Following the violation, the bank was issued an order to stop breaching the advertising legislation of the Russian Federation and pay the fine.²⁰¹

3. Co-operation with authorities outside of Russia

Russia is a member of the International Telecommunication Union (ITU) and participates in the activities of the European Broadcasting Union (EBU), where it is represented by VGTRK. Because Russia lacks an independent regulatory authority it is not, however, represented in EPRA – the European Platform of Regulatory Authorities.²⁰²

Russia participates to the work of the Standing Committee on Transfrontier Television of the Council of Europe (although it has not yet ratified the European Convention on Transfrontier Television). Russia is also active in the framework of the Commonwealth of Independent States (CIS), which has its own model regulation of transfrontier broadcasting.

The *Model Statute On Transfrontier Satellite Television and Radio Broadcasting and International Information Exchange via Satellite Means*, an advisory legislative instrument, was adopted with active participation of the Russian Federation by the Interparliamentary Assembly of CIS Member States on 15 June 1998.

It regulates relations that emerge in the process of:

- establishing systems of satellite television and radio broadcasting and satellite telecommunication networks;
- obtaining permission to use such networks;
- their actual use;
- television and radio broadcasting via satellites of one state to the territory of another state or to territories of several countries of the CIS;
- formation, use and protection of data as it passes through satellite telecommunication systems (Art. 2).

While Art. 11 of the Statute obliges an operator that broadcasts from the territory of a CIS state to obtain a licence according to the procedure envisaged by national law, it forbids the establishment of separate licences for satellite television and radio broadcasting and/or satellite telecommunications.

The right to choose which language(s) will be used for satellite television and radio broadcasting belongs to the operator, unless specifically established otherwise in the law on state language (Art. 16).

Art. 19 establishes rules on advertising. Advertisement time shall not exceed 15% of daily transmission time. In particular, Art. 19 forbids direct and indirect advertising of alcohol and tobacco products and any form of surreptitious advertising.

Conflicts between international operators, or between countries that are consumers of satellite programmes, or between such countries and international operators shall be resolved through negotiations. If reaching an amicable agreement is impossible they shall become subject to the jurisdiction of the Economic Court of the Commonwealth of Independent States (Art. 26).²⁰³

Taxation of television and radio broadcasting programmes and telecommunications data, unless they are being carried in a material form across the national border, shall not be allowed (Art. 27).²⁰⁴

201) Press release of 21 February 2008, available at: http://www.fas.gov.ru/english/news/n_17415.shtml?print

202) For more information on EPRA, see: www.epra.org

203) For information about the Court see: <http://www.sudsg.org/about/structure/>

204) Commonwealth of Independent States: Model Statute on Transfrontier Broadcasting by Andrei Richter, IRIS 1998-7: Extra. See: <http://merlin.obs.coe.int/iris/1998/7/article100.en.html>

IV. Summary and Outlook

Notwithstanding the attempts of the Russian legislature in the early 1990s, a specific act on broadcasting licensing has still not been adopted. The main legal basis for the regulation of the broadcasting system remains an outdated and, concerning licensing, rudimentary Statute On the Mass Media of 1991.

The subsequent adoption of further legal instruments, such as the 1994 Regulation On Licensing and the 1999 Regulation On Competitions, caused some problems because of discrepancies and contradictions between the different acts. According to these legal instruments, the federal regulatory bodies are entitled to develop their own policy in the sphere of broadcasting regulation including the methods and the procedures for licensing. Some positive developments, such as the *de facto* adoption of a competition procedure still lack a legally correct and comprehensive codification and practical solutions for possible conflicts. Before the procedure meets all Council of Europe standards and the pertinent case law of the European Court of Human Rights further developments might be needed.

If broadcasters are to be licensed and the airwaves monitored in the interests of society as a whole, then it is important that the responsible authority enjoys independence from the state. Furthermore, it should be established in a transparent way that takes account of public opinion. In contrast, a licensing authority that depends on the President or the government risks using the radio frequency spectrum ineffectively, if measured against the standpoint and needs of the public. Dual standards distinguishing between loyal or independent broadcasters are likely to be applied.

While the current rule obliges the broadcaster to avoid breaking the law and the terms of the broadcaster's licence (which is incidentally already a requirement of the very licence) if the broadcaster wishes to have the licence automatically renewed, the corresponding procedure for recording offences that may lead to a refusal of renewing the licence is by no means clearly laid down.

In this regard, it is of interest to look into the Principles of the Formation, Organisation, and Activity of the Special State Body of the Russian Federation for Licensing Television and Radio Broadcasting (The Federal Television and Radio Broadcasting Commission). The Principles were developed in 2003 by a working group of Western and Russian experts under the umbrella of an EU-funded project.²⁰⁵

The group suggested that the legal status of the Commission should be established by a special statute similar to the statute on another special federal state authority already in operation, i.e., the Central Election Commission. The Commission should be set up:

- to ensure the right of free dissemination of mass media information using electromagnetic waves (radio and TV broadcasting);
- to provide guarantees for the freedom of mass media, granted by Art. 29 of the Constitution of the Russian Federation, in the field of TV and radio broadcasting;
- to protect the rights and interests of consumers (TV viewers and radio listeners);
- to elaborate and pursue the state policy in the field of licensing TV and radio broadcasting;
- to ensure the rational use of the inherently limited radio frequency resources of the state;
- to introduce, and monitor compliance with, laws in the field of television and radio broadcasting;
- to render assistance in the development of television and radio broadcasting in the Russian Federation, the development of culture and education, respect of universally recognised moral norms, the Russian language and the languages and cultures of the peoples of the Russian Federation;
- to provide assistance in the dissemination of information-, popular scientific- and culture and education TV and radio programmes as well as TV and radio programmes whose purpose is to contribute to the spiritual, aesthetic and civic growth and education of children and youth;
- to uphold family values, promote a healthy lifestyle, etc.

²⁰⁵) The text is available in English at: http://medialaw.ru/e_pages/laws/project/d3-0.htm

The advent of digital television and other new services and technologies has recently expedited many processes as regards legal regulation which makes us believe that changes in the *status quo* are imminent and that even though these changes might look technological and cosmetic they are in fact essential. What worries is that government policy may lead to allocating places on the first three terrestrial multiplexes without any competitions and public discussions. There is the danger that the whole system of licensing that existed for a decade will give way to the practice of appointing channels under circumstance where these appointments will not be subject to any review procedures, licence conditions or open programming policies of the broadcasters. Neither has the government proposed so far the rules on the duration of digital terrestrial broadcasting licences, the terms of transfer for such licences or similar important issues. The role of the Federal Competition Commission on Broadcasting is yet to be confirmed.

As a result, the sources for pluralism and abundance of programming and information promised in the concept of digital television in Russia are still not apparent. Prospects for some form of public control over the state broadcasters are rather bleak as is the potential for establishing self-regulation and co-regulation. At least many of the attempts that were made in this regard over the last years have failed.

The Regulatory Framework for Audiovisual Media Services in Russia

Russia is by far the largest European television market outside the area where EU law applies. The country's approximately 17% share of the entire European population means that the Russian television market has remarkable economic potential. Against this background, it is also all the more considerable how little information has been published outside Russia on the legal bases of, and conditions applying to, this market.

This publication entitled "The Regulatory Framework for Audiovisual Media Services in Russia" in the IRIS *Special* series closes this gap. It provides a detailed analysis of the bases and regulatory framework for broadcasting in Russia and discusses in this context the adaptation of the legal framework to new audiovisual media services, drawing attention to the big differences between the EU and Russia and pointing out that these differences are due to the fact that the pace of development of digital media services in Russia is still slow.

The publication, which has been written by Andrei Richter, Director of the Moscow based Institute for Media Law and Media Policy and one of Russia's outstanding media specialists, provides a comprehensive and precise picture of the regulation of broadcasting in Russia.

Contents overview:

- The national media policy
- Key regulatory concepts and their interpretation
- Licence requirements
- The role of state broadcasting in contrast to public service broadcasting
- Media ownership and concentration
- Self- and co-regulation
- Advertising: regulation and control
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Given the crucial importance of the Audiovisual Media Services Directive, two more titles have been published in the IRIS *Special* series: "Audiovisual Media Services without Frontiers" (ISBN 978-92-871-6115-4, 76 pages, Edition 2006, 58,50 €), "Editorial Responsibility" (ISBN 978-92-871-6476-6, 50 pages, Edition 2008, 75 €).

