



The legal framework concerning foreign ownership in Russian media

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Dmitry Golovanov



Foreword

The benefits that can potentially result from the injection of foreign money into national economies, especially when they are weak, are numerous: the increase of productivity due to the transfer of technology and organisational knowledge; the positive effects on employment deriving from new capital; and the lowering of prices and improvement of quality of products as a general consequence of competition. But sometimes these benefits seem, from the perspective of the host country, to be outweighed by drawbacks: the increase in the demand of products, hence in their price; the lowering and even closing of national companies, which may make the market less competitive; and the influence on government policies, with a negative impact on economic growth.

When foreign investments concern strategic assets of a country, regulation has often intervened, reducing or even prohibiting the injection of foreign money. This is frequently the case in the media sector. The EU Merger Regulation refers to (i) public security, (ii) plurality of the media, and (iii) prudential rules as the “legitimate interests” that may justify that EU member states “take appropriate measures” (other than EU competition law considerations) to protect themselves. Treasoning is similar outside Europe, although without the safety net of the merger control review by the European Commission.

This article by Dmitry Golovanov provides an overview of the Russian approach to foreign ownership of the media and explores the evolution of the foreign participation rules in the Russian media market. Three landmark dates are mentioned: 2001, 2008 and 2014, marking the introduction of restrictions to foreign investors. Golovanov explores both the rules and the methods of compliance the companies put in place. A special focus is put on market research organisations and video-on-demand, before the author explores the most recent restrictions obliging media outlets to report on any kind of funding received from foreign companies, and finishes with some preliminary conclusions on the most recent trends.

Strasbourg, September 2018

Maja Cappello

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Executive summary

Since the limited restrictions of the first measures laid down in the Russian Federation's Statute "On the Mass media" of 1991, which resulted in the rise of foreign companies on the Russian television market in the 1990s, the approach of the state towards the media market has drastically changed over time, becoming more active and hostile towards foreign companies. In order to prevent any form of control of the media market from abroad, a set of strict protective measures was implemented and led to a complete transformation of the mass media market. **Chapter 1** depicts and traces the evolution undergone by the foreign participation rules in the Russian media market.

The first major restrictions on foreign participation in the television sector was introduced by the Federal Statute of 4 August 2001 in response to the need to protect the information security of the state. It sets an expanded list of persons (such as foreign citizens and foreign legal entities) who are denied the right to act as a founder of TV or video programmes, and to establish legal entities engaged in broadcasting activities covering half or more of the Russian territory or Russian population. **Chapter 2** focuses on this first major change and its impact on the industry.

Another way of restricting foreign participation then emerged, based on the assimilation of certain media companies to strategic companies that appeared "interesting" for national security issues according to the Russian government. Introduced in 2001 and concerning unitary enterprises or companies with a state participation, this status of "strategic companies" implied that any privatisation or corporatisation of such a company required the prior approval of the President of the Russian Federation. The restrictions were enhanced in 2008, when any television or radio broadcasting company transmitting in an area where half or more of the population of a given region of Russia lived, was considered to be of strategic importance for the defence and the security of the nation. The implications of such a status on foreign participation are detailed under **Chapter 3**.

A significant reform was then implemented in 2014 regarding the participation of foreign capital in the owning and managing of media assets. It referred to practices of protection from foreign interference implemented in other countries, but by ignored the already existing regulation on foreign investments in strategic companies. Following the objective that foreign nationals should not directly or indirectly control Russian mass media, a two-level system of restrictions was created, leading to a total prohibition of any foreign participation as either the founder or within the editorial board of the mass media or a broadcasting organisation, and to the application of a 20 percent foreign control restriction. This reform affected between 35 to 50 percent of the mass media market players. **Chapter 4** explores the different options these companies chose in order to



comply with the new law, as well as the organisational, legal, and economic difficulties they faced, notably in terms of protection of foreign minority shareholders, and the question of legality of certain provisions in non-corporate contracts with foreign partners.

However, broadcasting companies are not the only entities facing restrictions on foreign ownership of corporate assets in the market. **Chapter 5** discusses similar restrictions that have also been imposed on mass media market research organisations and video-on-demand services. In July 2016 the "Anti-TNS Act" was introduced, which required that market research, and in particular audience measurement, be provided only by authorised organisations. The rules governing authorisation procedures included, inter alia, limitations on the participation of foreign capital in the organisation of market studies, similar to those already applied to the media and broadcasting organisations. Regarding video on demand services, at the request of the representatives of the major TV channels and media holdings, the "Anti-Netflix Act" was adopted in May 2017, to clarify the legal status of OTT services and concurrently imposing similar restrictions on foreign participation in audiovisual services.

Finally, in the wake of the set of restrictions on foreign companies, December 2015 marked the introduction of an obligation on mass media companies to report any funds received from foreign sources, as described in **Chapter 6**.

Chapter 7 comprises a conclusion on the series of restrictions introduced in recent years, demonstrating the consistent approach of Russia to impose a protectionist regime on the information market.



1. Introduction

The Russian Federation's Statute "On the Mass Media" sets a framework for the participation of foreign persons in the media market. Article 7 of the first edition of the Statute, adopted in 1991,¹ imposed a ban on a foreign citizen "founding" ("starting") a mass medium. In fact, this restriction did not significantly hamper the media business: the ownership of assets was not regulated by media law, so a person who was "founder" within the meaning of the law did not necessarily have control over mass media assets;² also, there was no prohibition of a foreign citizen establishing a Russian legal entity that would act as the founder of a newspaper, magazine, or television company. Not surprisingly, this lacuna was due to the shortcomings of early Russian mass media and corporate law. For instance, the new Civil Code regulating, *inter alia*, corporate law fundamentals, was adopted three years after. In addition, at the time the economic and political situation did not call for the introduction of restrictions for foreign persons.

The softness of such restrictions resulted in the rise of foreign companies on the Russian television market in the 1990s (especially the late 1990s). As a rule, the business practices of the time made difficult the creation of joint ventures with Russian businessmen, in which investments and financial control were retained by foreign companies. Mass media were established as Russian legal entities with foreign participation. Foreign shareholders were able to influence top management decisions via corporate procedures.

At the same time, national broadcasting corporations (owned and controlled by Russian nationals) were introduced, where both state and privately owned companies coexisted on the market. Private media companies were owned by media tycoons, and state controlled companies were influenced by them as well (through holding minority shares stocks and control over finances).

However, since the turn of the millennium, the approach of the state to the media market started to change with increasing speed. It became more active and in some situations even more aggressive. Media tycoons from the 1990s were persuaded or forced to sell their companies as well as their shares in state owned companies to either media

¹ Закон Российской Федерации "О средствах массовой информации" (Statute of the Russian Federation "On Mass Media") of 27 December 1991 N 2124-1. The Russian text is available at: <http://docs.cntd.ru/document/9003299>.

² The "founder" is a person (private or legal person) who starts a mass media entity activities. This person is not obligatory holder of assets.



companies owned by state corporations (for instance, Gazpromedia), or to newly emerged media holdings (for instance, National Media Group)³.

At the same time a set of measures to protect media providers from overseas influence was proposed and implemented. The first signal for the market was the introduction in 2001 of a ban on direct ownership control by foreign persons of the broadcasting media companies, and the introduction of protective measures to control ownership of state owned mass media. In 2008, the abovementioned regulation was further developed: the participation of foreign persons in strategic assets was regulated in a detailed way. Major broadcasters were considered as being strategic.

Finally, substantial changes were introduced when the prohibitions expanded so significantly that the mass media market was reshaped in a significant way. From this moment, rather than counteracting the actual or potential domination of foreign companies in the media market in Russia, restrictions were imposed on the participation of foreign capital in media assets in order to prevent the control of media policy from abroad. The process is still ongoing: foreign companies are denied the opportunity to conduct television market measurements and are limited in the ability to finance Russian media; and online video portals face limitations upon foreign persons' participation. Parliamentarians and executive bodies are developing other measures to protect the information sphere.

This research is aimed at providing a review and analysis of milestone legal initiatives, which impose restrictions on foreign participation on the mass media economy, thereby changing the shape of television market in modern Russia.

³ NMG is a private corporation owned by companies of Russian oligarch Yuri Kovalchuk, known as one of the Russian President's friends. Kovalchuk's Bank "Rossia" ("Russia") was one the first companies to face US sanctions. NMG is presided by Kirill Kovalchuk, who is Yuri Kovalchuk's nephew and is participant of OFAC Specially Designated Nationals And Blocked Persons List, <https://www.vedomosti.ru/technology/articles/2016/12/21/670652-sanktsii-kovalchuka>.



2. First wave of changes

As a general background, it should be stated that prior to 2001 there was no unified and structured legal framework for restricting foreign participation in various economic sectors in Russia. The Federal Statute on Foreign Investment in the Russian Federation⁴ creates, as a general rule, the so-called “national” legal regime, which gave equal ownership rights to foreign and Russian investors. Restrictions on the activities of foreign investors could be introduced only by federal laws and only if it was necessary to protect “the constitutional order, morality, health, rights and legal interests of others, ensure the country’s defense and state security”. Restrictions in various spheres of business were introduced by separate laws. Such restrictions were often multidirectional.

That was true for the first restrictions on foreign persons’ ownership in the television sector to be introduced. The Federal Statute of 4 August 2001⁵ revised Article 19.1 to the Statute on Mass Media. According to the Explanatory Statement,⁶ the amendment was initiated in response to the need to protect the information security of the state.

Part 1 of Article 19.1 approved the expanded list of persons (to be compared with general provisions of Article 7) who were denied the right to act as founder of TV and video “programmes” (in fact television channels) on the territory of the Russian Federation and its regions. Foreign citizens, stateless persons, as well as Russian citizens with dual citizenship, foreign legal entities, and Russian legal entities percent with over 50 percent foreign-owned share capital were not allowed to become founders.

The abovementioned entities were prevented from establishing legal entities engaged in broadcasting. The ban was not total; it dealt only with broadcasting organisations with foreign participation whose broadcasting activities covered half or more of the constituent entities (regions) of the Russian Federation, or the territory where half or more of the population of the Russian Federation lived.

⁴ Федеральный закон “Об иностранных инвестициях в Российской Федерации” (Federal Statute “On foreign investment in the Russian Federation”) of 09 July 1999 No. 160-ФЗ. The Russian text is available at: <https://www.legalacts.ru/doc/federalnyi-zakon-ot-09071999-n-160-fz-ob/>.

⁵ Федеральный закон “О внесении дополнения в Закон Российской Федерации “О средствах массовой информации”” (Federal Statute “On introducing an addendum to the Statute of the Russian Federation “On Mass Media”) of 04 August 2001 No. 107-ФЗ. The Russian text is available at <http://docs.cntd.ru/document/901794237>.

⁶ The text of the Explanatory Statement in Russian is available for downloading at <http://sozd.parliament.gov.ru/bill/78801-3>.



Finally, the 2001 regulation included a ban on the sale of shares of broadcasting companies, if as a result “foreign participation” in the share capital of the company exceeded 50 percent.

Despite the fact that the industry received the new rules without enthusiasm, the entering into force of the law did not lead itself to a significant change in the market situation. Experts expressed the idea that, first of all, the act was specifically aimed against one of the most influential Russian media oligarchs, Vladimir Gusinsky, who had control over a popular private television company NTV, which was oppositional to the government.⁷ An element of Gusinsky’s strategy for retaining control over his business was setting up negotiations with foreign investors in order to sell business to foreign persons.⁸ However, at the time of adoption of the Statute, the activity of the media tycoon had already been to a large extent neutralised: in 2000 a criminal case against Gusinsky was initiated, which was terminated after he sold media assets to Gazprommedia. Having left the country, the oligarch published the addendum to the sale of shares contract, which provided the guarantees for the termination of the criminal case and for granting the possibility to leave the country. In 2004 the European Court of Human Rights ruled that Russian authorities used a politically motivated criminal proceedings to take over the print and broadcast operations of Mr Gusinsky.⁹

In other respects, the proposed regulation did not in itself become a significant obstacle for the work of foreign investors, although the changes have not gone unnoticed. One of the consequences of the implementation of the regulation was the creation of administrative barriers for the registration of mass media. Among the various steps in order to implement the new regulation, the Federal Service for Supervision in the Sphere of Mass Communications, Communication, and Cultural Heritage Protection (registration authority) adopted an Administrative Regulation on the registration of mass media that regulated in a very detailed way the procedure of mass media registration.¹⁰ The Administrative Regulation required the founders of mass media (legal entities) to provide documents with full details of their shared capital when registering the mass media. As a justification for such a requirement, it was stated that it was necessary to verify the conformity of the potential mass media entities with the requirements of Article 19.1. However, the necessary information for such purposes is publicly available and can be obtained from state registers. Based on this argument, founders of mass media appealed the Regulation before the Supreme Court, which annulled the relevant provisions of the Administrative Regulation, judging that the registration authority’s requirements for the

⁷ Изменения Закона РФ “О средствах массовой информации” в 1991 - 2010 гг.: факты как история, http://portalus.ru/modules/russianlaw/rus_readme.php?subaction=showfull&id=1401390655&archive=&start_from=&ucat=&.

⁸ Журналисты НТВ спугнули инвесторов , available at: <https://www.kommersant.ru/doc/253341>.

⁹ For more details see the ECHR Judgment of 19 May 2004 in case of Gusinskiy v. Russia, available at: <http://hudoc.echr.coe.int/eng?i=001-61767>.

¹⁰ Административный регламент исполнения государственной функции по регистрации средств массовой информации (Administrative Regulation on performing by the Federal Service for Supervision in the Sphere of Mass Communications, Communication and Cultural Heritage Protection of the governmental service “Mass Media Registration”), approved by the Order of the Federal Service for Supervision in the Sphere of Mass Communications, Communication and Cultural Heritage Protection of 22 October 2007 No. 315. The text in Russian is available at <https://rg.ru/2008/03/19/smi-registracia-dok.html>.



provision of additional documents were excessive and the provisions of the Regulation were contrary to the law.¹¹

It could be said that a lesson was learned by the regulatory authorities: subsequently the introduction of any restrictions into the Statute “On Mass Media” have been accompanied by the introduction in the law of a duty of applicants to submit documents that confirm or prove certain circumstances related to ownership-related measures of the law.

¹¹ Определение Верховного Суда РФ (Judgement of the Supreme Court of Russia) of 23 December 2008 No. KAC08-647. The text in Russian is available at <https://bazanpa.ru/verkhovnyi-sud-rf-opredelenie-nkas08-647-ot23122008-h1262946/>.



3. Inclusion of mass media in the category of strategic companies

Since 2001, the identification of strategic industries and companies, participation in which the Russian government considers essential for ensuring national security, has become an issue of general economic regulation. The basis for the implementation of this approach was laid by the Statute on the Privatization of State and Municipal Property.¹² This Regulatory Act introduced the category of “strategic companies”. According to this Statute, privatization (sale of a state-owned company to private investors, as a whole or as a block of its shares) or corporatization (transformation of unitary enterprise into a joint stock company with the state holding its shares) of this type of companies is to be carried out only according to a special procedure, specifically under condition of prior approval of the President of the Russian Federation.

The list of strategic companies is put together by the President upon the recommendation of the Government of the Russian Federation. The President's Order to approve the list of strategic companies was first issued on 4 August 2004,¹³ and afterwards underwent a series of amendments. These amendments reduced significantly the list of strategic companies: from approximately one thousand entities to 147 at the present time.

There are two types of companies in the list: state owned enterprises (“unitary enterprises”) and commercial companies with state participation in the share capital. The assets of the unitary enterprises include exclusively state funds, and the sale of shares in such companies is impossible before their corporatization. Companies of the second category are joint-stock companies in which the share of the state can vary from the lowest share size up to 100 percent.

Six companies in the President's list are either media companies or organizations providing significant technical services in the mass media sector. Five of them are federal state unitary enterprises: the largest state owned media-holding “The Russian Television and Radio Broadcasting Company” (VGTRK), news agencies “ITAR-TASS” and “Russia Today”, Russian Television and Radio Broadcasting Network (an organization that

¹² Федеральный закон “О приватизации государственного и муниципального имущества” (Federal Statute “On the Privatization of State and Municipal Property”) of 21 December 2001 No. 178-ФЗ. The text in Russian is available at <https://rg.ru/2002/01/26/private-dok.html>.

¹³ Указ Президента Российской Федерации “Об утверждении Перечня стратегических предприятий и стратегических акционерных обществ” (Order of the President of the Russian Federation “On approval of the List of strategic enterprises and strategic joint-stock companies”) of 04 August 2004 No. 1009 (last amended 10 February 2018). The text in Russian is available at <http://docs.cntd.ru/document/901904859>.



provides transmission of television signals) and Ostankino Technical Center (the key technical production and broadcasting center in Russia). The only public media company in the list is Channel One. The share of the state in Channel One's share capital is 51 percent.

VGTRK and Channel One have several TV channels operating on free-to-air basis, as well as a number of channels available in cable networks and on the internet. The two TV nationwide-disseminated main channels of these media holdings ("Russia 1" and "Channel One") consistently rank first and second in audience share, each of them having in recent years approximately 24 percent of television audience in the Russian Federation.¹⁴

As long as VGTRK and Channel One are listed as strategic companies, it is the President's prerogative to make decisions about the transfer of any state-owned shares or assets to private persons or organizations, including foreign persons. Concerning VGTRK, the governmental officials each year reconfirm that this holding will never be privatized.¹⁵ A similar position was declared by the President of VGTRK holding, Oleg Dobrodeev, in an interview.¹⁶ VGTRK is not in the list of planned privatizations approved by the Russian Government for 2017-2019.¹⁷

Concerning Channel One, no plans to decrease the share of the state have ever been published. However, the holders of 49 percent of the shares of Channel One are allowed (subject to corporate law requirements) to sell their shares to other persons. At the moment, this block of shares is allocated between three Russian organizations,¹⁸ none of which is known in the professional community. In 2010 Russian business newspaper Vedomosti enquired about Channel One's actual shareholder structure. However, this attempt was not successful: the outcome was the assertion that while de jure the state owns only 51 percent of Channel One shares, de facto control is carried out by the state in full.¹⁹

¹⁴ 2017 year research results according to Mediascope research company. See Annual report 2017, available at: www.mediascope.net/rkn/#view. 2013 – 2015 year research results were published by Vedomosti newspaper, available at:

www.vedomosti.ru/technology/articles/2016/01/22/625025-krupneishie-kanali-teryayut.

¹⁵ In 2004 vice Prime Minister Alexander Zhukov responsible for administrative reform stated that the privatization of VGTRK is not in agenda of the Government (A.Жуков: ВГТРК и РТРС приватизировать не дадим (A. Zhukov: We will not approve the privatization of VGTRK and RTRS), www.rbc.ru/economics/21/10/2004/5703c16a9a7947dde8e0880f).

¹⁶ "Я категорически против акционирования ВГТРК" (I strongly oppose to the of VGRK), <https://www.kommersant.ru/doc/466812>.

¹⁷ Распоряжение Правительства РФ "Об утверждении прогнозного плана приватизации федерального имущества и основных направлений приватизации федерального имущества на 2017 - 2019 годы" (Ordinance of the Government of the Russian Federation "On approval of the prognostic plan for the privatization of federal property and the main directions of privatization of federal property for 2017 - 2019") of 08 February 2017 No. 227-п. The text in Russian is available at www.docs.cntd.ru/document/420391920.

¹⁸ According to the national register of legal entities <https://egrul.nalog.ru/>.

¹⁹ «Первым каналом» владеют однокурсница Путина и подруга Абрамовича (Putin's classmate of and Abramovich's girlfriend owns the Channel One), https://vedomosti.ru/library/articles/2010/11/01/sekrety_pervoj_knopki.



Further restrictions on foreign ownership in the broadcasting sector came on 7 May 2008 with the entry into force of the Federal Statute on the Procedures of Foreign Investments in Commercial Companies that Present Strategic Importance for the Defence and Security of the Nation.²⁰

Television or radio broadcasting transmitted to a territory where half or more of the population of any given region (“federal subject”) of Russia live is considered to have strategic importance for the defence and security of the nation. If a foreign investor becomes involved in such a broadcasting company, he shall inform the authorized governmental body (the Federal Antimonopoly Service – the FAS) of any contract that results in obtaining five or more percent of its shares. The notification must be sent to the FAS within 45 days from the date on which the contract becomes effective, and a copy of the contract must be provided. Despite the fact that the applicant may demand confidentiality in respect to the key terms of the share purchase agreement, its content is accessible to public authorities.

Failure to fulfil the obligation to send a notice to the FAS may result in the deprivation of a foreign investor’s voting rights in the management bodies of the strategic company until the obligation is fulfilled.

A different procedure applies to deals that provide a foreign investor with 50 percent or more of ownership, as well as those that give foreign persons rights to appoint the management of a strategic company or a foreign company to act as chief executive officer. Such deals need prior permission from FAS. Prior permission is also obligatory for deals that provide foreign governments or international organizations, 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. Deals and contracts concluded without following required prior procedure are null and void.

An example of how the FAS intervened in a foreign person’s acquisition of a broadcasting company is the case of the Disney Channel. The company Catalpa was reported in the Russian press to represent The Walt Disney Company. On 11 October 2008, Catalpa petitioned FAS to approve the acquisition of 49 percent of shares of the Russian company “Media One - TV Holdings Limited” for USD 233 million. Documents submitted with the petition to FAS reportedly contained incorrect information and pointed to the possibility of putting “MO-TV Holdings Limited” under control of a foreign company. The Catalpa petition was dismissed by the FAS on 12 February 2009. Andrei Kashevarov, deputy head of the FAS, explained that the incorrect information related to the issue of how far the influence of Disney would reach in the operations of the future company. Robert A. Iger, President and Chief Executive Officer of The Walt Disney Company, lobbied to meet with Prime Minister Vladimir Putin to discuss the situation, but the meeting did not take place. At that time, observers believed that the decision of the

²⁰ Федеральный закон “О порядке осуществления иностранных инвестиций в хозяйственные общества, имеющие стратегическое значение для обеспечения обороны страны и безопасности государства” (Federal Statute “ on the Procedures of Foreign Investments in Commercial Companies that Present Strategic Importance for the Defense and Security of the Nation ”) of 29 April 2008 No. 57-ФЗ. The text in Russian is available at <https://rg.ru/2008/05/07/investicii-fz-dok.html>.



FAS was motivated not by legal technicalities but by a political decision and concern for “information security”. In May 2009, Disney officially terminated from the negotiations. Nevertheless, the company did not stop the process of entering the Russian market. In October 2011, an agreement was reached on the acquisition of a 49 percent share in the channel “Seven”, owned by the holding company U-TV (holding was formed as a result of merging several companies, including assets of Media One - TV Holdings Limited). Mr. Iger announced the agreement of a meeting with Prime Minister Putin. The Walt Disney Company purchased the stock from UTH Russia Limited for USD 300 million.²¹

²¹ Walt Disney покупает у ЮТВ 49% телеканала «Семерка» за \$300 млн, www.forbes.ru/news/75718-walt-disney-pokupaet-u-yutv-49-telekanala-semerka-za-300-mln.



4. Implementation of 20 percent foreign control restriction

4.1. Regulation model

In July 2014 deputies of the Parliament proposed a draft law providing further protection of Russian mass media from foreign control and influence.

In its Explanatory Statement,²² the deputies stated that the practice of protection from foreign interference exists in many countries. According to the author of the draft law, in the United States foreign persons are allowed to control no more than 25 percent of the shares of American television channels and radio stations; in France, the participation of foreign (i.e. not European Union) individuals or legal entities in the share capital of TV companies is limited to 20 percent; in Australia, Indonesia and Canada restrictions on foreign investment of broadcasters are set at 20 percent; in Spain – 25 percent. At the same time, in Russia, according to the authors of the [Explanatory Statement](#), the degree of protection of the information market at the time of the drafting of the bill was insufficient - only a ban on controlling 50 percent or more for broadcast media has been established.

It is important to note that the regulation of the law on foreign investments in commercial companies that present strategic importance to national security was completely ignored by the deputies. This was brought to the attention of the professional community by the Presidential Council for Civil Society and Human Rights (the consultative body to the President of the Russian Federation, tasked with assisting the President in guaranteeing and protecting human rights and freedoms in Russia), which prepared a comprehensive analysis of the draft law.²³ The Council concluded that the imposed restrictions contradicted the law in force and were excessive. However, the Council's position was not taken into consideration by the Parliament.

Amendments to Article 19.1 of the Statute of the Russian Federation on the Mass Media were made in October 2014 (the Federal Statute "On Amending the Statute of the

²² Available (in Russian) for downloading at <http://sozd.parliament.gov.ru/bill/604509-6>.

²³ Экспертное заключение на ФЗ "О внесении изменений в Закон Российской Федерации "О средствах массовой информации" (вводящий ограничения на иностранное инвестирование в СМИ) от 06 Октября 2014 (Expert opinion in respect to the Federal Statute "On Amending the Law of the Russian Federation" On Mass Media "(introducing restrictions on foreign investment in the media) of October 06, 2014). The text of report in Russian is available at www.president-sovet.ru/documents/read/264/.



Russian Federation on the Mass Media"),²⁴ but entry into force was postponed for more than one year (amendments came into force on 1 January 2016), so that the key market players had sufficient time to align the state of their assets with the new legislative requirements. These were aimed at significant reform of the participation of foreign capital in the owning and management of media assets.

The approach of the legislator was straightforward: foreign nationals should not directly or indirectly control Russian mass media. To implement this solution, a two-level system of restrictions was created:

- **First level:** any foreign participation in the founder, the editorial board of the mass media or the broadcasting organization is prohibited. To implement the prohibition, the law referring to several categories of persons to whom the restriction applies uses clear terms (such as "foreign state", "international organization", and "foreign legal entity"). At the same time, the term "person with foreign participation" (which is not particular to Russian law) was introduced.
- **Second level:** The next line of restrictions concern economic control by foreign persons over the assets and operational activities of organizations that act as shareholders of persons listed above (mass media founder, editorial board, broadcasting company). A foreign legal entity, as well as a Russian organization in which a foreign entity directly or indirectly controls more than 20 percent of the share capital, can control no more than 20 percent of the shares of entities of the second level.

The important aspect to stress is that the law prohibits not only direct ownership control (via shareholding), but also corporate and operational control in any form that allows the influencing of decision-making and the executive bodies of mass media. Roskomnadsor's officials have warned that the supervisory authority is going to interpret this rule quite broadly, aiming to block any attempts to find a loophole.

There were two exceptions made to the general rule on the removal of a foreign element from participation in ownership of a mass media outlet. The first was that the restriction does not apply if the participation of foreign capital was allowed due to international obligations of the Russian Federation. The second exception was temporary and referred to the organizations that were themselves controlled by Russian shareholders (founders) by more than 80 percent. For example, this was true with regard to foreign legal entities, having Russian citizens as the shareholders or final beneficiaries in any other way. However, this situation is/was considered to be legally sound only until 2017.

The management structure of mass media outlets had to be aligned with the requirements of the new law before the end of January 2016. Media companies were required to report the results of the relevant activities by 15 February 2016. Starting from

²⁴ Федеральный закон "О внесении изменений в Закон Российской Федерации "О средствах массовой информации"" (the Federal Statute "On Amending the Statute of the Russian Federation on the Mass Media") of 14 October 2014 No. 305-ФЗ. The text in Russian is available at <https://rg.ru/2014/10/17/ino-smi-dok.html>.



2016, registration and licensing of newly established mass media is carried out within the framework of the procedure, which implies mandatory confirmation of compliance of the structure of the share capital with the requirements of Article 19.1 of the Statute on Mass Media.

The most intriguing issue was what would happen to the mass media that were not able to meet the new requirements. As a general rule, persons and organizations violating Article 19.1 would face the repercussions that any corporate decisions will be ineffective with regard to the voting of persons of foreign origin or with foreign participation.

In addition to corporate law restrictions, the new law provided for a specific and harsh administrative liability: if Roskomnadzor finds non-compliance with the restrictive requirements, including the lack of a media report on bringing the constituent documents into line with the law, he is entitled to initiate the suspension of the activities of a mass medium in a court procedure. Currently, there are no cases of involvement of the mass media in court proceedings arising from violation of Article 19.1 of the Statute on Mass Media.

4.2. Implementation of the law

According to an evaluation by news Internet portal Meduza.io, 35 to 50 percent of the mass media market players were affected by the new law.²⁵ Initially it was harder for non-broadcasting media to follow the Statute. The television channels already had experience of having restrictions imposed upon them in 2001, or were initially founded with an understanding of restrictions on foreign participation (subsequent to 2001). The press, however, had not faced such kinds of difficulties before.

The actions of publishing houses demonstrated very clearly the three main strategies that were chosen by all media companies in connection with the introduction of the new law.

The first option chosen by some foreign companies was to sell their assets and leave the market completely. An example in the press sector is Finnish Sanoma Independent Media, and for broadcasters an example is Swedish MTG. As a rule, the decision to leave the Russian market was made by companies that were unable to find partners offering acceptable conditions for joint work. It is important to emphasize that attempts to find a compromise had been ongoing throughout 2015, and the decisions to withdraw from the market were often made several months before the law entered into force.

A significant number of companies preferred the second option, which was the reduction of participation in Russian media assets to 20 percent. Usually foreign assets

²⁵ Как устроен закон об иностранцах в СМИ? (How does the Statute on foreigners operate?), <https://meduza.io/cards/kak-ustroen-zakon-pro-inostrantsev-v-smi>.



were purchased by current partners or well-established media companies. This option became the most usual one. For instance, in the broadcasting sector the Discovery and Turner TV channels became controlled by Media Alliance Company, which is 80 percent owned by the National Media Group and 20 percent by Discovery itself. Walt Disney sold its shares to U-TV holding. While previously American Hearst Corporation and Russian publisher Viktor Shkulev owned Hearst Shkulev Media Publishing House in equal shares, now 80 percent of the company is controlled by Shkulev, and the rest by American partners.

The third option, finally was the most difficult: some foreign companies preferred not to seek Russian partner media companies, but to organize such companies themselves. It was (and remains) a very challenging task because it takes a lot of organizational activities, and puts new media at risk of suspension of activities by Roskomnadsor. As it had done before, the authority announced that special supervision will be exercised over corporate structures and schemes that potentially allow foreign persons to indirectly affect the operation of mass media outlets.

One of the companies to encounter difficulties was the German publishing house Burda. In November 2015, the Federal Antimonopoly Service approved the petition of the Russian company Everest Culture to acquire 100 percent of the voting shares of Burda. 90 percent of the shares of Everest Culture belonged to the chief accountant of Burda, Alexander Efimov; the remaining 10 percent was owned by the German Burda Verlag Osteuropa. The head of Roskomnadzor warned: "If in fact the structure created is recorded on the chief accountant and its founder is a former employee of the Russian Office of Burda, it falls under the law in terms of indirect affiliation. As soon the law comes into force, we will check this."²⁶ Burda had to change corporate composition after received warning from Roskomnadzor: founders became less involved with the Company.

Apparently, all media companies with foreign investors faced a lot of organizational, legal, and economic difficulties, which were not adequately predicted by legislators.

One of the main problems was that there were complex holding structures with foreign participation in Russia at the time of the introduction of the law. The task to withdraw foreign persons from such holdings was difficult and time-consuming, taking into consideration the need to follow corporate obligations and legal procedures. In addition, there was also the problem of reconciliation of financial conditions and fundraising for the purchase of foreign media assets from foreign partners. Media companies, especially large broadcasters, were among the first to become aware of the problem. Thus, CTC-Media (operating several channels, one of which ("CTC") is among the top 5 most popular in Russia), with the Swedish Modern Times Corporation as the major shareholder, appealed to the President of Russia to postpone the entering of the law into legal force for one more year. However, the appeal of CTC-Media, as well as other initiatives of print media owners, were declined.

²⁶ Роскомнадзор предостерег Burda от неправильной смены собственников (Roskomnadzor warned Burda of the wrong change of owners), <https://www.vedomosti.ru/technology/articles/2015/11/27/618631-ne-na-togo-prodali>.



The special difficulty in the case of CTC-Media was that part of the company's shares was available for trading on the NASDAQ stock market, and it would be simply impossible to establish the exact amount of foreign participation. Some other actors of the market faced this problem too.

Modern Times Group eventually successfully sold a 38 percent stake to U-TV Holding for USD 123 million. The parties fully closed the deal only in May 2016. MTG announced that it no longer has any interests in CTC Media or its operations.²⁷ To ensure compliance with the law in its entirety, CTC-Media withdrew from the US stock exchange.

The new challenges were analysed by a number of researchers and consultants. As expected, the main issue was the interpretation of the ban on "indirect" control by foreign partners. This vague term was questioned by a number of experts.²⁸

The first issue is what voting rights a foreign minority shareholder may have after the new law is in force. Typically, in joint venture agreements both majority and minority shareholders enjoy certain voting rights and protections. Within the context of the new amendments, it is unclear how to find an appropriate balance between two competing objectives: first, complying with the foreign control ban, and second, maintaining the necessary level of protection to allow a foreign shareholder to feel comfortable in cooperating with its 80 percent-shareholding Russian joint venture partner. This dilemma becomes even more acute in the context of the development of civil legislation regulating corporate relations in Russia. While earlier the provisions of the statutory law and the company's charter had unequivocal and unquestionable priority over shareholder agreements, in recent years the Russian legislators have been focused on changing this principle, allowing shareholders to solve many operational management issues within the framework of internal agreements. In particular, certain cases of compulsory voting may be pre-agreed in corporate contracts, as provided by Article 67.2 of the Civil Code (in force since 1 September 2015).²⁹ Taking this circumstance into account one may conclude that the mass media structured as corporations with foreign participation are partially or even completely denied the protection of the modernized Russian civil legislation.

The second issue is which provisions are not allowed in non-corporate contracts with foreign partners. It is common practice for international media companies to include certain standard provisions in their agreements with Russian partners and distributors, including certain restrictions on the use of licensed brands and content, audit rights, and other customary arrangements. Moreover, in some cases such restrictions are mandatory. For example, Article 1489 of the Civil Code requires a licensee to ensure that the goods produced or distributed by the licensee and bearing the licensed trademark comply with the quality requirements established by a licensor. Article 1489 further provides that the licensor has the right to control compliance with this provision.

²⁷ MTG receives payment for CTC Media shares //

www.mtg.com/press-releases/mtg-receives-payment-for-ctc-media-shares/.

²⁸ See e.g. Dergacheva A., "Foreign Ownership Restrictions in the Russian Media Sector: It's Here, So What's Next?", <http://www.medialawinternational.com/page129.html>.

²⁹ Гражданский кодекс Российской Федерации (часть первая) (the Civil Code of the Russian Federation (part 1)), 30 November 1994 No. 51-ФЗ. The text in Russian is available at <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102033239>.



The topic of using trademarks and other means of individualization is indeed extremely important for the market. Many companies that have maintained their presence in the market are rightsholders of internationally recognized trademarks. For the effective protection of a brand in Russia such companies need to register national trademarks. This means they need to build complex relations both with the Russian partner broadcasters, and the bodies authorized in the field of intellectual property. This last claim can be illustrated by the case of the TOPSHOP Broadcasting Company. The company operates a TV shop, so, in accordance with the requirements of Article 19.1 (version of 2001), it was registered as a Russian legal entity. However, it did not have the right to use the trademark TOPSHOP, which was originally held by the Swiss company STUDIO MODERNA S.A. When the Russian company filed an application for the registration of a trademark, it was rejected, because, in the opinion of the registering authority (Rospatent), the designation TOP SHOP did not have a sufficiently distinctive ability (the words "top" and "shop" characterized only the applicant's professional activities and did not distinguish the applicant from other teleshopping companies).

The broadcasting company TOPSHOP challenged the decision of Rospatent. In support of its position, the company referred to the fact that the TOPSHOP brand is world famous and recognizable, as it belongs to STUDIO MODERNA S.A, that is "relative" to the Russian company TOPSHOP. The initial refusal of the registering body was overturned and the Russian company became the trademark holder.³⁰ However, the question is how the declared "related" relationship with the company from Switzerland should be interpreted, and whether the official declaration can be interpreted by the Roskomandzor as violating of Article 19.1 of the Statute on Mass Media in the version currently in force.

³⁰ Decision of the Chamber of the Chamber of Patent Disputes (Заключение коллегии палаты по патентным спорам) of 21 February 2014. . The text in Russian is available at <http://edwaks.ru/ru/Library/sudebnaja-praktika/sudebnye-resheniya/resheniya-palaty/udovletvoritelnye/09102013-otmena-resheniya-rospatenta-i-473>.



5. New Rules for Mass Media market research organizations and video on demand services

The mass media companies were not the only entities to face restrictions of foreign participation in corporate assets on the market.

5.1. “Anti TNS” Act

In July 2016 legal requirements for organizations that provide market research services, specifically those for measuring the volume and ratings of the audience of television channels, were introduced. To construct a regulatory framework, the Statute on Mass Media was amended with the introduction of a special chapter dealing with television auditory measurement rules.³¹ The law established the general requirements for audience measurement and provided the procedure for selecting the only “authorized” organizations that were allowed to perform audience measurements. According to the amended version of the Statute “On Advertising”, television channels selling advertising time slots were obliged to use market research provided only by authorized organizations.

The regulatory and supervisory powers in the sphere of authorized organizations activities were delegated to Roskomnadzor, in accordance with the above mentioned Statute. This authority is empowered to decide what number of authorized organizations shall act; what the rules are for authorization procedure; and whether or not authorized organizations comply with statutory requirements. Anti-monopoly law is not applicable to authorized organizations, so the exclusive television research company can function legally.

Along with other regulations, limits on the participation of foreign capital in television market research organizations were also introduced. The provisions of the Statute on this issue are formulated as follows:

³¹ Федеральный закон “О внесении изменений в Закон Российской Федерации “О средствах массовой информации” и статьи 5 и 38 Федерального закона “О рекламе”” (the Federal Statute “On Amending the Statute of the Russian Federation on the Mass Media and Articles 5 and 38 of the Federal Statute “On Advertising”), 3 July 2016 No. 281-ФЗ. The text in Russian is available at <http://rg.ru/2016/07/06/reklama-dok.html>.



"...a foreign state, an international organization, as well as organizations under their control, a foreign legal entity, a Russian legal entity whose share in foreign ownership in the authorized organization capital is more than 20 percent, is not entitled to act as an authorized organization."

It is also not permitted to establish any forms of control over the authorized market research organization by any of the persons specified above, as well as by foreign citizens, stateless persons, or citizens of the Russian Federation having the citizenship of another state, if these persons acquire the possibility to directly or indirectly own or operate the organization, control it, or to determine the operational decisions it makes.

Despite the lack of detailed official arguments for the introduction of restrictions on foreign participation,³² the restrictions were the main goal of the adoption of the law. The changed regulation inevitably resulted in transformation of the market: before the Statute was passed, the dominant company was TNS Russia, which was owned by the British multinational advertising company WPP plc. The company had already been doing television market research for 20 years in Russia at the time.

By the time the law was initiated, some heads of the largest broadcasting companies (first of all, the CEO of Channel One) had repeatedly expressed dissatisfaction with the ratings measurement methodology of TNS. According to them, TNS carried out measurements only for cities with a population of at least 100 000 people. Representatives of the broadcasting industry noted that this method does not consider approximately 30 percent of the audience.³³ Channel One even refused to use reports by TNS and established its own audience measuring department. Some experts, however, believed that the real reasons for criticism were not actually the methodology used for the measurements, but the results of such measurements: according to TNS all air broadcasting channels were losing audience.³⁴

However, without support of the state, the market players, lead by Channel One, were not able to eradicate TNS. In 2014 a tender was organized by a specially established committee in order to select a company for measuring, which was supposed to arrange a replacement for TNS. The tender failed because TV companies were unable to jointly make a final decision. When a draft law banning the work of a foreign organization was initiated in the Parliament, it was supported by all major television companies. In the press, the law was called the "anti-TNS Act".³⁵

Even though the law was to come into effect only from September 2017, the market reacted proactively: in August 2016, the Media division of the state-owned

³² The Explanatory Statement had only one reasoning note: the restrictions were needed in order to protect national security. No concrete threats or reasons were mentioned. The Explanatory Statement available for downloading at: <http://sozd.parliament.gov.ru/bill/1092053-6>.

³³ Иностранцы недосчитались российских телезрителей (Foreigners missed the Russian TV audience) www.gazeta.ru/tech/2016/06/22_a_8322491.shtml?updated.

³⁴ Крупнейшие российские каналы теряют зрителей (The major Russian channels are losing audience), <https://www.vedomosti.ru/technology/articles/2016/01/22/625025-krupneishie-kanali-terayayut>.

³⁵ "Закон против TNS" прошел Госдуму ("Anti TNS law passes State Duma"), www.sostav.ru/publication/zakon-protiv-tns-proshel-gosdumu-22780.html.



Russian Public Opinion Research Center (VCIOM)³⁶ acquired from WPP 80 % of TNS Russia.³⁷ According to experts, based on the actions of VCIOM to raise funds, the acquisition price was up to RUB 1.4 billion (approximately EUR 19.4 million).³⁸ The company changed the brand name for MediaScope after completion of the acquisition deal. It is important to mention, however, that WPP retained 20 % of MediaScope; so far TNS has not decided to leave the Russian market altogether.

In September 2016, a special Commission set up by Roskomnadzor (including governmental representatives as well as the heads of the main television channels) ruled that there would be only one authorized company engaged in television market research in Russia until at least 2019. A month later, MediaScope was awarded the status of authorized organization on the basis of the tender results.³⁹

After the change of MediaScope's ownership, no criticism of measurement methods has been ever expressed by the main television broadcasters. At the same time, the company was criticized for a significant increase in the cost of services. In 2017, advertising agencies reported a significant raise of tariffs. For several clients, the cost of services has grown exponentially. This was especially uncomfortable for small advertising agencies. Market players supposed that such a tariff increase had been made in order to assist with loan payments of RUB 1.4 billion, which VCIOM incurred to purchase MediaScope, as well as with the emergence of a monopoly determined by the legislative ban on the use of alternative services.⁴⁰ In early 2018, some regional radio stations also accused MediaScope of introducing additional charges. Radio stations that refused to pay MediaScope were not measured at all.⁴¹

5.2 “Anti-Netflix” Act

Almost immediately after the introduction of restrictions on foreign participation in traditional media, major TV channels and media holdings began to assess the possibility of imposing limits upon online platforms. Major TV channels and media holdings became the main actors of this process. Representatives of these companies motivated the need to introduce restrictions by the “overflow” of content itself and because of the absence of

³⁶ According to the national register of legal entities egrul.nalog.ru the Russian Federation owns 100 per cent of the public company VCIOM.

³⁷ ВЦИОМ завершил сделку по покупке TNS Russia (VCIOM has closed TNS Russia acquisition deal), www.searchengines.ru/vtsiom-zavershil-sdelku-po-pokupke-tns.html.

³⁸ ВЦИОМ берет кредит 1,4 млрд рублей на покупку TNS (VCIOM attracts credit of 1.4 billion rubles for the purchase of TNS), www.searchengines.ru/vtsiom-beret-kredit-1-4-mlrd-rub.html.

³⁹ MediaScope измерит, у кого больше (MediaScope will measure who has more), www.gazeta.ru/tech/2016/12/15/10428173/mediascope.shtml?updated#page2.

⁴⁰ Mediascope пересчитала цены (Mediascope recalculated price-list), <https://www.kommersant.ru/doc/3311167>.

⁴¹ «Рейтинг тех, кто заплатил»: Mediascope кардинально меняет формат работы с радиостанциями (“Rating of those who paid”: Mediascope radically changes the format of work with radio stations) <https://realnoevremya.ru/articles/95112-radiostancii-platyat-mediascope-za-uchastie-v-reytinge>.



a level playing field for broadcasters of content to the Internet. According to TV companies and TV producers, the level of restrictions should be the same in all media.⁴²

This approach, however, was not supported by online broadcasting platforms operating in Russia. On the one hand, this could be explained by the insufficient saturation of the market by investments (this was indicated by online VoD services themselves). On the other hand, the lack of support could be explained by the absence of serious competition from world leading projects. In particular, despite the fact that Russian experts called the bill being drafted “anti-Netflix”, this streaming platform itself clearly did not plan an active expansion into the Russian market. The content of Netflix became available for viewing from Russia much later than the Russian video portals were launched, Netflix’s content and its Internet service interface was available in English only. Netflix also did not conduct a promotion campaign to market its service in Russia.

In the absence of large foreign online broadcasting platforms, the main discussions arose regarding social networks and UGC websites. Finally, it was decided not to include these categories of services within the scope of the regulation. Despite the fact that the authors of the draft law bore in mind previous regulation, the final version included a number of unusual provisions.

The Federal Statute amending the information law⁴³ was adopted on 1 May 2017 and entered into force two months later. According to the Explanatory Statement, the main goal of the law was clarifying the legal status of OTT services.⁴⁴

The new law introduced the concept of “audiovisual service”. It was described as a website providing audiovisual content which is available for the public on the basis of ad-based VOD or subscription VOD model. In order to be subject to regulation, the service should have at least 100, 000 visitors per day. The audiovisual service corresponding to these requirements is to be included in the register compiled by Roskomnadzor and is obliged to comply with the following requirements: not to distribute prohibited information; to rate or identify information, in order to protect children from information harmful to their development and health; to “comply with the legislation requirements for dissemination of mass information”; and to use software provided by Roskomnadzor designed to count the number of visitors. Perhaps the most unusual restriction is the ban on the distribution of TV channels that are not registered as media in the Russian Federation.

Audiovisual services can be owned only by Russian citizens (unless they hold citizenship of any other state) and Russian legal entities, provided however that foreign participation does not exceed 20 percent of share capital. Foreign states, citizens and

⁴² Онлайн-кинотеатры посмотрят по паспорту (Online cinemas will show passports), https://www.kommersant.ru/doc/3060071?from=doc_vrez.

⁴³ Федеральный закон “О внесении изменений в Федеральный закон “Об информации, информационных технологиях и о защите информации” и отдельные законодательные акты Российской Федерации” (the Federal Statute “On Amendments to the Federal Law “On Information, Information Technologies and Information Protection” and certain legislative acts of the Russian Federation”), 01 May 2017 No. 87-ФЗ, <http://docs.cntd.ru/document/420397323>.

⁴⁴ The text of the Explanatory Statement in Russian is available for downloading at <http://sozd.parliament.gov.ru/bill/37671-7>.



companies may be allowed to own more than 20 percent of the share capital of an audiovisual service under three circumstances: the Russian audience of the audiovisual service shall not exceed 50 percent; the audiovisual service owner shall undertake to comply with the law; a special governmental commission formed on the basis of a government decree shall approve foreign ownership. The approval may be granted if ownership, management, or control of the owner of audiovisual services will contribute to the development of the market for audiovisual services in the Russian Federation. In the event that the audiovisual service, which corresponds to the description given in the law, does not ensure the following of the law, it can be blocked in the territory of the Russian Federation.

Failure of an owner of an audiovisual service to comply with the requirements of the law may result in administrative fines for legal entities from RUB 600 000 up to RUB 1 million (approximately from EUR 8 000 to EUR 13 300) subject to the Code of Administrative Offences, and up to RUB 3 million (approximately EUR 40 000) for repeated violations.

At the time of writing, not all regulations concerning the enforcement of the law had been adopted and the government commission that is competent to approve foreign participation in the media has not been formed; so far no site has been included in the register of audiovisual services. It is difficult at this point to assess the effectiveness of the legislation described, based on the lack of its practice.



6. Foreign financing reporting requirement

To aggravate the complexities of Russian media regulation, at the end of December 2015 the Statute on Mass Media was further amended to include a duty of mass media companies to report on foreign financing.⁴⁵ A detailed reporting procedure was approved by the Government Ordinance No 368 of 28 April 2016.⁴⁶ The relevant reporting form was approved by Roskomnadzor.

If a mass media editorial board, publisher, or broadcaster receives any funds from foreign sources (as defined below), this must be reported. Reports are to be submitted once a quarter, not later than 10 days after the given accounting period. Only electronic communications may be used for reporting: mass media either upload reports at the Roskomnadzor website or must send them via the Public Services Portal of the Russian Federation (part of e-government services). All reports are supposed to be publicly available through the Roskomnadzor website.

In the context of the regulation of foreign financing, a “foreign source” includes a foreign state, an international organization, any foreign legal entity, a Russian non-profit organization having the status of “foreign agent”, a foreign citizen or stateless person, or a Russian legal entity whose participants (founders) are any of the above.

Certain transactions shall be free from reporting. These include funds received from a “founder” of the relevant mass media organization, funds that constitute

⁴⁵ Федеральный закон “О внесении изменений в Закон Российской Федерации “О средствах массовой информации” и Кодекс Российской Федерации об административных правонарушениях” (the Federal Statute “On Amending the Statute of the Russian Federation on the Mass Media and the Code of Administrative Offences), 30 December 2015 No. 464-ФЗ. The text in Russian is available at <http://pravo.gov.ru/proxy/ips/?docbody=&prevDoc=102013812&backlink=1&&nd=102385654>.

⁴⁶ Постановление Правительства РФ “Об утверждении Правил предоставления информации о получении редакцией средства массовой информации, вещателем или издателем денежных средств от иностранного государства, международной организации, иностранной организации, от выполняющей в соответствии с законодательством Российской Федерации функции иностранного агента некоммерческой организации, иностранного гражданина, лица без гражданства, а также от Российской организации, участниками и (или) учредителями которой являются указанные лица” (Ordinance of the Government of the Russian Federation “On the Approval of the Rules of Providing Information on the Receipt by the Editorial Office of Mass Media, the Broadcaster or the Publisher of Money Resources from a Foreign State, International Organization, Foreign Organization, from performing the functions of a foreign agent of a non-profit organization, a foreign citizen, citizenship, as well as from the Russian organization, whose participants and (or) the founders are the said persons”), 28 April 2016 No. 368. The text in Russian is available at <https://rg.ru/2016/05/18/medvedev-dok.html>.



advertising revenues or distribution income for the relevant channel, or other mass media and funds in the amount of less than RUB 15 000 (approximately EUR 200).

Failure to comply with the new requirements may result in administrative fines for legal entities from 100 up to 200 percent of the amount of unreported funds (up to 400 percent for a repeated violation), subject to the Code of Administrative Offences.



7. Conclusions

The introduction of restrictions on foreign participation in the mass media has taken a very important, although uneven, path. The significant amount of work that has been done in this direction over the past five years demonstrates that Russia is consistently implementing a protectionist regime in relation to the information market. At the same time, despite the fact that foreign persons are forced to leave the media market, it can be stated that their economic interests are not infringed upon. It is correct to characterize the situation as have caused lost profits, but not direct damages. In the cases where foreign companies realize that there is a corridor of opportunity for maintaining their presence in the country, they are striving for this. This indicates that at present the positive aspects of working in Russia outweigh the negative.

At the same time, there is certainly a critical concentration of mass media assets and a sufficient reduction in the level of competition. These factors inevitably lead to a decline in the level of content and mass media management quality. In some cases, it is obvious that the declared strategy to protect the informational space is used by lobbyists to advance their interests. This not only weakens competition, but also forms a distorted picture of the state of the industry.

Another negative trend is that the degree of regulation and the number of restrictions in the legal system have increased so drastically that it will inevitably warn off potential new projects coming externally. This reduces the level of Russia's involvement in the global market, as well as mass media professionals' awareness of processes and cutting edge audiovisual market trends.

Finally, despite the fact that Internet regulation for the most part does not seem to be effective at this stage, the claimed restrictive trend implies that in the event of the concentration of technical and organizational resources for law implementation activities, governmental authorities will be able to significantly restrict the transfrontier flow of information and the access of Russian consumers to the audiovisual content market. The Internet-related activity is clearly becoming the main issue on the agenda of the Russian authorities.

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