

MEDIA REGULATION IN RUSSIA

A LANDSCAPE ANALYSIS OF LAWS AND TRENDS



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Robert Bosch **Stiftung**





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INTRODUCTION





INTRODUCTION

Journalism around the world is undergoing huge change. Social media, 24-hour news cycles and ever increasing competition is changing the way journalism is consumed. More people than ever read and spread the news on their phones; the distinction between journalist and casual observer is increasingly hard to discern; and cross-border journalism is becoming the norm. In this increasingly noisy landscape, the role of the skilled, impartial journalist is important more than ever.

Thomson Reuters Foundation, the Robert Bosch Stiftung and the Fritt Ord Foundation (The Freedom of Expression Foundation) recently developed and established the independent journalism programme titled “Perspektivy” (“Perspectives”). The Perspektivy programme aims to strengthen journalism in Russia, Eastern Europe and Central Asia, to advance regional expertise on under-reported issues, and to contribute to mutual international understanding.

This report is a study of the shifting legal landscape that regulates online and print media in Russia developed to support the Perspektivy programme. The regulatory framework governing Russian media has been undergoing substantial revisions over the past few years, resulting in a noticeable increase in the number and severity of restrictions on press freedom, particularly concerning internet use. These legislative developments could have a significant impact on the way that journalists and media players in Russia are able to operate. This report was developed as a resource to help them understand and navigate these laws.

The Thomson Reuters Foundation’s TrustLaw programme facilitated pro bono legal support of DLA Piper Rus Limited who conducted a review of the media legislation in Russia over the past five years. The report includes an overview of key trending issues in Russian media legislation, the recent changes and its implications on journalists, bloggers and media players in Russia.

This report has the potential to be an important reference work for journalists and media players in Russia as well as for those who work with Russian journalism and media

trends in other countries. This resource will allow journalists to have a more overarching understanding of the current legal landscape and its impact on the media, with a view to more efficiently promoting independent journalism, and protection and promotion of freedom of expression, through our Perspektivy programme.

The report will be published for the perusal of an international audience in both English and Russian.

EXECUTIVE SUMMARY





EXECUTIVE SUMMARY

The regulation of mass media in Russia is governed by a range of both national law (the main instrument being Law No 2124-1 “**On Mass Media**” or the Mass Media Law) and international law (including the International Covenant on Civil and Political Rights and the European Convention on Human Rights). An important role is also played by state authorities such as the Federal Service for Supervision of Information Technologies and Communications (“**Roskomnadzor**”) and the Federal Agency for Press and Mass Communications (“**Rospechat**”) and the respective regulations which are published by these authorities from time to time.

An obvious trend in the regulation of media has been an increasing control, in particular a substantial increase in the authority of Russian government bodies (notably by Roskomnadzor). Such bodies may block, without the need to obtain a court order, access to websites that refuse to take down certain information, or require a journalist or editorial office to disclose a source of information. Other notable developments are the introduction of the so-called “bloggers law” and the ban on the use of explicit language.

Many of these regulations are the Russian government’s response to developments in the international political context and a perception that the media is increasingly a tool used by extremist and international groups.

The general principles of the Russian mass media law are based on the fundamental principles established by the Russian Constitution. The major principles: freedom of mass communication, the inadmissibility of censorship and a safeguard against the freedom of press being abused by the mass media are reinforced by the Mass Media Law. In relation to the first two, the law establishes that these principles shall not be subject to restriction, with the exception of those prescribed by the legislation of the Russian Federation. In relation to the safeguards against the abuse of the freedom of the press, restrictions and/or prohibitions exist on the dissemination of information relating to narcotics, counter-terrorism operations, child victims, subliminal stimuli and extremist activities.

The Mass Media Law and other legislative acts also contain certain restrictions on mass media, aimed at protecting the public interest. The **Law on Traditional Family Values** puts in place restrictions on the “promotion of non-traditional sexual relations” (a phrase not defined by the legislation). Similarly, the **Anti-Tobacco Law** prohibits the advertising or promotion of tobacco products, as well as the demonstration of tobacco products and the process of tobacco consumption. Finally, the **Child Protection Law** requires producers of information that is harmful to the health and development of children to place age restriction marks on such products, and the Mass Media Law sets out special rules governing the distribution of erotic materials.

Mass media products established on the territory of the Russian Federation are subject to registration with the Roskomnadzor. In order to initiate registration, the applicant should file a formal application including certain obligatory information set out by the Order of the Ministry of Communications and Mass Media No/362. Under the Mass Media Law, certain mass media products are exempt from registration (for example products founded by state bodies). The law also provides an exhaustive list of grounds for refusing to register, and in some cases an application to register may be returned to the applicant without consideration, or the registration certificate may be deemed invalid. Upon receiving the certificate, manufacturing of the products should start within one year from the date of issue, otherwise the certificate shall be deemed invalid. The activities of a mass media product may only be terminated or suspended by a decision of its founder or of the court upon the application of the registration body.

Along with registration, the Mass Media Law also requires the establishment of an editorial commission (an organisation or individual which produces and issues a mass media product).

The Mass Media Law lays down a number of rules governing the interaction of a mass media product with individuals and organisations in order to foster the free exchange of information and enhance civil society. The Mass Media Law establishes a special procedure for disclosing confidential information and lays down the editorial commission’s right to request information regarding the activities of state authorities and similar bodies. Information may only be refused if such information contains secrets specially protected by the law (state secrets for example), or falls within a number of established categories. The law also touches upon the publication of information relating to a minor and letters addressed to the mass media. An individual or organisation may also demand that an editorial commission refutes untrue information or information that attacks their honour and dignity, provided that the commission does not possess evidence of the fact that the

information it published is true. Such an individual or organisation equally has the right to give an answer to the untrue information in the same mass media product.

The Mass Media Law lays down a number of core rights and main obligations of journalists, as well as a number of limitations on their rights. In addition to these, the Code of Professional Ethics of Journalists also sets down a number of “soft law” rights and obligations. Special regulation on the activities of bloggers (defined as owners of websites that are visited by more than 3,000 daily users) has also been introduced, obliging them to observe the rules of publishing information established by the Mass Media Law. There are equally provisions concerning the rights of bloggers. As the responsibilities of bloggers introduced by the new law are quite broad, compliance with the legal regime may often cause difficulties in practice.

The Mass Media Law also provides specific grounds for releasing mass media organisations for publishing untrue information.

The document provides a non-exhaustive list of criminal offences which may affect journalistic activity. It also explores potential criminal and civil law liability for libel. Whilst the former consists of the intentional spreading of false information discrediting the honour, dignity or reputation of another person, the latter is considerably broader and consists of any statement discrediting the honour, dignity or business reputation of a citizen.

THE REPORT





THE REPORT

1. LEGAL LANDSCAPE AND TERMINOLOGY

The main legislation specifically governing the media in Russia is Law No. 2124-1 'On Mass Media' of 27 December 1991, as amended ("**Mass Media Law**").¹

Certain **international treaties are also applicable**, such as the International Covenant on Civil and Political Rights, the European Convention on Human Rights, the Final Act of the Conference on Security and Cooperation in Europe, and the Convention of the CIS on Rights and Freedoms of an Individual.

The main competent state authority in the sphere of mass media and communications is the Federal Service for Supervision of Information Technologies and Communications ("**Roskomnadzor**"). Roskomnadzor registers mass media products and issues licences for broadcasting activities. Another state authority in the sphere of mass communications is the Federal Agency for Press and Mass Communications ("**Rospechat**"). Rospechat provides state services and manages state property in the sphere of the mass media.

Under the Mass Media Law a **mass media product** shall be understood as a *periodical printed publication; a radio, television or video programme; a newsreel programme; or any other form of periodical dissemination of mass information*. A **periodical printed publication** shall be understood as a *newspaper, magazine or journal, almanac, bulletin, or any other publication which has a constant name and publishes an issue at least once a year*.

¹The following legislative acts, also govern the sphere of media: Federal Law No. 149-FZ 'On Information, Information Technologies and Protecting Information' of 27 June 2006, Federal Law No. 38-FZ 'On Advertising' of 13 March 2006, Federal Law No 8-FZ 'On Affording Access to Information on State Authorities and Local Government Authorities' of 9 February 2009, Federal Law No. 135-FZ 'On Amending Article 5 of the Federal Law On the Protection of Children from Information Harmful to their Health and Development and certain other Legislative Acts of the Russian Federation for the Purposes of Protecting Children from Information Negating Traditional Family Values' of 29 June 2013, Federal Law No 15-FZ 'On the Protection of Public Health from the Effect of Exposure to Environmental Tobacco Smoke and Tobacco Consumption' of 23 February 2013 among certain others.

2. OVERVIEW OF LEGISLATIVE DEVELOPMENTS IN MEDIA REGULATION

A dominating trend in the regulation of the mass media in Russia over the past five years is the Russian government's increasing control over the media. Key developments include:

- a. the introduction of strict limitations on the ability of foreign persons to own, control or run Russian mass media products with effect from 1 January 2016;
- b. restrictions on advertising on paid TV channels;
- c. an increase in the number of specific restrictions on the publication and distribution of mass media content;
- d. increasing control over Internet media; and
- e. the introduction of insider trading laws that allow the "confidentiality shield" to be pierced.

The first two developments listed above are dramatically affecting the landscape of the mass media market in Russia. However, as these developments relate more to businesses rather than the legal status of journalists and/or mass media sources, we do not focus on these topics for the purpose of our Report.

Applicable **restrictions on the mass media**, including those most recently introduced, are discussed in further detail in this report.

The key trend relating to the Internet media is the substantially increased authority of Russian government bodies (most notably, Roskomnadzor) to **block access to websites** without the need to obtain a court order. Originally, such power was introduced by Federal Law No. 139-FZ dated 28 July 2012 relating to the protection of rights of children (including rights to limit access to websites containing child pornography, and information on suicide and drugs, etc). The grounds for including websites on a "black list" were then substantially expanded (to include a breach of IP rights, publication of information to incite riots or encourage extremist activities, separatism, rehabilitation of Nazism, etc). The way this works in practice is that Roskomnadzor may initiate a notice to an owner of a website requesting the deletion of certain information prohibited by law within a few days. Unless the owner complies with such a request, the website domain may be blocked by Roskomnadzor. The Constitutional Court of the Russian Federation has upheld the respective provisions of the Russian law².

² Decree of the Constitutional Court of the Russian Federation No 1759-O dated 17 July 2014

Another notable development on Internet media regulation is the so-called “**bloggers law**” (please refer to section 7.3 below for further details).

The implementation of **insider trading regulations** in Russia has also introduced a change to the legal status of journalists and editorial offices, allowing Russian authorities (ie the Central Bank of Russia) to pierce the “confidentiality shield” and require a journalist or editorial office to disclose the source of information in the course of investigations into insider trading.

Another notable development is the **ban on the use of explicit language** on television and radio, with fines and a potential temporary suspension being imposed on non-compliant media.

3. GENERAL PRINCIPLES OF THE RUSSIAN MASS MEDIA LAW

The Russian Mass Media Law is based on the fundamental principles established by the Russian Constitution, such as the freedom of thought, the freedom of expression, the freedom from censorship, the freedom of conscience and religion, the right to a person’s privacy and the right to enjoy human rights and freedoms without discrimination on any ground such as gender, race and religion.

The Mass Media Law establishes the major principles of the Russian media laws, namely the freedom of mass communication, the inadmissibility of censorship and a safeguard against the freedom of the press being abused by the mass media. Each of these principles is considered in further detail below.

3.1 Freedom of mass communication

In the Russian Federation the retrieval, receipt, production and dissemination of mass communication; the foundation of a mass media product; the possession, use and disposal of such product; the manufacture, acquisition, storage and use of technical facilities, equipment and raw and auxiliary materials designed for production; and the spread of mass media products shall not be subject to restriction, with the exception of those prescribed by the legislation of the Russian Federation on mass media. Similar rules apply to regulation of Internet media³.

3.2 Inadmissibility of censorship

The Russian Constitution guarantees fundamental human rights, such as the right to freedom of expression and the right to freedom of thought. The Russian Constitution also states that censorship is inadmissible. **Censorship** is defined by the Mass Media Law as a *demand made by officials, state*

³ Resolution of the Plenum of the Supreme Court of the Russian Federation No 16 dated 15 June 2010 “On the practice of courts of the Russian Federation on Mass Media Law” (Item 36)

organs, organisations, institutions or public associations that the editor's office of a mass media organisation should obtain approval for the message and materials to be published (except for cases when the official in question is an auditor or interviewee) and the suppression of the dissemination of messages and materials and separate parts thereof.

A person's rights and freedom may only be limited in instances provided for by Russian federal laws and only to the extent that it is necessary to protect national security, public safety, health and morals, as well as the rights of other persons. This is the key to understanding that no legal right is unlimited. Further, a person's right should be balanced by rights of other people and public interests. Therefore, the Mass Media Law stipulates that the mass media may not abuse the freedom granted to the press.

As clarified by the Supreme Court,⁴ **a demand to obtain prior approval of materials** may be lawful if such demand is made by the editor-in-chief as he/she is responsible for the materials and information complying with the law. Such demand may be also made by the founder of the mass media organisation provided that such right is established in the charter of the editorial commission or an agreement concluded with the founder.

It should also be noted that the law allows the restriction of the freedom of the mass media in the **event of an emergency or military situation**. The procedure for censorship in these cases is governed by the Federal Constitutional Law "On Emergency Situations" and the Federal Constitutional Law "On Military Situations".

3.3 Safeguards against the Abuse of the Freedom of the Press

Several safeguards exist under Russian law to prevent the mass media from abusing the rights granted to it under the concept of the freedom of the press.

3.3.1 Criminal Acts

The mass media cannot be used to:

- commit criminal acts;
- disclose information constituting a state secret or any other legally protected secret;
- distribute information containing a public call to commit terrorist activities, a justification of terrorism, or other extremist materials;
- publish materials promoting pornography or a cult of violence or cruelty;
- publish materials containing profanities.

⁴Decree of the Plenum of the Supreme Court of the Russian Federation dated 15 June 2010 No 16 "On the practice of application by the courts of the Law of the Russian Federation "On Mass Media" (item 14)

As clarified by the Supreme Court,⁵ when hearing a case on the abuse of the freedom of the press by a mass media product, the court should not only consider the words and phrases of an article but also the context (e.g. what is the aim, genre and style of the article) and the social and political situation in the country and its separate regions. It was stressed that the humorous and satirical genre allows a greater degree of exaggeration, even provocation, provided that society is not misinformed of the facts of the case.

3.3.2 Narcotics

It is prohibited to distribute in the mass media, information on methods of producing and using narcotic drugs, psychotropic substances and their analogues or information on places where such substances can be purchased. Information on the “advantages” of any narcotic drugs, psychotropic substances and their analogues is also prohibited.

3.3.3 Counter-Terrorism Operations

During counter-terrorism operations a special procedure exists with regards to the collection of information by journalists, meaning that the overall procedure is established by the head of the counter-terrorism operation. It is prohibited to disseminate information in the mass media on the specific tools, techniques and tactics of the counter-terrorism operation if such dissemination could create obstacles for the counter-terrorist operation or put the lives or health of people at risk. Information on special detachments and persons providing assistance during counter-terrorism operations; on detecting, preventing, intercepting and exposing terrorist acts and on family members of the abovementioned persons may only be disclosed in accordance with the special rules provided by legislative acts of the Russian Federation.

3.3.4 Child victims

It is prohibited to distribute in the mass media information about a minor who has been the victim of unlawful acts. Such information includes the child’s surname, name, photograph or video or audio recording, information about his/her parents or other legal representatives, date of birth, place of residence or place of temporary stay, place of study or place of employment, and other information which could directly or indirectly identify such minor, save in certain exceptional circumstances (e.g., when the consent of the minor has been obtained).

3.3.5 Subliminal Stimuli

It is prohibited to use in the mass media techniques and methods that affect people’s subconscious minds or have a negative effect on human health.

⁵ Decree of the Plenum of the Supreme Court of the Russian Federation dated 15 June 2010 No 16 “On the practice of application by the courts of the Law of the Russian Federation “On the Mass Media” (item 28)

3.3.6 Extremist activity

It is prohibited to disseminate information about associations or their organisations that are included in the list of public or religious associations, or other organisations that have been liquidated or prohibited in court due to a violation of the Federal Law 'On Countering Extremist Activity' without making reference to that fact that such organisation has been liquidated or prohibited. Such list is published by *Rossiyskaya Gazeta* and posted on the official website of the Ministry of Justice. The list includes the following organisations whose activities are prohibited in Russia: the Pravy Sector far-right organisation, the Ukrainian Insurgent Army (UPA), and the UNA-UNSO far-right organisation.

It is also prohibited to distribute in the mass media information containing instructions on how to produce homemade explosive substances.

4. RESTRICTIONS ON THE FREEDOM OF MASS MEDIA

The Mass Media Law and other legislative acts contain certain restrictions on the mass media aimed at protecting the public interest.

4.1 Restrictions on the promotion of non-traditional sexual relations

Federal Law No. 135-FZ 'On Amending Article 5 of the Federal Law on the Protection of Children from Information Harmful to their Health and Development and Certain Other Legislative Acts of the Russian Federation for the Purposes of Protecting Children from Information Negating Traditional Family Values', which came into force on 30 June 2013 ("**Law on Traditional Family Values**") stipulates certain restrictions in relation to the promotion of non-traditional sexual relationships.

According to the Law on Traditional Family Values, the dissemination to children of information **negating family values, promoting non-traditional sexual relations** and **encouraging children to disrespect to parents** and/or other family members is banned (i.e. can only be disseminated to the age category 18+). The Constitutional Court of the Russian Federation has upheld the respective provisions of the Russian law⁶.

The Law on Traditional Family Values does not define the phrase "promotion of non-traditional sexual relations". Currently there are no official clarifications as to what constitutes promotion which is prohibited by the Law on Traditional Family Values.

4.2 Restrictions provided by anti-tobacco legislation

Most provisions of the newly adopted Federal Law No. 15-FZ 'On the Protection of Public Health from the Effect of Exposure to Environmental Tobacco Smoke and Tobacco Consumption' of 23

⁶ Decision of the Constitutional Court of the Russian Federation No 24-P dated 23 September 2014

February 2013 (“**Anti-Tobacco Law**”) entered into force on 1 June 2013. The Anti-Tobacco Law prohibits, in particular, the following:

- a. any advertising or promotion of the sale of tobacco, tobacco products and tobacco consumption;
- b. demonstration of tobacco products and the process of tobacco consumption in audio-visual works which are newly created and intended for children, including in television and video films, theatrical and entertainment performances, radio, television, video and documentary film programmes. This includes public performances, communication over the air, by cable, or any other kind of use of the mentioned works, performances and programmes where tobacco products and the process of tobacco consumption are demonstrated;
- c. demonstration of tobacco products and the process of tobacco consumption in audio-visual works which are newly created and intended for adults, including television and video films, theatrical and entertainment performances, radio, television, video and documentary film programmes, as well as public performances, communication over the air, by cable or any other kind of use of the mentioned works, performances and programmes where tobacco products and the process of tobacco consumption are demonstrated, except when such action forms an integral part of the artistic conception.

There is no statutory definition of artistic conception and no practice or clarifications on what is recognised as an integral part of such an artistic conception. The Anti-Tobacco Law allows the demonstration of tobacco products and the process of tobacco consumption while informing the population about the harm caused by tobacco consumption and harmful impact of tobacco smoke in mass media only within respective information campaigns against tobacco consumption. The Anti-Tobacco Law imposes the obligation on the broadcaster or the demonstration organiser to ensure broadcasting of social advertising related to the harm of tobacco consumption before and during the demonstration of an audio-visual work, including television and video films, theatrical and entertainment performances, radio, television, video and documentary film programmes, where tobacco products and the process of tobacco consumption are demonstrated. This provision entered into force on 01 June 2014.

Based on the recent court practice any such breach of the Anti-Tobacco Law requirements may be committed either intentionally or negligently⁷.

⁷ Resolution of the Seventh Court of Appeal dated 30 April 2015 No 07AP-2799/2015 (case No A03-16914 / 201)

4.3 Child protection requirements applicable to the mass media

Federal Law No 346-FZ 'On the Protection of Children from Information Harmful to their Health and Development' of 29 December 2010 ("**Child Protection Law**") obliges producers of information products to place **age restriction marks** on such products depending on the age range of children to which the information is addressed. The information shall be classified by the producers and/or distributors taking into consideration the:

- a. topics, genre, content and artistic design of the information products;
- b. peculiarities of the perception of the information by children of specified age categories;
- c. probability of the information causing harm to the health and/or development of children.

The following age marks are stipulated by law for indicating the correct category:

- a. for children who have not reached the age of six - in the form of the figure zero and the plus sign (0+)
- b. for children who have reached the age of six - in the form of the figure six and the plus sign (6+);
- c. for children who have reached the age of 12 - in the form of the figure 12 and the plus sign (12+);
- d. for children who have reached the age of 16 - in the form of the figure 16 and the plus sign (16+);
- e. prohibited for children - in the form of the figure 18 and the plus sign (18+).

There is a special regulation for disseminating the information restricted/prohibited for children, and in respect of the size of the age mark and the frequency and duration of the appearance of such age mark, etc.

4.4 Erotic production

The Mass Media Law sets out special rules governing the distribution of erotic materials. Erotic materials include periodicals or programmes, which in general and systematically make use of the public interest in sex.

The distribution of erotic programmes on specialised radio and TV without signal coding shall be permitted only from 23:00 to 04:00 local time, unless stipulated otherwise by the local administration.

The retail sale of the products of mass media specialising in erotic materials shall only be allowed in sealed transport packages and in specially designed premises, the arrangement of which is determined by local administration.

5. REGISTRATION OF MASS MEDIA PRODUCTS AND REGISTRATION REQUIREMENTS

Mass media products established on the territory of the Russian Federation are subject to registration with the Roskomnadzor.

Under the Mass Media Law an individual, association of individuals, enterprise, institution, organisation or a state body may be a **founder (co-founder) of a mass media product**. However, the following persons and bodies may not act as founders:

- an individual under 18 years of age, an individual who is imprisoned or a person with a mental health condition recognised as being legally unfit by a court of law;
- an association of individuals, enterprise, institution and organisation whose activity is banned by law;
- a non-Russian citizen or a stateless person who is not domiciled in the Russian Federation.

The review period is normally one month. The registration certificate should be issued for an unlimited period of time. The founder of the mass media product should start manufacturing mass media products within one year from the date of issue of the certificate. If the prescribed term is missed, the mass media registration certificate shall be deemed invalid.

In order to initiate the registration procedure an applicant should **file a formal application** and a set of documents (including a document confirming payment of the state duty). The procedure of registering a mass media product is established by Order of the Ministry of Communications and Mass Media No. 362 of 29 December 2011. The application should contain the following obligatory information:

- information on the founder (co-founders);
 - name of the mass media product;
 - language(s) to be used;
 - address of its editorial commission;
 - form of the mass media product;
 - intended area of distribution of the products;
-

- approximate topics and/or specialisation;
- intended frequency of the issue and maximum length ;
- sources of financing;
- information on the mass media product of which the applicant is a founder, owner, editor-in-chief, editor commission, publisher or distributor;
- internet domain name – for online media.

It is possible to replace a founder, change co-founders and alter the name, language, form or distribution area of the mass media product by re-registering the mass media product. Mass media products shall be re-registered in the same manner as they are registered. A mass media product whose activity is terminated by a court decision may not be re-registered. If the editorial office changes its place of location or domain name (for online media), or alters the periodicity of its issue or the maximum length, the founder shall be obliged to notify the registration body of such in writing within a month.

The Mass Media Law provides for the following exceptions when the registration of a mass media product is not required:

- mass media products founded by state bodies or bodies of local self-government exclusively to publish official communications and materials, normative and other acts;
- periodicals with a total print of less than one thousand copies;
- radio and television programmes disseminated through cable networks, limited to the premises and area of a governmental institution, educational establishment or industrial enterprise or organisation that has no more than 10 subscribers;
- recordings of audio and video programmes distributed with a total print of no more than 10 copies.

The law provides for an exhaustive list of **grounds for refusing to register** a mass media product:

- if the application is filed on behalf of a natural person, association of individuals, enterprise, institution or organisation not entitled to found a mass media product;
 - if information indicated in the application is untrue;
 - if the name, approximate topics and/or specialisation of a mass media product represents an abuse of the freedom of the press;
 - if a mass media product with the same name and form has previously been registered.
-

In the following cases, an application to register a mass media product shall be returned to the applicant without consideration, with the indication of a ground for such return:

- if the application has been filed in breach of the requirements of the Mass Media Law;
- if the application on behalf of the founder has been filed by an unauthorised person;
- if the registration fee was not paid.

The application shall be re-accepted for consideration after such violations have been rectified.

In the following cases a **registration certificate for a mass media product may be deemed invalid** by a court upon the application of the registration authority:

- if the registration certificate was obtained by fraud;
- if the mass media product is not published/broadcast for a term exceeding one year;
- if the statutes of an editorial commission or the agreement replacing them has not been adopted and/or has not been approved within three months of the first publication or broadcast of the mass media product;
- if the mass media product has been registered for a second time.

The activities of a mass media product may only be **terminated or suspended** by a decision of its founder or court upon the application of the registration body.

Repeated (within 12 months) breaches by the editorial commission of the requirements of Article 4 of the Mass Media Law (abuse of the freedom of the press), which resulted in the registration body serving written warnings to the founder and/or the editorial commission (editor-in-chief) or the non-fulfilment of a court ruling on the suspension of a mass media product shall be grounds for terminating the activity of a mass media product by court. The activities of a mass media product can also be terminated on the grounds established by the Federal Law 'On Countering Extremist Activity'.

The activity of a mass media product may only be suspended pursuant to an relief or a successful claim to terminate the activity of a mass media product. Such suspension is in practice regarded as an exceptional measure⁸.

⁸Resolution of the Plenum of the Supreme Court "On the practice of courts of the Russian Federation Law "On mass media" dated 15 June 2010 No 16

6. BASIC PRINCIPLES OF OPERATING A MASS MEDIA PRODUCT

The Mass Media Law requires not only the registration of a mass media product but also the establishment of an editorial commission (and the recruitment of the necessary staff). A mass media **editorial commission** is an organisation or individual (group of individuals), which produces and issues a mass media product. The final decision on the production and issue of the mass media product is taken by the editor-in-chief who is the head of the editorial commission.

The founder of a mass media product should approve the charter for the editorial commission of the mass media product and/or enter into an agreement with its editorial department.

7. RELATIONS OF MASS MEDIA PRODUCTS WITH INDIVIDUALS AND ORGANISATIONS

The Mass Media Law sets out a number of rules regarding the interaction of a mass media product with individuals and organisations in order to foster the free exchange of information and enhance civil society.

7.1 Right to request information

Under the Mass Media Law, the editorial commission shall have the right to request information regarding the activities of state authorities, self-government bodies, public associations and their officials. Both oral and written requests for information are possible. This information shall be provided by the heads of such bodies, organisations and associations, their deputies, representatives of the press office or other authorised persons. As clarified by the Supreme Court,⁹ the law does not require the purposes of the request to be specified nor the necessity of the provision of information to be substantiated.

It is only possible to refuse to provide the requested information if such information contains data comprising a state, commercial or any other secret specially protected by law. A notification on the refusal shall be delivered to the representative of the editorial commission within three days from the date of receiving the inquiry for information.

A delay in providing the requested information is permissible if the required data cannot be presented within seven days. A notification of the delay shall be delivered to the representative of the editorial commission within three days from the date of receiving the written inquiry.

Federal Law “On Affording Access to Information on the Activities of Courts in the Russian Federation” establishes a number of cases when information should not be provided to the mass media. Such information includes information which may create obstacles to receiving a fair trial if disclosed.

⁹ Decree of the Plenum of the Supreme Court of the Russian Federation dated 15 June 2010 No 16 “On the practice of application by the courts of the Law of the Russian Federation “On the Mass Media” (item 15)

7.2 Disclosure of confidential information

The Mass Media Law also establishes a special procedure for disclosing confidential information. The editorial commission may not disclose information submitted by an individual on condition that it be kept secret or reveal the identity of such individual.

The editorial commission shall be obliged to keep the source of information secret and may not name the person who submitted information on condition that his/her name will not be divulged, except for in cases when such information is demanded by a court in connection with a particular case.

The “confidentiality shield” may also be pierced by the Central Bank of Russia, without a court order, in the course of insider trading investigations.

7.3 Publication of information related to a minor

The editorial commission may not divulge information which directly or indirectly leads to the identification of a minor who committed or is suspected of committing a crime, administrative offence or antisocial action, without the consent of the minor or his/her legal representative.

7.4 Letters addressed to the mass media

Firstly, the intellectual property rights of the sender should be observed such as the right authorship. Secondly, the letter addressed to an editorial commission may be used in materials of the mass media, provided its content is not distorted and the provisions of the Mass Media Law are not violated. The editorial commission is not obliged to answer the letters sent by individuals or to forward these letters onto the state bodies, organisations or officials which are competent to consider them.

As a general rule no one has the right to demand the editorial commission publish work, letters or any other communication, unless otherwise provided by law. For example, a court decision may require that such a decision be published in a particular form of mass media.

7.5 Right of refutation

An individual or an organisation may demand that an editorial commission refute untrue information or attacks on their honour and dignity which were published in such mass media product. If the editorial commission of a mass media product does not possess evidence of the fact that the information it published is true, it shall be obliged to refute this information in the same mass media product.

If an individual or an organisation has submitted the wording of the refutation, this text shall be subject to publication provided it complies with the requirements of the Mass Media Law.

The refutation shall indicate which information is untrue, and when and how it was disseminated by the mass media organisation. A refutation published in a periodically printed publication shall be set up in the same type and featured under the heading "Refutation" and, as a general rule, in the same place where the refuted report or material was placed. The scope of the refutation may not exceed twice as much as the scope of the relevant fragment of the report or material. It is not necessary that the text of the refutation be shorter than one standard page of the typewritten text.

Within one month from the date of receiving the demand for a refutation or its wording, the editorial commission shall be obliged to notify the interested person or organisation in writing of the proposed timeframe for publishing the refutation or of the refusal to refute.

An editorial commission may refuse to make a refutation in the following circumstances:

- if the corresponding demand or the submitted wording of the refutation represents an abuse of the freedom of the press;
- if the corresponding demand or the submitted wording of the refutation contradicts a court decision which has entered into legal force;
- if the corresponding demand or the submitted wording of the refutation is anonymous.
- if the refuted information has been already refuted by somebody in the mass media product;
- if the demand for a refutation or the submitted wording was received by the editorial commission after one year of the date the refuted information was published in the mass media product.

7.6 Right to an answer

An individual or organisation, about whom a mass media product has printed untrue information or information which infringes the rights and lawful interests of such person or organisation, shall have the right to give an answer (commentary or retort) in the same mass media product. Based on the court practice, such right to an answer arises not only in case of an incomplete or inaccurate provision of information, but also when a person believes that expressed judgment or opinion affects his/her rights and legitimate interests¹⁰.

The answer to the reply shall be featured in at least the next issue of the mass media product. This rule shall not extend to editorial commentaries.

¹⁰ Resolution of Federal Arbitration Court of the Eastern Siberian District dated 22 December 2011 case No A58-1907 / 11

8. RIGHTS AND OBLIGATIONS OF JOURNALISTS

8.1 Statutory rights and obligations

The Mass Media Law defines a **journalist** as *a person who edits, creates, collects or prepares materials for the editorial commission of a mass media product and has employment or other contractual relations with the editorial commission or is authorised to carry out such activity by it.*

The Mass Media Law establishes the following **core rights** of journalists:

- to search for, inquire, receive and disseminate information;
 - to visit state bodies and organisations, enterprises and institutions, public associations or their press offices;
 - to be received by officials in connection with their inquiry;
 - to get access to documents and materials, with the exception of their parts containing information comprising a state, commercial or any other legally-protected secret;
 - to copy, publish, announce or reproduce by any other method documents and materials;
 - to make recordings with the use of audio and video equipment, photography and cine-photography, except for in cases provided by law;
 - to visit specially protected places of natural disasters, accidents and catastrophes, mass disorders and mass gatherings, and also localities where a state of emergency has been declared;
 - to attend meetings and demonstrations;
 - to verify the authenticity of information they have received;
 - to set out their personal judgments and assessments in reports and materials intended for dissemination in their name;
 - to refuse to prepare in their name any materials inconsistent with their convictions;
 - to remove their signature from a report or materials whose contents have been distorted, in their own opinion, in the process of editorial preparations or to ban or stipulate in any other way the conditions and nature of using this material;
 - to disseminate materials they have prepared in their name, under a pseudonym or without any signature.
-

The Mass Media Law also establishes the **main obligations** of journalists:

- to observe the statutes of the editorial commission with which they have employment relations;
- to verify the authenticity of the information they supply;
- to respect the wishes of a source as to the confidentiality of that source, and as to the attribution of quotes, being made public for the first time;
- to preserve the confidentiality of information and/or its source;
- to receive the consent of an individual or his/her lawful representatives (except for cases when it is in the public interest) to publish in a mass media product information on his/her personal life;
- to inform individuals and officials of audio and video recording, photography and cine-photography when receiving information from them;
- to inform the editor-in-chief about possible court cases and other claims envisaged by law in connection with the publication of the communication or materials which he/she prepared;
- to decline the assignment given to them by the editor-in-chief or editorial commission, if its fulfilment involves the infringement of the law;
- to present as soon as required the identity card issued by their editorial office or any other document that certifies their identity and rights, during their professional activity;
- to observe the prohibition to carry out pre-election campaigning or campaigning in connection with a referendum during their professional activity.

In their professional activities journalists are obliged to respect the rights, lawful interests, honour and dignity of individuals and organisations.

The publication of materials prepared with the **use of hidden audio and video recording, photography and cine-photography** shall be allowed in the following cases:

- if this does not infringe constitutional human and civil rights and freedoms;
 - if this is necessary to protect public interest and if measures have been taken to prevent the possible identification of third persons;
 - if the recording is permitted by a decision of a court.
-

In addition to the rights of journalists, the **Mass Media Law also prohibits journalists from abusing their rights**. Therefore, the rights of journalists shall not be used to conceal or falsify publicly important information, spread rumours under the guise of authentic reports, or collect information in favour of a third party which is not a mass media organisation. For example, if a journalist is in breach of his/her obligations, an interested party would have a right to demand refutation of statements damaging to its business reputation, unless a journalist who disseminated such statements proves that the information published is true¹¹.

Journalists are **forbidden to use their special rights to spread information to discredit** an individual or particular category of individuals exclusively on account of gender, age, race, nationality, language, religion, profession, place of residence, work, or political conviction.

The **professional status of journalists** established by the Mass Media Law shall extend to:

- staff workers of the editorial commission engaged in editing, writing, collecting or preparing communications and materials for newspapers with a large circulation and other mass media products which are distributed exclusively within one enterprise (association), organisation or institution;
- authors who are not connected with the editorial commission by employment or other contractual relations but are recognised by it as its freelance authors who fulfil the editorial commission's assignments.

A representative office of a foreign mass media organisation may be set up in the Russian Federation with the permission of the Ministry of Foreign Affairs of the Russian Federation, unless otherwise provided for in an international treaty concluded by the Russian Federation.

Foreign correspondents must be accredited by the Ministry of Foreign Affairs of the Russian Federation.

8.2 “Soft law” rights and obligations

Apart from statutory rights and obligations there are also certain “soft law” rights and obligations provided by the Code of Professional Ethics of Journalists (“**Code**”) which was adopted by the Congress of Journalists of Russia on 23 June 1994 and which is publicly available on the website of the Union of Journalists of Russia.¹²

The code states that journalists are obliged to **act on the basis of the principles of professional ethics** laid down in the Code, and their acceptance, approval and compliance with it is a precondition for membership of the Union of Journalists of Russia.

¹¹ Resolution of the Federal Arbitration Court of the Central District dated 28 June 2004 No A14-4520-03 / 125/21

¹² http://www.rujournalists.ru/about/code_of_professional_ethics_of_the_russian_journalist.php

According to the Code, a journalist shall **obey the laws of his/her country**, but as regards the performance of professional duties, he/she shall recognise the jurisdiction of his/her colleagues only, rejecting any pressure and interference from the government or any other third party.

A journalist disseminates and **comments only on information which he/she is convinced about** and the source of which is well known to the journalist. A journalist shall avoid spreading information which may damage anyone due to its incompleteness or inaccuracy; it is forbidden to spread information known to be false. Journalists shall also avoid concealing information which is of public interest.

A journalist is obliged to clearly **separate facts from opinions** in his/her reports, versions or suggestions, at the same time he/she is not required to be neutral. A journalist shall not use illegal and unworthy methods of obtaining information.

A journalist should **regard as a serious professional offence** any deliberate misrepresentation, defamation, or the receipt of payment for spreading false information or concealing the truth; a journalist shall not accept, directly or indirectly, any fees from third parties to publish materials or opinions of any kind.

A journalist should **keep the confidentiality of the source** of information received in confidence. No one can force him/her to disclose such source. The right to anonymity may be violated only in exceptional cases where it is suspected that the source has consciously distorted the truth, and when mentioning the name of the source is the only way to avoid serious and imminent harm to people.

A journalist should **be fully aware of the danger of restrictions, harassment and violence**, which can be triggered by his/her activities. In performing his/her professional duties a journalist should counteract extremism and the restriction of civil rights on any ground, such as gender, race, language, religion, political or other opinions, as well as social and national origins.

Only the **protection of public interest** may justify journalistic investigations which constitute the alleged interference in the private life of people. Such interference restrictions shall be rigorously observed when it comes to people placed in medical and similar institutions.

A journalist should consider his/her professional status incompatible with holding positions in organs of governmental, legislative or judicial power, as well as in the governing bodies of political parties and other politically focused organisations. **The combination of journalistic and advertising activity is ethically unacceptable.**

A journalist's professional activity stops the moment he/she takes up a weapon in his/her hands.

A journalist should respect and defend the rights of his/her colleagues and **observe the rules of fair competition**. He/she should also respect copyright rules; plagiarism is unacceptable. When using in any way the work of his/her colleagues, the journalist should refer to the name of the author.

A journalist may refuse an assignment if its fulfilment violates one of the abovementioned principles.

8.3 Status of a blogger

Recent amendments to the Federal Law 'On Information, Information Technologies and the Protection of Information' ("**Law On Information**") has introduced special regulation on the activities of bloggers.

Under the Law On Information owners of websites and/or webpages that are visited by more than 3,000 users daily are considered bloggers and such bloggers must observe legislative requirements. In general, **a blogger should observe the rules of publishing information** established by the Mass Media Law and legislation on elections and referenda. Owners of a website which is registered as a mass media product in accordance with the Mass Media Law are not considered bloggers. The Law On Information also provides that Roscomnadzor maintains a special register of websites with more than 3,000 visits per day.

In particular, a blogger should refrain from using the website or webpage to commit crimes, to disclose information considered a state or other secret protected by law, to disseminate materials containing public calls to carry out terrorist activities, public justifications of terrorism, other extremist materials, materials promoting pornography, the cult of violence or cruelty, or materials containing taboo words.

A blogger should also verify the truthfulness of information he/she has placed in the blog and immediately delete incorrect information. It is prohibited to use the blog to disseminate deliberately incorrect information under the guise of correct information.

Responsibilities of bloggers introduced by the new law are quite broad. The obligation to verify information and comply with the legal regime of information with restricted access may often cause difficulties in practice. For example, information published by Internet users may potentially violate the legal regime on confidential information and personal data protection laws¹³, restrictions on publishing information discrediting honour, dignity and business reputation¹⁴ or information that

¹³ Ruling of the Moscow City Court dated 28 February 2012 case No 33-6196

¹⁴ Appeal ruling of the Supreme Court of the Chuvash Republic dated 17 March 2014 case No 33-894 / 2014

can be reckoned as the actions of an extremist nature.

A blogger should refrain from publishing information on an individual's private life in violation of effective legislation. It is also prohibited to use the blog for the purposes of defaming an individual or a group of individuals on the basis of gender, age, race or national identity, language, religion, profession, place of residence or place of employment and in connection with political views.

A blogger shall have the following rights:

- to search for, inquire, transfer and disseminate information in accordance with Russian legislation;
- express his/her personal views on the website or webpage under his/her name or nickname;
- place on his/her webpage or website materials of other users provided such placement does not violate the legislation of the Russian Federation;
- place advertisements for a fee on his/her webpage or website.

A blogger should place on the webpage or website his/her surname and initials and an email for sending legally important messages.

As clarified by the Supreme Court,¹⁵ if commentaries on an online media website which is registered as a mass media product are placed without prior moderation (e.g. on the forum of the readers of such online media) such mass media shall not be liable for such commentaries. At the same time, if a mass media product receives a claim from the state authority that such commentaries constitutes a violation of the law, the mass media product should delete or moderate such commentaries.

9. LIABILITY OF JOURNALISTS

The Mass Media Law provides specific **grounds for releasing mass media organisations from liability** for publishing untrue information. The editorial commission, editor-in-chief and journalist shall bear no liability for publishing untrue information that damages the honour and dignity of an individual or an organisation, infringes the rights and lawful interests of individuals or causes harm to the health and/or development of children or represents an abuse of the freedom of the press and/or the rights of a journalist if:

- this information is available in an obligatory message;
- this information is received from news agencies;

¹⁵ Decree of the Plenum of the Supreme Court of the Russian Federation dated 15 June 2010 No 16 "On the practice of application by the courts of the Law of the Russian Federation "On the Mass Media" (item 23)

- this information is contained in a reply to an inquiry in the materials of the press-services of state authorities, organisations, institutions, enterprises, and public associations;
- this information is a literal reproduction of fragments from the speeches of the delegates to conferences, public associations or officials of state authorities, organisations and public associations;
- this information is to be found in the author's works that go on air without preliminary recording or in texts not subject to editing in accordance with law;
- this information is a literal reproduction of reports and materials or of their fragments disseminated by other mass media products (save for certain cases of disseminating information about minors), which can be ascertained and brought to liability for a given breach of legislation of the Russian Federation on the mass media.

10. CRIMINAL LIABILITY

Below we have summarized the main information on the criminal offences which may affect journalistic activity. The list is not exhaustive and depending on circumstances other provisions of the Criminal Code may be also applicable.

ARTICLE OF THE CRIMINAL CODE OF THE RUSSIAN FEDERATION	PENALTY
Article 128.1. Libel	
<p>Libel means intentional distribution of false information discrediting the honor, dignity or reputation of another person using mass media;</p>	<p><u>Fine</u>: up to RUB 1 million or up to one year's salary/income; or <u>compulsory works</u> for up to 240 hours.</p>
<p>Libel about the fact that the person suffers from diseases that pose a danger to others, as well as libel together with the accusation of committing sexual offenses;</p>	<p><u>Fine</u>: up to RUB 3 million or up to three years' salary/income; or <u>compulsory works</u> for up to 420 hours.</p>
<p>Libel together with the accusation of the commission of a serious crime.</p>	<p><u>Fine</u>: up to RUB 5 or up to three years' salary/income; or <u>compulsory works</u> for up to 480 hours.</p>

Article 137. Violation of privacy	
<p>Illegal collecting or dissemination of information about the private lives of individuals if it is personal or family secret, without his/her consent;</p>	<p><u>Fine</u>: up to RUB 200,000 or up to 18 months salary/income; or <u>compulsory works</u> for up to 360 hours; or <u>corrective works</u> for up to 1 year; or <u>mandatory works</u> for up to 2 years with prohibition to hold certain position or engage in certain activity for up to 3 years or with arrest for up to 4 months or with imprisonment for up to 2 years.</p>
<p>Illegal dissemination in mass media or through the Internet of information about the personality of underage victim (up to 16 years old) or information describing his/her physical sufferings or emotional distress that caused harm to physical/mental health or that has serious other consequences.</p>	<p><u>Fine</u>: from RUB 150,000 to RUB 300,000 18 months' to 3 years' salary/income; or <u>prohibition to hold certain position</u> or engage in certain activity for period from 3 to 5 years; or <u>mandatory works</u> for up to 5 years with prohibition to hold certain position or engage in certain activity for up to 6 years; or <u>imprisonment</u> for up to 5 years with prohibition to hold certain position or engage in certain activity for up to 6 years.</p>
Article 146. Breach of copyright or neighboring rights	
<p>Plagiarism causing major damage to an author or another right holder.</p>	<p><u>Fine</u>: up to RUB 200,000 or up to 18 months' salary/income; or <u>compulsory works</u> for up to 480 hours; or <u>corrective works</u> for up to 1 year; or <u>arrest</u> for up to 6 months.</p>

Article 205.2. Public calls to terrorist activity or public justification of terrorism by using mass media	
Public justification of terrorism means a public statement recognizing of the ideology and practice of terrorism as legitimate, or a claim that such ideology shall be followed and supported.	<u>Fine</u> : from RUB 300,000 to RUB 1 million or from 3 to 5 years' salary/income; or <u>mandatory works</u> for up to 5 years with prohibition to hold certain position or engage in certain activity for up to 5 years; or <u>imprisonment</u> for up to 7 years with prohibition to hold certain position or engage in certain activity for up to 5 years.
Article 280. Public calls to extremist activity	
Public calls to extremist activity using mass media or the Internet.	<u>Mandatory works</u> for up to 5 years with prohibition to hold certain position or engage in certain activity for up to 3 years; or <u>imprisonment</u> for up to 5 years with prohibition to hold certain position or engage in certain activity for up to 3 years.
Article 280.1. Public calls to actions violating territorial integrity of the Russian Federation using mass media or the Internet	
Public calls to actions violating territorial integrity of the Russian Federation using mass media or the Internet.	<u>Compulsory works</u> for up to 480 hours with prohibition to hold certain position or engage in certain activity for up to 3 years; or <u>imprisonment</u> for up to 5 years with prohibition to hold certain position or engage in certain activity for up to 3 years.
Article 282. Incitement of hatred or enmity or humiliation of human dignity	
Actions aimed to incite hatred or enmity or humiliation of human dignity with reference to gender, race, nationality, language, origin, or religion, together with membership of a particular social group created via mass media or the Internet.	<u>Fine</u> : from RUB 100,000 to RUB 300,000 or 1 -2 year's salary/income; or with <u>prohibition to hold certain position</u> or engage in certain activity for up to 3 years; or <u>compulsory works</u> for up to 360 hours; or <u>corrective works</u> for up to 1 year; or <u>mandatory works</u> for up to 4 years; or <u>imprisonment</u> for the same period.

Article 354. Public calls to aggressive war made with usage of mass media	
Public calls to aggressive war made with usage of mass media.	<u>Fine</u> : from RUB 100,000 to RUB 500,000 or 1 to 3 years' salary/income; or <u>imprisonment</u> for period up to 5 years with prohibition to hold certain position or engage in certain activity for up to 3 years.
Article 354.1. Rehabilitation of Nazism	
Denial of the facts established by the verdict of the International Military Tribunal for the trial and punishment of the major war criminals of the European Axis countries, the approval of the offenses established by the said judgment, as well as the spread of false information on the activities of the Soviet Union in World War II, committed with usage of mass media.	<u>Fine</u> : from RUB 100,000 to RUB 500,000 or 1 to 3 years' salary/income; or <u>mandatory works</u> for up to 5 years; or <u>imprisonment</u> for the same period with prohibition to hold certain position or engage in certain activity for up to 3 years.

11. LIBEL

11.1 Criminal law aspect

Libel is a criminal offence. Libel means intentional spreading of false information discrediting the honor, dignity of reputation of another person. Article 128.1 "Libel" of the Criminal Code is relatively new, earlier liability for libel was described in abolished Article 129. But the wording of these articles is similar, and therefore it is reasonable to assume that courts will follow previous practice and understanding of libel. In particular, "spreading" was understood by the Criminal Code as communication of information to one or more persons other than the claimant in written, oral, or video form. The Criminal Code was read to mean that "disseminating deliberately false information" means that the speaker knows the information is false or that it could be false. The Criminal Code provided that the statement itself must be capable of defamatory meaning, and was read to require a statement of a fact evidencing that the subject of the publication is in breach of the law or of any moral values. This required that the sued-upon statement had to be specific and contain factual statements capable of being verified.

11.2 Civil law aspect

Defamation (distinct from libel) is a civil wrong, not a criminal offence. The definition of defamation is broader than that of libel: a defamatory statement is a statement "discrediting the honor, dignity or business reputation" of a citizen made in the mass media.

The civil law is designed to protect persons against defamation under the heading of "protection of freedom, dignity and business reputation" (Art. 152 of the Civil Code of the Russian Federation). Article 152 of the Civil Code provides as follows: "a person has the right to demand in court the refutation of

communications defaming his honour, dignity, or business reputation, unless the person who disseminated of such communications shows that they correspond to reality.” The rules of Article 152 are also applicable to protection of the business reputation of a legal entity. There are cases on protection of freedom, dignity, and business reputation which are heard by commercial courts of the Russian Federation. The courts are mindful of the right of the mass media to fair comment, as provided by the Mass Media Law, so many claims are unsuccessful, on the basis that the statements in question are either true or within the protection for fair comment.

In *Alliance Group v. Publishing House of Rossiskaya Gazeta* (2004), the publicly traded Alliance Group filed a claim, asking the court to rule the publication of an article to be false and discrediting its honour, dignity, and business reputation. The article in the newspaper *Rossiskaya Gazeta* said that Alliance Group, using “dodgy methods of business,” corrupted officials and participated with criminals to the detriment of the Russian economy. The Commercial Court of the city of Moscow found the newspaper liable for defamation and ordered them to publish a retraction of the allegations made in the article. The appellate court reversed that decision and reviewed the case de novo. In its decision, the appellate Federal Commercial Court of the Moscow Region stated that the lower court failed to give sufficient weight to the following points: (1) whether the claimant had proved the allegations made in the article were false; and (2) whether the statements made in the article in fact could be considered “an opinion” of the journalist and thus fall within the definition of fair comment¹⁶.

The Criminal Code and the Civil Code each take the position that in order to constitute a libel, the defamatory statement has to be clear and precise and must make factual allegations, the truth of which is capable of verification.

¹⁶ Decision of the Federal Arbitration Court of the Moscow Region dated 14 October 2004 No. kG-A40/8331-04



CONCLUSION

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CONCLUSION

Over the past few years Russian mass media law has become substantially more regulated. Increasing role of the government in controlling the media has indeed formed a new legislative trend in Russia.

The role of financial regulators has also been increasing as a part of this general trend. Any economy or business related publications that may have potential impact on the financial markets have recently fallen under intense scrutiny of the Central Bank of Russia. The new financial super-regulator has gained significant powers in the context of preventing insider trading and market manipulation, including the right to pierce the “confidentiality shield” and require a journalist or editorial office to disclose the source of information.

At the same time the newly adopted laws and regulations quite often lack precision, particularly when defining the most sensitive subjects of mass media regulation (such as coverage of extremist activities or protection of rights of minors). In the absence of substantially developed and consistent court and regulatory compliance practices, the role of the state authorities in interpretation of laws becomes paramount. This significantly increases the risk of arbitrary application of the legislation by courts and regulatory authorities, which may be affected by the current political agenda.

While the above trend continues to define the landscape of Russian mass media, it is extremely difficult to establish any firm recommendations and set precisely the legal boundaries of conduct for journalists and other professionals in mass media field.

In view of the above, it is extremely important for the journalists in Russia to be very cautious in dealing with any sensitive subjects, either related to politics, economic or social agenda or practically any other matters. To the extent practicable, it is recommended to seek legal advice from the in-house or external counsel prior to any such sensitive publications, in order to minimize related legal risks.



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