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Legal protection of media economics

Abstract: In the context of regulating media economics and main legal areas are media law and intellectual property law. Of course we will extensively discuss the relationship of media economics and intellectual property. On the other hand, in order to fully understand this relationship it is vital to explain the media law and its role in media economics. In legal studies, media law has a special place, as do other cross-sectoral areas such as energy, environment or construction law. Unlike more specialized legal fields such as competition law or copyright law, media law does not start at a particular level of rule-making, such as public international law or constitutional law. Rather, the analysis of legal rules and principles related to specific media events is the main goal of media law. This method involves the analysis and application of legal principles to media-related concerns covering topics as diverse as intellectual property, defamation, privacy rights, freedom of expression, as well as ownership and regulation of media content. Furthermore, because media law involves interactions between various individuals and organizations spanning both sectors, it transcends the classic public-private law distinction. It covers the complex interplay between industry practices, government regulations and individual rights in the media landscape. Media law essentially provides a framework for understanding the legal dynamics governing the media sector, taking into account the particular challenges and complexities present in this rapidly evolving subject. It provides a prism through which lawyers and academics can explore and discuss the complex legal issues arising from the intersection of media and law.

Keywords: media; media economics; intellectual property law; copyright; digitalization; monetization.

The unique and changing nature of the media landscape justifies the development of media law as a distinct interdisciplinary field of study and requires specific academic and practical treatment. The terms "broadcast" and "content providers" are now used interchangeably due to the widespread use of terrestrial television, which once dominated the media landscape. However, with the introduction of cable television in the 1980s and the commercialization and privatization of electronic communications network infrastructure in the EU, the dynamics of media distribution changed dramatically. Broadcasters now had to learn how to access these networks and services in order to distribute their programs effectively. As a result of this change, governments have become involved in controlling access to electronic communications networks such as cable television and telephone networks. With these advances, media law has emerged as a distinct field of study to address the legal challenges arising from the convergence of communication and media technologies. Media law covers a variety of legal issues, including the regulation of media ownership and content, defamation, intellectual property, the right to privacy and freedom of expression. Because of its

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multidisciplinary nature, it integrates ideas from various important fields, including intellectual property law, telecommunications law and constitutional law. Media law offers important guidance to legislators, lawyers and industry stakeholders due to the rapid evolution of media technology and regulatory frameworks. It provides a framework for understanding and negotiating the complex legal issues that arise from creating, sharing and consuming media in the digital age.

Due to the transformation of the Internet into a mass media that can be widely used, the media landscape has undergone fundamental changes and has led to a phenomenon known as "media convergence". The production, distribution and consumption of media materials are strongly affected by this convergence. The democratization of media creation and distribution is an important consequence of the development of the Internet. Through channels such as social media, blogs, and video sharing sites, individuals can now reach large, even global, audiences. In addition, traditional media companies are blurring the lines between traditional and digital media by using the Internet to distribute their content to a wider audience. The Internet's revolutionary impact on media consumption also benefits consumers. Users can enjoy a seamless multimedia experience by accessing a wide range of services and content on one platform or device, such as smartphones or smart TVs. Customers benefit from increased efficiency and convenience through this convergence of services and content. The convergence of streaming services and content delivery is further facilitated by the entry of new players into the media content sector, such as network operators and Internet service providers. This makes it difficult and divisive to distinguish between the distribution of third-party material and the provision of unique content. Content convergence is the combination and integration of various media formats resulting from technical convergence, that is, the distribution of various media contents on a single technological infrastructure. The boundaries between traditional media categories are blurring and new efficiencies are being created through this synergistic relationship between technical and content convergence. To illustrate the convergence of multiple media formats on one platform, consider the example of a news article in an online newspaper that incorporates embedded video clips (broadcast TV) or written commentary (press) in addition to a current affairs podcast (radio) streaming/online service). In addition, the line between established media formats and emerging digital intermediaries is becoming increasingly blurred due to technological advances such as machine-generated speech.

Even with the phenomenon of media convergence, it is important to make a clear distinction between content producers and communication intermediaries - which we often call media in the technological sense of the term - especially when it comes to press and broadcasting. In fact, these trends call for a clearer distinction between the two groups. The distinction between the distribution of third-party information and the provision of original content remains crucial within the current framework of European media law. Many guidelines and regulations clearly recognize this distinction. For example, the Framework Directive and the ADM Directive only use terms such as "editorial responsibility" and "editorial control" to distinguish services that transmit signals over electronic communications networks and content providers [3]. Directives such as the Framework Directive and the AMS Directive contain specific rules describing the legal framework applicable to communication intermediaries and content producers. Examples of directives that emphasize the value of editorial control in deciding how different organizations are regulated are Article 2(c) of the Framework Directive, Article 25 of the AMS Directive and Article 1(1) (c) of the AMS Directive. In addition, the E-Commerce Directive distinguishes between the active creation of content and the passive hosting or transmission of information when discussing the liability of intermediary service

providers. Articles 12-14 of the Electronic Commerce Directive apply only to passive intermediaries; does not apply to organizations that produce or change materials. It is important to understand that in some cases a single company can serve as both an intermediary and a content provider. For example, a company that operates an electronic communications network may also provide broadcasting services. In these situations, the organization's specific activities will be the only activities covered by the regulatory framework, which will differentiate the organization's functions as a network operator and a content provider.

With the increase in the number of non-professional "citizen journalists", the issue of whether journalistic media has different legal protection than other publications has caused much debate in the legal community. A comparison is often made between journalistic media and other content providers that use communication channels to deliver information to a wide audience, but do not follow the legal criteria for journalism in European law, jurisprudence and academic debate. This view, often called "media freedom" or "press freedom", gives special protection to the journalistic media. The importance of professional journalists in educating the public and holding the powerful accountable is recognized with this assurance. It includes legal safeguards such as the right to protect sources, exemptions from certain liability laws and access to information. However, non-professional individuals or organizations providing information but not conforming to the mold of a media outlet may still claim protection of their free speech rights. However, they cannot enjoy the same privileges as the media covering journalism. The different functions and duties of professional journalists in democracies can be recognized by the imposition of different legal standards and regulatory restrictions on their activities. The differences between journalistic media and other content providers are important in shaping the legal and regulatory frameworks that govern the media environment. While recognizing the diversity of sources of information and expression available in the digital age, it reflects broader societal ideals and priorities regarding the importance of professional journalism in upholding democratic norms. Many jurists, especially those in the United States, disagree with the general view in European law and research, rejecting the idea that some content providers – such as broadcasters or the press of television companies – should be exempted from certain obligations or benefit from special treatment. to others. to other people or companies. Sometimes called the "equivalence model", this view holds that journalists should enjoy the same protections as others exercising their freedom of expression. Within this framework, there are several ways to conceptualize this method. According to some scholars, the "doctrine of neutrality" holds that these rights do not exist because the state must remain impartial when granting special rights to the media. Others support the "press as a model of technology" for institutional media outlets, meaning that the freedom of the press enshrined in the First Amendment to the US Constitution should be understood as every person's "right to use communications technology, not as an exclusive privilege". The United States Supreme Court interpretation of the First Amendment supports this view. While he recognizes the function of the press as a check on government power, he consistently rejects the idea of giving the institutional press more constitutional rights than other speakers. As it is said in Mills v. Alabama case: The free press has been a mighty catalyst in awakening public interest in governmental affairs, exposing corruption among public officers and employees and generally informing the citizenry of public events and occurrences [4]. This view is reinforced by UK laws such as section 10 of the Contempt of Court Act 1981, which gives publishers the right to protect the confidentiality of their sources. This clause emphasizes the idea that protecting jour-

nalistic sources is a fundamental priority for all publishers, as opposed to a luxury reserved for working journalists.

Regarding media protection provisions, experts in the US and Europe have taken a different position than the legislators and courts in continental Europe. They argue that difficulties in precisely defining or recognizing the media should not be an excuse to downplay certain media protection provisions. These articles are press clauses found in various constitutional provisions, including, for example, the First Amendment to the US Constitution, Article 21(2) of the Italian Constitution, Article 5(1)(2) and Article 25(1) of the German Basic Law. Provisions on the media in international documents such as the Belgian Constitution as well as Article 17 of the Swiss Constitution and Article 11, paragraph 2 of the Charter of Fundamental Rights of the EU (CHFRUE) express a clear recognition of the role and importance of the media in democratic societies. Furthermore, secondary EU law that recognizes the value of media freedom and exempts journalists from certain legal requirements reinforces this gap. Journalists, for example, are exempt from copyright laws (Article 5(3)(c) of the EU Copyright Directive) and data privacy laws (Article 9 of the Data Protection Directive) under EU directives. These exceptions show that the objectives of media protection provisions go beyond the protection of freedom of expression. Most importantly, the presence of special provisions for the protection of the media in legal and constitutional frameworks indicates a wider recognition of the special role and responsibilities of the media in society. These provisions uphold the value of media freedom and provide legal protection to ensure objectivity and honesty in reporting. As a result, they are essential for protecting democratic values and promoting a free and diverse media environment.

As we see, media law focuses on ethical and general matters which are non-financial and it means that in media economics, subjects of this relationship are not interested in protection of their rights which are protected by media law. It can sound crucial, but in reality production companies try to profit from information which they demonstrate or sell. I mean, they do not issue the journalists' rights and etc. that is why i mentioned above that in some countries has approach that media law can not be legal sector separately it exists in constitution but on the other hand mentioning that right in constitution, does not mean that it is the part of constitutional law. Thanks to European Union Directives which are mentioned above, we can see that right as freedom of expression is the objective of media law. As a matter of fact in European media law speeches are divided into 3 categories [5]:

1. Political speech - Following the example set by the United States and also observed in European countries like Germany, courts often afford a "preferred position" to "political speech," a concept stemming from arguments surrounding democracy. This prioritization has significant implications for the level of protection afforded to such speech, and courts have developed specific parameters to guide their decisions in these cases. When a court determines that a particular case involves political speech, it typically exercises a narrow margin of appreciation, meaning it intervenes minimally and allows for a high degree of freedom of expression. Additionally, the court may take on the responsibility of establishing the facts of the case and apply a rule based on a European standard. Several criteria are commonly applied by the court when assessing whether a case falls within the realm of political speech:

a) Relevance to Public Debate: The court considers whether the speech in question pertains to issues of public concern or interest, such as political, social, or economic matters.

b) Contribution to Democratic Discourse: The court evaluates the extent to which the speech contributes to the democratic process by fostering debate, facilitating the exchange of ideas, and enabling informed decision-making by citizens.

c) Importance of Free Expression: The court assesses the significance of allowing robust and uninhibited expression on matters of public importance, recognizing that such expression is essential for the functioning of a democratic society.

d) Potential for Harm: The court weighs any potential harm that may result from restricting or censoring political speech against the societal benefits of protecting free expression.

By applying these criteria, courts aim to strike a balance between safeguarding the fundamental right to freedom of expression, particularly in the context of political discourse, and addressing legitimate concerns regarding public order, national security, and individual rights. This approach reflects a commitment to upholding democratic principles while navigating the complexities of modern society and ensuring the protection of fundamental rights and liberties.

2. Artistic speech - The Court extends protection to artistic speech, recognizing its role not only in engaging in political discourse but also in challenging or questioning prevailing moral and religious norms. Artistic expression has historically faced opposition from authorities and societal conventions, as seen in examples such as the condemnation of German Expressionist paintings by the Nazis. Conflicts regarding restrictions on artistic speech often arise from clashes with religious and moral values held by the national or local community. In cases brought before the European Court of Human Rights in Strasbourg, such disputes encounter the broad margin of appreciation granted to Member States since the landmark Handyside decision. Consequently, local moral sensibilities that are "offended, shocked, or disturbed" by certain artworks tend to prevail in practice. A notable example is the controversy surrounding paintings by Swiss artist Müller, which depicted scenes of sodomy, fellatio, and bestiality as part of a group exhibition. These paintings were seized on the opening day of the exhibition following complaints from visitors, including a minor. In its decision-making process, the Court begins by considering fundamental principles. It acknowledges the importance of balancing the right to freedom of artistic expression with the need to respect societal values and standards. However, the Court's approach often errs on the side of caution, particularly when faced with expressions that challenge prevailing norms. This tension underscores the ongoing struggle to reconcile the protection of individual rights with the preservation of social order and cultural values. The Court began its decision with a consideration of principle:

'Those who create, perform, distribute or exhibit works of art contribute to the exchange of ideas and opinions which is essential for a democratic society. Hence the obligation on the State not to encroach unduly on their freedom of expression.' [1].

3. Commercial speech - 'Information of a commercial nature' has been covered by Article 10 protection in several judgments decided by the Court. This was acknowledged in great detail in the Barthold 4 and Markt intern Verlag instances (addressed infra at paragraph 45 et seq.), but there was also mentioned that there is a wide margin of appreciation. To use the language from the Markt intern Verlag decision:

“Such a margin is essential in commercial matters, and, in particular, in an area as complex and as fluctuating as that of unfair competition.” [2]

If not, the Court would have to go back and reevaluate all of the case's facts and circumstances. The Court's evaluation must be limited to the issue of whether the national measures are reasonable and, in principle, justified.

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Правовая защита экономики СМИ

Аннотация: Защита экономики СМИ ориентирована на сохранение производительности и, конечно же, демократии. Здесь мы являемся свидетелями косвенной точки соприкосновения закона об интеллектуальной собственности и закона о СМИ. Потому что нам нужна защита интеллектуальной собственности в медиаэкономике: 1. защита объектов интеллектуальной собственности в медиаэкономике; 2. мотивация авторов, владельцев и продюсеров производить больше и дифференцировать мир искусства и науки. Для поддержания продуктивности медиаэкономики необходим сильный защитный механизм. В этом случае мы должны применять закон о СМИ, особенно в сфере телерадиовещания.

Ключевые слова: медиа; медиаэкономика; право интеллектуальной собственности; авторское право; цифровизация; монетизация.

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