



**RIGA  
GRADUATE  
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LAW**

# **The legality of the governmental control of Russian media and its effect on media business.**

## **BACHELOR THESIS**

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### **DECLARATION OF HONOUR:**

I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

(Signed) .....

RIGA, 2019

## **Table of contents:**

<b>Abstract</b> .....	<b>3</b>
<b>Introduction</b> .....	<b>4</b>
<b>Part 1. Legal analysis of media regulation</b> .....	<b>5</b>
1.1 Mass Media Law of 1991 .....	7
1.2 Restrictions of the dissemination of information .....	8
1.3 Internet regulations .....	10
1.4 Information security doctrine.....	12
<b>Part 2. Governmental presence and influence on the functioning of different media sources</b> .....	<b>13</b>
2.1 Federal audio-visual broadcast.....	14
2.2 Regional television .....	16
2.3 Digital media .....	19
2.4 Press .....	21
<b>Part 3. Problems and perspectives for the business development</b> .....	<b>24</b>
2.1 Uncertainty of the rules.....	25
2.2 Entry Barriers.....	25
2.3 State financing.....	26
2.4 Competition.....	27
2.5 Lack of judicial protection .....	28
2.6 Quality of the content.....	29
<b>Conclusion</b> .....	<b>29</b>
<b>Appendix</b> .....	<b>31</b>
Interview 1.....	31
Interview 2.....	35
<b>Bibliography</b> .....	<b>39</b>
Primary sources.....	39
Secondary sources.....	41

## **ABSTRACT**

This paper is intended to provide an analytical understanding of how the state policy and legislation in Russia influences the media business. The importance of the research is determined by the actuality of the problem due to its influence on the societal well-being in Russia and the need to evaluate the prospects for the future development of the industry.

The work is divided into three parts: (1) The analysis of the statutory law that regulates the main activities of the media outlet; (2) The analysis of the media landscape in Russia and determining the scope of the governmental interference; (3) The analysis of the main problems in the media industry in Russia that were identified.

The paper notes and concludes that the legislative restrictions, which are commonly justified with the necessity of the social or national security, do not necessarily imply the distortion of the functioning of Russian media, although the restrictive trends in the recently accepted legislation are increasing the limitations and threats to the media activities. The governmental interference in the media business is represented in the selective application of laws, threats of criminal prosecution both on organizational and personal level, that is used to exert pressure over media outlets has led to the situation of the eventual financial control of the major media by the state, state-related companies or the personas with close ties to the administration.

The overall conclusion is that the problems that threaten the development of the media industry are aggravated by the state intention to gain complete control over the information sphere. The market share controlled by the state combined with trends in legislation and realities of the law enforcement in Russia lead to overall decline of mass media as a business and consequently affect the society as a whole.

## INTRODUCTION

According to Habermas, the access to reliable information and the opportunity to discuss it form not only the public sphere, but also an effective democratic society<sup>1</sup>. Thus, in his idealistic concepts mass media plays a role of the regulator of public life and as a special platform for the formation of public opinion.

However, as it will be evident from the following work, in Russian reality the character of power is more reminiscent of Foucauldian concept of Panopticon with an only one-sided transparency and the immanent presence of implied observation<sup>2</sup>. A centralized authority of Kremlin administration arranges the system of surveillance over the media in such way that it is difficult or even impossible to tell about both what is being under its supervision due to its extensive powers and what can bypass their control, thus, creating an environment that is resembling round arrangement of the prison cells around the warder's booth.

The Russian media landscape from the legal-political point represents a successive mixture of the Soviet governing approach and a disguise of the functioning democratic state employed to evade an open confrontation with the human rights protection agencies. However, this disguise in the recent years seems to fade away gradually, as the government's actions become more rigid, and the official explanation of their intentions clearly mismatches the reality. The close examination of the media business, the laws that regulate it and the actual application of those laws reveal that the state claims regarding the freedom of press in Russia are far from reality. Indeed, during the past two decades a number of major independent media outlets were either closed or bought by pro-Kremlin structures or persons, or, at least, experienced pressure over their editorial policy<sup>3</sup>. The issues of censorship and state control over information sphere in Russia are a frequent subject of academic research<sup>4</sup>. Despite the constitutional proclamation of freedom of media and prohibition of censorship, the state assertion of power results in de facto censoring policies and control over media industry. The interference in the media business is displayed in various ways, such as the increasing restrictions and surveillance policies of the new legislative initiatives, an abuse of judicial and executive powers and direct financial control of the mainstream media sources. The importance of the following work is determined by the need of evaluation of the legislative policy and government's actions from the business perspective.

The purpose of the following work is to examine the effects that this kind of policy has on the media business. The issues of legality of the application of law in the media industry are deemed to be the precondition to the threats, that the market is facing at the moment. The work is structured in three parts. The first chapter is dedicated to the analysis and interpretation of the laws that regulate activities of media outlets. The study of the main aspects of the media legislation is presented in the chapter's subparts, which include: the analysis of basic law for

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<sup>1</sup> Jürgen Habermas, *The structural transformation of the public sphere: An inquiry into a category of bourgeois society* (Cambridge: Polity, 1989).

<sup>2</sup> Michel Foucault, *Discipline and Punish: the Birth of the Prison* (New York: Random House, 1975).

<sup>3</sup> "12 редакций за пять лет Разгоны, блокировки, увольнения главредов: как власть реформировала рынок СМИ", *Meduza*, 17 мая 2016, <https://meduza.io/feature/2016/05/17/12-redaktsiy-za-pyat-let>

<sup>4</sup> See, for instance: Koltsova, *News Media and Power in Russia* (London: Routledge, 2006), Zasoursky, *Media and Power in Post-Soviet Russia* (London: Routledge, 2016)

media business, Mass Media Law of 1993, the restrictions on the materials produced by media outlets, the regulation of the Internet and the Information Security Doctrine of Russia. The second chapter provides the evidence of the state influence on the work of major media resources. The structure of the chapter is stipulated by the need to differentiate between different types of media. The chapter subparts are dedicated to (1) terrestrial audio-visual broadcasters, (2) regional television, (3) digital media and (4) printed media. The last chapter enumerates and discusses the problems of the Russian media industry, based on the findings presented in the two previous chapters. In the concluding part the author derives the key findings and suggests questions for further research.

The research and analysis are focused on the mass media segment of the media industry (e.g. audio-visual broadcasters, digital media and press) and excludes from the study such participants of the system as advertising agencies and news agencies. The predominant part of the work is dedicated to the examination of the television and internet media, as these are the most significant segments of the market, both in popularity and the revenues. The legal analysis of the state regulations mainly considers the interpretation of the legislation in the context of current political and business environment. Due to constraints on the scope of the work, in-depth analysis of the case law is left outside the subject of examination. The reasons behind such a limitation are the amplitude of the judicial practice, the complexity of the Russian judicial registry system and limited accessibility of the sources. Moreover, it has to be mentioned, that in the context of the work, the terms “government”, “state”, “Kremlin administration” are used as interchangeable and all refer to the group of people that practically have the main power in the country and decide on the policy of Russia.

The resulting research question to be answered is: how does the legislative policy and state intervention in media business affect media industry in Russia?

## **Methodology**

To achieve the goals set out above, the methodology used is a combination of legal doctrinal research and empirical research. The analysis of scholarly writings is used for the purpose of the assessment of the statutory legislation and interpretation of the laws in the context of political, economic and business environment. The vast reliance on the empirical research in this work is stipulated by the intention to examine the realities of Russian media system, to see them ‘as from within’, and limit the influence of the intermediaries.

## **PART 1. LEGAL ANALYSIS OF MEDIA REGULATION.**

The legal basis for the functioning of media outlets is provided in the Articles of the Constitution of the Russian Federation. They ensure the freedom of speech, freedom to search, get, transmit, produce and distribute information and the freedom of mass media and prohibit propaganda and

ensorship.<sup>5</sup> The Constitution also provides for the right to use abilities and resources for entrepreneurial and economic activities and prohibits monopolization and unfair competition<sup>6</sup>. The general essential rules for activities of different types of media are governed by the Mass Media Law of 1991.

In terms of the process of formation of legislation in the field of mass information, the major significance is held in the following laws: The Federal Law “On Information, Information Technologies and Information Protection” No. 149-ФЗ dated July 27, 2006 (the Law on Information), and the Federal Law “On the procedure for covering the activities of state bodies in state mass media”. The latter one determines the criterion of “statehood” of the mass media and establishes the procedure for regular press coverage of the activities of state bodies. Other important laws include Law on Advertising (1995), Law on Communications (2004), Law on Information, Anti-Piracy Law (2013). They set rules for media in particular fields.

Apart from these special laws, certain aspects of media activities are regulated by (a) Part 4 of the Civil Code, which is nearly entirely devoted to the field of intellectual property (the most important provision here remains Art. 152 on “Protection of honour, dignity and business reputation”, which is often invoked disputes related to media activities); (b) certain articles of the Criminal Code, e.g. Art 146 on "Violation of copyright and related rights"; (c) the entire Penal Code, which regulates the protection of information security of a person and a citizen (Article 137 "Violation of privacy", Article 138 "Violation of the secrecy of correspondence, telephone conversations, postal, telegraph or other messages" special technical means intended for secretly obtaining information "); and other special legal sources, such as Code of Administrative Offenses, Law "On State Secrets", Federal Law "On Advertising", Federal Law "On the mandatory copy of documents."

In recent years, a lot of legislative changes that extend the restrictions on the dissemination of the information and modify the regulation of the administrative procedures in the media market took place. In 2014 the foreign ownership of media outlets was restricted<sup>7</sup> and the laws that restrict the dissemination information were introduced. This includes the law prohibiting the propaganda of ‘non-traditional sexual relations’, the amendments to Criminal and Civil Codes, that increase responsibility for insulting the feelings of believers, the amendment that outlaws the use of foul language in mass media. Among that, the freedom of media is restricted by the prohibition of publications that constitute ‘extremist materials’ and materials advocating a “cult of violence and cruelty.” Negligence in the distribution of such materials can serve as a basis for criminal prosecution. The supervision over the media outlets and their publications is implemented by the Federal Service for Supervision of Communications, Information Technology and Mass Media, commonly known as Roskomnadzor, which monitors the observance of the prohibitions. It was re-established in 2008 by Resolution number 419, "On Federal Service for Supervision in the Sphere of Telecom, Information Technologies and Mass Communications", which provides the organ with censoring powers over information technologies, telecommunications, electronic media and mass communications. Apart from organizing the work and licensing for tele- and radio- media resources, the agency is responsible for the surveillance over all the mass media for their publications being in compliance with the laws. The procedure for controlling the

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<sup>5</sup> Article 29 of the Constitution of Russian Federation of December 12, 1993

<sup>6</sup> Article 34 of the Constitution of Russian Federation of December 12, 1993

<sup>7</sup> *Russian mass media federal regulation amendments* available at: <http://docs.cntd.ru/document/420225760>. Accessed April 10, 2019

dissemination of illegal information is described in Article 15 of the Law on Information. Roskomnadzor after issuing two warnings within a year has the right to revoke the registry or withdraw a license of a media outlet or block the domain of internet resource without a judicial decision.

The following chapter provides a scrutinized analysis of the legal framework aimed at regulating media activities. For this goal, most relevant rules are grouped in terms of their effect on the functioning of media. The first part focuses on the general rules provided in the Mass Media Law; the second part concerns the legislation restricting the dissemination of information and the third one is dedicated to the most important rules relevant to the activities of the digital media and internet-based resources. The last part of the analysis also includes the overview of the Information Security Doctrine, as this text is deemed to bring light on the overall approach taken by the government for the development of media-related legislation.

## **1.1 Mass Media Law of 1991**

The Media Law of 1991 outlines the main principles of the functioning of media undertakings. Having been introduced almost thirty years ago, it is a compilation of essential rules that regulate all activities of press and Media. The law represents the first effort to develop a modern legal framework for media policy in the newly established democratic society. The period of dramatic historical changes during which the law was drafted lead to it coming out as a “an awkward version of an ideal, a sometimes apolitical formulation of the proper relationship between the media and the state”<sup>8</sup>. In practical terms it appears more as an emblem of newly established freedom of media rather than actual means of implementation of the ideals that this law embodies<sup>9</sup>.

The law requires the registration of a media outlet, and the authorities are limited to an exhaustive list of acceptable reasons to deny it. Thus, official discretion is limited in such matters. The law also provides the government with an ability to de-register a media outlet and close it in case of an “abuse of freedom of media” and the publications violate enumerated prohibitions<sup>10</sup>. Under the Mass Media Law, a media outlet that disregards these content restrictions may be shut down. However, this requires a court order, and an precondition that the media was previously notified with two warnings from an surveillant agency twice within a twelve-month period.

The law also allows for the ownership of a mass media outlet by any ‘state organ’. This reveals the mixed character of the Russian legislative approach which combines the inherent traits of the Soviet system with the attempt to establish a legal framework for the emergence of a proper democratic civil society.

The law regulates relations between "founders," editorial collectives, and publishers. The term ‘founder’ (‘учредитель’) itself is of crucial importance for the understanding of the role of the

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<sup>8</sup> Monroe E. Price, “Law, Force, and the Russian Media”, 13 *Cardozo Arts & Ent. L.J.* (1995), 798

<sup>9</sup> *Ibid.*, 799

<sup>10</sup> Article 4 of Law No. 2124-I of the Russian Federation on Mass Media, 27 December 1991

government may legally take in relation to managing a media source<sup>11</sup>. This legal concept that was developed in the Soviet Union and introduced initially in the 1990 USSR Press Law to replace the state or party control over their own press institutions. The term was transferred to the Russian Mass Media Law. Under Article 7 of this law individuals, associations of individuals, enterprises, organizations, institutions, or state bodies can be founders or co-founders of a media outlet. Foreign citizens or stateless persons not residing in the Russian Federation may not serve as founders. Under Article 8 of the same law, the founder is responsible for submitting the application to register a media outlet. The Mass Media Law reinvented the term, creating essentially a new kind of sponsor, one that acted as an intermediary between the government and the media organization. However, although the provisions that safeguard the editorial freedom are present, the statute only concerns the relationship between journalists and founders. The law says practically nothing about media owners and the possibilities of financiers, both shareholders and informal sponsors, to interfere in an editorial policy of a media outlet.<sup>12</sup>

In 2016 the amendments to provisions of the law which govern the foreign capital of media businesses were introduced<sup>13</sup>. The law outlaws the ownership of and control, direct or indirect (through holding aggregate more than 20 percent stake in the authorized capital) over Russian legal entities with a broadcasting license under Russian jurisdiction. These protectionist measures continue the trend of limiting foreign presence in the information sphere in Russian media, that were seen in the earlier laws on foreign agents<sup>14</sup> and unwanted NGOs<sup>15</sup>. These laws, however, serve solely political interests of the government and are aimed at securing the sovereignty of the political life in Russia<sup>16</sup>.

The Article 4 of the Mass Media law provides the authorities with a right to issue warnings to the editorial board when the 'abuse of the freedom of mass media' occurs. This term includes such outlawed activities as calls for extremist and terrorist activities, the use of obscene language, propaganda of cruelty or information about illegal drugs (all of this is to be described in detail the following part on restrictions of the dissemination of information). Despite the necessity of the provision for securing public order, the specific interpretation of these terms can lead to censorship well beyond what a literal reading of the law suggests.

To sum it all up, the law has general character and there is not a lot of precision in the rules provided: "Clumsy formulations, lengthy recitations, and awkward adjustments of old ways to new political realities could not suffice to ensure the evolution of free press."<sup>17</sup> Combined with the duality of the character of the legislation, this opens a door for the different course of the development. Due to the impact of the fast-growing technological advancements in the

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<sup>11</sup> Yelena Sheftelevich, "The state of the media law in the Russian Federation: a difficult past, an interesting present, an uncertain future", *Touro International Law Review*, [Vol. 12], (2009), 92, available at: <https://www.tourolaw.edu/ilr/uploads/articles/v12/sheftel.pdf>. Accessed April 21, 2019.

<sup>12</sup> Laura Belin, "The Rise and Fall of Russia's NTV", 38 *Stan. J. Int'l L.* 19, (2002), 24

<sup>13</sup> Art 1(3) of the Federal Law "On Amendments to the Law of the Russian Federation" On Mass Media "dated 10.14.2014 N 305-FZ (last revised)

<sup>14</sup> Federal Law of 23.05.2015 N 129-FZ "On amendments of some legislative acts of the Russian Federation"

<sup>15</sup> Federal Law N 121-FZ «On Amendments to Legislative Acts of the Russian Federation regarding the Regulation of the Activities of Non-profit Organisations Performing the Functions of a Foreign Agent»

<sup>16</sup> A. I. Vasilenko, "Adopting of the Foreign Agents Act as a First Stage towards Legal Regulation of Lobbying in Russia," *Perm University Herald Juridical Sciences* 25 (2014): 44-58, available at: <https://heinonline.org/HOL/P?h=hein.journals/permujs25&i=45>. Accessed April 21, 2019

<sup>17</sup> Monroe E. Price, "Law, Force, and the Russian Media", 806



information sphere, a whole series of other laws regulating the activities of the media was predestined to be adopted since the Media Law was passed.

## **1.2 Restrictions on the dissemination of information**

The extension of legislative restrictions of the dissemination of the information is represented in several laws recently accepted by Russian authorities. The areas of regulation include the usage of obscene language, the protection of minors, protecting the feelings of believers, fighting extremism and defamation and prohibiting materials advocating violence and cruelty. These laws are distorting the work of media outlets as their application in practice outlaws the potential topics, information and the means of its presentation for the media publications.

The probably most significant and most popular in terms of the frequency of the evocation are the restrictions stemming from the extensive anti-terrorism legislative policy. The Federal Law “On Countering Extremist Activities” No. 114-FZ from July 25, 2002, is one of the most ambiguous and dangerous laws for the journalists. In accordance with this law, the Federal List of Extremist Organizations and the Federal List of Extremist Materials are formed and maintained by the Ministry of Justice of the Russian Federation. The activities that constitute criminal offence are listed in the Articles 280, 282 and 205(2) of the Criminal Code of Russian Federation. These concern public calls for extremist activity (including actions aimed at violating the territorial integrity of the Russian Federation), incitement of hatred or enmity, as well as abasement of human dignity and public calls for terrorist activities, public justification of terrorism or propaganda of terrorism respectively. The Supreme Court of the Russian Federation has explained that the distribution of extremist materials on a massive scale, can be either administrative or criminal offense, depending on the intent of the perpetrator. Criminal liability under Article 282 of the Criminal Code of the Russian Federation occurs if extremist materials are massively distributed in order to incite hostility or hatred, and also to degrade the dignity of a group of people or one citizen<sup>18</sup>. According to Federal Law N 114-FZ, the term ‘extremist activity’ among all refers to excitation of racial, national or religious strife, public justification of terrorism, propaganda and public display of Nazi attributes or symbolism similar to Nazi attributes or symbolism to the point of confusion, or attributes or symbolism of extremist organisations. The latter clause is of particular interest, as the literal interpretation of it suggests that only public display of the symbols for the propagandist purposes would constitute extremist activity. However, the cases of practical application of the law, which are to be discussed in more detail in the next chapter, show, that Russian judiciaries could interpret it in a different way. The European Commission against Racism and Intolerance in its report for 2019, marks the presence of abuse of anti-extremism legislation in Russia. It concluded, that the federal list of extremist materials is extensive and the number of persecuted for extremist activity is extremely large and is growing every year. Site blocking procedures, including extrajudicial, can be used to

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<sup>18</sup> Postanovlenie Plenuma Verkhovnogo Suda Rossiiskoi Federatsii “O sudebnoi praktike po ugovolnim delam o prestupleniah ekstremistskoi napravlenosti” ot 28 iunia 2011 g., №11. [Russian Federation Supreme Court Law 282, of Jun. 28, 2011], para. 8, available at: <https://rg.ru/2011/07/04/vs-dok.html>. Accessed on April 23, 2019

ensor and suppress dissent<sup>19</sup>. The Presidential Council for Civil Society and Human Rights has disapproved the legislation as well. In the 2018 it issued recommendations, that contained statistics proving the current legislation inefficiency and provided the legislators with the improvement recommendations<sup>20</sup>. Later the same year the law providing for partial decriminalization of Article 282 of the Criminal Code was accepted. It changed the liability to administrative penalty, unless a similar offense was committed earlier within one-year period<sup>21</sup>. The law will surely decrease the number of the criminal trials, but it is unlikely to cancel out the possibilities for the misinterpretation of the reasons for the prosecution by the judiciaries. The legitimacy of the free expression of one's opinion is the basis of democracy, but it is often mistaken by the prosecution for the public calls for illegal activities.

Negligence in the distribution of materials, not necessarily even related to extremism, can serve as a basis for criminal prosecution as well. The implications of the law are very broad and open for interpretation. For instance, a publication about the corruption among the state authorities can be interpreted as an attempt to spark hatred against state officials, or the publication that contains extremist symbolic, even if it is necessary for the illustrative purposes can lead to a penalty<sup>22</sup>.

The laws related to the protection of personal data also restrict the actions of the reporters. The inability to get permission from the institutions or persons to use certain information about them is sometimes necessary produce materials and naming them might also lead to prosecution.

The Federal Law about the language of Russian Federation disallows using the 'words and expressions which are not meeting standards of the modern Russian literary language' in mass media<sup>23</sup>. In 2014 the provision was amended with inclusion of strong language in this rule. Thus, this law, in fact, prohibits any word usage that does not comply with the norms of the modern Russian literary language. However, the clear definition of what these norms are does not exist, nor does the official list of the prohibited words, so the experts determine them at any given time with the help of an "independent examination".

### 1.3 Internet regulations

The Law on Information regulates the basic principles of the right to search, receive and disseminate information, therefore it is the main legal source of the rules applied to digital media. The Internet is generally accepted to be a communication environment where everyone can exercise their constitutional rights to seek freely, to receive, transmit, produce and disseminate information. Indeed, the restrictive trend of recent rulemaking did not bypass the

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<sup>19</sup> ECRI Report on the Russian Federation (fifth monitoring cycle), European Commission against Racism and Intolerance, 2019, available at: <https://rm.coe.int/fifth-report-on-the-russian-federation/1680934a91>. Accessed April 23, 2019

<sup>20</sup> Рекомендации Совета при Президенте Российской Федерации по развитию гражданского общества и правам человека по совершенствованию законодательства о противодействии экстремизму и практики его применения, August 22, 2018, available at: <http://www.president-sovet.ru/presscenter/news/read/4875/>. Accessed April 23, 2019

<sup>21</sup> Federal Law N 519-ФЗ "On amendments to the Article 282 of the Criminal Code of Russian Federation"

<sup>22</sup> Nozima Akhrarkhodjaeva, "Russian Media and Journalists' Dilemma between "Exit, Voice, and Loyalty", *Russian Analytical Digest (RAD)*, Volume 197, 2017, available at: <https://doi.org/10.3929/ethz-b-000170564>. Accessed April 29, 2019

<sup>23</sup> Article 3(9) of the Federal Law N 53-FZ

Internet aspect. The growth of state interest in Internet regulation that began in 2012 with an acceptance of the "Law on Black Lists of Runet"<sup>24</sup>. This law has introduced a number of provisions to other federal laws, which presuppose filtering of Internet sites with the blacklist system and blocking prohibited Internet resources. It contained amendments to the laws "on the protection of children from the information harmful for their health and development" (FZ-436), "on communications" (FZ-126) and "on information, information technologies and the protection of information" (FZ-149). The law initially targeted the website that contains the materials advocating suicide or drug production or abuse and disseminating child pornography. This was further amended to allow blocking 'extremist' materials (according to the Federal List of Extremist Materials comprising prohibited content). Beginning from 2012, Russia maintains a centralized internet blacklist (the "single register") managed by the Federal Service for Supervision of Communications, Information Technology and Mass Media, or *Roskomnadzor*. The reasons for blocking include "extremism", "suicide propaganda", "arousing hostility", "insult to representatives of the authorities", "calls for separatism", "insult of the feelings of the faithful", "propaganda for non-traditional sexual relations" and many others.

Currently one can clearly mark tendencies to increase censorship, providing special services with new powers to control the information space. The most resonant laws in the field of Internet regulation, apart from the above mentioned "Law on Black Lists of Runet" are Federal Law of 05/05/2014 N 97-FZ ("law on bloggers"), Federal Law of 12/28/2013 N 398-Ф3 ("Law on pre-trial blocking of Internet resources"), Federal Law of 07/02/2013 N 187-FZ ("anti-piracy law"). These laws reveal the expansion of the grounds for bringing users and site owners to responsibility in the recent legislation. The "Law on bloggers" was one of the most illustrative examples of an attempts to tighten the control over activities of the people on the internet. This law was accepted as a part of "anti-terrorist package" in 2014. It imposed the same duties and rights as of traditional media on the 'the owner of the site and (or) pages of the site on the Internet, on which publicly available information is placed and access to which during the day is more than three thousand users'<sup>25</sup>. The owners of popular websites, pages in social networks (bloggers) and other resources on the Internet were required to register with the Federal Service for Supervision of Communications, Information Technology and Mass Communications (*Roskomnadzor*). A special registry was made for those purposes. The law proved inefficient and after three years it was annulled it by the Federal Law 276-FZ, which, at the same time, imposed a ban on the use of technologies to bypass government locks (the law on regulation of VPN, anonymizers and search engines).

The anti-terrorist policy of the legislators is further manifested in the laws that govern data protection regime. Recent legislative amendments that extend the state's abilities of data retention: Federal Laws 374-FZ and 375-FZ, commonly known as Yarovaya laws, obliged the telecommunications and Internet companies to maintain the copies of all contents of communications for six months and disclose that, as well as the metadata and "all the information necessary for decoding" to the authorities on the request and without court order. These laws have provoked a lot of criticism and public discontent in relation to the incompatibility with the human rights and privacy, and the constitutionality of such an

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<sup>24</sup> Article 3(2) of the Federal Law N 139-FZ "Law on Black Lists of Runet", amending Article 15(1) of the Federal law "On Information, Information Technologies and Protection of Information" N 149-FZ

<sup>25</sup> Article 1(2) of the Federal Law N 97-FZ

interference in the personal life of the citizens was questioned<sup>26</sup>. Providing nearly full access to the data of the users of social media, messenger services and traditional telecommunication was officially claimed to be intended to help regulating illegal activities, mainly fighting extremism or preventing terrorist attacks, require companies to hand over encryption keys.

Nowadays the situation has escalated with a distinct case for discussion being the acceptance of the bill on "On an Autonomous Internet System"<sup>27</sup>. The law provides for a creation of a Russian Internet resource that would allow it to be operable in case if the connection of Russian telecom operators to foreign Internet servers is impossible. The legislators have explicitly justified the initiative with the aggressive nature of the US National Cyber Security Strategy adopted in September 2018<sup>28</sup>. A national domain name system will be created and special traffic routing rules will be developed, which is supposed to prevent the potential withdrawal of .ru and .pf domains and Russian own routing system is to protect blocks of IP addresses from the withdrawal from Internet providers. The protectionist nature of the law does not seem to justify fully such a costly project. Apart from the officially stated reasons, the purposes of the law may include the aim of gaining complete control over internet space, another opportunity for budget embezzlement, a backup for oppressing possible mass protests and social unrest and even actual preparation for Russia being disconnected from the global web as a result of political conflict. From the business perspective, it is likely to threaten the position of foreign business giants and their leave of the market, as it would be easier to leave rather than to overcome the legal barriers and the size of the Russian market is not enough the fight.

## 1.4 Information security doctrine

At the end of 2016, Vladimir Putin signed a decree approving of the new Doctrine of information security of the Russian Federation. The doctrine which replaced the similar document from 2000 is a strategic planning document in the field of national security, which sets out the threats perceived by the government and sheds light on the government's approach to the development of information services. Among the main information threats to the national security the Doctrine lists the desire of "individual states" to use technological superiority to dominate the information space, the increase by foreign countries of the possibilities for rendering an "informational and psychological impact" on the Russian population with a view to internal political destabilization and undermining the sovereignty of the Russian Federation, an increase in the number of materials in the foreign media containing "a biased assessment of the state policy of the Russian Federation", and discrimination against the Russian media abroad. Compared to the preceding doctrine, the new document places greater emphasis on the danger of "informational and psychological impact" on the individual and public consciousness of Russian

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<sup>26</sup> See, for instance: Daniel Garrie; Irene Byhovskiy, "Privacy and Data Protection in Russia", 5 *J.L. & Cyber Warfare* 235, (2017); Oreste Pollicino; Oleg Soldatov, "Striking the Balance between Human Rights Online and State Security Concerns: The Russian Way in a Comparative Context", 19 *German L.J.* 85 (2018); A. Michael Froomkin, "Lessons Learned Too Well: Anonymity in a Time of Surveillance", 59 *Ariz. L. Rev.* 95 (2017)

<sup>27</sup> Federal Law N 90-FZ "On amendments in the Federal Law "On communications" and Federal law "On Information, Information Technologies and Protection of Information "

<sup>28</sup> State Duma of Russian Federation reading on law regulating internet traffic, available at: <http://duma.gov.ru/news/44504/>. Accessed April 23, 2019

citizens by foreign special services, as well as terrorist and extremist organizations. Apart from that, in the doctrine of 2016, for the first time, a tendency of increasing negative assessments of Russia in foreign media is mentioned. In the previous edition of the document it was said only about the "danger of dependence of the spiritual, economic and political spheres of the public life of Russia on foreign information structures."

These formulations indicate how the government articulates the external threat to legitimize the enclosure of the community from the outside world.<sup>29</sup> The view that foreign governments use the power of the information to undermine political and social stability and the emphasis on the 'defence of the sovereignty' in this case can be interpreted as a clear intention of the government to further extend the restrictions concerning both the dissemination of the information and the role played by the foreign agencies in the media sphere. This is clearly illustrated by all recent legislation, from the foreign media ownership amendment to the bill on the Autonomous Runet. The textual representation of the values and threats proposed in the Doctrine seems to correspond to a distinctive overall trend in the relationship between media and the state<sup>30</sup>.

## **PART 2. GOVERNMENTAL PRESENCE AND INFLUENCE ON THE FUNCTIONING OF DIFFERENT MEDIA SOURCES.**

Since the first presidential term of Vladimir Putin, the Russian media landscape was marked with evolving surveillance over media and information spreading services. Is it the secret services background of the president or the overall heritage of the Soviet Epoch, but the attitude of the ruling elite seems to understand the power of information and, furthermore, is eager to exploit it in a way to secure themselves from the threats arising from the free media. Indeed, in other countries with developed democratic societies, the authorities are often known to interact with the media and exert certain influence. This seems inevitable, but the effect of such interactions do not cause problems to the development of the media businesses: the balance of competing for political powers lead to the media being interested in creating quality content and developing technologies rather than preserving the coherent, one-sided politically desired perspective of presenting the information. In the case of Russia, the flipside of the governmental intervention in the activities of media businesses is the barriers that establish for the development with a lack of healthy competition. This issue can be approached from two ways: one is how the existing censorship policy threatens the evolvement of the new media resources that create the content deemed undesirable by the government thus creating a barrier to enter the market and the second one relates to the gradual takeover of the existing and emerging, potentially successful media resources by the pro-governmental media tycoons, that have close ties to Kremlin. In this chapter the author considers the existing environment for the functioning of different types of media resources and the ways that the government applies or may apply to exert pressure on those. The division is driven between the federal and regional audio-visual broadcasting, digital media and

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<sup>29</sup> Carman, Douglas, "Translation and Analysis of the Doctrine of Information Security of the Russian Federation: Mass Media and the Politics of Identity", *Pacific Rim Law & Policy Journal, University of Washington School of Law*, (2002), 354

<sup>30</sup> *Ibid.*, 367

press segments of the media market. Although many of the media outlets from these different groups belong to same media holdings (as it will be mentioned in more detail in this chapter) thus being, in fact, subject to the control of the same people, the scale and means of the governmental intervention vary within these groups.

The author seeks to explore the nature of governmental influence on the development of the media sector. Although the legislation is often used by the authorities to exert pressure on the media, the Russian government does not resort to open censorship and violence. The constitutional prohibition of censorship and propaganda makes it impossible to resort to such measures to exert pressure over the editorial board. The government resorts to detour direct influence and uses a “softer” and more ambiguous approach of employing administrative measures to ensure a pro-Kremlin position. Such measures may include withdrawing licenses or imposing fines that impoverish the company, drive it to bankruptcy. This all is possible due to both the legislative aspect of the vague formulations of the laws and the executive aspect and common practice of selective law enforcement.

According to Albert Hirschman’s ‘Exit/Voice/Loyalty’ theory, the journalists are forced to choose between either speaking freely, staying loyal to the government in their publications or exiting the job. The rise of the ‘costs’ of the ‘voice’ leads to many participants in the industry inclining towards exit or loyalty<sup>31</sup>. The journalists that hold critical views and are capable of expressing discontent or criticizing the political power are forced to either quit or keep silent. The effect of de facto existing censorship is achieved mainly through the management’s hiring and firing practices and the uncertainty regarding the rules of the game. That is why the Russian censorship system now is characterised with “softer” and more sophisticated tools rather than deploying excessive violence and open coercion: ‘it seems that stability and compliance can be ensured through deliberately creating an ambiguity about the rules of the game, so that nobody really knows how to act, what is allowed, and what is not allowed’.<sup>32</sup> In the following chapter discusses the particular cases of this selective ‘punishment’, that is seen by the others as an example warning of the potential consequences of standing in the way for Kremlin. Apart from that, the administrative structure of the main media holdings will be discussed in order to draw the linkages between the runners of most of the media outlets and the government.

## 2.1 Federal audio-visual broadcast

Currently, television remains the dominant media in Russia. Terrestrial on-air television in Russia is generally available: at least one TV-channel is received by 99 per cent of the population and average TV viewing time in Russia is about 5 hours and 53 minutes, which is relatively high<sup>33</sup>. Television remains the main source of information for 71 percent of Russians, according to FOM statistics, and 36 per cent name it as the most reliable source of information<sup>34</sup>.

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<sup>31</sup> Albert O. Hirschman. *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States*. (Cambridge, MA: Harvard University Press, 1970)

<sup>32</sup> Nozima Akhrarkhodjaeva, “Russian Media and Journalists’ Dilemma between “Exit, Voice, and Loyalty”, 6

<sup>33</sup> Russia, Expert analysis of the state of media, *Medialandscapes*, available at: <https://medialandscapes.org/country/russia/media/television>. Accessed April 24, 2019

<sup>34</sup> Sources of news and credibility of mass media, available at: <https://fom.ru/SMI-i-internet/14170>. Accessed April 24, 2019



These rates were decreasing over the last years, yet TV still remains the most popular and influential media in Russia, although the younger population view the Internet almost of an equivalent level of access and influence. The statistics also show that the predominance of the TV outside big cities is higher<sup>35</sup>.

Few federal broadcasters are dominating the media landscape. They operate ten on-air channels that are transmitted from Moscow and are almost universally available. At the moment, the several companies that run the ten main channels are All-Russia State Television and Radio Broadcasting Company ('Vserossijskaya Gosudarstvennaya Televizionnaya i Radioveshatelnaya Kompaniya' or VGTRK), National Media Group (NMG) and Gazprom-Media Holding (GMH). The lack of transparency in the ownership structures of the companies makes it impossible to point out the direct linkages between the shareholders and the administration. The absence of the publicly available data<sup>36</sup> on the shareholders combined with sometimes complex schemes of offshoring allows the state official to deny the existence of the censorship and speak about the importance of the freedom of mass media and the unacceptability of the governmental intervention in its work<sup>37</sup>. Nonetheless, even from the existent information, it is evident that either direct governorship of the editorial policy through state ownership or indirect influence due to the stakes owned by the persons or entities close to Kremlin or Putin himself can be achieved.

VGTRK media group is a state-owned media holding that is the biggest in Russia. In 2016 it was reported to have the controlling stake of two of Russia's top TV channels, Channel 1 and Rossiya 1. Apart from that, the group owns and operates other three national TV channels, two international channels, five radio stations, over 80 regional TV channels and radio stations and an information agency.

Among the assets of the NMG holding are 25% of the shares (blocking stake) in Channel One, as well as controlling stakes in Channel Five and REN TV. It is controlled by Bank Rossiya, the main shareholder of which is Yuri Kovalchuk, known for his proximity to President Vladimir Putin. Kovalchuk's association with the current president dates back to the early 1990s, when both of them were beginning their careers in St Petersburg - one as a member of city administration and another as a businessman.<sup>38</sup> Other major NMG stockholders include the energy company Curgutneftegaz and another industry giant, Severstal (both companies believed to have close ties with Kremlin)<sup>39</sup>. A small stake is owned by the company "RTL group", registered in Luxembourg. The precise structure of NMG's ownership structure are obscure and have become even more so after the imposition of sanctions on Bank Rossiya and Kovalchuk.

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<sup>35</sup> *Television remains the main information source for Russians, with the exception of the youngest respondents (aged 18 to 24), who have access to television and the Internet at almost the same level (54% vs. 49% in August 2018). In older age cohorts, polarization between TV and the Internet is more pronounced.* Statistics available at: <https://www.levada.ru/2018/09/13/kanaly-informatsii/>. Accessed April 24, 2019. Distribution of the answers depending on socio-demographic characteristics available at: [https://www.levada.ru/cp/wp-content/uploads/2018/09/Doverie-novostyam\\_tab.pdf](https://www.levada.ru/cp/wp-content/uploads/2018/09/Doverie-novostyam_tab.pdf). Accessed April 24, 2019

<sup>36</sup> Ксения Болецкая, "«Первый канал» перестал публиковать отчетность", *Ведомости*, April 28, 2017, available at: <https://www.vedomosti.ru/technology/articles/2017/04/28/688065-pervii-kanal-otchetnost>. Accessed April 24, 2019

<sup>37</sup> See, for instance, president Putin speaking on the freedom of speech in 2016 from "Участники медиафорума: на смену мейнстриму идет новая журналистика", *РИА Новости*, June 7, 2016, available at: <https://ria.ru/20160607/1443889034.html>. Accessed April 24, 2019

<sup>38</sup> Russia, Media Guide, *BBC Monitoring*, 2017, 22

<sup>39</sup> *Ibid.*, 7

Gazprom Media Holding is a subsidiary of Gazprom for media asset management. The holding can also be called to some extent the property of the state since 100% of its shares belong to the Russian national company Gazprom. The ultimate owners of Gazprom Media are unknown. In 2001-2002, the holding received its main assets from Media-Bridge, Vladimir Gusinsky, in the course of his "dispute between business entities" and Gazprom. Gazprom-Media now owns two national TV channels (NTV and entertainment channel TNT), as well as the satellite channel NTV-PLUS. It also owns five radio stations, including Ekho Moskvyy, a publishing house and other assets.

The actual control of the state over the policy of main TV broadcaster is thus rooted in the ownership of the main players in the market, either direct or involving dependency ties. It is possible both due to the absence of the solid legal foundation for the functioning of the independent media business and the abuse of powers by the administration. In the eyes of the current government, television is seen as a primary and most efficient tool to influence people. With Putin's coming to power in 2000, the control over audio-visual media began to tighten. Among numerous cases of governmental intervention and exerting pressure over media outlet, an early case of NTV takeover was the one to receive the most coverage. It reflects the methods employed by the government to exert pressure over media in Russia. The events that took place around this independent channel in 1999-2003 signified both the government's attitude towards unwanted content on air and the ways that are to be used to get rid of it. After the somewhat troublesome entrance in 1993, the channel has been benefiting from the existent at that time political favouritism.<sup>40</sup> The channel received state support during the 1990s, displayed in lower licencing fees, tax reduction, and exemptions from customs duties on imported equipment together with a financial aid, when partly state-owned Gazprom bought out 30 per cent stake, resulting in a significant cash inflow to the business. Despite that, the network produced controversial from the government's perspective materials, such as negative coverage of Russia's actions in the First Chechen war. After the conflict related to the privatization of the Svyazinvest company, in which the Media-Most owners' interests were affected, the publications in the holding's media outlets with attacks on the government started to increase even further. The network lost governments support but managed to survive the crisis of 1998 and remain one of the most popular channels due to the high-quality content that it produced. However, after Putin coming to power in 1999, the pressure on the channel and its owner, Vladimir Gusinsky, started to increase. It combined raids of the tax police, backed by FSB and general prosecutors office, criminal investigation and arrests, accompanied by the financial squeeze. Although the legislation does not allow for the replacement of the employers in the media outlets by the state officials, the financial position of the network gave leverage to the creditors. Gusinski was accused of misappropriation of funds in connection with a company "Russian Video" and shortly after arrested and put in a notoriously famous Butyrka prison. Nonetheless, the charges against him were dropped after Gusinsky agreed to sell a controlling stake in Media-Most to Gazprom-Media. After a while disclosure of a secret agreement called "Protocol 6" ("shares of freedom") between Gusinsky and Mikhail Lesin, the Minister of Media, followed. It confirmed that criminal process against Gusinsky and his associates was to be stopped if Gusinsky followed through on the sale of Media-Most. After the reveal of this information, the criminal investigations were restored. Gusinsky was charged with a criminal offence of fraud.

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<sup>40</sup> Belin, "The rise and fall of Russian NTV", 24-27



In 2001 Gazprom announced having acquired 46 per cent stake at NTV. The in the early 2000s the channel was still a leading independent media channel, although its editorial policy changed, and content such as acute political satire or government denouncing investigations disappeared. Despite the state officials insisting on the presence of the strong evidence against the accused, the administration's interest in altering the media's policy appeared to override the deliberation to prosecute criminals<sup>41</sup>. This case is a vivid example not only of the existent in Russia selective law enforcement but also of the readiness of the government to override the legitimate powers. The involvement of the cabinet of ministers in the negotiations between the creditor and debtors and threatening of criminal prosecution to win a deal over a television network are clearly signifying of the absence of the rule of law in the industry.

## 2.2 Regional television and radio

Russia is a multinational state with the largest territory in the world and great cultural differences between the ethnicities that inhabit it. That is why regional media play a very significant role in Russia by producing regional news and programs to adapting the content to the preferences of the audiences in certain regions. At the beginning of the century, when the economy of the country was going up with the inflow of oil money, the businesses were developing and that increased the demand for advertising in the regions, especially in the big cities. The richer was a city, the bigger the demand and paying capacity there were, the more developed local media grew. The number of channels and the scope of their activities was thus stipulated solely by economic solvency.

In 2009 a Federal Program of transition to digital broadcasting "Development of Television and Radio Broadcasting in the Russian Federation in 2009 - 2015" was adopted. Digital broadcasting is a more advanced technology that allows to simultaneously transmit a whole package of channels (multiplex) on a single frequency. Similar transitional programs are implemented all over the world since the 1990s. This transition would change the whole structure of the market of TV broadcasting and define new ways of functioning of regional TV companies. In Russia, the switchover plan was under development since 1999 and was initially to be accomplished by 2015. However, due to numerous challenges, such as a lack of investment in home television equipment, the creation of a national network of stable digital signal transmission and regional broadcasters' access to digital multiplexes, the approximate date for disconnecting the analogue broadcast was postponed to the end of 2018 - the beginning of 2019. At the moment, almost all Russian population can receive the digital TV signal and analogue broadcast is being disconnected in some regions. According to the latest data from the Ministry of Digital Development, Communications and Mass Media, the disconnection of analogue broadcasting of TV channels of the first and second multiplexes is scheduled from February to June 2019.<sup>42</sup>. No one will disconnect the analogue broadcast, but the state stopped subsidizing the analogue distribution of channels of the first multiplex. Accordingly, after this, the redistribution of the market begins.

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<sup>41</sup> *Ibid.*, 35

<sup>42</sup> Russian state radio-frequency commission's meeting, December 24, 2018, available at: <https://digital.gov.ru/ru/documents/6330/>. Accessed 25, April, 2019

Theoretically, the switchover is supposed to increase the number of the channels available in some regions, by providing all-Russia transmission of two multiplexes, that total of 20-21 channels, free of charge.

The changes that accompany the switchover in practice imply the death of regional television in Russia. From now it is possible to acquire a license only for all-Russia broadcast, instead of a licence for a certain territory, as it used to be before. From a technical perspective, there is no need in such a change. The representation of regional television is reduced to one channel in the cable network. For each region, there will be provided one channel free of charge on the 21st button. The contest between the channels is very high, especially in the bigger cities and it will only suffice the main need in the news about regional news, but not allow for a creative approach to the creation of the content. The elimination of the competition of this kind leads to the barriers in the development of regional TV businesses.

The opportunity for a network to be broadcasted nationwide via digital transmission is a very expensive one (for instance, a place in the second multiplex costs about 36 mln rubles plus the company has to pay for the expenses on building the infrastructure for digital transmission<sup>43</sup>). The worsening economic situation in Russia was reflected in a decrease in the advertising market, which brings the most profit for the regional channel, thus making them unable to afford digitalization.

The following strategies can be undertaken for regional companies to survive in the harsh conditions of competition:

- (1) a horizontal merger of two, three, several local TV channels on geographical, national and other grounds;
- (2) partnership association at the local level, when several broadcasters occupy one frequency and divide its broadcasting, carrying out independent programming only a few hours a day;
- (3) switch to cable broadcasting;
- (4) switch to broadcasting via the Internet.<sup>44</sup>

The most likely option for most of the channels, however, will be relocating the channel to either internet or cable broadcast, or both of those. Many channels already now dub the broadcast on the Internet, and the overall trend suggests that this number was only to increase even without the shutdown of the analogue broadcast. The possibility to move to cable broadcasting also is viewed by many local companies as a priority development path. This is confirmed in the development strategy of television and radio broadcasting for the period up to 2025, which was developed by the Ministry of Communications and Mass Media. From another side, switching to cable will lead to a partial loss of the channel's audience, since many viewers do not want any changes, they are satisfied with the simplicity and the minimum number of buttons, and are not interested in technological innovations, especially as they are the ones to pay for them (in particular, paying for a content of questionable quality sometimes). Regional television is faced with a choice: to go cable, to broadcast on the Internet, or to leave the air completely.

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<sup>43</sup> Каратаев Руслан Юрьевич, "Последствия перехода России на цифровое вещание для регионального ТВ", *Вестник КГУ* №3 (2017) p 150-153, available at: <https://cyberleninka.ru/article/n/posledstviya-perehoda-rossii-na-tsifrovoe-veschanie-dlya-regionalnogo-tv>. Accessed 26.04.2019

<sup>44</sup> *Ibid.*

For such a multinational and multicultural country as Russia, with its vast territory, it is especially important to preserve regional television, as the local broadcasting remains the most efficient and sometimes the only source of information in remote areas of the province.

The question of whether the changes related to digitalization were intentionally aimed to increase obstacles in the development of regional television and increase centralized control over the TV channels is ambiguous. From the one hand, such an approach would go in line perfectly with the current trends of tightening the policy of control over the media. At the same time, they are justified by the needs of adapting to technological development. A former owner of a Tomsk TV2 and media holding to which it belonged, Arkadij Mayofis believes that ‘killing’ of regional television was not the initial purpose of the government, although they managed to benefit from the coincidence<sup>45</sup>. The official hostility to the independent regional media can be observed in the point of view represented in 2016 Gazprom’s NTV film, where the authors accuse TV2 of being sponsored by the US.<sup>46</sup> The owner of the channel in his turn has held the opinion that the technical difficulties combined with the Roskomnadzor’s actions were aimed at eliminating the unwanted TV channel<sup>47</sup>.

## 2.3 Digital media

The technological developments are bringing changes to the media landscape in Russia similar to the rest of the developed world. The increasing popularity of such media resources as online newspapers, social media and news applications are especially relevant for the younger segments of the population.

The domestic internet service providers overrun the American rivals: Mail.ru Group and Yandex remained the dominant media holdings at the end of 2018, those projects hold the top two positions for weekly and monthly reach<sup>48</sup>. The Mail.ru Group is an internet company that produces a total of twenty-one entertainment and e-commerce services and online communication platforms, which includes Mail.ru email service and Russia’s top popular social media Vkontakte and Odnoklassniki. According to the BBC data, in 2016 Internet holding the largest shareholders of the internet holding are South African media group Naspers (31.7%) and New Media Technologies (17.9%), which is controlled by Alisher Usmanov. NMT owns more than half of the voting shares of Mail.ru Group, which makes Usmanov the actual owner of this media holding. Usmanov has repeatedly expressed his admiration for Putin<sup>49</sup>. The second Russian internet giant is Yandex, which owns a total of the twenty-eight internet projects. Its search engine of the same name is the most popular in Russia. The company surrendered its initial independent policy under the pressure of Kremlin and nowadays is believed to be loyal to the administration.<sup>50</sup>

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<sup>45</sup> See Appendix, Interview with A. Mayofis , April 22, 2019 via Facebook call.

<sup>46</sup> Russia, Media Guide, *BBC Monitoring*, 67

<sup>47</sup> See Appendix, Interview with A. Mayofis.

<sup>48</sup> Mediascope WebIndex Report, 2018

<sup>49</sup> Russia, Media Guide, *BBC Monitoring*, 23

<sup>50</sup> Elizaveta Osetinskaya, “Yandex, a Russian Success Story and Putin’s High-Tech Tiger (Op-ed)”, *The Moscow Times*, September 27, 2017. Available at: <https://www.themoscowtimes.com/2017/09/27/yandex-a-russian-success-story-and-putins-high-tech-tiger-a59029>. Accessed April 30, 2019.

Another big player in the industry is Rambler & Co. It is one of the largest Russian groups of companies working in the field of media, technology and e-commerce. The project audience is over 40 million people per month. The group of companies includes such projects as email service, one of the largest Rambler portals in RuNet, the online news magazines Lenta.ru and Gazeta.ru, the entertainment Internet portal Afisha, the blog platform LiveJournal.com, the English-language online edition of INRUSSIA, the portal Rambler and projects related to it and various other (a total of more than 40). It is owned and run jointly by Vladimir Potanin and Alexander Mammut. A significant amount of the Rambler Group's shares was bought out by Sberbank<sup>51</sup>. The internet newspaper Lenta.ru was found to be the most frequently quoted news source for the Russian-language blogs<sup>52</sup>. After a warning from Roskomnadzor for a publication of an interview with one of the leaders of the Right Sector banned in Russia, the editor Galina Timchenko that was the head of the publication since 2004 was replaced by the owner of the publication with Aleksey Goreslavskiy, known for having a pro-kremlin position. After the dismissal, Timchenko has founded a digital news platform, that functioned on the basis of free mobile applications as a content aggregator. Timchenko decided that the registration of the new media outlet must be done outside Russian jurisdiction, preferably under the jurisdiction of the European Union, as this would prevent the state from being able to employ accusation of illegal activities to exert pressure over editorial policy<sup>53</sup>.

Roskomnadzor was repeatedly accused of attempting to censor the Internet and violate freedom of speech by blocking websites and internet service providers under the guise of the protection of personal data or "protecting children from harmful information" or directly criticizing activity of the Government or Parliament of Russia. Nonetheless, the state representatives repeatedly talk about the necessity of the freedom of the Internet and claim the Russian internet to be free<sup>54</sup>. As for accusations of censorship, one of the explanations is, for instance, the absence of the audience interest to the opposition point of view<sup>55</sup>.

Despite this, the history of the blocking of internet resources reveals a clear trend in oppressing the opposition. In 2014, Roskomnadzor on the request of the General Prosecutor's Office, without a court decision, in relation to "Appeals to illegal activities and participation in mass events held in violation of the established procedure" limited access to three online media outlets: Grani.ru, Kasparov.ru and Daily Journal, all of which were representing the opposition point of view. A long history of persecution of opposition activist and founder of Anti-Corruption Foundation Alexey Navalny also involved entering of his blog in LiveJournal into the banned registry and in the context of his presidential campaign Roskomnadzor has blocked the

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<sup>51</sup> Екатерина Брызгалова, "За что Сбербанк заплатит 11 млрд рублей Александру Мамуту", *Ведомости*, April 23, 2019, available at: <https://www.vedomosti.ru/finance/articles/2019/04/23/799995-sberbank-11-mlrd>. Accessed April 30, 2019

<sup>52</sup> Bruce Etling, Rob Faris, John Palfrey, Urs Gasser, John Kelly, Karina Alexanyan, "Public Discourse in the Russian Blogosphere: Mapping RuNet Politics and Mobilization", Berkman Klein Center, Oct 18, 2010 (available at: [https://cyber.harvard.edu/publications/2010/Public\\_Discourse\\_Russian\\_Blogosphere](https://cyber.harvard.edu/publications/2010/Public_Discourse_Russian_Blogosphere). Accessed April 30, 2019

<sup>53</sup> Галина Тимченко, "Meduza Тимченко зазвонит из Латвии" интервью Ирины Тумаковой для "Фонтанка.ру", September 09, 2014, available at: <https://www.fontanka.ru/2014/09/29/139/>. Accessed April 30, 2019

<sup>54</sup> "Путин считает важным диалог с интернет-сообществом и свободой сети", *TASS*, April 8, 2019, available at: <https://tass.ru/ekonomika/6305797>; "Путин назвал свободными российские СМИ и интернет", *РБК*, June 5, 2018, available at: <https://www.rbc.ru/rbcfreenews/5b159ff79a79474e575682c0>. Accessed April 30, 2019

<sup>55</sup> Medvedev states that opposition is of no interest to the audience in "Дмитрий Медведев: ограничить свободу слова в век интернета невозможно", *TASS*, February 14, 2016, available at: <https://tass.ru/obschestvo/2666889>. Accessed April 30, 2019

site "Smart voting" 2019.vote because of a violation of the law on the protection of personal data.

The websites of the oppositionist politician and entrepreneur Mikhail Khodorkovsky were a target of Roskomnadzor as well. In 2017 «MBH media" was entered into the list of banned websites. The prosecutor's office reasoned it with the opinion that the resource distributed "information materials of unwanted organizations." Despite the removal of the publications named violating the law, the site was now unblocked and later next year website mbk.news was blocked without explanation, provided that it mirrored the blocked website mbk.media.

The increasing popularity of social media made it a target of the state attention as well. This is proved both by the legislative and judicial tendencies of the state activities. Apart from the increased legislative regulation, considered in the previous chapter, the increase in the number of criminal prosecutions also signifies of the tightening policy in relation to information on the Internet. The Decrees of the Supreme Court of the Russian Federation of June 28, 2011 No. 11 "On Judicial Practice in Criminal Cases on Extremist Crimes" and "On Amendments to the Decrees of the Plenum of the Supreme Court of the Russian Federation of February 9, 2012 No. 1" "On Certain Issues of Judicial Practice in Criminal Cases crimes of a terrorist nature", testify that recently there has been an increase in the number of citizens who were responsible for reposts that were found to constitute extremist content on social networks<sup>56</sup>. Needed to mention, that in many cases the information did not come directly from the citizens but was only distributed on the Internet using repost on social networking pages. This means that the defendants did not necessarily express their attitude to the information that they "reposted", even more so, such actions do not imply a justification or public support of extremist activities. This problem was touched upon by the Supreme Court's recommendations to the courts on how to handle cases of extremist publications in social networks, where it clarified that the thoughtless repost of extremist materials is not a crime. The Supreme Court stressed that the courts should base their decisions on the nature and degree of public danger of the offense, which is determined by the audience that sees the publication, and it should take into account the form, context and content of information, availability and content of comments or other expressions of attitude to the materials. The law providing for partial decriminalization of Article 282 of the Criminal Code that followed later proved that the earlier tightening measures that were not formulated clearly enough were also disproportional. Currently, criminal punishment follows only in case of there was a similar violation committed during earlier the same year. Otherwise, the administrative punishment determined by the Article 20.3.1 of the Administrative Code applies<sup>57</sup>.

A distinctive case of persistence in the governmental intention to gain control over personal data has provoked the controversy with a Russian-based messenger service Telegram. Telegram is a cloud-based instant messaging and voice over IP service, that has gained worldwide popularity due to its privacy protection mechanisms. In the recent years it also evolved into a popular

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<sup>56</sup> Postanovlenie Plenuma Verkhovnogo Suda Rossiiskoi Federatsii "O sudebnoi praktike po ugovolniam delam o prestupleniakh ekstremistskoi napravlenosti" ot 28 iunia 2011 g., №11. [Russian Federation Supreme Court Law 282, of Jun. 28, 2011], available at: <https://rg.ru/2011/07/04/vs-dok.html>. Accessed May 2, 2019; Postanovlenie Plenuma Verkhovnogo Suda Rosiiskoi Federatsii "O nekotorykh voprosakh sudebnoi praktiki po ugovolniam delam o prestupleniakh terroristicheskoi napravlenosti" ot 9 fevralia 2012 g., №1 , available at: <https://rg.ru/2012/02/17/terrorozm-dok.html>. Accessed May 2, 2019

<sup>57</sup> "Колокольцев заявил о снижении числа дел по статье "о репостах" в 25 раз", *Интерфакс*, May 6, 2019., available at: <https://www.interfax.ru/russia/660255>. Accessed May 2, 2019



platform for bloggers by providing an opportunity to reach large audiences instantly via a messaging channel. Telegram channels key differences from standard microblogging (such as Twitter, Facebook, Tumblr ...) are the absence of algorithmic news feeds, absence of feedback from subscribers and anonymity. The last one was the main advantage of the platform and the main cause for authorities' dissatisfaction with it. It was impossible to claim that the domestic service is transferring personal data of its Russian users to foreign companies, like its foreign analogues, Facebook's WhatsApp or Messenger, for instance, and thus there was less room for justifying the necessity of data retention by protection of national security. Nonetheless, the state demonstrated insistent interest in having the keys that would allow security services to decipher the encrypted mechanisms. It was reasoned with the service's potential danger of providing the communications platform for illegal activities, such as terrorism and drug trafficking. Telegram was entered in Roskomnadzor's blacklist, but its technological advancements soon allowed the users to bypass the blocking.

Despite the state deliberation to block the messenger service, state officials themselves continue using the application. Furthermore, the popularity of the service as a mass media is utilized by the Kremlin as well. The dominance in the number of pro-Kremlin unanimous channels can be observed, and their ties to the administration surpassingly involves financial contracts<sup>58</sup>. By contrast, the author of the satiric Telegram channel was forced to disclose his unanimity under the pressure of the state-controlled media and has claimed to experience unreasoned interest of the law enforcement organs, which coincided with the disclosure of his identity<sup>59</sup>.

With the newly accepted laws on fake news and the insult of the authorities, the censoring policy can extend even further. However, the first practice of the implementation of the law, although claimed to be 'prophylactic', ridiculously appeared to target a publication about a graffiti<sup>60</sup>.

## 2.4 Press

The decreasing popularity of printed media is a global trend, which can be observed in Russia as well. The decline in demand for printed media outlets is stipulated by their inability to compete with contemporary media resources that are easier accessible and have more convenient ways of the representing the information. Almost all bigger printed editorials, such as Moscow-based dailies and newspapers, as well as ones of the major economic centres, and have their publications duplicated in their internet or other digital platforms.

Apart from the changes in the media consumption habits, several reasons lead to an inevitable decline of the press segment in Russia. These include the economic recession, which affected the advertising demand that is the primary source of revenues for the printed media especially, the legislative changes prohibiting tobacco and alcohol production advertisement in press

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<sup>58</sup> Михаил Рубин, "Как власти превратили Telegram в телевизор", интервью Алексея Нарышкина для *ЭхоМосквы*, эфир от 28.11.2018, available at: <https://echo.msk.ru/programs/rikoshet/2323559-echo/>. Accessed May 3, 2019

<sup>59</sup> Александр Горбунов, "'Сталингулаг' больше не аноним: 'Как писал, так и буду'", interview for *BBC Russian Service*, May 2, 2019, available at: <https://www.bbc.com/russian/features-48128178>. Accessed May 3, 2019

<sup>60</sup> "Роскомнадзор начал применять закон об оскорблении власти", *BBC Russian Service*, April 4, 2019, available at: <https://www.bbc.com/russian/news-47788768>. Accessed May 3, 2019

periodicals<sup>61</sup> and mass closures of press kiosk (most of them were unauthorized points of sales and were closed by orders of the regional authorities). Though the changes in the distribution structures of the printed press in the large industrial centres, are transforming the market. The ability to distribute the product in urban transportation and trade infrastructure lead to the shift from the partial reliance on the income from the sales of the physical products to profiting solely from advertisement and sponsorship. This is coherent with a global trend of establishment of new lifestyles and spreading popularity of the press free of charge.

Russian national quality newspapers include both general interest and business dailies. The most popular ones of those are *Izvestia*, *Kommersant*, *Rossiyskaya Gazeta*, *Nezavisimaya Gazeta*, *Vedomosti*. *Izvestia* is a pro-government newspaper, since it was acquired by Gazprom-Media in 2005, which now belongs to NMG holding; *Kommersant* is a business-oriented daily, that is a part of Alisher Usmanov's *Kommersant Publishing House*; *Rossiyskaya Gazeta* is an official publisher of new laws, owned and funded by the state. *Nezavisimaya Gazeta* is a heavyweight broadsheet daily, owned and edited by businessman and politician Konstantin Remuchkov. Remuchkov insisted that the editorial policy of the newspaper was depending solely on himself, the journalist team and the readers, however, the claim is doubtful due to the information leakage, proving businessman's ties to Kremlin. *Vedomosti* is Russia's oldest newspaper, its modern version is a liberal daily business newspaper published since 1999. Its publications provide analysis and forecasts on economic, financial, corporate and political issues. *Vedomosti* is currently owned by the media entrepreneur Demyan Kudryavtsev, a former director of *Kommaersant*; prior to the legislative restriction of the foreign capital, the ownership was shared by the Finnish company Sanoma, US companies Dow Jones and Pearson (owner of *Financial Times*). This newspaper is one of the few Russian titles to operate a paywall for the web version of material from its print edition, which constitutes the main source of revenues for the outlet, allowing it to overcome the difficulties of the declining stage of the printed media market.

Several main trends in the printed media sector in Russia can be identified. These include the media businesses seeking new production or distribution models, such as gradual shift from print to online publication, the diversification of the assets into all accessible segments of the media market, the changes in the ownership structures that followed the legislative changes of allowed foreign investment and consequently increasing role of the state support of the businesses. For instance, English-language newspaper *The Moscow Times* and weekly news magazine *The New Times* are still being published online, but the paper versions of both outlets stopped in 2017. *The New Times* was a target of Roskomnadzor's warnings and administrative fines before it was sentenced to pay over 22 mln rubbles fine in 2018, the largest fine in the history of Russian media, that in practical terms meant the death of the publication<sup>62</sup>. *The Moscow Times* fell under the scope of the foreign investment in media law, so that its previous owner, Sanoma, sold the publication to Demyan Kudryavtsev. The foreign investors that left Russian market, like the previous owners of *Vedomosti* and *The Moscow Times*, included the subsidiary of German publisher Alex Springer, which ran the Russian edition of *Forbes* magazine. Apart from using *Forbes* brand, the magazine was not otherwise connected to the US version. Prior to the sale, the

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<sup>61</sup> Article 16(1) of the Federal Law N 15-ФЗ "On protection of public health from exposure to environmental tobacco smoke and the consequences of tobacco consumption article 21 (2.1) of the Federal Law N 38-ФЗ "On Advertisement"

<sup>62</sup> Евгения Альбац, "Дело о 22 млн штрафа The New Times", *The New Times*, November 5, 2018, available at: <https://newtimes.ru/articles/detail/171867> Accessed May 4, 2019

publication among all produced investigations of president Putin's finances. However, after the changes in the ownership structure the level of independent journalism was lowered, and the workers have accused the new management of interference in their work<sup>63</sup>.

RBC Group (or RosBiznesKonsalting) was yet another major media holding, whose main outlets covered the materials from a moderate liberal standpoint. The group's assets included a daily analytical newspaper "RBC", and monthly business magazine of the same name. Until recently, RBC media was the source of most of the in-depth business investigations and reports. It covered the issues of the obscure business dealings of Putin's circle and his confidants, including family members or the circumstances of the events of Russia's intervention in Ukraine. Under the ownership of tycoon Mikhail Prokhorov, RBC's journalist team enjoyed the opportunity to dig in and publish sometimes controversial materials, mainly related to business or financial issues. The company's products were particularly valuable because of their appeal to facts and objective conclusions. Compared to other media resources, RBC was starting to look more and more defiant, despite the fact that they only used the data in the in open access for their investigations, only difference being that all the other publications did not collect it and did not analyse. The scandalous reveal of Panama Papers did not bypass the editorial's attention and an independent investigations and information were published about the involvement of president's friends and a number of state officials in the offshores activities that involved transactions for large sums of money<sup>64</sup>. Together with the investigations concerning the identity of the president's daughter<sup>65</sup>, these publications have provoked the government to exert pressure over the media holding. Soon after the investigations were published, raids of tax police in "ONEXIM", Prokhorov's investment group that owned a major stake in most of the assets of media holding, and accusation of tax evasion followed. Despite the absence of any direct pretensions to the media holding itself, the criminal prosecution was threatening other, more profitable businesses of the "ONEXIM" group. The state officials denied any interrelations between these events<sup>66</sup>. Nonetheless, soon after the dismissal of the editor's team of the media holding, including the chief editors of the holding, the newspaper and the news agency, the accusations were dropped. The new managers appointed at their positions used to work for the state news agency TASS and as editors of the Kommersant newspaper in the past. The departure of media group editors was "a serious blow" for independent journalism in Russia<sup>67</sup>. Not only this affected the editorial policy of this particular media outlet, it has also showed what is to happen to the ones standing in the way of Kremlin and its inhabitants. In 2017 a major stake in and the liabilities of the

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<sup>63</sup> Russia, Media Guide, *BBC Monitoring*, 47

<sup>64</sup> Елизавета Сурначева, Михаил Рубин, Иван Ткачѳв, "Панамский список: что держали в офшорах российские чиновники", *РБК*, April 4, 2016, available at: <https://www.rbc.ru/politics/04/04/2016/5701767c9a7947743875c168>. Accessed May 5, 2019

<sup>65</sup> Фарида Рустамова, Михаил Рубин, "«Не звездные дети»: что известно о Катерине Тихоновой", *РБК*, December 17, 2015, available at: <https://www.rbc.ru/politics/17/12/2015/5672a1ba9a79471ab070fead>. Accessed May 5, 2019

<sup>66</sup> "Кремль призвал не связывать следственные действия в "Онэксиме" с деятельностью РБК", *Интерфакс*, April 15, 2016, available at: <https://www.interfax.ru/russia/503946>. Accessed May 5, 2019

<sup>67</sup> "Departure of media group editors "a serious blow" for independent journalism in Russia", *Reporters Without Borders*, May 15, 2016, available at: <https://rsf.org/en/news/departure-media-group-editors-serious-blow-independent-journalism-russia>. Accessed May 5, 2019; "The dismantling of the independent news organization 'RBC' How Russia gained and lost a great source of news", *Meduza*, May 13, 2016, available at: <https://meduza.io/en/feature/2016/05/13/the-dismantling-of-the-independent-news-organization-rbc>. Accessed May 5, 2019



company were purchased by Grigory Beryozkin, an industrialist with the links to the ruling elite<sup>68</sup>.

The long-term economic decrease of the publishing market made it generally unattractive for private investment. Nowadays the press market in Russia is characterized with a particularly prevalent role of local and regional authorities, who own a dominant number of media companies, especially in the regional market. The regional press becomes dependent on subsidies from local authorities to survive the decrease of advertising markets.

One of the ways to avoid the threats for the printed media business is seen in the diversification of the assets. This applies to digital media, as well as to other media sectors. For instance, apart from various print editions, Komsomolskaya Pravda publishing house also runs websites, mobile applications and radio station; NMG has introduced “Izvestia” Multimedia Information Centre - Russia's first private multimedia information centre, which combined the editorial and technological capabilities of the news services of the TV channels REN, Fifth Channel and the Izvestia newspaper for production of multi-format information content for TV, print and the Internet.

### **PART 3. PROBLEMS AND PERSPECTIVES FOR THE BUSINESS DEVELOPMENT**

In this chapter the author intends to identify the main challenges in the media industry in Russia nowadays. From the issues raised in the previous chapter, it follows that the media industry is facing a difficult period with severe problems, such as lack of competition, lower standards of journalistic work and growing paranoia. In this chapter the author provides the analysis of the implication of these factors on the business environment. Currently the main key features of Russian media system include the economic, audience and information prevalence of terrestrial television, the high level of concentration of the financial resources in the leading segments of the media industry and high level of state component in the media capital and domination of federal companies both economically and in terms of audience<sup>69</sup>. Apart from that, the advertising-based business model remains to be the most popular when compared to the new evolving business models. The prospects of the media industry are likely to follow the inertial development model, that is characterized by following the present trends rather than gradual introduction of and adapting to disruptive technologies and know-hows<sup>70</sup>. This implies that the current problematic traits are either to escalate or to be managed constrainedly.

#### **3.1 Uncertainty of the rules**

The first and the most significant issue of the existent media landscape is the political and legal aspects of the uncertainty of the rules of the game. The threat to the independent media drives

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<sup>68</sup> Russia, Media Guide, *BBC Monitoring*, 48

<sup>69</sup> Vartanova, E.L., Vyrkovsky, A.V., Makeenko, M.I. and Smirnov, S.S., “The Russian Media Industry in Ten Years: Industrial Forecasts”. *Westminster Papers in Communication and Culture*, 11(1) (2016), 65–84, available at: <https://www.westminsterpapers.org/articles/10.16997/wpsc.221/>. Accessed May 8, 2019

<sup>70</sup> *Ibid.*, 73

away the potentially interested investors. The case studies provided in the previous chapter reveal how the volatility of the media can be overridden by the state interference in its work. As mentioned by our interviewee, “No businessman today will not invest in the mass media, which does news, for example - just because it is dangerous for their primary business”<sup>71</sup>. The potential possibility of the Roskonnadzor’s measures such as blocking withdrawal of the license to broadcast are threatening the viability of the media outlet itself, and the threat of criminal prosecution and invoking personal liability of the owners in order to exert pressure on the editorial policy of the media are deemed to cause danger for the other activities of the investors.

### 3.2 Entry barriers

The rapidly changing social and technological environment stipulates the broad horizon of opportunities for emerging media, including both traditional audio-visual broadcast and printed media and, more importantly, digital media and internet-platforms. Although traditional media is less malleable to innovation, due to the relatively slow tempo of changes towards developing methods of communications that are inherent for the general population in Russia, the traditional media is not likely to change drastically or die out in the nearest future. Thus, its development relies highly on the abilities and opportunities to produce better content rather than on game-changing novelties. The stagnating oligopolistic market, however, is not a fertile soil to start new businesses. The decreasing demand for printed press, digitalization of terrestrial television and radio create entry barriers that lower potential for the start-ups in these markets. Overall, the market is in declining stage of development, apart from the digital media sector<sup>72</sup>. Internet has already overridden television, the most popular media in Russia, in the revenues from advertising<sup>73</sup>, and this trend is only expected to escalate. The digital media ecosystem, in turn, provides massive opportunities for development and growth. It is possible to introduce new formats of representation of the content and new ways of communicating it to the consumers. The new approaches to digital media market are projected to involve higher use of personalized data and technological support of personalization of selection and content delivery, more efficient tools for the collection and analysis of consumer behaviour and overall increase both in the access to and demand for the digital content<sup>74</sup>. Moreover, the audience of other traditional media will shift gradually to the internet to satisfy the needs which the traditional media previously used to suffice. This altogether is capable of creating a prosperous field for business development. The legislative and political factor, however, might undermine the desire of the newcomers to enter the market. Firstly, the already existing legislative restrictions and their use by the executive organs pose a threat to any media business, not only those connected to politics because of their inherent uncertainty and inconsistency in implementation. Furthermore, the project provided in Sovereign Internet Law can also repel those potentially interested in new ventures that involve reliance of the internet in Russia. Despite little changes at the initial stage,

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<sup>71</sup> See Appendix, Interview with A. Mayofis

<sup>72</sup> See appendix, Interview with F. Kravcheko, May 11, 2019 via WhatsApp call

<sup>73</sup> Объем рекламы в средствах ее распространения в 2018 году, Отчет Ассоциации Коммуникационных Агентств России [Association of the Communication Agencies of Russia Report, 2018], available at: [http://www.akarussia.ru/knowledge/market\\_size/id8690](http://www.akarussia.ru/knowledge/market_size/id8690). Accessed May 9, 2019

<sup>74</sup> Vartanova, E.L., Vyrkovsky, A.V., Makeenko, M.I. and Smirnov, S.S., “The Russian Media Industry in Ten Years: Industrial Forecasts”, 65–84

the actual disconnection from the global web that might follow would lead to major distortion of the internet connection and the work of all services that rely on the internet<sup>75</sup>. The licensing policy of Roskomnadzor is yet another barrier to entering the market.

Consequently, these factors determine the market as highly unattractive for private investment. The foreign interest in participation is already reduced to none as there are too many obstacles that are not worth the effort, as the market is not big enough, while the attractiveness for domestic investors is also falling rapidly. This leads to the following problem, which is a high reliance on the state support of the media businesses.

### 3.3 State financing

Already now, the biggest market share in the Russian media market belongs to the state or “semi-state” media. State media are the ones clearly owned by the state, like Channel 1, VGTRK or Russia Today; “semi-state” in turn are those which formally meet the criteria of private enterprises, but are indirectly owned and controlled by the state, like for example, Gazprom’s GMH. The third type is nominally in the hands of private individuals, for example, oligarchs close to the Kremlin, but in reality this is just a formality of the ownership. All these companies receive directly or sometimes in a slightly veiled form subsidies from the state. For the major media, such as the first channel or VGTRK these are extremely large sums of money. The official data from Ministry of Finance reveals the state expenditures on the mass media total of 76, 83, 88 billion of rubbles in the years 2016, 2017, 2018 respectively<sup>76</sup>, which constitutes nearly two per cent of total federal budget expenditures. The main recipient of was VGTRK television: in 2018 it received a total of 24.6 billion rubbles from the federal budget, a billion more than in the previous year, and in 2019 and 2020, the planned amounts are less - around 21 billion rubbles for each year<sup>77</sup>. The second among TV broadcasters in terms of subsidies was ANO TV-News, which owns and produces content for RT, receiving around 20 billion per year<sup>78</sup>. The high level of the expenditures in 2018 was justified by the promotion of a major international sports event that took place in Russia and the planned transition to digital broadcast. The key state program, “Information Society”, according to which the money goes to media holding was designed for 2011–2020<sup>79</sup>. This supposedly means that state financing is to be reduced in the following years. However, this seems very unlikely, keeping in mind the current state of the industry. Most probably, the state will have to continue the donations either in the

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<sup>75</sup> Alexandra Prokopenko, “Russia’s Sovereign Internet Law Will Destroy Innovation”, *The Moscow Times*, April 21, 2019, available at: <https://www.themoscowtimes.com/2019/04/21/russias-sovereign-internet-law-will-destroy-innovation-a65317>. Accessed May 10, 2019

<sup>76</sup> Yearly data of implementation of the federal budget, official website of the Ministry of Finance of Russian Federation, April 3, 2019, available at: [https://www.minfin.ru/ru/statistics/fedbud/?id\\_65=80041&page\\_id=3847&popup=Y&area\\_id=65](https://www.minfin.ru/ru/statistics/fedbud/?id_65=80041&page_id=3847&popup=Y&area_id=65). Accessed May 10, 2019

<sup>77</sup> “СМИ и бюджет: деньги закончатся вместе с футболом”, *Газета.ру*, March 23, 2018, available at: <https://www.gazeta.ru/business/2018/03/28/11699354.shtml?updated>. Accessed May 10, 2019

<sup>78</sup> *Ibid.*

<sup>79</sup> Распоряжение Правительства Российской Федерации от 20 октября 2010 г. N 1815-р г. Москва "О государственной программе Российской Федерации "Информационное общество (2011-2020 годы)", available at: <https://rg.ru/2010/11/16/infobschestvo-site-dok.html>. Accessed May 10, 2019

open form or bypassing the officially stated budget, because it is the only way to keep the same level of production if the demand for advertising decreases and the audience's expectation grow.

### **3.5 Competition**

In the market where some of the players can benefit from stable and generous state funding, healthy competition is impossible.

The money donated to some media holdings largely pays for their expenses for production, the wages, purchases of rights, and so on. But at the same time, these media are present at the advertising market, they sell advertisements in the same way as fully commercial channels or other media outlets, so that they must compete on equal terms. As explained by one of our respondents,

*Fair competition is absolutely impossible in a situation where, say, we sell bakery on the market, but at the same time they [the state] give me money for flour, a free oven and it also allows us to hire a hundred workers not at the expense of selling cakes, but at the expense of the state budget. I will be able to offer a price that you [the competitors] can never offer, you can never compete with me in this situation. But it is precisely this position in which Russian state media are. Of course, there is a huge degree of monopolization of the market - in fact, all the major media in Russia somehow belong to the state.<sup>80</sup>*

Moreover, the effect of state interference is two-sided. Apart from certain media benefiting from state protectionism, the other ones are suffering from the lack of security. The monopolization of the market is possible and even inevitable not only because of the state support for pro-Kremlin or apolitical, although still state-controlled, media, but also because independent media are facing difficulties of insecure legal and political environment. The state policy has nearly completely destabilized the legal basis for the proper functioning of the independent media by imposing obscure restrictions and implementing selective law enforcement. Thus, state interference in the media business in Russia affects the competition from two sides: from the one hand, there is state support for pro-Kremlin or apolitical, although still state-controlled, media, and on the other hand, the independent media are facing difficulties of insecure legal and political environment. In this situation a healthy competition is impossible.

### **3.6 Lack of judicial protection**

From the various cases described in the previous chapter it is clear that nearly any media in Russia now can be destroyed without a lot of effort and social response even if it behaves rationally and tries not to violate any law. Apart from the cases where the ground for convicting an unfavourable media outlet is deliberately found or created by the prosecutors to exert pressure over it, one must consider the cases of legal proceeding against the state-related persons or organisations that concern a real conflict of interests or violations of rights. In the current regime, there little chance of court decision in favour of the media, especially in the proceedings that concern political figures or state companies. The situation worsened due to several reasons. The

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<sup>80</sup> See Appendix, Interview with F. Kravchenko

first one concerns the changes in the judicial system in Russia: The Supreme Court of Arbitration of the Russian Federation was liquidated, and the system of lower arbitration courts has been greatly changed. The Supreme Arbitration Court was characterised as an example of transparency, high qualification of the judges and a strive to form a predictable practice, while quite often making rulings against the state bodies<sup>81</sup>. With its liquidation, both arbitration courts and the courts of general jurisdiction are headed by the Supreme Court, which is less independent and transparent<sup>82</sup>. Another reason lies in the increase in the legal limitations on the media activities, the ambiguity of these rules and poor quality of the newly accepted laws<sup>83</sup>. One of the specifics of the judicial practice in Russia is that frequent verdicts of acquittal of a judge are a reason for scrutiny of his or her decisions. It is especially relevant for criminal prosecution, where the number of the acquittal decisions in the judge's career is none or close to none. Thus, the judicial system represents an efficient mechanism for condemnation rather than a protection of rights and interests of the citizens.

However, in the cases of no interest to the government one can still seek justice and protection. In practice, most of the conflicts in the media industry are the ones that are regulated by the Civil Code, not litigations against the authorities. In principle, in cases like pleas of protection of honour, dignity and business reputation or claims of copyright infringement, the horizontal relationship between the parties normally would not involve the pressure from the 'above'. The exception though stems from the interconnection between some of the media owners and the government. The growing influence of the state on the media through private businesses or particular persons means the spread of the state interests. Thus, statistically, the number of cases where the principles of rule of law and fair trial are implemented is becoming less. "...a lawyer, just competently performing his work, can predict what the court decision will be. Wherever the state participates, and there are more such cases, the court experiences influence that has become more difficult to overcome"<sup>84</sup>. Both of the respondents also notice, that the law itself is not the main problem, and it is the intention of the legislator and the way the law is implemented, that constitute the threat to the business in Russia<sup>85</sup>.

### 3.7 Quality of the content

One of the main results of such a system, that has been formed in Russia by now, is the negative impact on the quality of the content. It includes both the information that the end users get and the way that this information is presented, whether this is news, opinions, or even entertainment. In a situation when the market is stagnating and there is a lack of investment, the opportunity of resurrection lies in creative and innovative approaches to modification of the business at all stages of the value chain. The quality of the end product though remains the main indicator of the production efficiency and determines level of the consumers' satisfaction.

The production of quality content depends not only on the available financial resources, but on human resources even more. The existence of the professionals that are capable of creating the

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<sup>81</sup> See Appendix, Interview with F. Kravchenko

<sup>82</sup> *Ibid.*

<sup>83</sup> *ibid.*

<sup>84</sup> See Appendix, Interview with F. Kravchenko.

<sup>85</sup> See Appendix, Interview with A. Mayofis; Федор Кравченко, "Эксперт по российскому праву СМИ: Нас переселили в среднеазиатскую диктатуру", интервью Юлии Вишневецкой для *Deutsche Welle*, July 7, 2014, available at: <https://p.dw.com/p/1CVow>. Accessed May 13, 2019

quality product is determined by the education system and preparation of staff. In these terms, the sphere of journalism seems to be hindered the most.

*Certainly, it [the state] influences absolutely everything, starting from the training of professionals, studying in universities, the education of sensible, free-minded people who are inculcated with the values of a democratic society and independent press. I think that these issues today are paid less and less attention to in universities, and the during their practice the specialists, students then see, not only in textbooks but also in life, what is happening. And, strictly speaking, the independent journalism, investigative journalism, or different points of view, in general, are just out of the question, as everyone realizes that it is impossible, or just having no example of how it works.<sup>86</sup>*

The entertainment sector is surely less affected by the state interference. However, the state intention to control the information sphere results in the factual control of all media with the subsequent lack of healthy competition. Thus, the entertainment media also experience the lack of incentives to grow and develop good specialists.

From the consumers perspective, such a situation signifies of a loss, because, even if there is a demand for a product of a good quality, such product is not present at the market.

## CONCLUSION

The ambiguous character of many legislative sources, vague and obscure wording of the statutory texts and lack of coherence in judicial interpretation of those leads to chilling effects on the already malfunctioning rule of law in Russia. The introduction of the new mass media regulations and the tightening sanctions for the non-performance indicate the emergence of the new legal environment, which can be difficult for the business to adapt to.

The increasing governmental control over the media displayed in the pressure over independent media outlets results in several threats for the development of the industry. Media businesses are becoming more financially dependent on the state's support which subsequently leads to serving the needs of the government rather than the society. A current situation of obscure rules of the game and unspoken but generally accepted censorship eliminates the possibility of healthy competition. The companies are often unable to withstand scrutiny by the law-enforcement agencies and thus are either forced to surrender their independence or exit the business. The high dependency on the approved editorial policy prevents the publishers from relying on the market-driven demands of the audience, while the lack of competition averts media from striving to produce high-quality content.

Innovation and advancement that are particularly crucial for this industry are slow, gradual and evolutionary rather than revolutionary. This is reasoned, firstly, by the audience's preferences and secondly, limited competition. The intentions of the state to increase restrictions in the digital space, although not always successful, are nonetheless preventive in terms of the development of new business models and popularization of disruptive technologies.

Thus, despite the presence of legal basis for the functioning of the independent media, the practical implementation of the existing rules which involves cherry picking in condemnation and prosecution and in some cases even the abuse of powers by the state for the purposes of preserving the authority are destabilising the foundation of the industry.

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<sup>86</sup> See Appendix, Interview with A. Mayofis

The issues considered in this paper require further investigation. A more precise understanding of the business environment can be achieved by examining the advertising market in Russia, as to it is a predetermining factor for the development of media as a business. Moreover, the search for the rule of law in Russia presupposes in-depth research of judicial practice with a special focus on the regional court decisions. One of the characteristics of the Russian specific approach to justice is the lack of transparency and publicity in the work of the judicial system. At the moment, the visible effects of such an approach can be observed and analysed, but the possibility to combat the problems lies in understanding of their core.

The goal of this paper was to find out how does the legislative policy and state intervention in media business affect the media industry in Russia. The conclusion based on the evidence considered in the work is that the problems that threaten the development of the media industry are aggravated by the state intention to gain complete control over the information sphere. The market share controlled by the state combined with trends in legislation and realities of the law enforcement in Russia lead to overall decline of mass media as a business and affect the society as a whole.

## **Appendix**

As a part of a thesis “The legality of the governmental control of Russian media and its effect on media business” work, two interviews were conducted.

The first interviewee was a representative of regional television, Arkadij Mayofis, who was the head of a Tomsk TV channel TV and is the owner of Tomsk Media Group - the holding which included regional TV-channels, production studio, news agency, a number of radio channels and advertising companies. TV2 was founded in 1990, during the time of its operation the channel gained recognition and became famous for its investigative stories and news, it has won various journalistic awards, including national prize TEFI. In 2014 the channel underwent technical difficulties in broadcasting, and later that year the broadcasting license was not prolonged by Roskomnadzor. In January 2015 the channel stopped broadcasting.

The interview took place on the 22/04/2018 via Facebook call. For the convenience of the interviewee, it was done in Russian and then the text was translated into English by the author of the work. In the following appendix to the work, one can find the transcript of the original text and its translation into English.

The second interview is Feodor Kravchenko, a managing partner of Media Lawyers Collegium and practising lawyer, specializing in media law, IP, legal regulation of advertising, licensing in the field of media and telecommunications, protection of honour, dignity and business reputation, protection of confidential information and other areas of information law. The interview took place on the 11/05/2019 via WhatsApp call. The transcript of the answers is enclosed.

Interview 1.

**1. How do you assess the existing legislation regulating the activities of the media in the Russian Federation? Recently, several laws have been passed that restrict the activities of the media. What are the real goals of these measures?**

The ultimate goal of many laws in Russia, including these, is to preserve the existing power as long as possible. It is clear that the media, which conduct an independent editorial policy do not suit the authorities. In Russia, not everything is regulated by law: we know examples, when the law was great, but the practice of their execution or not execution, on the contrary, led to the fact that independent media were closed. Therefore, very little depends on what legislation in Russia today is. Everything in Russia is now centralized so that it is in the hands of one person and his apparatus in the form of the presidential administration and the Federal Security Service as watchdogs of this regime. Therefore, the issue is not in the legislation. It is all about the regime.

**2. What is the role of the state in the development of media business in Russia? Is the role of the state in the industry limited only by preventing the emergence/operation of publications/channels/ sources, or does the influence of the state extend wider and affect the business of non-political media?**

Certainly, it influences absolutely everything, starting from the training of professionals, studying in universities, the education of sensible, free-minded people who are inculcated with the values of a democratic society and an independent press. I think that these issues today are paid less and less attention to in universities, and the during their practice the specialists, students then see, not only in textbooks but also in life, what is happening. And, strictly speaking, the independent journalism, investigative journalism, or different points of view, in general, are just out of the question, as everyone realizes that it is impossible, or just having no example of how it works. The same goes for entertainment media. There is an unwritten contract of the owners that they entertain not only because it is needed by the audience, but because they cannot do anything else. No businessman today will not invest in the mass media, which does news, for example - just because it is dangerous for their primary business. In short, from which side do not look, everywhere are obstacles that hinder the existence of normal mass media economically, politically, and ideologically.

**3. How has the industry changed compared to the beginning of the 2000s? How do you see the development of media business in Russia in the future?**

The media business cannot exist separately from the situation in the country, economic and political, therefore, if the situation in the country worsens and toughens (and I have no doubt that it will follow), then the media live through not the best times: in fact, their remains, since today there is almost no normal media on traditional mediums, and the Internet is also under attack, and it will only get worse, from my point of view.

As for the difference from what was happening in the two thousandths, the situation began to deteriorate precisely at this time, with Putin's advent to power. But then, economically the mass media were able to survive and even develop, because the economy began to swell with oil money, and this could not but affect the media that live on advertising - and the advertisers were living better, economically. It was a period of economic heyday of the media, and at the same time, simultaneously, the strangulation of independence went on all fronts already, and in this sense, now it is only the continuation of what was started in the 2000s.



**4. What, in your opinion, is the role of the Internet and new technologies in the development of the market in Russia?**

Predominant, as in the rest of the world. More and more people prefer Internet platforms to meet their interests in information, entertainment, and many others and so it will continue. It is clear that the phones, in which the most part of people's life is concentrated nowadays, are going to play a major role and the media will go out looking for formats related to the phone, fitting the perception via mobile phones. It will all happen inevitably, another story is that the government is trying to regulate these areas, somewhere successfully, somewhere not (in case of app. "Telegram", not very successfully). What will happen tomorrow? The state is preparing, investing big money to regulate it. Obviously, this cannot last forever. But, as I have already said, the collapse of state policy will happen only with the collapse of the state as it is today.

**5. Do you think the elimination of regional television was one of the goals of the transition to digital broadcasting or was it rather a "side effect", and this transition was inevitable only as of the next step in the development of technology?**

I don't think that it was exactly the initial task, that the question was "how do we destroy the regional media?" - "Well, let's introduce digitalization, in order to destroy..." Most likely, these are two parallel processes, digitalization is like the inevitable stage in the technical development of this industry, and the destruction of any independent media, not only regional, as a separately worthwhile goal. And at some point, they realized that it could be connected, so they successfully did it, connected those. They succeed very well when it is about killing, destroying, demolishing; it is much more difficult to create, develop, for this a completely different type of statehood is needed than the one that now exists in Russia.

**6. There is a point of view that the closure of TV2 (the Tomsk media group) was a kind of testing of public opinion before the closure of regional TV companies in relation to the switchover. What do you think about it? And, in your opinion, how could a stronger public reaction affect the further development of events, both with TV2 and with the entire branch of regional television?**

I do not think that it was testing, because, at that moment when TV2 was being destroyed, the state absolutely didn't care about public opinion. It has already produced a huge amount of actions in this area and in all the others that could have caused some kind of protest, but, firstly, they did not cause, and secondly, if they did, there was no response to that. Today, the state doesn't care what people think about certain actions, and, generally, the state is right, as the people eat it all up and continue to vote "correctly". So, TV2 - it was a specific task, they didn't show anything to anyone, it was just necessary to destroy us. And at the same time, it turned out that this showed how the state will deal with everyone who was like us. But I think that this was a side target.

Original text in Russian

1. Как вы оцениваете существующее законодательство, регулирующее деятельность СМИ в РФ? За последнее время был принят ряд законов, ограничивающих деятельность медиа - каковы настоящие цели принятия этих мер?

*Окончательная цель очень многих законов в России, в том числе и этих, заключается в том, чтобы сохранить существующую власть как можно дольше. Понятно, что СМИ, которые занимают независимую от властей политику, ведут редакционную политику*

*самостоятельную, не устраивают власть. В России же не все регулируется законами: мы знаем примеры, когда законы были прекрасные, а практика их применения или неприменения, наоборот, приводила к тому, что независимые СМИ закрывались. Поэтому, по большому счету, оттого, какое законодательство сегодня в России, зависит очень мало. Все сейчас в России настолько централизовано, что находится в руках одного человека и его аппарата в виде администрации президента и Федеральной Службы Безопасности как сторожевых псов этого режима. Поэтому, дело не в законодательстве. Дело в режиме.*

2. Какова роль государства в развитии медиабизнеса в России? Ограничивается ли роль государства в индустрии только препятствованием возникновению/работы оппозиционных изданий/каналов/источников, или влияние государства простирается шире, влияет на бизнес аполитичных медиа?

*Безусловно, влияет абсолютно на все, начиная от подготовки профессионалов, обучения в университетах, там тоже сужается поляна для воспитания здравомыслящих, свободных людей, которым прививаются ценности демократического общества и независимой прессы. Я думаю, что этим вопросам сегодня уделяется внимания в университетах все меньше и меньше, а практика такова, что специалисты не только в учебниках, но и в жизни видят, что происходит, и, собственно говоря, о независимой журналистике, о расследовательской журналистике, или вообще о журналистике и разных точках зрения просто и речи не ведут, понимая, что это или невозможно, или не видя, как это работает. То же самое касается и развлекательных СМИ. Существует такой негласный договор хозяев о том, что они развлекают не только потому, что это нужно зрителям, но потому что другим заниматься ничем нельзя. Никакой вменяемый сегодня бизнесмен не станет инвестировать в средства массовой информации, которое занимается новостями, например. Просто, потому что это опасно для его основного бизнеса. Короче говоря, с какой стороны не кинь, везде клин, препятствующий существованию и экономически, и политически, идеологически, нормальных средств массовой информации.*

3. Как изменилась индустрия по сравнению с началом нулевых? Каким Вам видится развитие медиабизнеса в России в будущем?

*Медиа бизнес не может существовать отдельно от ситуации в стране, экономической и политической, поэтому, если ситуация в стране будет ухудшаться и ужесточаться (а у меня нет никаких сомнений, что она пойдет именно по этому пути), то и медиа будут переживать не лучшие времена - по сути, их остатки, так как сегодня уже практически нет нормальных медиа на традиционных носителях, а на интернет тоже идет наступление, и будет только хуже, с моей точки зрения.*

*Что касается разницы между тем, что было в двухтысячные годы, то как раз ситуация ухудшаться стала именно в это время, с приходом Путина к власти. Но тогда экономически средства массовой информации еще способны были выживать и даже развиваться, потому что экономика начала пухнуть от нефтяных денег, и это не могло не сказаться на средствах массовой информации, которые живут с рекламы, потому что их рекламодатели стали жить экономически лучше. Это был период экономического расцвета средств массовой информации, и при этом параллельно удушения независимости шло по всем фронтам уже, и в этом смысле, сейчас лишь продолжение того, что было начато в двухтысячные годы.*

4. Какова, на Ваш взгляд, роль интернета и новых технологий в развитии рынка в России?

*Преобладающая, как и во всем мире. Все больше и больше людей предпочитают интернет-платформы для удовлетворения своих интересов информационных, развлекательных, каких-либо еще. И так будет происходить дальше. Понятно, что роль телефона, в котором сосредоточена большая, если не большая, часть жизни человека, начинает играть все большую и большую роль, и медиа будут переходить туда и будут искать форматы, связанные с телефоном, облегчающие восприятие по телефону. Это все будет происходить неизбежно, другой разговор, что эти сферы государство пытается регулировать каким-то образом, где-то успешно, где-то нет (с Телеграмом - не очень успешно). Что будет завтра? Государство готовится, вкладывает большие деньги, чтобы это регулировать. Очевидно, что бесконечно долго это продолжаться не может. Но, как я уже говорил, крах произойдет политики государственной только с крахом того государства, в каком виде оно сегодня существует.*

5. Как Вы считаете, было ли устранение регионального телевидения одной из целей перехода на цифровое вещание или же это скорее “побочный эффект”, и этот переход был неизбежным только как следующий шаг, учитывая развитие технологий?

*Я не думаю, что последовательно задача была именно такая, что стоял вопрос “как нам уничтожить региональные медиа?” - “А, вот, давайте цифровизацию введем для того, чтобы уничтожить.” Скорее всего, это два параллельных процесса, цифровизация - как неизбежный этап в техническом развитии этой отрасли, и уничтожение независимых любых СМИ, не только региональных, как отдельно стоящая цель. А в какой-то момент они поняли, что это можно соединить, и успешно с этим справились, соединили. Все, что касается убить, уничтожить, подмять, это у них очень хорошо получается, гораздо сложнее получается создать, развить, для этого нужен совершенно другой тип устройства государственности, нежели тот, который сейчас существует в России.*

6. Существует точка зрения, что закрытие ТВ2 (томской медиа группы) было своего рода тестированием общественного мнения перед закрытием региональных телекомпаний в связи с цифровизацией. Что Вы думаете об этом? И, как на Ваш взгляд, мог бы более сильный общественный резонанс повлиять на дальнейшее развитие событий, как с ТВ2, так и со всей отраслью регионального телевидения?

*Не думаю, что это было тестирование, потому что в тот момент, когда ТВ2 уничтожилось, государству было уже абсолютно наплевать на общественное мнение. Оно уже произвело огромное количество действий в этой сфере и во всех остальных, которые могли бы вызвать какой то протест, но, во-первых, не вызвали, а во-вторых, если и вызвали, то на это не было никакой реакции. Сегодня государству абсолютно все равно, что думают люди по поводу тех или иных их действий, и, как правило, оно, государство право, так как народ все это съедает и продолжает голосовать “правильно”. Так что, ТВ2 — это была такая задача специфическая, никому они ничего этим не показали, просто нужно было нас уничтожить. А заодно и выяснилось, что это продемонстрировало то, как государство будет поступать со всеми, кто был на нас похож. Но я думаю, что это была побочная цель.*

## Interview 2.

1. На протяжении последних нескольких лет в законодательных инициативах в России прослеживаются явные тенденции ограничений в области информации и иностранного участия в СМИ. Как принятые законы и их применение влияют на медиа бизнес?

*По поводу ограничений в сфере иностранного участия: судя по всему, правительство (т.е. Кремль) поставило стратегическую задачу исключить вообще любое участие иностранного бизнеса в российских СМИ, практически любых влиятельных. то есть можно точно сказать что иностранцы не могут участвовать в современном российском медиа бизнесе, даже если он носит не политический, а развлекательный характер. в этом смысле интересно посмотреть на пример Романа Абрамовича, который остается достаточно лояльным Кремлю. Когда он относительно недавно получил гражданство Израиля, ему пришлось во исполнение поправок в статье 19.1, 19.2 продать принадлежащий его подконтрольным компаниям контрольный пакет акций Первого Канала. Такой запрет на всякое иностранное участие в российских медиа с юридической точки зрения не был нужен или полезен и носит абсолютно бессмысленный характер, поскольку еще несколько лет назад были приняты изменения в антимонопольное законодательство, которые позволяли Федеральной Антимонопольной Службе, которая подконтрольна правительству, одобрять или не одобрять крупные сделки с медиа активами. Таким образом. у Кремля и раньше была возможность регулировать эту сферу, и принятием поправок, полностью запретивших иностранное участие в российских СМИ, Кремль не расширил свои возможности, а наоборот их сузил. Поэтому, я думаю, речь идет не о какой-то юридической необходимости, а скорее о жестком политическом решении, декларации, что в России никаких иностранцев в области СМИ быть не должно в принципе.*

*Но еще до того, как были приняты все эти законодательные запреты на иностранное участие в СМИ, российский медиа бизнес стал терять всякую привлекательность для зарубежных бизнесменов, и это было связано с тем, что российский медиа рынок не вполне здоровый. На российском медиа рынке есть очень большая доля государственных и полугосударственных СМИ. Государственные - те напрямую принадлежащие правительству, например ВГТРК, а полугосударственные, это те, которые принадлежат, например, Газпром Медиа, которые формально соответствуют критерию частных, но находятся в опосредованной собственности государства. Есть еще третий вид СМИ, которые номинально находятся в руках частных лиц, например, олигархов, близких к кремлю, Ротенберги, например, или Ковальчук, но на самом деле это просто формальная форма собственности, конечно, это просто другое лицо Путина, но это все тот же Путин, без каких-либо содержательных, сущностных отличий. Соответственно, эти государственные и полугосударственные СМИ получают из бюджета напрямую или в немного завуалированной форме очень большие субсидии и дотации. К примеру, для таких СМИ, как первый канал, ВГТРК, речь идет о сумме около миллиарда долларов в год, или десятков миллионов рублей в год, и эти деньги просто безвозмездно передаются соответствующим медиа холдингам, что в значительной степени окупает их расходы на производство, на заработные платы, на покупку прав и так далее. Но, помимо этого, те же каналы полностью присутствуют на рекламном рынке, точно так же продают рекламу, как и полностью коммерческие каналы и конкурировать им приходится на равных. Но честная конкуренция абсолютно исключена в ситуации, когда, скажем, мы с вами продаем пирожки на рынке, но мне при этом дают деньги на муку, бесплатную печь и еще позволяют нанять сто рабочих не за счет денег с продажи пирожков, а за счет государственного бюджета. Понятно, что я смогу предложить такую цену, какую вы никогда предложить не сможете, вы никогда не сможете со мной конкурировать в этой ситуации. Но именно в таком положении находятся российские государственные СМИ, и, конечно, у них огромная степень монополизации рынка - фактически, все крупные СМИ в России так или иначе принадлежат государству. Это первая причина, почему я говорю, что российский медийный рынок не совсем здоровый. Это не гигантский рынок. Да, он достаточно большой, но не феноменальный. При этом доля телевидения была преобладающей, и она*

*начинает сокращаться и сейчас доля доходов интернет-СМИ догнала телевизионные, обогнала, и, скорее всего, это навсегда; доля печатных СМИ стабильно снижается; доля радио падает еще быстрее. Таким образом, в целом, российский рынок не является растущим, если не брать в расчет интернет-СМИ. И этот рынок со временем становился все менее и менее привлекательным для иностранных инвесторов, потому что на нем постоянно, в геометрической прогрессии росли юридические и политические риски. То есть, в России вообще собственность не является неприкосновенной, и если потребуется, то эту собственность могут отобрать через правоохранительные органы и это в полной мере касается медиа активов. Но, плюс к тому, каждый год принимались новые и новые законы, по которым можно было лишить медийные компании лицензии или наложить огромные штрафы, или признать свидетельства о регистрации СМИ недействительным, или возбудить уголовное дело. То есть, делать какой-то контент, предсказуемо понимая, что за него не последует штрафов, в России становилось все менее и менее возможным. Иностранцы очень любят предсказуемость в своем бизнесе, но получалось так, что доходы падают, а риски растут, и в какой-то момент эти две кривые пересеклись, и сейчас я могу сказать, что даже для российского бизнеса инвестиции в масс-медиа абсолютно непривлекательны, если, повторюсь, не учитывать интернет-сектор. Довольно резкое заявление, но я рискну его сделать: в России сейчас СМИ как бизнес не существует, потому что риски слишком высоки, а доходы слишком низкие.*

2. Цифровые медиа, и социальные медиа, в частности, играют все большую роль в сфере массовых коммуникаций. Как влияют изменения в законодательстве на развитие цифровых медиа в России и, наоборот, реагирует ли законодатель на появление новых медиа технологий?

*На мой взгляд, было две эпохи в отношениях российского законодателя и цифровых медиа. Первая эпоха характеризовалась невмешательством. Довольно долгие годы правительство и, в частности, министерство связи занимало очень взвешенную и правильную позицию, что не нужно лезть депутатам в регулирование интернета. Было отклонено на уровне министерства связи довольно много законодательных инициатив, которые призывали к какому-то подходу к регулированию распространения информации в интернете. Все это продолжалось до, условно говоря, 2012 года, когда законодатель, разумеется, не самостоятельно, а по указанию из Кремля и при полной поддержке Минсвязи, выработал очень действенный механизм, который называется блокировка или “черный список интернет-сайтов”. Действительно, поскольку в российском технологическом поле есть такая фигура, как Интернет-провайдер, у которого есть лицензия на оказание услуг связи, и государство всегда может его этой лицензии лишить и, соответственно, обнулить его бизнес, всем российским провайдерам можно сказать: “не пускайте пользователей интернета к тем сайтам, которые мы внесем в соответствующий реестр”. Соответственно, после этого началась повальная кампания по ограничению социальных сетей и интернета, и сейчас компаниям, которые вынуждены исполнять российское законодательство, очень трудно конкурировать с европейскими, североамериканскими, азиатскими и другими мировыми интернет-компаниями, потому что введено большое количество малограмотных ограничений на их деятельность. Когда я говорю “малограмотный”, это не только моя негативная субъективная оценка. Давайте посмотрим на факты: в 2014 году были приняты поправки в закон об информации, которые вводили понятие “популярный блогер”. Формулировки в законе не то что размытые, а просто не имеют смысла: “владелец сайта или страницы в сети интернет (что такое сайт? тем более, что такое “страница в сети интернет”? это нигде не определено.) на которых размещается*

*общедоступная информация (то есть, практически любая) и доступ к которым в течение суток составляет более трех тысяч пользователей в сети интернет". Здесь просто нарушена грамматическая конструкция - нельзя сказать "доступ составляет более трех тысяч пользователей". Совершенно неясно, что означает та формулировка, которую они использовали. С точки зрения юриспруденции, невозможно четко установить, что они хотели этим сказать. (Закон был отменен спустя три года.) Раз законодатели сами, спустя такое короткое время были вынуждены отменить эти поправки, это говорит об их очень низком качестве - законодатель сам признал, что он допустил глупость, что он сформулировал те нормы права, которые сам счел нецелесообразными.*

*После этого были введены серьезные ограничения, связанные с персональными данными: все российские интернет-компании обязали хранить данные только в России. Но это не всегда возможно, и многим пришлось на это сильно потратиться. Огромных затрат со стороны интернет-компаний потребовали действия по предоставлению спец. службам знакомиться с перепиской. И последний, пакет Яровой, который потребовал хранить абсолютно всю информацию, которая передается всеми пользователями, на жёстких дисках. Например, если вы Вконтакте скачаете пять раз фильм "Властелин Колец", то, получается, что "контакту" нужно обзавестись такими жесткими дисками, которые позволят хранить пять раз эти гигабайты информации. Больше того, не только "вконтакту", но и провайдеру. Это, конечно, неисполнимо. Это чудовищные объемы данных, которые хранить практически невозможно. Очень интересная тактика выработана Роскомнадзором. Роскомнадзор ведет переговоры со всеми крупными игроками - с Гуглом, с Твиттером, Амазоном - со всеми, кто присутствует на российском рынке услуг в сфере интернета, и старается убедить их, иногда мягко, иногда жестко, следовать этим правилам. В качестве аргумента, что в случае чего, мы готовы вас заблокировать, Роскомнадзор приводит пример социальной сети LinkedIn. Она не была очень популярной, разве что среди какого-то узкого круга бизнесменов или ориентированных на Запад людей. Но все равно, когда ее в одночасье заблокировали, было обозначено, что Кремль готов действовать достаточно жестко в исполнении своих угроз, и остальным пришлось как-то с ним договариваться. Понятно, что тот же Гугл не выполняет всего, о чем его просит Роскомнадзор, но и старается не занимать слишком агрессивную позицию. Крупные компании защищают то, что ими пользуются миллионы или десятки миллионов людей, и предполагается, что Кремлю не по силам сейчас контролировать тот социальный взрыв, который будет, если он заблокирует крупные социальные сети, поэтому они скорее стараются договориться по-хорошему.*

Как может сказаться закон о суверенном интернете на российском бизнесе и медиа бизнесе в частности?

*У закона есть две стадии. На первой стадии он никак не скажется. а во второй фазе он может сказаться катастрофически. Первая относится к тому периоду, который сейчас идет, когда на бюджетные деньги закупается достаточно дорогостоящее оборудование, и это оборудование устанавливается у операторов связи. Скорее всего, благодаря этому очень сильно расширятся возможности российских гос. органов что-то блокировать, что-то прослушивать, и исподтишка влиять на интернет и его контролировать. Но это по большому счету не сильно отличается от ситуации, которая есть сейчас, когда уже в принципе российские гос. органы имеют возможность и прослушивать, и читать, и блокировать. Но, как я сказал, в этой фазе практически ничего не меняется и для пользователей, и для интернета. Вторая фаза возникает тогда, когда возникают какие-то чрезвычайные обстоятельства, и я думаю, что Кремль в первую очередь беспокоит ситуация, когда массы людей выходят на улицы с какими-то протестами (и я бы сказал, что вообще две трети законодательных инициатив,*

которые в последние десять лет были предприняты, направлены не на текущую ситуацию, а на то, чтобы иметь все рычаги контроля, если начнутся какие-то социальные волнения и протесты). В этой ситуации закон «О суверенном Рунете» позволит очень быстро выключать любые технологические ресурсы, отдельные сайты, отдельные сети, мессенджеры, только технологически, конечно, ситуация будет гораздо хуже, чем когда Роскомнадзор блокировал Телеграм и не работали десятки сервисов Майкрософта, Амазона, Гугла и многих других интернет компаний. Скорее всего, не будет работать ничего, весь интернет будет работать очень непредсказуемым, неопределенным образом, в очень некачественном режиме. Но я думаю, что Кремль осознанно идет на это, поскольку, во-первых, Кремль вообще очень любит, когда из бюджета выделяются средства, которые можно отдать близким кремлю подрядчикам, во-вторых, это все-таки, пусть и какое-то иллюзорное, но создание контроля, а в ситуации, когда речь будет идти о сохранении власти, то Кремлю будет безразлично, что будет с экономикой.

Таким образом, цифровые медиа хорошо развивались до того, как возникло давление со стороны государства, но после 2012 на протяжении последних семи лет с каждым годом регулятивная среда становилась все хуже и хуже, и сейчас ее можно оценивать как неудовлетворительную, крайне непривлекательную, опасную.

3. В своем интервью 2014 года Вы говорили о наличии верховенства закона и справедливого суда в России, за исключением политических дел и дел с явным финансовым давлением одной из сторон. Далее Вы добавили, однако, что это - “старые добрые времена, когда было примерное равенство сил и разумное законодательство” (<https://p.dw.com/p/1CVow>). Изменилась ли ситуация за последние несколько лет, и какие тренды можно наблюдать в судебной практике?

*К сожалению, ситуация, должен признать, ухудшилась, и она с каждым годом ухудшалась все сильнее и сильнее. Как раз вскоре после 2014 года была изменена структура судов в России, был ликвидирован высший Арбитражный суд. Высший Арбитражный суд как раз показывал пример того, каким суд должен быть прозрачным, он старался формировать предсказуемую практику, достаточно часто выносил решения против гос. органов, квалификация судей там была достаточно высокой. Возможно, этой судейской самостоятельностью он и заслужил себе такой приговор. Система нижестоящих арбитражных судов была сильно изменена. Сейчас во главе и арбитражных судов, и судов общей юрисдикции находится Верховный суд, который как раз никогда ни особенной открытости, ни независимости, ни даже квалифицированности не демонстрировал. Все-таки, наверное, чуть-чуть ухудшилось в этом смысле качество судебной системы. Если говорить о судьях, то, конечно, они находятся под двойным давлением. Нельзя говорить о том, что судья независим и несменяем. В России, скажем, если судья начинает выносить оправдательные приговоры, то это воспринимается как нонсенс, и в карьере многих судей вообще нет оправдательных приговоров или их количество можно пересчитать по пальцам одной руки. И даже за них судьям приходится иногда проходить строгие проверки - “по какой-то причине он вынес целых два оправдательных приговора?”. Но это если говорить об уголовных делах. Если брать гражданские дела, то, конечно, всегда сохранится значительная доля дел, в которых государству абсолютно все равно - например, если вы - журнал, а я - фотограф, и мы с вами судимся, то какая государству в конце концов разница, смогу я с вас взыскать триста тысяч рублей или нет за нарушение авторских прав. Конечно, такие дела будут разрешаться достаточно независимо. Но ведь у государства все больше и больше появляется безразличных ему бизнесов. То есть, если это будет не маленький какой-то журнал, а, скажем, ВГТРК или Первый канал, то не исключено, что судья*

*будет испытывать влияние, что это нужная нам компания. Это то, что касается медийных дел, а есть же еще дела, в которых фигурируют миллиарды рублей или долларов. государство, а точнее, люди, находящиеся у власти в России, вполне могут быть лично заинтересованы в исходе тех или иных дел. Поэтому, с этой стороны ситуация тоже ухудшилась: появилось больше игроков на рынке, которые государству небезразличны. Сохраняются, иногда, тем не менее, позитивные примеры: например, 10 дней назад нам удалось впервые взыскать убытки с Роскомнадзора за блокировку сайта в арбитражном суде. До этого все такие попытки, например, когда в результате блокировок Телеграма десятки и даже сотни сайтов пострадали, были неудачными. В этом случае арбитражный суд абсолютно непредвзято взыскал с Роскомнадзора пусть и не огромную сумму, всего 15000 рублей, но все же это прекрасный пример, что российские суды, особенно арбитражные, еще могут выносить такие единичные позитивные решения. Но если брать статистику, то она, конечно, с каждым годом ухудшается, и сейчас нельзя сказать, что юрист, просто грамотно выполняя свою работу, может предсказать, каким будет судебное решение. Везде, где участвует государство, а таких дел стало больше, суд испытывает влияние, которое стало труднее преодолевать.*

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