MEDIA LAW INTERNATIONAL ®

e-Zine 12/19

Qatar approves draft media law on press and publishing

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Cabinet supports freedom of opinion and expression in the country with new media law amid industry advance

Qatar's cabinet has approved a draft law regulating media activity in support of freedom of opinion and expression in the country amid technological advance.

The cabinet approved the new media law on press, publications, publishing and arts during a meeting held on 13 November that was chaired by Prime Minister HE Sheikh Abdullah bin Nasser bin Khalifa al Thani.

The cabinet met at the Amiri Diwan and has referred the draft law to the Shura Council.

The new law will replace Law No. 8 of 1979 on Publications and Law No. 16 of 1993, which regulate advertising, public relations and artistic production and works.

Qatar News Agency (QNA) commented on the law, stating: 'It comes within the context of updating legislation, keeping pace with technical and technological developments in the field of the press, publications, media activities and the arts, and supporting freedom of opinion and expression and freedom of the press and media in Qatar.'

In an earlier report, QNA commented that Qatar 'affirmed its keenness to support and develop the freedom of media, based on ➔

Singapore orders Facebook to correct user's post

Singapore has ordered Facebook to correct a user's social media post under the country's new fake news law, considered to be among the toughest in the world.

The order was issued on 29 November and requires Facebook to publish a correction notice on a post published by a user in Australia on 23 November. The post contained accusations about an arrest of a whistleblower and election rigging.

The government action marks the first time the country has enforced the Protection from Online Falsehoods and Manipulation Act outside its borders.

The authorities ordered the user Alex Tan, States Times Review Editor, to correct the post. Mr Tan refused to, commenting he would 'not comply with any order from a foreign government'.

Mr Tan, who was born in Singapore and is an Australian citizen, subsequently commented in a Facebook post that he would 'defy and resist every unjust law'.

The government commented that the States Times Review made "scurrilous accusations against the elections department, the prime minister, and the election process in Singapore", and launched an investigation against Mr Tan for failing to comply with a take-down request from the ministry.

Facebook previously commented that it was 'concerned with aspects of the new law which grants broad powers to the Singapore executive branch to compel us to remove content they deem to be false and to push a government notification to users'. ■

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TI Media

Future to acquire TI Media in GBP140m deal to develop digital monetisation models

Multi-platform media company Future has announced plans to acquire TI Media in a GBP140 million deal. The transaction, announced on 30 October, will allow Future to expand its portfolio to more than 220 global brands.

TI Media publishes some of the world's most iconic magazine titles, including Marie Claire, Country Life and Wallpaper. In a press release, Future commented that the deal 'further diversifies our audience with a large female readership.'

Future initiated the deal after a "record-breaking year" in which it almost tripled its pre-tax profit to GBP12.7 million for the year ending 30 September 2019, an increase from GBP4.4 million the previous year.

Future CEO, Zillah Byng-Thorne, said: "Following a record-breaking year of huge organic growth at Future, I am delighted that we are now in a position to announce the proposed acquisition of TI Media."

Ms Byng-Thorne, who joined Future in November 2013 as Chief Financial Officer, also commented: "We have long admired TI Media, and I am thrilled at the prospect of bringing our exceptional teams together. I truly believe that through our combined passion, determination and expertise that we will be a super-force of specialist media." ■

Schillings hires former cyber security director

Leading media law firm Schillings has appointed cyber security expert Peter Yapp as part of the firm's expansion of its cyber and information security division.

Peter Yapp joined the firm on 26 November and leads the cyber team. He is the fourth partner appointed by the Tier 1 firm this year and joins from the National Cyber Security Centre, where he was Deputy Director.

The firm's expansion is part of its ongoing work in the area of cyber defence, protecting the reputation and privacy of media clients when information security is breached.

Schillings' CEO, Rod Christie-Miller, said: "To properly understand, and protect against, every aspect of reputation, privacy and security threat in today's world, we need to have the best problem solvers from every discipline – law, intelligence, investigations, and information security."

Speaking of his appointment, Peter Yapp commented: "The role of cyber in our lives - and therefore its potential to be manipulated in the wrong hands - is greater than ever before. Rather than being scared, we need to understand how to take control."

Mr Yapp has also held senior roles in the cabinet office and the private sector.

Other hires over the past two years include Amy Pope, formerly US Deputy Homeland Security Advisor to President Obama, and John Chase, a crisis response expert with over 20 years of experience in responding to kidnap for ransom, extortion, blackmail, piracy and cyber threats. ■

Qatar approves draft media law on press

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← the political and social awareness of its people and its recognition of the right of its citizens to know the full truth.'

It added that the 'State consolidated the citizens' right to free and constructive media in a manner that distinguishes the truth from rumours and false and fabricated news.'

In May this year, Amir of Qatar, Sheikh Tamim Bin Hamad Al Thani, issued a law on the establishment of the country's Media City.

Under the law, the Media City will have an independent budget dedicated to developing media activity in the country.

It aims to strengthen the county's regional position as a location to attract international media companies.

The law offers licensed companies in the Media City tax exemptions for 20 years and gives them the freedom to hire employees and import supplies without registration.

The preparation of the draft law is intended to achieve a high level of national transparency and integrity, as well as protect public funds.

The charter is expected to promote conduct codes and public-service ethics among officials in the country.

Artificial intelligence is among other areas of Qatar's national strategy that were reviewed by the cabinet. ■

Rules on influencer advertising and FTC's guidance on disclosure

Hannah E. Taylor

Lawyer Hannah E. Taylor outlines measures that can protect against "deceptive" practice

As influencers have risen in popularity, the Federal Trade Commission (FTC) has taken note of failure industry failure to properly disclose the sponsored nature of content.

Some, therefore, mistakenly believe that the law in the United States relating to deceptive endorsement practices is new. While advertising is ever-changing, the law prohibiting use of deceptive third-party endorsement tactics has actually existed for decades. Below is a primer.

Section 5 of the 100-year-old FTC Act prohibits unfair or deceptive acts or practices. A representation, omission,or practice is "deceptive" if it is material and likely to mislead consumers acting reasonably under the circumstances.

The FTC made clear in its 1980 Guides Concerning Use of Endorsements and Testimonials in Advertising (Endorsement Guides) that if there exists a material connection between an endorser and an advertiser – one that might affect the weight or credibility of an endorsement – and such material connection is not clearly and conspicuously disclosed, such is a deceptive practice.

A "material connection" can mean payment, but can also mean receipt of product, a relationship (such as working for the company, familial ties, etc.), or other benefits. This means, for example, if an influencer posts a review of a complimentary lipstick, a brand sent her, she should disclose in the post that she received the lipstick for free.

Likewise, if an employee of a car company posts that he loves the new model, he should disclose that he works for the business.

While the Endorsement Guides do not have the force of law, violation of the principles can (and do!) lead to an investigation or enforcement actions by the FTC. After the influencer boom, the FTC released updated FAQs, "What People are Asking," addressingsocial media and influencer advertising.

The FTC also brought related enforcement actions, including against major advertisers such as Warner Brothers and Lord & Taylor.

But in case the Endorsement Guides, the FAQs, and enforcement actions were not enough, the FTC recently released Disclosures 101 for Social Media Influencers, a plain English guidance document that finally brings the FTC's rules to basics. Here is what you need to know:

1. Any financial, employment, personal, or family relationship must be disclosed - do not assume followers know.
2. Disclosures are required even if you think evaluations are unbiased.
3. Use plain language, or a hashtag, but make disclosures understandable. Hashtags like #[Brand]Ambassador or #[Brand]Partner work. So do "#Ad" or "Sponsored." #Spon, #Sp, #Collab do not work. Neither do stand-alone terms such as "thanks" or "ambassador."
4. Disclosures must be conspicuous, early in the post (within the first two lines on Instagram), and repeated if in a live stream or video. Superimposing disclosures on a picture works. Don't bury the disclosure in a string of hashtags or put it in a link in a profile. Use of a platform's disclosure tool is also not necessarily sufficient.
5. If posting from abroad, US law applies if it's reasonably foreseeable that the post will affect US consumers. Foreign laws might also apply.
6. Influencers can only endorse products and services that they have actually tried and like.
7. Influencers can only make statements about products that the advertiser, itself, can independently substantiate. ■

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US: Prometheus Continues to Burn

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Chérie R. Kiser, Partner at Cahill Gordon & Reindel, outlines the long-term effects of media ownership rules following efforts to ease restrictions

On 07 November 2019, the Federal Communications Commission (FCC) filed its Petition for Rehearing En Banc (Petition) of Prometheus Radio Project v. FCC (Prometheus IV). In Prometheus IV, released on 23 September, the Third Circuit Court of Appeals rejected the FCC's modifications to its media ownership rules.

As explained in previous issues of Media Law International, the media ownership rules are intended to promote competition, localism and diversity. Congress has directed the FCC to review the rules every four years, modifying or repealing those no longer in the public interest.

The FCC's 2017 Order on Reconsideration, issued pursuant to the 2014 Quadrennial Regulatory Review, did just that, by easing or eliminating cross-ownership restrictions and single-entity ownership caps. This gave rise to a blizzard of litigation, reviews and remands, which culminated in Prometheus IV.

There, a three-judge panel, in a 2-1 decision, vacated and remanded the FCC's latest attempt to relax its rules, stating the FCC had failed to "adequately consider the effect its sweeping rule changes will have on ownership of broadcast media by women and racial minorities."

The Petition requested a rehearing en banc, in which the entire Court of Appeals would reconsider the case. For 15 years, it explained, the "same divided panel of this Court has frustrated the Commission's repeated attempts to modernise its media ownership rules to reflect the realities of today's dynamic and competitive media market place."

The long back-and-forth, the FCC claimed, has "effectively replaced the Commission's broad-ranging public interest analysis (which is focussed by statute on competition but historically has included considerations of localism and diversity) with a narrow inquiry into the effect of the FCC's rules on female and minority ownership."

The FCC presented numerous reasons why the entire court should take a "fresh look" at the Prometheus line of cases.

First, the FCC highlighted the panel's requirement that it redress "faulty and insubstantial data" on minority and female ownership with "new empirical research" or "in-depth theoretical analysis."

The FCC explained it repeatedly sought data from the public; with few responses, it "made reasonable predictions based on its extensive experience with media regulation and data on minority ownership."

This followed judicial precedent, which only requires administrative agencies "to act based on the record before them following adequate notice of a proposed rule."

Second, the FCC charged the panel with undermining Congressional intent. No party has disputed that the media ownership rules are obsolete, the FCC claimed, but the panel's focus on minority ownership has frustrated FCC attempts to act in the public interest.

Finally, the FCC challenged the panel's decision to summarily vacate its "eligible entry" definitions.

The panel directed the FCC to consider their impact on minority and female ownership, but the FCC argued it had already done that in 2016, deciding that race- or gender-conscious definitions would not pass constitutional muster.

On 20 November, just short of two weeks after the Petition was filed, a majority of Third Circuit judges voted to deny it, without explanation.

This is not altogether surprising; under the rules governing appellate courts, rehearing en banc is an extraordinary proceeding and rarely is granted. Still, it represents the FCC's fourth consecutive loss before the Third Circuit, stretching back to 2004.

The FCC – or the National Association of Broadcasters, which filed its own brief in support of the Petition – could seek review by the Supreme Court.

US: Prometheus Continues to Burn

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Both Chairman Pai and Commissioner O'Rielly, who stated in September that the Third Circuit had "abused the statute and defied common sense as it pertains to media ownership limitations", have indicated that this is a possibility.

The parties have 90 days from 20 November to file for certiorari. There is no automatic right of appeal; the Supreme Court has discretion to decide whether or not it will review the case.

In the meantime, though, the status quo has been restored. On 29 November, with the Third Circuit's issuance of its mandate, all the ownership rules in place prior to the 2017 Order on Reconsideration were reinstated.

What does this mean for the media and broadcast business? A few recent transactions may be instructive.

Over the past year, the FCC Media Bureau has approved several mergers where the proposed transaction violates the Top-Four Prohibition of the Local Television Ownership Rule, which bars one company from owning two of the top-four rated stations in the same designated market area .

In the 2017,Order on Reconsideration, the FCC announced it would waive the Top-Four Prohibition in cases where it found that likely public interest benefits outweighed the loss in competition.

The Media Bureau did so with respect to the merger of Gray Television and Raycom Media on 20 December 2018, the merger of Nexstar and Tribune on 13 September 2019 and Gray Television's acquisition of licenses from Red River Broadcast Co. on 24 September 2019.

The approval of Gray Television was issued a day after Prometheus IV, prompting the Media Bureau to offer a more nuanced application of the ownership rules.

Since the mandate had not yet issued, the 2017 Order on Reconsideration remained in effect. Regardless, the Media Bureau made clear that even if the mandate had issued, and the pre-2017 ownership rules were in effect, it would have reached the same conclusion under Section 1.3 of FCC regulations, which permits the FCC to waive its substantive rules for good cause shown.

Now, of course, the mandate has issued, and the 2017 Order on Reconsideration has been vacated in its entirety, making the approval of such mergers potentially more difficult.

Exemptions from the pre-2017 media ownership rules are likely to be rare, although Section 1.3 does provide the FCC with the means to grant them, at least in Gray-like transactions with unique circumstances.

And what of the long-term effects of the media ownership rules? On 22 November, the Media Bureau approved Terrier Media's proposed acquisition of television and radio stations from Cox Enterprises and NBI Holdings.

The deal, as originally structured, would have run afoul of two provisions of the pre-2017 ownership rules: the Eight-Voices Test, which prohibits a company from owning two television stations in the same Designated Market Area unless eight independently owned stations remain after the merger, and the Newspaper/Broadcast Cross-Ownership Rule, which prohibits a company from owning a daily newspaper and full-power broadcast station serving the same community.

On 29 October, parties amended their transaction, promising to surrender two television licenses, modify the post-merger ownership structure,and publish the three daily newspapers at issue three times per week.

The FCC has given the parties 30 days from the date of consummation to implement these promises, given the "unique circumstances of the case."

But one pledge has already come under fire from journalists, who highlight the disconnect between the purpose of the media ownership rules (greater localism and diversity in news) and the effect of enforcing them (cutting newspapers' weekly print run from seven days to three).

Similar unforeseen consequences may result from applying decades-old rules to today's modern media market.

As Prometheus IV aptly observed, the tortured history of the media ownership rules constitute a "saga." While no one can say how this epic will end, it does appear, at last, that this long and twisting tale may be drawing to a close.

* The views expressed are those of the author and not necessarily the firm or its clients.

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