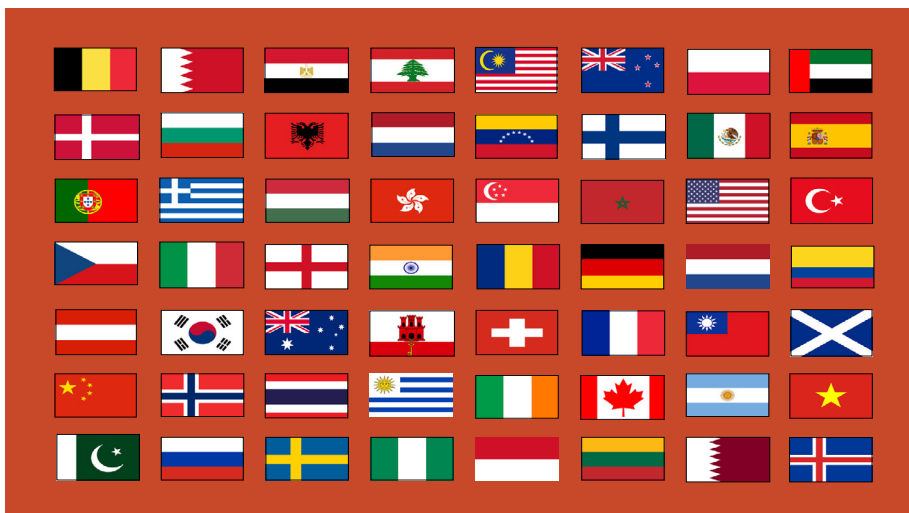


*Research, analysis and opinion on international media law*

## Media Law International launches its eighth edition



## MLI publishes its 2021 edition, featuring newly ranked firms, content from expert media lawyers and industry developments around the world

Media Law International (MLI) has launched the eighth edition of its flagship annual guide. MLI 2021 was published on 15 February, ahead of schedule.

The publication provides coverage of world-leading law firms for media law and related areas, including IP, sports, gaming, entertainment and advertising.

The annual guide ranks law firms in 56 jurisdictions, guiding media clients on firm expertise and capabilities, across a range of industry segments. The guide also features articles from some of the world's most experienced media lawyers, highlighting

global developments, legislative changes and industry trends.

Zineb Serroukh-Ouarda, Managing Editor at MLI, said: "There has been a vast increase in content output over the past year, with a global streaming boom across film, television, music and other creative IP-driven industries."

MLI has worked with law firms, media companies and other industry experts around the world to produce MLI 2021, featuring some of the world's most relevant firms in their jurisdictions.

Newly ranked firms include CETINKAYA in Turkey, LGV Avvocati in Italy, WP Law in →

## Google agrees to pay GBP55m to French publishers

Google has agreed to pay GBP55 million to French publishers for news after several months of talks with media groups, represented by France's Alliance de la Presse d'Information Generale.

The agreement was announced on 21 January on Google France's blog. Members of the alliance will be remunerated based on daily volume of publications and monthly internet audience. Google will negotiate individual licensing deals with publishers.

Pierre Louette, CEO of Les Echos title stated: 'After long months of negotiations, this agreement is an important step, which marks the effective recognition of the neighboring right of press publishers and the start of their remuneration by digital platforms for the use of their online publications.'

France is the first country to adopt new EU copyright laws, which made digital platforms liable for infringements under the neighbouring rights law.

Neighbouring rights were established by Article 15 of the EU Copyright Directive. The Directive does, however, allow for the terms of use and remuneration to be negotiated between parties.

Google France has already negotiated individual payment deals with newspapers such as national daily Le Monde and weekly magazine l'Obs.

In a statement, Sébastien Missoffe, CEO of Google France commented '...the agreement confirms Google's commitment to compensate publishers appropriately under French law.' ■

### What's inside

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## Kakao Page and Kakao M join to create Kakao Entertainment as part of next stage of growth

Kakao Page Corp. and Kakao M have agreed to merge entities to create Kakao Entertainment, a deal expected to reach completion on 01 March.

The merger was announced by both companies on 25 January. The move is part expansion plans intended to 'disrupt the global entertainment industry.'

Kakao Page produces original content while Kakao M provides expertise in creating music, TV series, films and performances.

Commenting on the merger, Kakao Page stated: 'The merger of Kakao Page and Kakao M is that of a strategic alliance to build a foundation to compete in the global

entertainment industry. By combining the two companies' business acumen, capabilities and value chain, we aim to disrupt the global entertainment industry.'

Kakao Entertainment will have an unparalleled business portfolio to include 50 subsidiaries and affiliates across all verticals of the industry. The entity will focus on producing blockbuster media franchises.

Kakao M added: 'The decision to merge our expertise in contents and digital platforms was made so we can compete in the hyper-competitive global entertainment sector in earnest. Together we can accelerate and evolve into a global player.' ■

## Media Law International's eighth edition

← Poland and Cedar White Bradley in the United Arab Emirates.

MLI 2021 also features a newly opened chapter for Nigeria, with law firms Olajide Oyewole, Olaniwun Ajayi LP and Punuka Attorneys among those ranked in Tier 1.

Rankings represent market feedback and perspectives, which are validated using information from law firm submissions that list law firms' most important cases over the

past year, as well as their clients. The research team also interviews media clients, hearing about lawyer expertise and case handling.

MLI continues to expand with its next venture in conferencing as it prepares for the Annual Global Conference, due to take place on Tuesday 22 June.

The virtual event has attracted high-profile media companies including the Guardian, The Sun, the BBC, Channel 4, Viacom and

## Poland plans draft law to limit social media censorship

Poland's government has prepared a draft law to limit social media censorship. The proposed law will prevent social media platforms from deleting content or banning users who do not break Polish law.

The 'freedom of speech protection' bill was announced by Justice Minister Zbigniew Ziobro on 15 January.

The law will establish a 'freedom of speech council', and will impose fines of up to PLN50 million (GBP9.8 million) for social networks failing to restore deleted posts or accounts.

The draft bill comes just weeks after Donald Trump was banned indefinitely from Facebook and permanently from Twitter following the violent Capitol riot on 06 January, during which five people died and 138 law enforcement officers were injured.

Mr Trump was banned for inciting violence in two posts. He told rioters he "loved" them and that the election was "stolen from us".

Poland's Justice Minister Zbigniew Ziobro commented that large internet corporations were increasingly limiting freedom of speech.

On Facebook, Prime Minister Mateusz Morawiecki wrote: 'Algorithms or the owners of corporate giants should not decide which views are right and which are not.'

Mr Morawiecki continued: 'There can be no consent to censorship.'

He added: 'Censorship of free speech, which is the domain of totalitarian and authoritarian regimes, is now returning in the form of a new, commercial mechanism to combat those who think differently.' ■

continued from page 1

Kantar. Law firms taking part include Norris McLaughlin (US), Charles Russell Speechlys (UAE) and McCann FitzGerald (Ireland).

The event will run three sessions focussing on Digital Content, Press and Entertainment.

Topics include 'When the creative meets the commercial', 'Libel Tourism' and 'Legal issues of reputation protection in media, including digital media'. Wellspring Studios newly joins the line-up of speakers.



## Information Technology & Communications

The growing interaction among smart devices (fixed and mobile), as well as their ability to operate and send information across multiple platforms and countries are impacting all business sectors. Digital convergence has redefined many innovation models and has resulted in new industries emerging and in the dramatic increase of productivity of human resources.

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# Prometheus Media Ownership Case



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## Media partner Chérie R. Kiser, Cahill Gordon & Reindel LLP, reviews the US Supreme Court's approach in Prometheus Media Ownership Case

On 19 January 2021, the Supreme Court heard consolidated oral arguments in Federal Communications Commission (FCC) v. Prometheus Radio Project and National Association of Broadcasters (NAB) v. Prometheus Radio Project.

At issue are the FCC's 2017 changes to a number of longstanding media ownership rules, such as the elimination of the 1975 Newspaper/Broadcast Cross-Ownership Rule, which prohibits a company from owning a daily

newspaper and full-power broadcast station serving the same community. Under Section 202(h) of the Telecommunications Act of 1996, the FCC is required to review its ownership rules every four years and modify or repeal those that are "no longer in the public interest;" its attempts to do so have been the subject of litigation since 2003.

The Prometheus Radio Project and others (the "Prometheus parties") filed a lawsuit challenging the FCC's 2017 changes to the ownership rules.

As discussed in the September-October 2019 issue of MLI, a three-judge panel of the U.S. Court of Appeals for the Third Circuit struck down those changes on 23 September 2019.

The court found that the FCC had failed to consider the effect of the changes "on ownership of broadcast media by women and racial minorities" and that the FCC's analysis of data concerning minority ownership was "so insubstantial that it would receive a failing grade in any introductory statistics class."

The FCC and NAB petitioned the Supreme Court for review (see the May-June 2020 issue of MLI), and on 02 October 2020 the Court agreed it would hear the case.

During oral argument, Deputy Solicitor General Stewart maintained that the FCC had properly concluded that existing ownership rules "disserved the public interest by preventing economically efficient combinations that would provide consumers better broadcast service."

The Third Circuit's reliance on a single factor to challenge this conclusion – minority and female broadcast ownership levels – lacked support in the governing statute and "failed to show adequate respect for the agency's predictive judgments and its balancing of competing policy objectives."

NAB counsel argued that the FCC had properly acted upon traditional public policy principles – viewpoint diversity, localism, and competition – and should not be forced to "draw in brand-new rationales as an excuse to keep outdated rules."

As they had in their briefs, both the FCC and the NAB emphasized the "archaic" nature of the existing rules and the 17-year struggle to loosen outmoded ownership restrictions.

In response, the Prometheus parties challenged the sufficiency of the FCC's ownership rules reconsideration order.

They claimed the FCC had failed the "basic requirement of administrative accountability" in relying on "zero information about female ownership and a nonsensical analysis of badly flawed data on minority ownership."

According to Supreme Court precedent, they claimed, to change the rules it was incumbent upon the FCC to "acknowledg[e] that there's been a change in policy and then ... [provide] an explanation of why."

Questions from the Justices ranged from the FCC's ongoing responsibility to minority and female businesses to the impact of Internet-based news platforms.

Justice Breyer questioned the silence of the evidentiary record with respect to tangible impacts from rule reform on women and minority groups, given the "10,000 law professors and economics professors who look for studies to do."

# Prometheus Media Ownership Case



← Justices Sotomayor, Kagan, and Kavanaugh questioned the adequacy of the FCC’s explanation of its decision to remove minority and female ownership from the public interest analysis undergirding the revised ownership rules.

Justice Thomas asked when “the FCC has used a structural ownership rule such as this one to advance minority or female ownership”; NAB could not identify another example.

Chief Justice Roberts asked whether the FCC was not at least under some obligation to explain why it was not considering the impact on women and minority ownership in these rule changes, given its long history of doing so in other situations.

As described in the July-August 2020 issue of MLI, the Prometheus cases have garnered considerable interest from broadcasters of varying size, minority advocacy groups, and non-partisan research centers.

Amicus briefs in support of the FCC were filed on 23 November 2020. The nation’s four largest broadcast networks linked the survival of local television stations in a “hyper-competitive marketplace” to immediate regulatory relief, criticizing the Third Circuit’s attempt “to unfairly hamstring local journalism.”

TechFreedom, explaining that it “does not come to the FCC’s defense often or lightly,” avers that the “delegation-plus-deference” framework that forms the core of the modern administrative state is undermined by “judicial adventures in policymaking,” which engender “confusion, expense, and unpredictability.”

Amicus briefs supporting the Prometheus parties criticized the reliability of the FCC’s impact analysis (as set forth by The American Statistical Association) and the inequity of affording broadcasters free spectrum licenses “while eliminating the most important safeguard to providing the necessary diversity – ownership limits” (as argued by Public Knowledge).

The Supreme Court’s ruling will determine whether the 2017 changes are allowed to take effect – along with their corresponding potential impacts on local media markets – or whether or not the FCC’s proposed changes will remain mired in the litigation that has haunted them for more than seventeen years. The Court’s decision is expected by the summer.

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



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