

## Chapter 11A

### **Estonia**

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## **I. Media Law**

### **A. Sources**

#### **§ 1:1 Basic principles**

The basic principles of Media Law in Estonia include the freedom of communication, the freedom to tell the truth, the avoidance of censorship, journalist responsibility, avoidance of damage in journalism, and justification of criticism of public figures. The freedom of communication is the basic premise for a working democratic society, and the free press is the means and prerequisite for attaining it. With respect to the freedom to tell the truth, the press and other media must serve the right of the public to receive true, fair and comprehensive information. The critical observation of the implementation of political and economic power is the main obligation of the press. With respect to censorship, the free press and other media may not be restricted or obstructed in the gathering and publication of information, provided that such activities remain within the limits of the law. With respect to a journalist's responsibility, a journalist must be responsible for his or her own statements and work. Media organizations must undertake to prevent the publication of inaccurate, distorted or misleading information. In addition, the reputation of any individual must not be unduly harmed without there being sufficient evidence that the information regarding that person is in the public interest. Finally, individuals in possession of political and economic power and information important to the public are considered as public figures; and their activities will be subject to closer scrutiny and criticism. The media must also consider as public figures individuals who earn their living through publicly promoting their persona or their work.<sup>1</sup>

Estonian media is built upon a great variety of newspapers, magazines, radio and TV stations. There are about 70 different newspapers (40 of which are members of the Estonian Newspaper Association), among which are 6 large dailies and 10 larger weeklies. Over 20 local newspapers and up to 80 magazines are published in Estonia.

Besides public radio (four channels) and public television, there are nearly 30 private local and regional/national radio stations and three national private television channels. Most of them are the members of the Association of Estonian Broadcasters.

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<sup>1</sup> The Code of Ethics of the Estonian Press, Section 1, General provisions

## **§ 1:2 Constitutional sources**

The Constitution of the Republic of Estonia<sup>2</sup> states that everyone has the right to obtain public information (§ 44) and to freely express one's ideas, opinions, convictions and any other information (§ 45). The clause, however, also sets certain restrictions on the exercise of the freedom of speech. For example, Constitution § 17 states that no one's honor or good name shall be defamed. § 19 establishes the right to free self-realization, and § 39 gives an author an inalienable right to his or her work.

## **§ 1:3 Codified sources**

Estonia offers a liberal environment for the media. There is no specific law on the press in Estonia. Cases regarding libel are covered by civil<sup>3</sup> and criminal codes.<sup>4</sup> In libel cases, the burden of proof rests with the media defendant. The press in Estonia is also affected by the Copyright Act, which creates favorable conditions for authors, performers, producers of phonograms, broadcasting organizations, producers of first fixations of films, makers of databases and protects the cultural achievements, and the development of copyright-based industries.<sup>5</sup> The Competition Act safeguards marketplace competition in the interest of free enterprise regarding the extraction of natural resources and precludes the prevention, limitation, or restriction of competition in other economic activities.<sup>6</sup> The Language Act provides the basis for the official use of Estonian Literary Standard<sup>7</sup> pursuant to the procedure established by the Government of the Republic.<sup>8</sup> The Advertising Act establishes the administrative proceedings, general requirements, prohibitions, and restrictions established for advertising in Estonia.<sup>9</sup> The procedure for the use, communication, and protection of state secrets<sup>10</sup> and the marking, storage and destruction of corresponding media are addressed by the State Secrets Act.<sup>11</sup>

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<sup>2</sup> The Constitution of the Republic of Estonia. RT I 1992, 26, 349; 2003, 29, 174.

<sup>3</sup> The Law of Obligations Act RT I 2001, 81, 487; 2009, 18, 108, The General Part of the Civil Code Act. RT I 2002, 35, 216.

<sup>4</sup> The Penal Code, RT I 2001, 61, 364; 2009, 19, 261, sections 241, 245, 249.

<sup>5</sup> The Copyright Act, RT I 1992, 49, 615; 2008, 59, 330, section 1, subsection 1.

<sup>6</sup> The Competition Act, RT I 2001, 56, 332; 2007, 66, 408, section 1, subsection 1.

<sup>7</sup> Government of Republic: Estonian Literary Standard Setting Procedures. Regulation No. 196 of 7 September 2006.

<sup>8</sup> The Language Act, RT I 1995, 23, 334; 2009, 4, 26, section 1, subsection 1.

<sup>9</sup> The Advertising Act, RT I 2008, 15, 108; 2009, 38, 255, section 1, subsections 1, 2.

<sup>10</sup> The State Secrets Act, RT I 2007, 16, 77; 2009, 39, 262, section 1, subsection 1.

<sup>11</sup> Government of Republic: Implementation of some provisions of the State Secrets Act. Regulation No. 65 of 24 March 1998.

The Broadcasting Act [*Ringhäälinguseadus*] was passed on 19 May 1994, entered into force on 15 June 1994, and was amended during the period from 1994 to 2004 by 25 other pieces of legislation. The most recent amendments entered into force on 13 July 2008.<sup>12</sup> This law provides for the allocation of licenses for private broadcasters and sets the foundation for public service television and radio.<sup>13</sup> This law guarantees freedom of operation, protection of information sources, the right to register an objection, morals and legality, etc. The same fields in the print media industry are legally unregulated in Estonia.

In 1997, the Ministry of Culture started drafting a new set of laws for electronic media:<sup>14</sup> The Electronic Communications Act entered into force in 2005 and sets all the necessary conditions for the development of electronic communication, promotes the development of electronic communications networks and communications services, promotes free competition and plans for the allocation of radio frequencies and numbering.<sup>15</sup>

Estonia has a liberal policy regarding print media - no license, permit or registration is required to set up a newspaper. The same applies for using the services of a printing plant or the distribution of a publication.

In December 1997 the Estonian Newspaper Association passed a Code of Press Ethics,<sup>16</sup> the first of its kind in post-independence Estonia. It provides the freedom of communication as the basic premise for a working democratic society and the idea that the press and other media shall serve the right of the public to receive true, fair and comprehensive information.<sup>17</sup> Other media organizations joined in by approving it. The Code also serves as a foundation for the Press Council, a voluntary self-regulatory body to handle complaints about the press.

The Estonian National Broadcasting Act<sup>18</sup> was passed in 2007 and mandates the legal status, objective, functions, financing, and organization of management and activities of Estonian National Broadcasting [*Eesti Rahvusringhääling*].<sup>19</sup>

Regulations in soft law are known as good practice agreements: The Good Practice of Online Comments, The Good Practice of Distinction between Advertising and Journalistic

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<sup>12</sup> The Broadcasting Act, RT I 1994, 42, 680; 2008, 28, 184.

<sup>13</sup> The Broadcasting Act: Section 1.

<sup>14</sup> The Electronic Communications Act. RT I 2001, 58, 354; 2002, 53, 336; 61, 375.

<sup>15</sup> The Electronic Communications Act :section 1, subsections 1, 2.

<sup>16</sup> The Code of Ethics for the Estonian Press. Estonian Press Council, 1997.

<sup>17</sup> The Code of Ethics for the Estonian Press. Estonian Press Council, 1997: General provisions. sections 1, 2.

<sup>18</sup> The Estonian National Broadcasting Act. RT I 1997, 24, 643; 2007, 245; 18, 54.

<sup>19</sup> The Estonian National Broadcasting Act.: section 1.

Content, The Good Practice for Summarizing Articles, The Good Practice Agreement of Copyright.<sup>20</sup> Professional self-regulatory bodies support the stabilization of journalistic culture by creating ethical norms of journalism and maintaining good practices. The Code of Ethics was introduced by the Estonian Newspaper Association, the Association of Estonian Broadcasters, and the Estonian Press Council (EPC),<sup>21</sup> which supported its implementation. Before this code, the profession was governed on the basis of international professional tradition and the best knowledge of the members of EPC. At present, the Code provides a basis for assessing cases, but, as it does not cover all possible cases, the EPC refers to precedents.<sup>22</sup>

#### § 1:4 Case law sources

Personality and privacy are protected by the Constitution, and every person has the right to sue anyone who has violated his or her rights.<sup>23</sup>

Still, there are currently not enough court decisions in existence to make the rulings predictable. The Estonian law courts abstain from judging moral damages, intimating that the determination of the value of moral damage in financial terms is rather complex.<sup>24</sup> Thus, in Estonia, it is quite difficult to re-establish one's rights in a case of harm caused by media.

Cases regarding libel are covered by the Law of Obligations Act,<sup>25</sup> and the burden of proof in such cases rests with the media defendant. A person has the right for a correction and to sue for damages.<sup>26</sup> In cases of defamation of persons enjoying international immunity, representatives of the state authority, the court, or the judge, the new Penal Code provides certain penalties, but there are no legal penalties for “irresponsible journalism.”<sup>27</sup> Estonia has two

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<sup>20</sup> Estonian Newspaper Association (EALL). URL: [www.eall.ee](http://www.eall.ee) (29.09.2009).

<sup>21</sup> Harro-Loit, Halliki and Lauk, Epp: Self-regulation: Watchdog's Collar or Shelter for the Guild? Helsingin yliopisto, Helsinki, 2003. Referred Lauristin, Vihalemm, Raudsaar, Tammpuu, The Case of Estonia. Department of Journalism and Communication, Tartu University 2005, p. 6. URL: <http://www.aimproject.net/uploads/media/Estonia.pdf> (29.09.2009).

<sup>22</sup> Estonian Press Council - EPC. URL: [www.asn.org.ee](http://www.asn.org.ee). (29.09.2009).

<sup>23</sup> The Constitution of the Republic of Estonia, section 26, subsection 1.

<sup>24</sup> Council of Europe, The media in a democratic society: reconciling freedom of expression with the protection of human rights. Estonia: collapse of media self-regulation. Luxembourg, 2002. URL: <http://www.asn.org.ee/english/related/collapse-of-self-reg.html> (29.09.2009).

<sup>25</sup> The Law of Obligations Act, section 1045.

<sup>26</sup> The Law of Obligations Act, section 1045: section 1046.

<sup>27</sup> The Explanatory Memorandum for Electronic Communications Act, the Information Society Services Act, the Penal Code, Criminal Procedure Code and the draft Act to amend the Code of Misdemeanor. Estonian Ministry of Justice, 2005.

important cases in Media Law from 2002 and 2006. The first one<sup>28</sup> discusses the amount of information that may be published from police. The court stated that publishing delicate personal information requires approval from the police and the person to whom the information relates.<sup>29</sup> The second case<sup>30</sup> is about an article in a local newspaper that mentioned names of parties of a procedure that was declared closed. The plaintiff suffered damage and required the reimbursement of moral damages from the magazine.<sup>31</sup>

## **B. Regulatory Framework**

### **§ 1:5 For publishing industry**

Estonia's main source of law for the publishing industry is the Creative Persons and Artistic Associations Act, which supports cultural creativity and the preservation and development of fine arts at professional level and improves conditions necessary for the creative activity of artists through artistic associations.<sup>32</sup> A freelance creative person,<sup>33</sup> the subject of the mentioned Act, is an author or performer working in a specific field, who is not in public service, does not work based on an employment contract or any other permanent contract under the law of obligations, and does not receive income from enterprise or other professional activity.

The Act to Regulate Dissemination of Works that Contain Pornography or Promote Violence or Cruelty prohibits the dissemination and exhibition to minors of works that contain pornography or promote violence or cruelty; and the transmission of television or radio broadcasts that contain pornography or promote violence or cruelty.<sup>34</sup> "Dissemination of works" means the sale, rental, or transfer in any other manner of works or copies of works produced in any form, and "exhibition of works" means presentation of works or copies of works either directly or by technical means.<sup>35</sup> "Pornography" means a manner of representation in which sexual acts are brought to the foreground in a vulgar and intrusive manner and other human

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<sup>28</sup> The Estonian Supreme Court, Civil Collegiums case no. RK 3-2-1-138-02.

<sup>29</sup> The Estonian Supreme Court, Civil Collegiums case no. RK 3-2-1-138-02: The opinion of College, description no. 9.

<sup>30</sup> The Estonian Supreme Court, Criminal Collegiums case number RK 3-3-1-98-06.

<sup>31</sup> The Estonian Supreme Court, Criminal Collegiums case number RK 3-3-1-98-06: Arguments of proceeding parts, description no. 4.

<sup>32</sup> Creative Persons and Artistic Associations Act, RT I 2004, 84, 568; 2009, 38, 254, section 1, subsection 1.

<sup>33</sup> Creative Persons and Artistic Associations Act: section 3, subsection 1.

<sup>34</sup> Act to Regulate Dissemination of Works which Contain Pornography or Promote Violence or Cruelty, RT I 1998, 2, 42; 2008, 15, 108, section 1, subsection 1.

<sup>35</sup> Act to Regulate Dissemination of Works which Contain Pornography or Promote Violence or Cruelty: section 2, subsection 2.

relations are disregarded or relegated to the background.<sup>36</sup> “Promotion of violence or cruelty” means depiction of violence or cruelty that exceeds the limits of justified self-defense, in an approving manner, for the purpose of promoting violent or cruel behavior among people.<sup>37</sup>

The provisions of the Administrative Procedure Act<sup>38</sup> §31 apply the administrative proceedings of publication of documents in newspaper, taking account of the specifications provided for in this Act.<sup>39</sup> §31 describes the main requirements for publishing resolutions contained in a document or in the official publication *Ametlikud Teadaanded*.<sup>40</sup>

The Copyright Act<sup>41</sup> gives the definition and requirements of works that are deemed published<sup>42</sup> and the main rules for using published works legally.<sup>43</sup> The Act also provides rights for authors and publishers to receive equitable remuneration for the reproduction of their works.<sup>44</sup>

#### **§ 1:6 For broadcasting industry**

The Estonian National Broadcasting Act<sup>45</sup> provides the legal status, objective, functions, financing, and organization of management and activities of Estonian National Broadcasting [*Eesti Rahvusringhääling*], (hereinafter National Broadcasting).<sup>46</sup> National Broadcasting does not need a broadcasting licence for its operation.<sup>47</sup> The radio frequencies and channels required by National Broadcasting for the performance of its functions provided by this Act and the parameters necessary for the provision of digital television and radio services must be approved by the Government of the Republic at the proposal of the Communications Board.

The Association of Estonian Broadcasters (AEB) is a non-profit and non-governmental institution set up to protect the interest of radio and television broadcasters.<sup>48</sup> In 1997, the AEB

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<sup>36</sup> Act to Regulate Dissemination of Works which Contain Pornography or Promote Violence or Cruelty: section 2, subsection 3.

<sup>37</sup> Act to Regulate Dissemination of Works which Contain Pornography or Promote Violence or Cruelty: section 2, subsection 4.

<sup>38</sup> The Administrative Procedure Act. RT I 2001, 58, 354; 2002, 53, 336; 61, 375.

<sup>39</sup> Estonian National Broadcasting Act, RT I 2007, 10, 46; 2007, 66, 408, section 2, subsection 4.

<sup>40</sup> *Ametlikud Teadaanded* = *Official Notices*.

<sup>41</sup> The Copyright Act. RT I 2000, 16, 109; 2006, 28, 210.

<sup>42</sup> The Copyright Act: section 9, subsection 1.

<sup>43</sup> The Copyright Act: sections 19, 20, 26.

<sup>44</sup> The Copyright Act: section 27, subsections 1, 2.

<sup>45</sup> The Estonian National Broadcasting Act RT I 1998, 32, 645; 2007, 18, 478.

<sup>46</sup> The Copyright Act: section 1, subsection 1.

<sup>47</sup> The Copyright Act: section 2, subsection 3.

<sup>48</sup> The Association of Estonian Broadcasters (AEB) statute, section 1, subsection 1.

signed a general agreement<sup>49</sup> with the Estonian Authors' Society that has also been renewed for the following periods. This agreement settles the conditions under which private broadcasters are authorized to use music, ballet scenes and pieces of art during the next six years.<sup>50</sup>

### **§ 1:7 For online services**

The Public Information Act ensures that the public and every person has the opportunity to access information intended for public use, based on the principles of a democratic and social rule of law and an open society.<sup>51</sup> The law also seeks to preserve opportunities for the public to monitor the performance of public duties.<sup>52</sup>

The Electronic Communications Act<sup>53</sup> §102 contains general principles of data protection. A communications undertaking is required to maintain the confidentiality of all information which becomes known thereto in the process of provision of communications services and which concerns subscribers as well as other persons who have not entered into a contract for the provision of communications services but who use communications services with the consent of a subscriber; above all, the following data must be protected:

- (1) Specific data of using communications services;
- (2) The content and format of messages transmitted through the communications network; and
- (3) Information concerning the time and manner of transmission of messages.

### **§1:8 Regulators and their core competencies**

The Council of Public Word was established by the Estonian Newspaper Association in 1991. The model was taken from Finland and even the Estonian name Avaliku Sõna Nõukogu ("The Council of Public Word") was borrowed from the Finnish language.

In April 1997, several media organizations decided to reorganize the Estonian Press Council (EPC) on a wider basis, and a non-profit organization was founded on the grounds of private agreement between the Newspaper Association, the Association of Broadcasters, the Journalists' Union, the Union of Media Educators and the Consumers' Union. Later, the Network

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<sup>49</sup> General Agreement of the Copyright Licensing. Estonian Authors Society, 05.02.1997.

<sup>50</sup> General Agreement of the Copyright Licensing, section 2, subsection 1.

<sup>51</sup> The Public Information Act, RT I 2000, 92, 597; 2009, 39, 262, section 1 subsection 1.

<sup>52</sup> The Public Information Act: section 1, subsection 2.

<sup>53</sup> The Electronic Communications Act, RT I 2004, 08, 542; 2005, 98, 445.

of Estonian Nonprofit Organizations, the Estonian Council of Churches, and a NGO called Media Watch became members of the non-profit organization. The first two of the three subsequent joiners have discontinued their membership in the NGO.

The aims of the non-profit organization are as follows:

- (1) to protect press freedom;
- (2) to examine complaints about mass media from the aspect of good conduct; and
- (3) to support the development of journalists' professional skills (including perception of ethics) and adherence to the good tradition of journalism.<sup>54</sup>

The EPC participated in creating the national Code of Ethics. The Code was introduced in December 1997 by the Estonian Newspaper Association, the Association of Estonian Broadcasters and EPC. Before that, adjudications were made on the basis of international professional tradition and the best knowledge of the members of EPC. At present, the Code provides a basis for assessing the cases, but since the Code does not cover all possible cases, the EPC refers to the body of cases already considered.

The Estonian Press Council (*Pressinõukogu*) is a voluntary body for media self-regulation that handles complaints from the public about media content. The Council provides the public with the opportunity to find solutions to disagreements with the media without the need to go to court. The Press Council discusses complaints about material appearing in the press, in online portals with journalistic content, and on public service broadcasting stations. No longer than three months must have passed since the material appeared, and the handling of complaints is free of charge and relatively quick (the Council meets once a month).

The Estonian Press Council (*Pressinõukogu*) was established in 2002 by the Estonian Newspaper Association. In 2003, the main online news portals agreed to comply with the standards set by the Press Council regarding journalistic content of these sites. In 2005, the public service Estonian Radio and Estonian Television joined the system as well.

## **§1:9 Public sector in the media industry**

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<sup>54</sup> Estonian Press Council. General information about the Estonian Press Council. URL: [www.asn.org.ee](http://www.asn.org.ee) (29.09.2009).

The Estonian media system involves both private and public media channels. Estonian Public Broadcasting (Eesti Rahvusringhääling, ERR) was established in June 2007 by merging two public service broadcasting organizations—Eesti Televisioon and Eesti Raadio.

Estonian Television (ETV) is the national public television broadcaster and was established in 1955. ETV supports and archives Estonian national culture. ETV is also responsible for the information needs of Estonian society, leading to versatile programming that offers something interesting for various tastes. The films and imported programs mostly have subtitles and are broadcast in the original language. This also applies to private television stations in Estonia.

Eesti Raadio is the Estonian public radio broadcaster that has assumed the responsibility of chronicling, upholding, and introducing important events of Estonian national culture and history, of satisfying the needs of all of the country's population groups for information, culture and entertainment, and to offer varied and balanced programming. Eesti Raadio offers five different programs that have different target groups.

### **§ 1:10 Split of legislative/regulatory authority between the federal government and individual states**

As Estonia is a unitary state, there is no federal government, and all legislative decisions are passed by the parliament of Estonia, called Riigikogu.

## **C. Defamation**

### **§ 1:11 Main sources of law**

Cases regarding libel are governed by the Law of Obligations Act,<sup>55</sup> and the burden of proof in such cases rests with the media defendant. A person has the right for a correction and to sue for damages.<sup>56</sup> In cases of defamation of persons enjoying international immunity, like representatives of the state authority, the court, or the judge, the new Penal Code<sup>57</sup> stipulates certain penalties, but there are no legal penalties for "irresponsible journalism."<sup>58</sup>

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<sup>55</sup> The Law of Obligations Act. RT I 2002, 46, 897; 2008, 56, 112.

<sup>56</sup> The Law of Obligations Act.: sections 1045, 1046.

<sup>57</sup> The Penal Code, sections 137, 156, 157, 241-243, 377.

<sup>58</sup> International Covenant on Civil and Political Rights, Human Rights Committee: Consideration of Reports Submitted by States Parties under Article 40 of the Covenant. Third periodic reports of States parties: Estonia. 10. December, 2008. Section 448.

Defamation and contempt are not punished criminally except in the following cases:

(i) Defaming an internationally protected person or his or her family is punishable by a pecuniary punishment or up to 2 years' imprisonment;<sup>59</sup>

(ii) Defaming or insulting a representative of state authority or any other person protecting public order is punishable by a pecuniary punishment or up to 2 years' imprisonment;<sup>60</sup> and

(iii) Defaming or insulting a court or judge in connection with their participation in the administration of justice is punishable by a pecuniary punishment or up to 2 years' imprisonment.<sup>61</sup>

### **§ 1:12 Definition and significant subdivisions**

A statement is defamatory if it tends to lower the plaintiff's status in the estimation of average members of society.<sup>62</sup> Protection of person's name<sup>63</sup> means that a person whose interests are damaged by use of his or her name may demand termination of the unauthorized use of the name and compensation for moral and proprietary damage. The provisions of subsection (1) also apply to a publicly used pseudonym. Other personal rights receive legal protection<sup>64</sup> and a person may also demand termination of the violation of his or her personal rights not specified in General Principles of the Civil Code Act §§23–25 and compensation for moral and proprietary damage caused thereby.<sup>65</sup> A person has the right to demand termination of defamation, refutation of defamatory information concerning the person, and compensation for moral and proprietary damage caused by the defamation by a court proceeding, unless the defamer proves the accuracy of the information.<sup>66</sup>

Defamatory language is divided into two categories. The more common and more serious is *libel*, which is defamation in writing or some other permanent form, such as a tape or video recording.<sup>67</sup> Radio and television broadcasts and computer-generated transmissions are

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<sup>59</sup> The Penal Code, section 247.

<sup>60</sup> The Penal Code, section 275.

<sup>61</sup> The Penal Code, section 305.

<sup>62</sup> Ernits, M. Avalik väljendusvabadus ja demokraatia. Juridica 2007, nr 1, lk 16.

<sup>63</sup> General Principles of the Civil Code Act, section 25, subsection 1.

<sup>64</sup> General Principles of the Civil Code Act, section 26, subsection 1.

<sup>65</sup> The General Principles of the Civil Code Act RT I 2002, 35, 216; 2003, 78, 523.

<sup>66</sup> General Principles of the Civil Code Act, section 23, subsection 1.

<sup>67</sup> The Explanatory Memorandum for Electronic Communications Act, the Information Society Services Act, the Penal Code, Criminal Procedure Code and the draft Act to amend the Code of Misdemeanor. Estonian Ministry of Justice, 2005. p 6.

defined by statute as libel.<sup>68</sup> *Slander* is spoken defamation or defamatory language in some other temporary form.<sup>69</sup> Although actions against newspaper and television companies for slander are rare, the writer or broadcaster should always be conscious of the risk of making a slanderous statement—particularly the investigative journalist who is checking allegations of wrongdoing or confronting the wrongdoer in person. If the writer or broadcaster makes defamatory statements about the wrongdoer to or in earshot of a third party, he or she is exposed to the risk of being sued for slander.

The Advertising Law<sup>70</sup> establishes protection for persons and property in advertising, and a defendant must not violate these rights in advertising, including using the voice, images, or pictorial representations without prior written consent.<sup>71</sup> Also, property owned or possessed by a person may not be referred to or used in advertising in a way likely to convey the impression of a personal endorsement without prior written consent.<sup>72</sup>

### **§ 1:13 Main factors or elements of claim**

In order to prove defamation, the claimant must show defamatory language by the defendant which:

- (1) Identifies or refers to the claimant, and
- (2) Is published to a third party.<sup>73</sup>

The law<sup>74</sup> presumes that the defamatory statement is false and that the claimant is of good reputation.<sup>75</sup> The claimant is not required to prove any actual damage to reputation or other loss, and the burden of establishing the truth of the statement or any other defense is on the defendant.<sup>76</sup>

The real skill for writers and broadcasters and their editors or producers is determining when statements that may be construed as tending to lower the person's status in the estimation

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<sup>68</sup> *Op. cit.*: p 7.

<sup>69</sup> *Op. cit.*: p 10.

<sup>70</sup> The Advertising Act, RT I 1997, 436, 87; 2004, 52, 835.

<sup>71</sup> The Advertising Act, section 7, subsection 2.

<sup>72</sup> The Advertising Act, section 6, subsection 1,2.

<sup>73</sup> Parliaments' Legal Commission sitting protocol no. 42. November 13<sup>th</sup>, 2003. p 3-4.

<sup>74</sup> The Estonian Press Council's Rules of Procedure. Estonian Press Council.

<sup>75</sup> The Estonian Press Council's Rules of Procedure, section 2, subsection 1.

<sup>76</sup> The Estonian Press Council's Rules of Procedure, section 5, subsection 2.

of average members of society can be published with a reasonable degree of safety. Consideration should be given to the following:

- (1) Is the piece true?
- (2) Can it be proved to be true?
- (3) If not, is it covered by one of the other defenses to defamation?
- (4) Is the subject of the piece likely to sue?

Also, a relevant element the claimant has to prove in an action for defamation is that the ordinary, reasonable person would understand that the defamatory statement referred to the claimant.<sup>77</sup> The claimant does not need to be named in the journalism piece; rather, the plaintiff may be identified by description, photograph or other characteristic information.<sup>78</sup>

A defamatory statement is actionable when it is published to a third party because, as a policy matter, reputation exists entirely on the belief of other people about the claimant. Communication of the defamatory statement to the plaintiff alone will not harm the claimant's reputation and is, therefore, not actionable.<sup>79</sup>

Accordingly, a person may safely write a letter containing any amount of defamatory material about the addressee as long as it remains in an envelope while in transit and is only read by the addressee. The situation is different if such a statement is made on a postcard or in an email sent to others between dispatch and arrival. It is irrelevant that the defendant did not intend the defamatory statement to be communicated to any other person.<sup>80</sup>

The Estonian Press Council EPC will not examine the case when any of the following conditions apply:

- (1) the case is already heard in the court or is under police investigations;
- (2) the case has no connection to media matters;
- (3) it is obvious that it is a legal pleading;
- (4) the subject of the complaint cannot be determined;
- (5) the content of the complaint is indecent; or

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<sup>77</sup> The Estonian Supreme Court, Civil Collegiums case no. RK 3-2-1-161-05.

<sup>78</sup> The Estonian Supreme Court, Civil Collegiums case no. RK 3-2-1-161-05.

<sup>79</sup> International Covenant on Civil and Political Rights, Human Rights Committee: Consideration of Reports Submitted by States Parties under Article 40 of the Covenant. Third periodic reports of States parties: Estonia. 10. December, 2008. Section 447.

<sup>80</sup> Luide, S. The civil law of defamation and the differences of the defamation via the Internet. Master Thesis. Law Faculty, University of Tartu, 2003, p. 43. URL: <http://dspace.utlib.ee/dspace/bitstream/10062/787/5/luide.pdf> (30.09.09).

(6) the complaint is anonymous.<sup>81</sup>

In libel litigation, the plaintiff generally must prove that publication of the statement has actually taken place.<sup>82</sup> This is usually unnecessary in cases involving media defendants like newspapers or television and radio programs because the law presumes that the material has been published to other persons.<sup>83</sup>

#### **§ 1:14 Types of relief available**

The distinction between libel and slander is relevant only to the issue of damages. Damage is presumed in cases of *libel*; but in cases of *slander*, the plaintiff has to prove actual loss unless the allegation falls within one of four exceptions where damage is presumed:

1. An allegation that the claimant has committed a crime punishable by imprisonment;
2. An allegation that the claimant is suffering from a contagious or infectious disease;
3. An allegation that the claimant is an unchaste woman or is a woman who has committed adultery; or
4. An allegation that is likely to damage the claimant's business or profession.<sup>84</sup>

Malicious falsehood is related tort where a false statement does not damage the claimant's reputation but causes or is likely to cause the claimant financial loss.<sup>85</sup>

In such a case, the plaintiff must prove that:

1. The statement is false
2. It was published maliciously, and
3. If caused financial loss or, in cases when the statement is written or reflects on the claimant's business or profession, it is likely to cause financial loss.<sup>86</sup>

In practice, proceedings for malicious falsehood are considerably more difficult for a plaintiff to win than defamation suits. The burden is on the plaintiff to establish the falseness of the

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<sup>81</sup> Luide, S., p. 54.

<sup>82</sup> Luide, S., p. 46.

<sup>83</sup> The Estonian Press Council's Rules of Procedure.

<sup>84</sup> The Advertising Act, article 4<sup>1</sup>, ssection 3, subsection 2.

<sup>85</sup> The Estonian Supreme Court, Civil Collegiums case no. RK 3-2-1-161-05.

<sup>86</sup> *Op. cit.*

statement and the malice of the defendant.<sup>87</sup> Actions for malicious falsehood are tried by judge alone and are eligible for legal aid.

The Law of Obligations Act § 128 enumerates the types of damage subject to compensation, and subsection 5 gives the definition of non-monetary damage, which primarily involves the physical and emotional distress and suffering caused to the aggrieved person. The defendant must compensate the aggrieved person for non-monetary damage only if justified by the gravity of the violation, in particular by physical or emotional distress.<sup>88</sup>

§§131 and 1055<sup>89</sup> govern the compensation for monetary damage in cases that involve the deprivation of liberty or a violation of personality rights.

### **§1:15 Defenses available**

There are seven main defenses to libel commonly raised by the defendant<sup>90</sup>:

1. Justification
2. Fair comment
3. Absolute privilege
4. Qualified privilege
5. Offer of amends
6. Leave and license
7. Innocent defamation

The burden of proof is on the defendant to prove any of these affirmative defenses.<sup>91</sup> It is important to realize that the filing of a defense to a defamation action is a step governed by the Code of Civil Procedure.<sup>92</sup> Under those rules, a defendant is not permitted to plead any point unless evidence exists to support that point.<sup>93</sup> Those who publish in the belief that the story is true, without actually substantiating the story, are in danger of being left with no defense at all.<sup>94</sup>

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<sup>87</sup> Tikk, E., Nomper, A. *Information and Law*. Tallinn, Juura, 2007. p. 143.

<sup>88</sup> The Law of Obligations Act section 134 subsection 2.

<sup>89</sup> *Op. cit.*: sections 131 and 1055.

<sup>90</sup> Tikk, E., Nomper, A. *Information and Law*. Tallinn, Juura, 2007. p. 168.

<sup>91</sup> The Estonian Supreme Court, Civil Collegiums case no. RK 3-2-1-161-05.

<sup>92</sup> The Code of Civil Procedure RT I 1998, 43/45, 666; 2005, 25, 197, section 8.

<sup>93</sup> The Code of Civil Procedure, section 5, subsection 2.

<sup>94</sup> The Estonian Supreme Court, Civil Collegiums case no. RK 3-2-1-138-02.

Estonian courts also recognize the freedom to voice an honest opinion as being in the public interest.<sup>95</sup>

Estonian law does not protect the right to publicize falsehoods; only the expression of truth is protected, and the defendant may assert that the statement was truthful.<sup>96</sup> In order to raise the defense of justification successfully, the defendant must prove that the defamatory statement is true or substantially true in both substance and fact.<sup>97</sup> The defendant must provide enough evidence to satisfy the jury that, on the balance of probabilities, the published statement is true. This means that it is more likely than not that the statement is true—a lower standard than the criminal standard of “beyond reasonable doubt.”<sup>98</sup>

In practice, however, the defendant’s evidence will have to be convincing where the published allegation is very serious.

#### **§ 1:16 Time period for asserting claim**

The Estonian Press Council (EPC) generally only examines materials published no earlier than six months ago; but on its own initiative, the EPC may also examine materials published earlier.<sup>99</sup> The EPC can examine the case if all the parties involved have given their comments to the case.<sup>100</sup> The case may be examined without these explanations and objections if they were not given within the one week deadline.<sup>101</sup>

The EPC adjudication must be published and signed within 10 days after the decision.<sup>102</sup> After signing, the adjudication must be sent to the parties and put on the Internet within one day.<sup>103</sup> The adjudications are also circulated to the members of the member organizations of the

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<sup>95</sup> Luide, S. The civil law of defamation and the differences of the defamation via the Internet. Master Thesis. Law Faculty, University of Tartu, 2003, p. 38. URL: <http://dspace.utlib.ee/dspace/bitstream/10062/787/5/luide.pdf> (30.09.09).

<sup>96</sup> The Code of Ethics of the Estonian Press, General provisions, section 1.,.

<sup>97</sup> Kergandberg, E., Kangur, A., Lind, S., Saaremäel-Stoilov, K., Saaremets, V. Kohtumenetlus. Tallinn, Juura 2008. Lk. 369.

<sup>98</sup> The Estonian Supreme Court, Civil Collegiums case no. RK 3-2-1-138-02.

<sup>99</sup> The Estonian Press Council’s Rules of Procedure.

<sup>100</sup> The Estonian Press Council’s Rules of Procedure, section 3.6

<sup>101</sup> The Estonian Press Council’s Rules of Procedure, section 3.7.

<sup>102</sup> The Estonian Press Council’s Rules of Procedure, section 3.9.

<sup>103</sup> The Estonian Press Council’s Rules of Procedure, section 4.1.

NGO "Avalik Sõna." A single complaint must be examined and adjudicated within six months.<sup>104</sup>

If a complaint is upheld, the defendant newspaper or station has 7 days to print or announce the full text of the adjudication.<sup>105</sup> If the media organization does not follow that rule, EPC must make the adjudication public by other means of mass communication. EPC may drop the obligation to print the adjudication to protect the private life of the individual concerned.

If the adjudication on the upheld case is of public interest, EPC must inform the media of the fact that the case has been upheld. It is the prerogative of the criticized newspaper or station to make the text of the adjudication public within 7 days.<sup>106</sup> The case that is not upheld shall be publicly available immediately after the adjudication is signed.

#### **D. Invasion of Privacy**

##### **§ 1:17 Main sources of law**

The European Convention on Human Rights (ECHR)<sup>107</sup> Article 8 plays the most important role in Estonia's invasion of privacy doctrine. Estonian Constitution Section 26, which applies the protection of privacy, is based on the ECHR article 8.<sup>108</sup> Also, the General Principles of the Civil Code Act also contains a cause of action for invasion of privacy.<sup>109</sup> The Law of Obligations Act prohibits damaging privacy rights.<sup>110</sup>

The Estonian Supreme Court has set into the context of invasion of privacy in cases III-4/A-1/94 and III-4/A-2/94 in rights' protection procedure, cases III-4/A-4 and RK 3-4-1-10-02 in administrative procedure and RK 3-3-1-98-06 and RK 3-2-1-138-02 in media. Informational self-determination is also discussed in cases RK 3-1-1-116-04<sup>111</sup> and RK 3-3-1-57-03<sup>112</sup> but concentrated mostly in databases.

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<sup>104</sup> International Covenant on Civil and Political Rights, Human Rights Committee: Consideration of Reports Submitted by States Parties under Article 40 of the Covenant. Third periodic reports of States parties: Estonia. 10. December, 2008. Section 494.

<sup>105</sup> Co-Regulation Measures in the Media Sector: Annex 4: Country reports on media systems. Section 3.6: Estonia. Hans-Bredow-Institut, University of Hamburg. June, 2006. p 119.

<sup>106</sup> Co-Regulation Measures in the Media Sector, p. 122.

<sup>107</sup> The Convention for the Protection of Human Rights and Fundamental Freedoms, the Council of Europe- CETS No. 005, 03.09.1953. .

<sup>108</sup> "From the words of section 26 can be notice the influence of the article 8 of ECHR" The Estonian Supreme Court, Administrative Collegiums case no. RK 3-4-1-2-01, p. 14.

<sup>109</sup> General Principles of the Civil Code Act, section 133, subsection 1, section 138, sections 1, 2.

<sup>110</sup> The Law of Obligations Act, section 1046.

<sup>111</sup> The Estonian Supreme Court, Criminal Colleges case no. 3-1-1-116-04.

### **§ 1:18 Definition and significant subdivisions**

Invasion of privacy is defined in Estonia as “Eraelu puutumatus.” The definition comes from The Constitution of the Republic of Estonia § 26, which states that everyone has the right to the inviolability of private and family life. State agencies, local governments, and their officials must not interfere with the private or family life of any person except to protect health, morals, public order, or the rights and freedoms of others, to combat a criminal offence, or to apprehend a criminal offender.<sup>113</sup>

The main subdivision examines “informational self-determination.”<sup>114</sup> This right is generally concerned with personal autonomy: the right to be left alone, the right to a private life, the right to control data about one’s self, and the right to enjoy intimacy, secrecy, and anonymity.<sup>115</sup>

The most important distinction between libel and “false light” is that false light statement is not defamatory.<sup>116</sup> False light privacy actions stem from a person’s right to be let alone and is based on the way people view themselves. Emotional distress is often the basis for false light privacy suits. Unlike libel, false light invasions of privacy actually may embellish one’s reputation.<sup>117</sup> The home is inviolable<sup>118</sup> and it is forbidden to penetrate someone’s dwelling, premises or place of work or to be searched. Everyone has a right to the confidentiality<sup>119</sup> of their posts, telegraphs, and telephone or other commonly transmitted messages.

### **§ 1:19 Main factors or elements of claim**

Under The Code of Civil Procedure there are two elements of an invasion of privacy claim: (1) Intrusion into a private place, conversation, or matter, (2) in a manner highly offensive

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<sup>112</sup> The Estonian Supreme Court, Administrative Colleges case no. 3-3-1-57-04.

<sup>113</sup> The Constitution of the Republic of Estonia, section 26, subsection 1.

<sup>114</sup> Tikk, E., Nõmper, A. Information and Law. Kirjastus Juura, University of Tartu, 2007, p. 37.

<sup>115</sup> Gate, F. H. Privacy in the Information Age. Brookings Institution Press, 1997, p. 21-22.

<sup>116</sup> Luide, S. The civil law of defamation and the differences of the defamation via the Internet. Master Thesis. Law Faculty, University of Tartu, 2003, p. 72. URL: <http://dspace.utlib.ee/dspace/bitstream/10062/787/5/luide.pdf> (30.09.09).

<sup>117</sup> Luide, S., p. 73.

<sup>118</sup> The Constitution of the Republic of Estonia, section 33, subsection 1.

<sup>119</sup> The Constitution of the Republic of Estonia, section 43, subsection 1.

to a reasonable person.<sup>120</sup> To define “intrusion,” the court has cited case law stating that a person can invade someone's privacy through unwarranted “sensory intrusions,” such as eavesdropping or wiretapping.<sup>121</sup> In order for an invasion of privacy claim to stand, however, a plaintiff must have a “reasonable expectation of seclusion or solitude in the place, conversation, or data source.”<sup>122</sup> The Estonian Supreme Court held that, even if he or she had no expectation that his or her words were confidential, a plaintiff can still state a claim for invasion of privacy because he or she had a reasonable expectation of privacy against being electronically recorded.<sup>123</sup>

Regarding the second element of an invasion of privacy claim, the court noted that the issue of whether the intrusion was highly offensive is to be determined on a case-by-case basis.<sup>124</sup>

### **§ 1:20 Types of relief available**

A person has the right to demand termination of a violation of the inviolability of his or her private life and to demand compensation for moral and proprietary damage caused thereby.<sup>125</sup> The Code of Civil Procedure in Estonia sets a value of action in case of non-proprietary claim, which is presumed to be 15,000 Estonian kroons.<sup>126</sup>

### **§ 1:21 Defenses available**

If a person consents, there can be no invasion of privacy.<sup>127</sup> However, reporters should be sure that the subject has not only consented to be interviewed, but also consented to publishing or airing the interview or photographs. When minors or legally incompetent people

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<sup>120</sup> The Explanatory note of Criminal Procedure Code and the Code of Civil Procedure. Estonian Parliament, 08.05.2006. Section 3.2, p. 2.

<sup>121</sup> Estonian Press Council, Solution nr 340. URL: [http://www.asn.org.ee/asn\\_lahendid.php?action=view&num=340](http://www.asn.org.ee/asn_lahendid.php?action=view&num=340) (01.10.09). Estonian Supreme Court, Civil Collegiums cases nr RK 3-2-1-78-98 and RK 3-2-1-138-02.

<sup>122</sup> Estonian Press Council, Solution nr 340. URL: [http://www.asn.org.ee/asn\\_lahendid.php?action=view&num=340](http://www.asn.org.ee/asn_lahendid.php?action=view&num=340) (01.10.09). Estonian Supreme Court, Civil Collegiums cases nr RK 3-2-1-78-98 and RK 3-2-1-138-02.

<sup>123</sup> The Estonian Supreme Court, Criminal Collegiums case nr RK 3-1-1-5-09.

<sup>124</sup> The Estonian Supreme Court, Civil Collegiums case nr RK 3-2-1-78-98.

<sup>125</sup> International Human Rights Instruments. Core Document Forming Part of the Reports of States Parties. Estonia. 7. June 2001. Sections 79, 80.

<sup>126</sup> The Code of Civil Procedure, section 132, subsection 1.

<sup>127</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications). 32002L0058, Article 17.

are involved, the consent of a parent or guardian may be necessary. A written release is essential for use of pictures or private information in advertising or other commercial contexts.

Truth can also be a defense, but only in false light cases.<sup>128</sup> A litigant claiming false light invasion of privacy who is involved in a matter of public interest must prove that the media intentionally or recklessly made erroneous statements about him or her.<sup>129</sup> However, truth is not a defense to a claim based on the publication of private facts. There is no general test for determining whether a fact private or public.

If the public has a legitimate interest in the story as it was reported, newsworthiness can be a defense to the charge of invasion of privacy.<sup>130</sup> But if the report of legitimate public interest includes gratuitous private information, publication of those private facts may be actionable.

### **§ 1:22 Time period for asserting claim**

The statute of limitations period for a claim arising from law is ten years as of the moment when the claim accrues, unless otherwise provided by law.<sup>131</sup> The limitation period for a claim arising from unlawfully caused damage is three years as of the moment when the entitled person became or should have become aware of the damage and of the person required to compensate for the damage.<sup>132</sup> If a person required to compensate for damage receives gain at the expense of the entitled person in connection with the damage caused, however, such person is, even after the expiry of the limitation period, required to return the gain pursuant to the provisions concerning unjust enrichment.<sup>133</sup> Regardless of any other provisions, a claim arising from unlawfully caused damage expires not later than ten years after performance of the act or occurrence of the event which caused the damage.<sup>134</sup>

## **E. Right of Publicity**

### **§ 1:23 Main sources of law**

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<sup>128</sup> Turow, J. *Media Today: An Introduction to Mass Communication*. Routledge, 2009. p. 112.

<sup>129</sup> Turow, J., p. 113.

<sup>130</sup> *Journalists Code of Ethics*, section 1.6.

<sup>131</sup> *The General Principles of the Civil Code Act*, section 149, subsection 1.

<sup>132</sup> *The General Principles of the Civil Code Act*, section 150, subsection 1.

<sup>133</sup> *The General Principles of the Civil Code Act*, subsection 2.

<sup>134</sup> *The General Principles of the Civil Code Act*, subsection 3.

The right of publicity is the right to prevent unauthorized use of one's name or likeness by a third person for commercial benefit.<sup>135</sup>

The Constitution of the Republic of Estonia §45 grants to everyone a right to disseminate ideas, opinions, beliefs and other information by word, print, picture or other means. This right may be restricted by law to protect public order, morals, and the rights and freedoms of health, honor and good name of others.<sup>136</sup> This right may also be restricted by law for state and local government public servants, to protect a state or business secret or information received in confidence that has become known to them by reason of their office.<sup>137</sup> Section 17 of the Constitution<sup>138</sup> implements the governmental protection for a person's good name.<sup>139</sup> The Personal Data Protection Act<sup>140</sup> protects the fundamental rights and freedoms of natural persons upon processing of personal data and, above all, the right to the inviolability of private life.<sup>141</sup> The Estonian Data Protection Inspectorate<sup>142</sup> supervises national agencies with respect to the protection of personal data, complying with requests for information, and publication of information on the Internet and elsewhere. Illegal usage of another company's name and identity is also regulated in the Competition Act,<sup>143</sup> and the state supervision is exercised from the Estonian Competition Board.<sup>144</sup> The focus of trademark law<sup>145</sup> is the customer and the likelihood of confusion, unlike the right of publicity, which looks to the ability of a person to control his or her image.<sup>146</sup>

The Publicity of the Parliament<sup>147</sup> states that Parliament sessions must be public unless two-thirds of the Parliament votes otherwise. Voting in Parliament must also be public. If votes are being cast for an election or appointment, however, voting will be done by secret ballot.

The Estonian Supreme Court has discussed the right of publicity in cases RK 3-1-1-117-

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<sup>135</sup> EU Directives, including the Software Directive (1991), the Rental Rights Directive (1993), The Copyright Duration Directive (1993), Database Directive (1996), the Copyright (Information Society) Directive (2001).

<sup>136</sup> The Constitution of the Republic of Estonia, section 45, subsection 1.

<sup>137</sup> The Public Service Act RT I 1995, 16, 228; 2005, 7, 112. Section 67.

<sup>138</sup> The Constitution of the Republic of Estonia, section 17.

<sup>139</sup> "No one's honour or good name shall be defamed."

<sup>140</sup> The Personal Data Protection Act RT I 2007, 24, 127; 2007, 68, 421.

<sup>141</sup> The Personal Data Protection Act, section 1, subsection 1.

<sup>142</sup> The Estonian Data Protection Inspectorate - *Andmekaitse inspeksioon*. URL: <http://www.aki.ee/>. (06.11.2009).

<sup>143</sup> The Competition Act, section 52, subsection 1.

<sup>144</sup> The Estonian Competition Board – *Konkurentsiamet*. URL: <http://www.konkurentsiamet.ee/> (06.11.2009).

<sup>145</sup> The Trade Marks Act, RT I 2002, 49, 308; 2009, 4, 24.

<sup>146</sup> The Trade Marks Act, section 14, subsection 1.

<sup>147</sup> The Constitution of the Republic of Estonia, section 72, subsection 1.

05 and RK 3-1-1-80-97. The Supreme Court<sup>148</sup> has explained that §151 of the Penal Code establishes liability for any activities that publicly incite hatred, violence, or discrimination on the basis of nationality, race, colour, sex, language, origin, religion, sexual orientation, political opinion, or financial or social status.<sup>149</sup>

The main source of political right of publicity is expressed in European Court of Human Rights from April, 23 1992 in case *Castells v. Spain*.<sup>150</sup> The Court recalled that freedom of expression constituted one of the essential foundations of a democratic society and one of the basic conditions for its progress; it was applicable also to information or ideas that offended, shocked, or disturbed. Freedom of expression was of special importance to an elected representative of the people because he represented his electorate, drew attention to their preoccupations, and defended their interests. As the applicant had expressed his views in a periodical, the Court stressed the pre-eminent role of the press in a State governed by the rule of law. It provided the public with one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders and gave politicians the opportunity to reflect and comment on the preoccupations of public opinion. It thus enabled everyone to participate in free political debate.

### **§ 1:24 Protection of right of publicity after death**

The Copyright Act<sup>151</sup> entitles authors to the term of copyright protection as the life of the author and seventy years (70) after his or her death, irrespective of the date when the work is lawfully made available to the public, except in the cases like differences with joint-authorship, anonymous or pseudonymous works, collective works, works created in execution of duties, audiovisual works and serials.<sup>152</sup>

Where the country of origin of a work, within the meaning of subsection 4 of Article 5 of the Berne Convention on Literary and Artistic Works,<sup>153</sup> is a another country, and the author of the work is not a citizen or permanent resident of the Republic of Estonia, the term of protection

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<sup>148</sup> The Estonian Supreme Court, Criminal Collegium, case no. 3-1-1-117-05.

<sup>149</sup> The Penal Code, section 151, subsection 1.

<sup>150</sup> European Court of Human Rights, Publication no. A 236, *Castells v Spain*, 23.04.1992.

<sup>151</sup> The Copyright Act, section 38, subsection 1.

<sup>152</sup> The Copyright Act, section 39: joint authorship, section 40: anonymous or pseudonymous works, section 41: collective works, works created in execution of duties, audiovisual works and serials.

<sup>153</sup> The Berne Convention for the Protection of Literary and Artistic Works. Paris, France 24.07.1871.

of copyright shall run within a period prescribed by the law of the country of origin but may not exceed the term specified in Estonia's copyright statute.<sup>154</sup>

After death, the deceased's intellectual rights will be transferred to his or her successor<sup>155</sup> according to the general provisions of the law of succession.<sup>156</sup>

Free Use of Works<sup>157</sup> allows reproducing and translating lawfully published work by a natural person for the purposes of personal use without the authorization of its author and without payment of remuneration on the condition that such activities are not carried out for commercial purposes.<sup>158</sup>

### **§ 1:25 Main factors or elements of claim**

A plaintiff may establish the elements of validity and infringement regarding:

- 1) The existence of enforceable rights in the identity of the complaining party,
- 2) The length and manner of usage without permission of identity or aspects of identity in such way that plaintiff is identifiable from defendant's use,
- 3) The nature and extent of advertising and promotion of the mark,
- 4) The efforts made in the direction of promoting a conscious connection, in the public's mind, between the name or mark and a particular product or venture and
- 5) Defendants use is likely to cause damage to the commercial value of that person.<sup>159</sup>

In the context of the right of publicity, enforceable right means that either the plaintiff's own identity is at issue or that plaintiff is an assignee or exclusive licensee or someone else's right of publicity. Therefore, a plaintiff will not have standing to sue unless his own identity is at issue or he has been assigned or licensed the right to use the identity or persona at issue.<sup>160</sup>

The test for the infringement element is identifiability. For this element to be satisfied, the defendant must use some aspect of the plaintiff's identity or persona in such way that the plaintiff is identifiable. It is important to emphasize that the test for infringement is

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<sup>154</sup> The Berne Convention for the Protection of Literary and Artistic Works, Article 5, section 4.

<sup>155</sup> The Copyright Act, Section 36 – Succession of Copyright.

<sup>156</sup> The Law of Succession Act, RT I 2008, 7, 52; 2008, 53, 296.

<sup>157</sup> The Copyright Act, Chapter IV - Limitations on exercise of Economic Rights of Authors.

<sup>158</sup> The Copyright Act, section 18, subsection 1.

<sup>159</sup> The Explanatory Note on Proposed Amendments to the Code of Criminal Procedure and Code of Civil Procedure Acts. 06.07.2008.

<sup>160</sup> The Estonian Supreme Court, Administrative Collegium, cases no. 3-3-1-15-01, 3-3-1-64-00, 3-3-1-65-00, 3-3-1-25-99.

identifiability and not confusion as to endorsement by the person. Deception and false endorsement are not needed for a violation of the right of publicity. Identity can be stolen and used to attract attention to an advertisement or product without giving rise to a valid claim of false endorsement.<sup>161</sup>

### **§ 1:26 Types of relief available**

The Copyright Act §81<sup>4</sup> allows the author or holder of related rights to claim the following damages or remedies:

- 1) Compensation, pursuant to § 1043 of the Law of Obligations Act, for the patrimonial and non-patrimonial damage caused through the unlawful use of a work or an object of related rights;
- 2) Termination of the unlawful use of a work or an object of related rights and refrainment from further violation pursuant to § 1055 of the Law of Obligations Act;
- 3) Delivery of that which was received by way of the unlawful use of a work or an object of related rights pursuant to §§ 1037 and 1039 of the Law of Obligations Act.

If, as a result of a violation of copyright legislation, a work or an object of related rights is communicated to the public, reproduced, distributed or altered etc., an entitled person may claim:

- 1) Restoration of the work or object of related rights in the original form;
- 2) Alteration of copies of the work or object of related rights by specific means, or
- 3) Destruction of pirated copies. (Do not apply to works of architecture).<sup>162</sup>

### **§ 1:27 Defenses available**

One opportunity is consent. If the defendant has the consent of the person whose right of publicity is in question, then there is no violation of that right of publicity. Discussion of this issue generally centers on whether the defendant had consent to take the particular actions in question. Consent is typically manifested by a signed release, consent or waiver.

### **§ 1:28 Time period for asserting claim**

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<sup>161</sup> Ministry of Culture. An Overview of the Situation regarding Copyright in the Republic of Estonia for the Government of the Republic. December, 2001.

<sup>162</sup> The Copyright Act, section 81<sup>7</sup>, subsection 2.

Filing the action should be done within five years after becoming aware of the later trademark.<sup>163</sup> These grounds do not apply if the application of the later trademark was filed in bad faith<sup>164</sup>

## **II. Advertising Law**

### **A. Sources of Advertising Law**

#### **§ 1:29 Basic principles**

From the moment of proclamation of Estonian independence, seven years passed before the 1998 statutes on advertising were enacted. The updated version of the Estonian Advertising Act was introduced in 2008, matching the European standards.<sup>165</sup>

An “advertisement” is information made public for the purpose of increasing the sale of products or services, promoting an event or idea, or achieving other desired results in other areas and which an advertiser disseminates for a fee.<sup>166</sup> Advertising laws regulate the requirement for content, design, and presentation of advertising to be presented in a way that, given ordinary attention by the public, may be recognized as advertising and contains clearly distinguishable information identifying the advertiser.<sup>167</sup>

#### **§ 1:30 Constitutional sources**

There are no Constitutional provisions that directly intervene with the field of advertisement. Yet some of the basic rights connected to the freedom of obtaining information and the freedom to disseminate ideas, opinions, beliefs and other information by word, print, picture or other means may be invoked when discussing options for building a legal basis in an advertisement case.<sup>168</sup> Those rights may be restricted by law to protect public order, morals, and the rights and freedoms of health, honour, and a good name.

#### **§ 1:31 Codified sources**

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<sup>163</sup> Estonian Supreme Court, Civil Collegiums case No. 3-2-1-142-08.

<sup>164</sup> The Code of Criminal Procedure RT I 2001, 61, 364; 2009, 56, 401. The Code of Misdemeanour Procedure RT I 2002, 50, 313; 2009, 88, 590, the Trade Mark Act, section 52, subsection 2.

<sup>165</sup> European Association of Communications Agencies, URL: <http://www.eaca.be/> (06.11.2009).

<sup>166</sup> The Advertising Act, section 2, subsection 1.

<sup>167</sup> The Advertising Act, section 3.

<sup>168</sup> Ots, M., Maisvee, R. Real Property Rights in Estonia, Band 24, Center of Legal Competence, Wien, Graz, 2006.

The Advertising Act is the main codified source of advertising law in Estonia.<sup>169</sup> The Advertising Act provides the definition of advertising, establishes general requirements for advertising and restrictions on advertising, regulates supervision over advertising, and establishes liability for any violation related to advertisement deeds.<sup>170</sup>

The Estonian Advertising Act also includes, in contrast to many other European countries that have established an independent legislation, specific restrictions on advertising of tobacco products, alcoholic beverages, medicinal products, health services, poisonous, flammable and otherwise dangerous products, narcotic drugs and psychotropic substances, weapons and ammunition, gambling, and prostitution.<sup>171</sup> The Advertising Act also includes regulations on advertising aimed at children that may be considered somewhat vague, as the listed restrictions do not create a sufficient framework for effective application of any accessible sanctions.<sup>172</sup>

Keeping in mind Chapter IV of the TVWF Directive<sup>173</sup> and the provisions of the Advertising Act and Broadcasting Act, the Consumer Protection Act (*Tarbijakaitseadus*)<sup>174</sup> regulates offering and selling a product or service to the consumer or otherwise marketing the same by the trader in general. The Consumer Protection Act does not contain any special norms in the field covered by Chapter IV of the TVWF Directive. In relation to the relevant provisions of the Advertising Act and Broadcasting Act, the Consumer Protection Act directly provides a basis for conducting legal proceedings in case of any misdemeanors committed in the advertising business (irrespective of place and method, including by a broadcasting organization).<sup>175</sup>

The Green Paper on Commercial Communication targets all possible forms of commercial communication and is relevant to the communication of commercial information by “transfrontier” broadcasting and new information services.<sup>176</sup> The Commission is exploring the possibility of formulating rules that are common to all Member States so as to avoid forcing those who are engaged in the transfrontier communication of commercial information to comply

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<sup>169</sup> Kaur, V. Comparative study concerning the impact of control measures on the television advertising markets in the EU Member States and certain other countries. Estonia. Legal Report, 2003.

<sup>170</sup> The Advertising Act, RT I 2008, 15, 108; 2009, 38, 255, section 1, subsections 1, 2.

<sup>171</sup> The Advertising Act, sections 17, 18, 19, 20, 21, 22, 24.

<sup>172</sup> The Advertising Act, section 9, subsection 1.

<sup>173</sup> Council Directive 89/552/EEC of 3 October, 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.

<sup>174</sup> The Consumer Protection Act RT I 2004, 13, 86; 2008, 59, 330.

<sup>175</sup> The Consumer Protection Act, sections 12, subsection 1, section 12<sup>2</sup>, subsections 2, 4, 5, 6.

<sup>176</sup> The Green Paper on the Review of Council Regulation (EC) No. 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters. COM (2009) 175 final, Brussels, 21.4.2009.

with all the different rules in all of the Member States where the communication is or can be received. Another codified source that partly refers to advertising is the Estonian Penal Code, which prohibits commercially advertising copyright-infringing devices or software.<sup>177</sup>

### **§ 1:32 Case law sources**

Due to the facts that Estonia has a relevantly short period of independence and the legal system may be considered quite young and undeveloped and Estonia is a civil law country, there are just a handful of cases that somehow cross paths with the field of advertising.

The political advertising cases are the most important. According to the provisions of Estonian Local Government Council Election Act,<sup>178</sup> visual advertising with the use of visual images and logotypes of the candidates 40 days before an election is forbidden.<sup>179</sup> In case No. 4-06-513 a person having a poster in the window of his car was deemed to be in breach of the above mentioned prohibition.<sup>180</sup> The defendant fell back on several constitutional rights (the freedom of expression and the right of ownership), but it proved to be ineffective. Similarly, in case No. 4-07-5511, a person was accused of having political visual image advertising during the prohibited agitation period pursuant to the Estonian Riigikogu Election Act.<sup>181</sup> The charges were dropped because the vehicle did not belong to the person in question, the latter did not place the advertising image on the car, and he did not know about the prohibition of political advertising.

## **B. False Advertising**

### **§ 1:33 Main sources of law**

The Estonian Advertising Act governs false advertising.<sup>182</sup> In contrast to other Baltic countries, neither the Estonian Civil Code nor the Penal Code include any specific provisions regarding false advertising. The second most important source is the Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising that follows the primary purpose to protect consumers, persons carrying on a trade or business or practicing a

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<sup>177</sup> The Penal Code, section 225, subsection 1.

<sup>178</sup> The Local Government Council Election Act, RT I 1996, 37, 739; 2002, 36, 220

<sup>179</sup> The Local Government Council Election Act, Section 6, subsection 1.

<sup>180</sup> Harju County Court, case no. 4-06-513, 23.02.2007.

<sup>181</sup> Estonian Riigikogu Election Act Article 5 point 1 of

<sup>182</sup> The Advertising Act, section 6, subsection 1.

craft or profession, and the interests of the public in general against misleading advertising and the unfair consequences thereof.<sup>183</sup>

The directive of the European Parliament and Council 2005/29/EB and the Council Directive 79/112/EEC give guidance in questions of protecting traders against misleading advertising<sup>184</sup> and the unfair consequences thereof, the conditions under which comparative advertising is permitted, and rules on labelling containing information that would mislead the purchaser or attribute medicinal properties to objects classified as food.<sup>185</sup> Finally, false advertising in the field of unfair competition and medicinal products are separately regulated in the Estonian Competition Act and Medicinal Products Act.<sup>186</sup>

### **§ 1:34 Definition and significant subdivisions**

The Estonian Advertising Act defines “misleading advertising” as advertising that, in any way, including its presentation, deceives or is likely to deceive the public, or that, for those reasons, injures or may injure a competitor.<sup>187</sup> The Estonian Competition Act prohibits the publication of misleading information, the presentation or ordering of misleading information for publication, and the disparagement of a competitor or its goods.<sup>188</sup>

The Estonian Consumer Protection Act regulates false advertising in two aspects. First, it prohibits “bait advertising” - making an invitation to purchase products or services at a specified price but later raising the price.<sup>189</sup> Another prohibited type of advertising is “advertorials,” which presuppose editorial content in the media to promote a product or service where a trader has paid for the promotion without making that fact clear to the consumer.<sup>190</sup>

Television advertising and teleshopping shall not cause behavior prejudicial to health or safety or encourage behavior prejudicial to the protection of the environment.<sup>191</sup> The

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<sup>183</sup> Council Directive 84/450/EEC, Article 1:1.

<sup>184</sup> Council Directive 79/112/EEC.

<sup>185</sup> Council Directive 2005/29/EB.

<sup>186</sup> The Medical Devices Act RT 2004, 75, 520; 2007, 12, 66, section 35, subsection 3.

<sup>187</sup> The Advertising Act, section 4, subsection 1.

<sup>188</sup> The Competition Act, section 29, subsection 1, section 50, subsections 1, 3, section 51, subsections 1,2.

<sup>189</sup> The Consumer Protection Act, section 12 subsection 8:5.

<sup>190</sup> The Consumer Protection Act, section 12 subsection 8:6.

<sup>191</sup> The Broadcasting Act Section 15 Subsection 4 clause 1, TVWF Directive, articles 12 b and i.

Advertising Act defines such terms as “offensive advertising” and “denigratory advertising.” Both offensive advertising as well as denigratory advertising are prohibited.<sup>192</sup>

According to Advertising Act Section 5, an advertisement is offensive if it is contrary to good morals and customs, calls on people to act unlawfully or to violate prevailing standards of decency, or if it contains such activities.<sup>193</sup>

An advertisement is considered offensive in particular if the advertisement:

1) presents, incites or endorses discrimination on the grounds of nationality, race, colour, sex, age, language, origin, religion, political or other opinions, and financial or social status or other circumstances;<sup>194</sup>

2) Calls on people to behave violently or incites violent behavior in order to achieve an objective or in choosing the manner in which to achieve an objective;

3) Degrades lawful behavior or directly or indirectly justifies violation of the law as a means of achieving an objective;

4) Plays on superstition, fear or sympathy;

5) Contains any direct statement or visual presentation regarding a sexual act, inappropriate nudity or socially unacceptable sexual behavior; or

6) Presents false information concerning other persons, their products or services, or other facts.

According to the Advertising Act, denigratory advertising means advertising that directly or by implication degrades or in some other manner denigrates a person, activity, area of activity, product, service, business activity or anything else published in advertising.<sup>195</sup>

In general, television advertising and teleshopping shall not use the voice or image of a person who appears as an announcer in a news program or as a presenter or commentator in programs about current affairs.<sup>196</sup>

### **§ 1:35 Main factors or elements of claim**

The factors analyzed in a false advertisement case include the following:

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<sup>192</sup> Advertising Act, Section 5 Subsection 1; Section 6 Subsection 2.

<sup>193</sup> Advertising Act, subsection 1.

<sup>194</sup> Goes further than article 12.b TVWF Directive.

<sup>195</sup> Advertising Act, section 6, subsection 1.

<sup>196</sup> The Broadcasting Act, section 15, subsection 3.

1) the composition, environmental safety, and risk of damage to health related to use of the product, the method and date of manufacture, fitness for purpose, manner of use, place of production, country of origin or other characteristics the composition, environmental safety and risk of damage to health related to use of the product, the method and date of manufacture, fitness for purpose, manner of use, place of production, country of origin or other characteristics;

2) The value and actual price of the product or service;

3) The terms of payment for products or services, such as hire purchase, leasing, instalment sales and credit sale;

4) Delivery, exchange, return, repair and maintenance of the products;

5) Terms of guarantee of products or services;

6) The manufacturer of the product or service provider, the manufacturer's or service provider's area of activity and qualifications, and the intellectual property rights related to the product or service;

7) Official recognition or approval of the product or service, receipt of awards, distinctions or diplomas;

8) Extent of endorsement for public or charitable causes using the name of the product or service.<sup>197</sup>

It is prohibited to use the results of scientific or other research, quotations from scientific or technical publications, and statistical or scientific data in advertising in a manner that misleads the public concerning the subject of the advertising.<sup>198</sup> Therefore, another important factor is whether the advertisement conveys scientific facts that are misleading.<sup>199</sup>

The Estonia Medicinal Products Act also provides several absolute conditions for false advertising:

1) Medicinal products must have a marketing authorization to be advertised;

2) Only the holder of a marketing authorisation has the right to advertise the medicinal product or order the advertising of such product;

(3) Advertising of a medicinal product shall be based on the summary of product characteristics approved by the State Agency of Medicines and must not contain any information not included in the summary of product characteristics;

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<sup>197</sup> The Advertising Act, section 4, subsection 2.

<sup>198</sup> The Advertising Act, section 4, subsection 4.

<sup>199</sup> The Advertising Act, section 4, subsection 3.

(4) Advertising of a medicinal product shall facilitate rational use of the medicinal product by presenting information in an objective and unexaggerated way. The advertising shall not be misleading and must not exaggerate the properties of the medicinal product. A clear separation must be made, in advertising, between the properties exclusively connected to the advertised medicinal product and the properties which are generally known or also characteristic to other medicinal products;

(5) Each time the name of the medicinal product is mentioned, it shall be accompanied by the name of its active ingredient set out in a clearly distinguishable and legible form using a font at least one-half of the size of the name of the medicinal product.<sup>200</sup>

Although most false advertising claims brought against advertisers are by competitors, consumers can also file such claims.

#### **§ 1:36 Examples of claims found false or misleading and claims found not false or misleading**

One specific case had a tremendous political scandal in the background and acquired enormously wide publicity in Estonia in 2005. Referring to the legal prohibition of active candidate advertising forty days before an election, there was a massive poster advertisement campaign for curd snacks during the forbidden period.

In case No. 01-42-014/05, the limited liability company Idea AD was deemed in breach for misleading advertising on the producer of the K-kohuke curd snack ad.<sup>201</sup> In particular, the K-kohuke curd snack logo (the letter “K” on a green background) and the slogan (For everyone) were considered suspiciously similar to the Centre Party logo (the letter “K” on a green background) and slogan (For the good of everyone). Most important was the fact that the company producing the product was run by Oliver Kruuda, an important sponsor of the Centre Party.

The Consumer Protection Board criticized the advertisement, asserting that the K-kohuke ad was misleading since it failed to “bring out the advertised product clearly enough.”<sup>202</sup> The Board argued that, given the size of the text and the image used in the design, it was not possible

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<sup>200</sup> The Medicinal Devices Act, section 83.

<sup>201</sup> The Estonian Consumer Protection Board, Misdemeanors Collegiums case No. 01-42-014/05.

<sup>202</sup> The Consumer Protection Board (CPB) initiated a proceeding of misdemeanor against the Ltd Kohuke. CPB, 05.10.2005.

for the average consumer to unequivocally realize that the advertisement promoted a specific product.<sup>203</sup> The board also argued that elements of the design used in the posters did not clearly refer to the product that was being advertised and that it was difficult to explicitly associate the word “cares” and the uppercase “K” with the product being advertised.<sup>204</sup> Idea AD was fined 25,000 EEK (1,600 EUR), half the maximum fine of 50,000 kroons as set out in the Advertising Act.<sup>205</sup>

The Centre Party refused to accept responsibility for K-kohuke curd snack ad. In this case, No. 4-05-752, the court took a significantly different approach to the Consumer Protection Board’s analysis.<sup>206</sup> It found that the advertisement could not be considered false or misleading.<sup>207</sup> The main argument presented by the court included a clear separation between “the failure to understand the content of the advertisement” and “the intentional attempt to confuse or misguide the public.”<sup>208</sup> The court found that the Consumer Protection Board’s argument was incomplete and inconsistent and revoked its judgment.<sup>209</sup>

### **§ 1:37 Types of relief available**

If the claim against misleading advertisement should be entirely or partly established, the plaintiff may ask for material compensation that is usually established with regard to the actually incurred damages.<sup>210</sup> Furthermore, a plaintiff may seek non-material compensation.<sup>211</sup>

The Estonian Code of Civil Procedure specifically states that damaged reputation or honor may be considered a sufficient ground for non-material relief.<sup>212</sup> The non-material relief amount is estimated to be 25,000 EEK (1,600 EUR).<sup>213</sup>

The plaintiff may always seek to restore the effects of damages resulting from the false advertising.<sup>214</sup> Pursuant to the Estonian Code of Civil Procedure, the courts will decide

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<sup>203</sup> The Estonian Consumer Protection Board, Misdemeanors Collegiums case No. 01-42-014/05.

<sup>204</sup> The Estonian Consumer Protection Board, Misdemeanors , section 6.

<sup>205</sup> The Advertising Act, section 33, subsection 2.

<sup>206</sup> Harju County Court, Misdemeanors Collegiums case No. 4-05-752.

<sup>207</sup> Harju County Court, Misdemeanors, section 2.4.

<sup>208</sup> Harju County Court, Misdemeanors section 7.11.

<sup>209</sup> Harju County Court, Misdemeanors section 7.14.

<sup>210</sup> The Code of Civil Procedure, section 124.

<sup>211</sup> The Code of Civil Procedure, section 125.

<sup>212</sup> The Code of Civil Procedure, section 101, subsection 2, section 175, subsection 2.

<sup>213</sup> The Code of Civil Procedure, section 124 subsections 1, 3.

reparative actions in the context of the matter as well as the financial situation and abilities of the parties.

### **§ 1:38 Defenses available**

Defendants may rely on their good faith or try to prove their good intentions behind the creation of advertisement. In general, the rights of self expression, speech and exchange of ideas<sup>215</sup> from the Estonian Constitution may prove to be valid defenses.

### **§ 1:39 Evidence required to support advertising claims based on tests**

No results of scientific or other research, quotations from scientific or technical publications, or statistical or scientific data may be used in advertising in a manner that misleads the public concerning the subject of the advertising.<sup>216</sup> Estonian legislation does not set any concrete criteria regarding the minimum degree of evidence needed to substantiate research or tests. Yet, the advertiser must be ready to provide supporting evidence upon request of competent agencies, and the sufficiency of that evidence will be examined on case-by-case basis.<sup>217</sup>

Medicinal products are different. The Medicinal Products Act requires that, each time the name of the medicinal product is mentioned, it must be accompanied by the name of its active ingredient set out in a clearly distinguishable manner and cannot include information suggesting that the effects of taking the medicine are guaranteed, are unaccompanied by side effects, or are better than, or equivalent to, those of another treatment or medicinal product.<sup>218</sup>

### **§ 1:40 Time period for asserting claim**

The plaintiff must assert the claim within the period ten years from the moment the advertisement in question actually published.<sup>219</sup>

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<sup>214</sup> International Covenant on Civil and Political Rights, Human Rights Committee: Consideration of Reports Submitted by States Parties under Article 40 of the Covenant. Third periodic reports of States parties: Estonia. 10. December, 2008. Section 503.

<sup>215</sup> The Constitution of the Republic of Estonia, section 44.

<sup>216</sup> The Advertising Act, section 4.

<sup>217</sup> International Covenant on Civil and Political Rights, Human Rights Committee: Consideration of Reports Submitted by States Parties under Article 40 of the Covenant. Third periodic reports of States parties: Estonia. 10. December, 2008. Section 448.

<sup>218</sup> The Medicinal Devices Act section 84, subsection 7.

<sup>219</sup> The General Principle of Civil Code Act, section 149, subsection 1.

### **C. Third Party Trademarks and Copyrights in Advertising**

#### **§ 1:41 Permissibility of using another party's trademark in advertising without that party's authorization**

The proprietor of a trademark has no right to prohibit other persons from using the following in the course of trade in accordance with good business practices:

- (i) the names and addresses of other persons;
- (ii) any sign that consists of signs or indications that designate the kind, quality, quantity, intended purpose, value or geographical origin of the goods or services, the time of production of the goods or of rendering of the services, or other characteristics of the goods or services, or that describe the goods or services in another manner, or that consist of the above-mentioned signs or indications that are not considerably altered;
- (iii) signs or indications that have become customary in current language or in good faith business practice;
- (iv) the trademark if it is necessary to indicate the intended purpose of a product, in particular as accessories or spare parts, or a service;
- (v) elements of the trademark that are not subject to protection.<sup>220</sup>

The proprietor of an earlier trademark has no right to prohibit the use of a later trademark or another later right if the proprietor of the earlier trademark was aware or should have been aware of the later trademark and has acquiesced, for a period of five consecutive years, in the use of the later trademark.<sup>221</sup>

#### **§ 1:42 Permissibility of using another party's copyrighted work in advertising without that party's authorization**

According to the Estonian Copyright Act, a lawfully published work may be reproduced and translated without the authorization of its author and without payment of remuneration—on the condition that such activities are not carried out for commercial purposes, only by a natural person, and only for the purposes of personal use.<sup>222</sup> An author will enjoy the exclusive right to use the author's work in any manner, to authorise or prohibit the use of its work.<sup>223</sup>

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<sup>220</sup> The Trade Marks Act, RT I 2002, 49, 308; 2009, 4, 24, section 16.

<sup>221</sup> The Trade Marks Act, section 16, subsection 2.

<sup>222</sup> The Copyright Act, section 18, section 1.

<sup>223</sup> The Copyright Act, section 12.

Free Use of Works<sup>224</sup> allows reproducing and translating lawfully published work by a natural person for the purposes of personal use without the authorization of its author and without payment of remuneration on the condition that such activities are not carried out for commercial purposes.<sup>225</sup>

### **§ 1:43 Time period for asserting claim of trademark infringement or copyright infringement**

The plaintiff must assert the claim within the period ten years from the moment the infringement in question was actually discovered.<sup>226</sup> An applicant may file an appeal against a decision of the Patent Office with the Industrial Property Board of Appeal<sup>227</sup> within two months of the date of making the decision.

An interested person may contest an applicant's right to a trademark in the Industrial Property Board of Appeal. The term for the filing of a revocation application is two months from the publication of the notice of the decision to register a trademark.<sup>228</sup>

In case an appeal or revocation application is allowed in whole or in part, the Board of Appeal shall annul the decision of the Patent Office and require the Patent Office to continue proceedings taking into account the facts set out in the decision of the Board of Appeal.<sup>229</sup>

## **III. Entertainment Law**

### **A. Sources**

#### **§ 1:44 Basic principles**

Entertainment law or media law is a term for a mixture of more traditional categories of law with a focus on providing legal services to the entertainment industry. The principal areas of Entertainment Law overlap substantially with the well-known and conventional field of intellectual property law. But, generally speaking, the practice of entertainment law often involves questions of employment law, labor law, bankruptcy law, immigration, securities law, security interests, agency, intellectual property (especially trademarks, copyright, and the so-

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<sup>224</sup> The Copyright Act, Chapter IV - Limitations on exercise of Economic Rights of Authors.

<sup>225</sup> The Copyright Act, section 18, subsection 1.

<sup>226</sup> The General Principle of Civil Code Act, section 149, subsection 1.

<sup>227</sup> The Estonian Patent Office. *Patendiamet* URL: <http://www.epa.ee/> (06.11.2009).

<sup>228</sup> Circumstances specified in section 9, subsection 1 or section 10 of the Trademark Act.

<sup>229</sup> The Trademark Act, section 41, subsection 3.

called "right of publicity"), international law (especially private international law), and insurance law. Much of the work of an entertainment law practice is transaction-based, i.e. drafting contracts, negotiation and mediation. Some situations may lead to litigation or arbitration.

#### **§ 1:45 Constitutional sources**

The right to the enjoyment of life is guaranteed by section 19, subsection 1 of the Constitution of the Republic of Estonia, and the right is vested in each born and preborn human being from the moment of fertilization.<sup>230</sup>

The Constitution represents a person's right to be naturally and equally free, independent, and to have certain inherent rights to enter into a state of society, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.<sup>231</sup>

#### **§ 1:46 Codified sources**

The Gambling Act regulates the gambling organizations' activity as a form of entertainment.<sup>232</sup> The new Gambling Act encompasses types of gambling that are currently insufficiently regulated. Most importantly, the new Act thoroughly regulates remote gambling.<sup>233</sup> This is defined as a type of gambling where the result of the game is determined by using an electronic device and the players can participate in the game by means of electronic communication devices (such as the Internet, digital television, mobile phones, or public broadcasting).

The Creative Persons and the Artistic Associations Act supports cultural creativity and the preservation and development of the fine arts at the professional level.<sup>234</sup> A creative person engaged in a liberal profession is not a sole proprietor.<sup>235</sup> The provisions of tax legislation concerning sole proprietors entered in the commercial register or registered with a local Tax and Customs Board office of their place of residence or place of business also apply to the taxation of income derived from creative activities by creative persons engaged in a liberal profession. The

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<sup>230</sup> The Constitution of the Republic of Estonia, section 19, subsection 1.

<sup>231</sup> Hansar, M. Entertainment industry in Estonian culture. Sirp, 2004.

<sup>232</sup> The Gambling Act, RT I 2008, 47, 261,

<sup>233</sup> The Gambling Act, section 5.

<sup>234</sup> The Creative Persons and the Artistic Associations Act, RT I 2004, 84, 568; 2009, 38, 254.

<sup>235</sup> The Creative Persons and the Artistic Associations Act, section 3, subsection 2.

Act also seeks to improve the conditions necessary for the creative activity of artists through artistic associations.<sup>236</sup>

The Estonian Association of the Phonogram Producers (EFÜ) is the organisation representing local and international phonogram producers in Estonia. EFÜ's main priorities are collectively representing local and international phonogram producers (i.e. collecting license fee and distributing it among producers) and serving the legal interests of phonogram producers.

The Estonian Performers Association (EEL) is a non-profit organization established at the beginning of 2000. EEL administers and promotes performers rights, collects remunerations under the Copyright Act, and distributes the remunerations among those entitled to them. EEL is a member of The Societies Council for the Collective Management of Performers Rights.<sup>237</sup>

The main codified source for regulating the Estonian entertainment law is the Copyright Act.<sup>238</sup>

#### **§1:47 Case law sources**

Estonian history is relatively short, and that there is an obvious lack of legislation aimed at regulation of aspects of entertainment law. There are currently no judgments relevant to the field of entertainment law in Estonia.

### **B. Types**

#### **§ 1:48 Legal matters characterized as entertainment law**

Various legal matters may be characterized as entertainment law in several different contexts, as follows:

(1) Film: covering option agreements, finance, chain of title issues, talent agreements (screenwriters, film directors, actors, composers, production designers), production and post production and trade union issues, distribution issues, motion picture industry negotiations distribution, and general intellectual property issues especially relating to copyright and, to a lesser extent, trademarks;

(2) Music: including talent agreements (musicians, composers), producer agreements, and synchronization rights, music industry negotiation and general intellectual property issues, especially relating to copyright (see music law);

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<sup>236</sup> Creative Persons and Artistic Associations Act, section 1, subsection 1.

<sup>237</sup> SCAPR, [www.scapr.org](http://www.scapr.org)

<sup>238</sup> The Copyright Act RT I 1992, 49, 615; 2008, 59, 330.

- (3) Television and Radio: including broadcast licensing and regulatory issues, mechanical licenses, and general intellectual property issues, especially relating to copyright;
- (4) Theatre: including rental agreements and co-production agreements, and other performance oriented legal issues;
- (5) Multimedia, including software licensing issues, video game development and production, Information technology law, and general intellectual property issues;
- (6) Publishing and print media issues, including advertising, models, author agreements and general intellectual property issues, especially relating to copyright;
- (7) Visual Arts and Design including fine arts, issues of consignment of artworks to art dealers, moral rights of sculptors regarding works in public places; and industrial design, issues related to the protection of graphic design elements in products.

#### **IV. Art Law**

##### **A. Sources**

##### **§ 1:49 Main sources of law relating to sale of artworks**

Estonia has adopted the Berne Convention for the Protection of Literary and Artistic Works and the Translation and Consolidation Act.<sup>239</sup>

The Intra-Community Transport, Export and Import of Cultural Objects Act governs the processing of export licenses of cultural objects, the expert assessment of objects, and the referral of things or cultural objects to expert assessment, customs formalities upon export of cultural objects, and liability for violation of this Act.<sup>240</sup>

##### **§ 1:50 Sources of law for artists' rights**

The Constitution of Republic of the Estonia states that the sciences, arts, and their instruction are free.<sup>241</sup> Universities and research institutions are autonomous within the restrictions prescribed by law.<sup>242</sup> The Copyright Act provides for: the protection of a specific right (copyright) of authors of artistic works for the results of their creative activity.<sup>243</sup>

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<sup>239</sup> The Copyright Act, section 1.

<sup>240</sup> Intra-Community Transport, Export and Import of Cultural Objects Act, RT 2007, 45, 677; 2008, 5, 881, subsection 1.

<sup>241</sup> The Constitution of the Republic of Estonia, section 38, subsection 1.

<sup>242</sup> The Constitution of the Republic of Estonia, section 38, subsection 2.

<sup>243</sup> The Copyright Act, section 1, subsection 2:1.

The author's rights shall include the right to authorize or prohibit the following: reproduction of the author's work, making adaptations, modifications (arrangements), and other alterations of the work, or distribution of the author's work or copies thereof; translation of the author's work, compilation and publication of collections of the author's works and systematization of the author's works, public performance of the work as a live performance or a technically mediated performance, displaying the work to the public, and communication of the work by radio, television or satellite, and retransmission thereof by cable network, or direction of the work at the public by other technical devices.<sup>244</sup>

An exemption exists where the party uses reproductions of works of architecture in real estate advertisements to the extent justified by the purpose without the authorization of the author as long as mention is made of the name of the author of the work.<sup>245</sup>

## **B. Relationships**

### **§ 1:51 Relationship between dealer and artist**

The Copyright Act regulates the relationships between dealer and artist through licensing.<sup>246</sup> Works may be used by other persons only in the case of transfer (assignment) of the author's economic rights by him or her or on the basis of an authorization (license) granted by the author except in the cases prescribed in Chapter IV of the Copyright Act.<sup>247</sup> Chapter IV establishes the rules for the limitation of economic rights of authors,<sup>248</sup> free reproduction and translation of works for purposes of personal use,<sup>249</sup> free use of works for scientific, educational, informational and judicial purposes,<sup>250</sup> public archives, museums or libraries,<sup>251</sup> free public performance of works<sup>252</sup> and free use of computer programs.<sup>253</sup>

The transfer of the author's economic rights or the grant of an authorization to use a work may be limited with regard to certain rights and to the purpose, term, territory, extent, manner and means of using the work. A person who is granted an authorization to use a work may

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<sup>244</sup> The Copyright Act, section 13, subsection 1.

<sup>245</sup> The Copyright Act, section 20, subsection 2.

<sup>246</sup> The Copyright Act, section 13<sup>1</sup>, subsection 2, 4, 6, 7, section 47, section 48, subsection 3, section 49.

<sup>247</sup> The Copyright Act, sections 17 – 27.

<sup>248</sup> The Copyright Act, section 17.

<sup>249</sup> The Copyright Act, section 18.

<sup>250</sup> The Copyright Act, section 19.

<sup>251</sup> The Copyright Act, section 20.

<sup>252</sup> The Copyright Act, section 22.

<sup>253</sup> The Copyright Act, section 24.

authorize a third person to use the work (grant a sublicense) only with the prior consent of the author.<sup>254</sup> An author's contract may be entered into to use an existing work or to create and use a new work.<sup>255</sup>

### **C. Art Auctions**

#### **§ 1:53 Laws relating to auctions and auction houses**

Estonia has no laws that regulate auctions.

### **D. "Stolen" Art Works**

#### **§ 1:54 Legal issues regarding "stolen" artworks**

The Act on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State of the European Union regulates the return to a Member State of the European Union of cultural objects that have been unlawfully removed from the territory of that Member State of the European Union and brought to Estonia.<sup>256</sup> The requesting Member State may file an action with the county or city court of the location of the cultural object in order to initiate proceedings against the owner or possessor of the cultural object with the aim of securing the expropriation of the cultural object or its reclamation and return from illegal possession and the award of fair compensation to the owner within one year after the requesting Member State becomes aware of the location of the cultural object and of the identity of its owner or possessor.<sup>257</sup>

"Unlawful removal of a cultural object from the territory of a Member State" means the removal of a cultural object from the territory of a Member State of the European Union in breach of the rules on the removal of cultural objects established under the legislation of the Member State or in breach of Regulation.<sup>258</sup> (EEC) No 3911/92

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<sup>254</sup> The Copyright Act, section 47, subsection 1.

<sup>255</sup> The Copyright Act, section 48, subsection 2.

<sup>256</sup> The Act on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State of the European Union, RT I 2003, 51, 351; 2008, 33, 641.

<sup>257</sup> The Copyright Act, section 9, subsection 1.

<sup>258</sup> The Council Regulation (EEC) No 3911/92 of 9 December 1992 on the export of cultural goods. OJ L 395, 31.12.1992, p. 1.

Matters of expropriation of cultural objects or their reclamation and return from illegal possession and the award of compensation shall be heard pursuant to the procedure provided in the Code of Civil Procedure.<sup>259</sup>

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<sup>259</sup> The Code of Civil Procedure, RT I 1998, 43–45, 666; 108/109, 1783; 1999, 16, 271; 31, 425; 2000, 51, 319; 55, 365; 2001, 21, 113; 34, 186; 53, 313; 93, 565; 2002, 29, 174; 50, 313; 53, 336; 64, 390; 92, 529; 2003, 13, 64 and 67; 23, 140.