

# Chapter 14A

## Greece

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### I. MEDIA LAW

#### A. SOURCES

##### § 14A:1 Basic principles

There is no single legal framework regulating the Greek media sector. Indeed, different pieces of legislation govern telecommunications, broadcasting, press, publishing, entertainment, and advertising. Be that as it may, the basic

principles that are protected by the Greek Constitution and are intended to apply to the entire spectrum of Greek Media Law are cultural diversity, pluralism, freedom of expression, the fight against racial, political and religious fanaticism, the protection of minority rights, and equality. According to Article 4 of the Greek Constitution, all Greeks are equal before the law. Article 5(2) provides that all persons living within the Greek territory enjoy full protection of their life, honour and liberty irrespective of nationality, race, or language, and of religious or political beliefs. Article 14 also protects the right to freedom of expression. Until recently, racial and religious tensions were few and far between and rarely, if ever, required legal protection. Nonetheless, the inflow of immigrants over the past few years has challenged the homogeneity of the Greek society and created tensions with which the political and judicial authorities still struggle to cope.

It is envisaged that all types of media should be ruled by the principles of objectivity, accuracy, and impartiality and refrain from misleading the public and communicating inaccurate statements. However, the protection of the right to free expression is so strong that very few cases of censorship have arisen over the last three decades and restrictions on the right to freedom of expression have been rarely enforced. This is despite the fact that inaccurate and defamatory publications or broadcasts have created a substantial case backlog in Greek courts.

### **§ 14A:2 Constitutional sources**

There are several references in the Greek Constitution that are of relevance to Greek media law. In particular:

- Article 5(1) refers to the right of all persons to develop their personality and get involved in the social, economic, and political affairs of the country,<sup>1</sup> provided that the persons do not infringe the rights of others or violate the Greek Constitution and Greek social mores. The scope of the protection under this particular article is quite broad and includes one's participation in all types of social, business, and political activities and formations as well as every individual's right to free choice and self-determination.

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#### **[Section 14A:2]**

<sup>1</sup>Article 5(1) of Greek Constitution.

- Article 5(2) provides that the law applies equally to all persons regardless of sex, language, religion, or political opinion and extends to both men and women, to persons with different religious views, and aliens who do not speak the Greek language.<sup>2</sup> Exceptions are allowed only in cases provided by international law.
- Article 5a(1) deals with the right to information, whatever the form in which information is transmitted. Restrictions to this right may be imposed by law provided that the restrictions are absolutely necessary and justified for reasons of national security, of combating crime, or of protecting rights and interests of third parties.<sup>3</sup>
- Article 5a(2) refers to the right of participation in the so-called Information Society,<sup>4</sup> which covers access to electronically transmitted information, as well as the production, exchange, and diffusion of such information. The right of participation is subject to the limitations of articles 9,<sup>5</sup> 9a,<sup>6</sup> and 19<sup>7</sup> of the Greek Constitution: Article 9 protects privacy and family life. Article 9a deals with the protection of the collection, processing and use of personal data in electronic form. Article 19 refers to the protection of mail secrecy.
- Article 14 protects the right to freedom of expression, whether orally or in writing or through the press.<sup>8</sup> Under this Article, the seizure of newspapers and other publications, whether before or after circulation, is prohibited. Seizure is allowed only by order of the public prosecutor and in cases of (a) an offence against a religion; (b) an insult against the President of the Republic; (c) a publication which discloses information on the composition, equipment and set-up of the Greek armed forces or the fortifications of the country, or which aims at the violent overthrow of the regime or is directed against the territorial integrity of the State; and (d) an obscene publication which is obviously offensive to public decency.

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<sup>2</sup>Article 5(2) of Greek Constitution.

<sup>3</sup>Article 5a(1) of Greek Constitution.

<sup>4</sup>Article 5a(2) of Greek Constitution.

<sup>5</sup>Article 9 of Greek Constitution.

<sup>6</sup>Article 9a of Greek Constitution.

<sup>7</sup>Article 19 of Greek Constitution.

<sup>8</sup>Article 14 of Greek Constitution.

- Article 15(2) refers to the direct supervision of radio and television by the State.<sup>9</sup> The National Council of Radio and Television is exclusively authorized to control and impose administrative sanctions and grant operation licenses. Supervision aims at the objective communication of information and news, the quality control of the programs, and the protection of human dignity and minors. The direct control of the State, which may also assume the form of permission prior to transmission, aims at the objective and on equal terms transmission of information and news reports, as well as of works of literature and art, at ensuring the quality level of programs mandated by the social mission of radio and television, and by the cultural development of the country.

### § 14A:3 Codified sources

In Greece, there are numerous pieces of both primary and secondary legislation in the form of presidential decrees and ministerial decisions that make up the corps of Media Law. Primary legislation includes the Constitution, Community legislation and laws passed by the Greek parliament, whereas secondary legislation includes presidential decrees and ministerial decisions which are made by an executive authority (e.g., the President of the Republic and Ministers) under powers given to them by primary legislation. Therefore, secondary legislation implements and administers the requirements of primary legislation. As a rule, parliamentary laws are stronger than presidential decrees which, in turn, are comparatively stronger than ministerial decisions. Besides legislation directly referring to the media sector, there are several pieces of legislation that refer to areas of law, such as competition, consumer protection, and copyright, which are relevant to media.

The main codified sources regarding media include the following:

- Law 2328/1995 on Legal Status of Private Television

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<sup>9</sup>Article 15(2) of Greek Constitution.

and Local Radio,<sup>1</sup> which refers to the conditions and procedures of licensing private television and radio stations, the regulation of advertising, the imposition of administrative sanctions such as license revocation, and the civil liability of the Press.

- Law 2863/2000 on the Establishment of the National Council for Radio and Television,<sup>2</sup> which refers to the setting up, status, composition, competencies, and administrative organization of the National Council for Radio and Television.
- Law 3414/2005, amending Law 3310/2005, on Measures to Ensure Transparency and the Prevention of Fraud in the Process of Public Procurement.<sup>3</sup> The law refers to the incompatibility of the owner, shareholder or main shareholder of a mass media enterprise with his/her being, in parallel, the owner, shareholder or main shareholder of an enterprise bidding and being awarded public contracts. The law also refers to the prohibition of concluding public contracts with mass media enterprises and to the administrative and criminal penalties arising in case of a breach of this provision. The law resulted in considerable opposition from many quarters, including the European Commission.
- Law 3444/2006 on the Establishment of the National Audiovisual Archive,<sup>4</sup> which refers to the establishment, scope, activities, and administration of the National Audiovisual Archive and to its cooperation with other media organizations.
- Law 3592/2007 on Concentration and Licensing of Business Media,<sup>5</sup> which implemented into Greek Law EU Regulations 2002/19/EU, 2002/20/EU, 2002/21/EU,

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**[Section 14A:3]**

<sup>1</sup>Law 2328/1995 on Legal Status of Private Television – Radio, Regulation of Issues concerning the Broadcasting Market and other provisions.

<sup>2</sup>Law 2863/2000 on the Establishment of the National Council for Radio and Television and other authorities and bodies in the area of broadcasting services.

<sup>3</sup>Law 3414/2005 on Measures to Ensure Transparency and the Prevention of Fraud in the Process of Public Procurement.

<sup>4</sup>Law 3444/2006 on the Establishment of the National Audiovisual Archive and other provisions.

<sup>5</sup>Law 3592/2007 on Concentration and Licensing of Business Media and other provisions.

2002/22/EU, and 2002/77/EU and deals with issues regarding market concentration in media, the ownership of media enterprises, the licensing procedure for private television and radio stations, and issues regarding digital television and radio.

- Article 50 of Law 3801/2009 on the Personnel of State-Owned Undertakings and Local Self-Governed Authorities,<sup>6</sup> according to which radio stations that belong to political parties represented in the Parliament and that had been operating lawfully at the time Law 3592/2007 on Concentration and Licensing of Business Media entered into force, are entitled to participate in the tender process regarding the granting of establishment and operation licences for a local radio station.
- Presidential Decree 131/2003 regarding the implementation of Directive 2002/21 on E-Commerce,<sup>7</sup> which refers to the minimum content of e-commerce agreements as well as to the liability of intermediaries regarding the provision of services.
- Law 1178/1981 on Civil Liability of the Press,<sup>8</sup> which refers to the rights of compensation and indemnity arising from statements that were intended to insult someone's honour or reputation.

#### § 14A:4 Case law sources

The Greek legal system belongs to the Civil Law tradition that is prevalent in continental Europe. Of the variants of Civil Law (e.g., French, German, Scandinavian), German civil law is the one that has most affected the Greek legal system. Greek courts are divided into civil, criminal, and administrative courts. Additionally, certain authorities are occasionally empowered with judicial authority, such as the Data Protection Authority, the Regulatory Authority for Energy, the Competition Authority, the National Broadcasting Council for Radio and Television (NCRTV), etc. The NCRTV is an independent, seven-member authority estab-

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<sup>6</sup>Law 3801/2009 on the Personnel of State-Owned Undertakings and Local Self-Governed Authorities.

<sup>7</sup>Presidential Decree 131/2003 on E-Commerce- Services of the Information Society.

<sup>8</sup>Law 1178/1981 on Civil Liability of the Press and other provisions.



lished under Law 1866/1989<sup>1</sup> whose decisions may be appealed before the Council of State, Greece's supreme administrative court modeled after the French *Conseil d'Etat*. Crucially, the powers and competencies of the NCRTV are safeguarded by the Constitution (articles 15(2) and 101A).

Given the competence of the NCRTV to decide and impose sanctions in relation to the media's compliance with applicable legislation, its decisions are a critical source of case law. According to a recent decision of the Council, the participation of young people with physical and phonetic deficiencies in a television contest, called *Je t'aime*, violates the legal requirements for quality, respect of human dignity and protection of childhood.<sup>2</sup> The Council based its decision on the fact that the participants, while aiming at gaining an economic benefit, were stigmatized and their human dignity was severely offended. The contest at issue was rendered of low quality and was said to infringe the right to the protection of childhood and of minors. An administrative penalty of €200,000 was thus imposed on the TV station that broadcasted the contest. This penalty was comparatively one of the largest to be imposed. Factors that affected the value of the penalty included the popularity of the program, the substantial advertisement income generated by the TV station, and the station's past conduct.

The Council of State, hearing an appeal to a decision of the NCRTV, held with its decision no. 3490/2006 that a scene of two men kissing in a TV series neither violated the provisions regarding the protection of childhood nor was it contrary to social mores and annulled decision 371/2003 of the NCRTV.<sup>3</sup> The Court thus held that homosexuality is protected under Article 2 of the Greek Constitution (on the respect and protection of the value of human life and dignity) and Article 5(1) as it relates to the right to the free development of one's personality.

Recently, the Greek Cassation Court (*Areios Pagos*, Greece's Supreme Court) reinforced the right of free press by

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**[Section 14A:4]**

<sup>1</sup>Law 1866/1989 on the Establishment of NCRTV and granting of license for the establishment and operation of television stations.

<sup>2</sup>No. 314/11.6.2007 concerning the TV-show *Je t'aime*, broadcasted by ALTER CHANNEL.

<sup>3</sup>Council of State, decision no. 3490/2006 MEGA CHANNEL vs. NCRTV.

rejecting a claim for defamation through a newspaper on the grounds that references to the claimant were not sufficiently express.<sup>4</sup> Indeed, decision no. 167/2008 held that censorship of the press is prohibited and that reference to the lifestyle of a judge, who is suspicious of having misappropriated public funds during his term of office, is justified for reasons of public interest. Furthermore, the Court ruled that no specific reference was made so as to identify with certainty that the claimant was indeed the judge to whom reference was made.

## B. REGULATORY FRAMEWORK

### § 14A:5 For the publishing industry

In Greece there are no regulatory bodies that are specific to the publishing industry. Indeed, it is only the Greek courts that are responsible for enforcing copyright law. The publishing industry in Greece is regulated by Law 2121/1993 (“Copyright Law”), as amended by Law 3057/2002, which transposed into Greek Law the provisions of Directive 2001/29/EC on the harmonization of certain aspects of copyright and related rights in the information society. The regulatory framework of the Greek publishing industry is also made up of the following:

- Law 1178/1981 on Civil Liability of the Press, as amended by Law 2243/1994, which refers to the rights of compensation and indemnity arising from statements that were intended to insult someone’s honour or reputation.
- Law 3592/2007 on the Concentration and Licensing of Media Companies, under which the concentration of media enterprises is disallowed. Law 3592/2007 implemented into Greek Law EU Regulations 2002/19/EU, 2002/20/EU, 2002/21/EU, 2002/22/EU and 2002/77/EU and deals with issues regarding market concentration in media, the ownership of media enterprises, the licensing procedure for private television and radio stations, and issues regarding digital television and radio.
- Laws 3310/2005 and 3414/2005 on Transparency on Tenders—Main Shareholder. These laws place restrictions regarding the conclusion of public contracts with media enterprises, their main shareholders, their members of Board of Directors and their managers. The

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<sup>4</sup>Cassation Court (Supreme Court) decision 167/2008 (case name is not provided).

law refers to the incompatibility of the owner, shareholder or main shareholder of a mass media enterprise with his/her being, in parallel, the owner, shareholder or main shareholder of an enterprise bidding and being awarded public contracts. The law also refers to the prohibition of concluding public contracts with mass media enterprises and to the administrative and criminal penalties arising in case of breach of this provision.

- Law 1092/38 defines the basic press instruments, namely newspapers and magazines, and indicates the obligations of publishers, the basic principles regarding news broadcasting and the liabilities of publishers and journalists.
- Article 14 of the Greek Constitution is also responsible for regulating the publishing industry by protecting the freedom of the press. Article 14 provides that every person may express his/her thoughts orally, in writing, and through the press. Censorship or other preventive measures, including the seizure of newspapers and other publications before or after circulation, is prohibited.<sup>1</sup> Seizure by order of the public prosecutor is allowed exceptionally after circulation and in cases of (a) the committing of offences against a religion; (b) insulting the President of the Republic; (c) disclosing information about the composition, equipment, and set-up of the armed forces or about the defense of the country or about the overthrow of the democratic regime; and (d) obscene publications which are obviously offensive to public decency.
- Article 14(5) of the Greek Constitution provides for the right to reply to inaccuracies published or broadcasted by the media.<sup>2</sup> There is not, however, a governing body responsible for determining whether a publication includes an inaccuracy. According to article 6 of the Code of Journalism Ethics on Radio and Television,<sup>3</sup> any inaccurate or misleading statement broadcasted on radio and/or television must be corrected in the same or similar broadcast/show. However, the offended party

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**[Section 14A:5]**

<sup>1</sup>Greek Constitution, Article 14.

<sup>2</sup>Greek Constitution, Article 14(5).

<sup>3</sup>Ministerial Decision 21/1991: Code of Journalistic Ethics on Radio and Television.

may request court protection and the publisher that published the inaccurate or misleading statement is obliged to publish a summary of the court's judgment that accepted the claims of the offended party according to Article 1(6) of Law 1178/1981 on Civil Liability of the Press.

- Finally, the general provisions of the Greek Civil Code on compensation for moral harm such as Articles 57 and 932 are applicable to the Publishing Industry.<sup>4</sup> According to Article 57 of Civil Code, the offended party may seek the cease of the insult and its future prevention. If the offended party is dead, the said right may be exercised by its relatives. In order to receive compensation for moral harm, the unlawfulness of the act or omission, liability on the part of the infringer, and an adequate connection between the act and the damage must be proved. As will be discussed in more detail below, Articles 361 to 369 of the Criminal Code on defamation and libel are also applicable to the publishing industry.<sup>5</sup>

#### **§ 14A:6 For broadcasting industry**

Article 14(5) of the Greek Constitution provides for the right to reply to inaccuracies, published or broadcasted by media.<sup>1</sup> Moreover, according to Article 15(1) of the Greek Constitution, "the protective provisions for the press are not applicable to films, sound recordings, radio, television or any other similar medium for the transmission of speeches or images."<sup>2</sup> According to Article 15(2) of the Constitution, "radio and television shall be under the direct control of the State."<sup>3</sup> The control and imposition of administrative sanctions are under the exclusive competence of the National Council of Radio and Television, which is a seven-member independent regulatory authority established under law

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<sup>4</sup>Greek Civil Code, Article 57 on personality right and Article 932 on compensation for moral harm.

<sup>5</sup>Greek Criminal Code, Article 361 on defamation and Article 369 on libel.

#### **[Section 14A:6]**

<sup>1</sup>Greek Constitution, Article 14 (5).

<sup>2</sup>Greek Constitution, Article 15(1).

<sup>3</sup>Greek Constitution, Article 15(2).

1866/1989<sup>4</sup> whose decisions may be appealed before the Council of State.

In addition to the constitutional provisions, various pieces of primary legislation regulate aspects of the broadcasting industry including the following:

- Law 3592/2007 on the Concentration and Licensing of Media Enterprises provides for the prohibition of the concentration of the media industry.<sup>5</sup> According to Law 703/1977 on Unfair Competition,<sup>6</sup> as amended by Law 3373/2005, the Competition Authority is responsible for ensuring that the media industry does not become concentrated.
- Laws 3310/2005 and 3414/2005, both on the Transparency of Tenders and the Main Shareholders, place various restrictions on the conclusion of public contracts with media enterprises, their main shareholders, their Board members and their managers.<sup>7</sup> Both laws aim at the protection of fair competition and the objective broadcasting of information. They also apply to relatives—up to third degree—of the above individuals and to the beneficial owners of off-shore companies holding more than 1% of the share capital of these enterprises. Such restrictions do not apply to public contracts that involve the media industry itself. The NCRTV is responsible for regulating and/or enforcing restrictions of both laws.
- Law 1730/1987 on Public Broadcasting Stations provides for the general principle that the press is obliged to respect the personality and privacy of individuals as well as the truth.<sup>8</sup> In cases of publications of untrue or erroneous facts, there is an obligation on the press to publish a correction statement. The press is also expected to respect the variety of opinions and abstain from the dissemination of news in a manner that may cause panic to the public.

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<sup>4</sup>Law 1866/1989 on the Establishment of NCRTV and granting of license for the establishment and operation of television stations.

<sup>5</sup>Law 3592/2007 on the Concentration and Licensing of Media Enterprises and other provisions.

<sup>6</sup>Law 3373/2005 on Antimonopoly and Unfair Competition.

<sup>7</sup>Laws 3310/2005 and 3414/2005 on the Transparency of Tenders—Main Shareholder.

<sup>8</sup>Law 1730/1987 on Public Broadcasting Television and Radio Stations.

- Law 1866/1989 governs the establishment of NCRTV and the granting of licenses for non-state-owned TV and radio stations gave birth to private television and radio in Greece and discontinued the State's monopoly in the industry.<sup>9</sup> A license to a private TV or radio station is granted by a joint decision of the Ministers of Internal Affairs, Finance, and Communication, following the opinion of the NCRTV. The shares of such private stations must be registered and each shareholder may hold no more than 25% of their share capital.
- The opening-up of the industry was later completed with Law 2328/1995 that governs matters concerning the function of private TV and local radio and the electronic market and Law 2863/2000 that governs NCRTV and other authorities of radio/TV services.<sup>10</sup> The first law refers to the procedures and criteria for the granting and renewal of licenses to TV and radio stations, the principles governing the broadcasting of advertisements, and the administrative and civil sanctions that may be imposed. Furthermore, Law 2863/2000 refers to the establishment, setting-up, competencies, and administrative organization of the NCRTV. Interestingly, Law 2328/1995 stipulates that NCRTV has the authority to request information from radio and television stations regarding their set-up and financing. Overall, NCRTV is solely responsible for (a) granting, renewing, or revoking licenses for radio and TV services; (b) monitoring radio/TV companies, whether private or state owned, for their compliance with relevant legislation; (c) ensuring political and cultural diversity in mass media in conformity with Laws 2328/1995 and 2644/1998 (which also puts restrictions on the concentration in media ownership); (d) monitoring competition in the media market; (e) imposing fines and administrative measures; and (f) examining requests for remedies for defamation caused by mass media.
- In addition to the NCRTV, Law 3414/2005 on Transparency on Tenders—Main Shareholder sets the anti-monopoly public policy in the field of media enterprises in execution of Article 14(9) of the Greek Constitution

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<sup>9</sup>Law 1866/1989 on NCRTV and granting of licenses for the establishment and operation of TV stations.

<sup>10</sup>Law 2328/1995 on Private Television and Radio and Law 2863/2000 on NCRTV.

and provides, in Article 12, that NCRTV monitors the market share of media companies.<sup>11</sup> Moreover, Law 3431/2006 on E-Commerce and other provisions which approximated Greek Law with the provisions of Directives 2002/19/EU, 2002/20/EU, 2002/21/EU, and 2002/22/EU, regulates electronic communication networks and electronic communication services.<sup>12</sup> In particular, to the law governs the general principles of e-commerce and the establishment and competencies, including the capacity to act as an arbitrator, of the National Telecommunications and Post Commission. Licenses are required for the engagement in all kinds of electronic communication activities that are relevant to the provision of electronic communication networks or/and services. In addition to the above-mentioned laws, there are various presidential decrees that are relevant to the Greek broadcasting industry such as Presidential Decree 100/2000 which implemented the EU Directive on Television without Frontiers into Greek Law. In particular, Presidential Decree 100/2000 refers to the conditions of broadcasting advertisements and tele-sales programs, sponsoring of television programs, and broadcasting of European TV programs. Furthermore, Presidential Decree 235/2003 on the conditions of establishment and operation of radio stations under a free transmission regime refers to the tendering procedure regarding the granting of operation licenses as well as to the eligibility criteria of bidders.

#### **§ 14A:7 For online services**

Presidential Decree 131/2003 transposed into Greek Law the provisions of Directive 2000/31/EU on E-Commerce and regulates several aspects of electronic commerce, including liability of intermediary service providers on the Internet.<sup>1</sup> Online services include online information services (e.g., online newspapers), online selling of products and services (e.g., books, financial services, and travel services), online advertising, entertainment services, and basic intermediary

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<sup>11</sup>Law 3414/2005 on Transparency on Tenders—Main Shareholder.

<sup>12</sup>Law 3431/2006 on E-Commerce and other provisions.

#### **[Section 14A:7]**

<sup>1</sup>Presidential Decree 131/2003 on E-Commerce and Information Society.

services (e.g., access to the Internet and transmission and hosting of information). In particular, Presidential Decree 131/2003 regulates aspects concerning the minimum information that shall be granted by the service provider, the requirements of commercial information being part of the Information Society, and the validity of the conclusion of electronic agreements. Any kind of information provided by the service providers is subject to restrictions regarding the protection of secrecy and personal data. Interestingly, there are not any trade groups in Greece that are responsible for governing the online industry. Online services are also regulated under the provisions of Article 4 of the Consumer Protection Law 2251/1994, as amended by Law 3587/2007.

#### **§ 14A:8 Regulators and their core competencies**

As mentioned earlier, NCRTV is an independent regulatory authority for the radio and TV market whose sole responsibility is to (a) grant, renew or revoke licenses for radio and TV services; (b) monitor radio/TV companies, whether private or state owned, for their compliance with relevant legislation; (c) ensure political and cultural diversity in mass media in conformity with Laws 2328/1995 and 2644/1998 which places restrictions on the concentration in media ownership; (d) monitor competition in the media market; (e) impose fines and administrative measures; and (f) examine requests for remedies for defamation caused by mass media. NCRTV was established under Law 2863/2000 on NCRTV.

Moreover, EETT is the independent regulatory authority which supervises and regulates both the telecommunications and the postal services markets. EETT, otherwise known as *Ethniki Epitropi Tilepikinonion kai Taxydromion* (National Telecommunications and Post Commission), supervises and regulates the telecommunications as well as the postal services market. EETT's institutional purpose is to promote the development of the two sectors, to ensure the proper operation of the relevant market in the context of sound competition and to provide for the protection of the interests of the end-users. EETT is an independent, self-funded decision making body and is empowered with arbitration authorities.

As already indicated, the NCRTV is an independent authority consisting of seven members, i.e., a President, a Vice President, and five members, all appointed by the Greek Parliament. Its decisions regarding media law matters may



be appealed before the Council of State and its powers and authorities are safeguarded by the Constitution itself. A license to private TV and radio stations is granted by a joint ministerial decision of the Ministers of Internal Affairs, Finance, and Communication, following an opinion of the NCRTV. An individual is entitled to file a written complaint with the NCRTV in case of violation of his/her/its personality due to a certain TV or radio program. According to a recent decision issued by NCRTV on 13.12.2007 (decision no. 92), the operation license of the radio station named "PLANET 99.5 FM" was revoked due to the fact that it did not submit to the NCRTV all required documents regarding the transfer of shares and its capital increase. Furthermore, according to decision no. 462/23.09.2008, administrative charges were imposed on TV channel ALTER due to a violation of its obligation to ensure the political diversity in news broadcast. In particular, ALTER failed to present to a satisfied extent the political opinion of the Communist Party and, therefore, breached the general principle of political diversity.

#### **§ 14A:9 Public sector in the media industry**

According to Law 1730/1987,<sup>1</sup> public TV and radio are united under one corporate body called E.R.T. S.A. (E.R.T), which stands for Hellenic (E) Radio (R) and Television (T). As stipulated in the law, the mission of E.R.T. is the organization, exploitation, and development of state radio and television, its contribution to public education and entertainment, and the presentation of the activities of the Greek Parliament. E.R.T. is supervised directly by the State and is financially and administratively independent. E.R.T.'s Board of Directors consists of nine members. E.R.T. broadcasts on a regular basis the sessions of the Greek Parliament, the election campaigns, and issues concerning local government. The law further provides that state television and radio should reach as many social groups as possible and cover a broad range of fields because the main objective of E.R.T. is not to make profit but to serve public interest. Other than the NCRTV, there are no other bodies that impact the regulation of the media industry.

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#### **[Section 14A:9]**

<sup>1</sup>Law 1730/87 on Public Broadcasting Stations.

**§ 14A:10 Split of legislative/regulatory authority  
between the federal government and  
individual states**

Greece is not a federation of states, but is divided into 51 prefectures. There are no regional laws regarding the media sector and it is the government, through the Ministry of Press and Media, which is responsible for the entire Greek territory. Nonetheless, there are laws which are applicable only to the daily and weekly regional press, such as Law 3688/2008 on the Cultural Center of Greek Police and other provisions which regulates notices made by public entities in regional newspapers as well as notices of auctions and tenders of public entities.

In 1994, the Ministry was consolidated as the Ministry of Press and Mass Media. In 2004, under Law No. 3242 (Article 2), the Ministry of Press and Mass Media was dissolved and two General Secretariats under the Prime Minister were established: the Secretariat General of Communication and the Secretariat General of Information, which incorporated the functions of the defunct Ministry. The Secretariats are authorized to (a) provide people with as objective information as possible; (b) inform state services and public sector agencies on important international events as well as views and reactions of the Greek and foreign public opinion, including the position of mass media on issues affecting the country; (c) inform international public opinion in cooperation with the Ministry of Foreign Affairs and other competent bodies on Greece's standpoints, promote the country's image abroad, and contribute to the strengthening of relations with foreign countries and international organizations; (d) contribute to the strengthening of national and cultural links with Greeks of the Greek Diaspora and keep them informed on matters that affect them; (e) formulate state policy and ensure the adoption of the necessary legislative initiatives regarding the regulation of the wider sector of the mass media and implement policies for providing all kinds of radio and TV services necessary to the Information Society; (f) follow international and European developments in the wider field of information and communication media in order to coordinate and regulate all necessary measures for the appropriate adaptation of national audiovisual policies; and (g) plan, develop, and make good use of European Union programs relevant to the terms of reference of the Secretariat General of Communication and the Secretariat General of Information.

### C. DEFAMATION

#### § 14A:11 Main sources of law

The main sources of law regarding defamation are found in the following:

- Article 2(1) of the Greek Constitution protects the respect of human dignity;
- Article 14 of the Greek Constitution provides for the right to reply to articles/statements, published or broadcasted in the media, while the media is obligated to publish or broadcast any reply to (alleged) inaccuracies or defamatory statements;
- Articles 362 to 369 of the Criminal Code regulate defamation and libel and the available penal sanctions, such as imprisonment and/or fines;
- Articles 914, 932, 57, and 59 of the Civil Code regulate claims for damages in relation to offending someone's personality (moral damages); and
- Law 1178/1981 on the Civil Liability of the Press<sup>1</sup> as amended by Law 2243/1994, provides that the owner of a newspaper or magazine is liable to compensate and even pay moral damages to anyone offended by an article with inaccurate information.

#### § 14A:12 Definition and significant subdivisions

Defamation is the publication or dissemination of a statement which exposes persons, whether natural or legal (i.e., corporations) to contempt, or causes them to be shunned or avoided by reasonably-minded, right-thinking members of society.<sup>1</sup> In other words, defamation is about making a false statement that aims to discredit a person to a third party and to harm one's respectability. The offence can be made in express terms or by innuendo (i.e., a hidden meaning or implication attributed to a person) and can come in the form of either libel, which is a statement made in permanent form (i.e., written or printed statement such a letter or fax) or of slander, which is a statement in transitory form. Both libel and slander are crimes according to the Greek Criminal Code under Articles 362 to 363.

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#### [Section 14A:11]

<sup>1</sup>Law 1178/1981 on Civil Liability of the Press.

#### [Section 14A:12]

<sup>1</sup>Article 362 of Greek Criminal Code.

It is, however, important to distinguish between defamation and insult.<sup>2</sup> In the case of insult, someone is insulting the reputation of someone else either orally or by other means. The insult is made directly to the injured party, whereas in case of defamation the statement is made to one or more third parties, other than the injured party.

### § 14A:13 Main factors or elements of claim

The elements of a claim of defamation are the following:

- (1) a statement, either orally or in writing, before a third party in the absence of the offended person;
- (2) a statement against the offended person;
- (3) the statement is of a defamatory nature and may harm the reputation of the offended person;
- (4) the defamatory statement must be communicated to at least two people; and
- (5) there is an intention to defame.

If the defendant is aware of the inaccuracy of the said statement, Article 363 of the Greek Criminal Code governing libel is applicable and the minimum criminal sanction is a three-month term of imprisonment.

### § 14A:14 Types of relief available

The basic legal remedy in case of defamation is imprisonment for up to two years or a fine. In some situations, at the Court's discretion, both imprisonment and a fine can be imposed. In case of libel, at least a three-month imprisonment is imposed on the guilty party, whereas a fine and deprivation of the right to vote may be also imposed.<sup>1</sup>

In case where the personality or reputation of a person has been insulted due to defamation, then compensation for moral harm may be awarded under the provisions of Article 57 (personality right), Article 59 (compensation for moral harm), Articles 914 and 932 of the Civil Code on tort liability and compensation of moral harm. Unfortunately, there is not an objective method of calculating damages and therefore the claimant has to overcome the difficulty of the quantification of damages. However, a number of factors are taken into account in determining the monetary value of damages,

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<sup>2</sup>Article 362 and 361 of Greek Criminal Code.

[Section 14A:14]

<sup>1</sup>Article 362(2) of Greek Criminal Code.

such as the degree of fault/tort and the financial circumstances of the offender. Furthermore, according to Article 57 of the Civil Code, discontinuing the infringement in the future may be also requested.

According to Article 1(1) of Law 1178/1981 on Civil Liability of the Press, as amended by Law 2243/1994, the owner of a newspaper or a magazine is obliged to pay damages and compensation for moral harm caused deliberately by statements that were intended to insult someone's honour or reputation. However, there is not an objective method of calculating such damages and therefore the claimant often faces difficulties of quantification of damages. However, the law provides a minimum amount of damages, i.e., €6,000 but makes no reference to a maximum amount.

Finally, according to Article 6 of the Code of Journalism Ethics on Radio and Television,<sup>2</sup> any inaccurate or misleading statement, broadcasted on radio and/or television must be corrected in the same or similar broadcast/show. Moreover, according to Article 1(6) of Law 1178/1981 on Civil Liability of the Press, the publisher that published the inaccurate or misleading statement is obliged to publish a summary of the court's judgment that accepted the claims of the offended party. The same obligation is provided by Article 369 and Article 229(3) of the Greek Criminal Code.

### § 14A:15 Defenses available

The main defense of defamation is proving the truth of the statement. If this can be evidenced, then the criminal sanctions provided under Article 362 of the Greek Criminal Code on defamation are not applicable.

Under Article 367 of the Greek Criminal Code, the following cases do not constitute a criminal offence:

- (a) unfavorable/degrading judgments regarding scientific, artistic, or professional works;
- (b) unfavorable/degrading statements included in a deed of a public authority in executing its lawful objects; and
- (c) expressions/indications either undertaken within the execution of lawful duties or lawful powers, or exercised towards maintaining a right or communicated by a justified interest.

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<sup>2</sup>Ministerial Decision 21/1991: Code of Journalistic Ethics on Radio and Television.

In order to plead successfully, a defense under the above criteria must be supported by either documents or witnesses.

### **§ 14A:16 Time period for asserting claim**

Defamation is considered a misdemeanor under the Greek Criminal Code. The criminal offence of defamation must be initiated only on complaint within three months of the time the offended became aware of the offence and in any case no later than five years from the date the defamation occurred.<sup>1</sup>

A civil action may be filed within 20 years from the date the infringement occurred.<sup>2</sup> Civil claims for damages and compensation for moral harm may not be brought after five years from the date the offended became aware of the infringement and in no case later than 20 years following the year the infringement occurred.<sup>3</sup>

## **D. INVASION OF PRIVACY**

### **§ 14A:17 Main sources of law**

The protection of individuals from the processing of their personal data is regulated under Article 9a of the Greek Constitution. However, the main source of law regarding invasion of privacy is law 2472/1997 on Protection of Individuals from Processing Personal Data (“Data Protection Law”) implementing the EU Data Protection Directive 95/46. Crucially, under Article 15 of the Data Protection Law, the Data Protection Authority was established as an independent authority to regulate the terms under which personal data may be processed, as well as the rights of individuals regarding the processing of their personal data, such as the right of information (Article 11), the right of access (Article 12), the right to object (Article 13), and the right to seek provisional court relief (Article 14).

Law 3471/2006 on Personal Data and Private Life Protection in the Sector of Electronic Communications, which amended Data Protection Law 2472/1997, is also an important legislative text. Law 3471/2006 has implemented into Greek Law the provisions of EU Directive 2002/58 of the European Parliament and of the Council concerning the

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#### **[Section 14A:16]**

<sup>1</sup>Article 111 par. 3 and Article 112 of Greek Criminal Code.

<sup>2</sup>Articles 57 and 249 of Greek Civil Code.

<sup>3</sup>Articles 57, 59, and 937 of Greek Civil Code.

processing of personal data and the protection of privacy in the electronic communications sector (directive on privacy and electronic communications). It provides more severe sanctions due to the unauthorized processing of personal data, i.e. imprisonment up to 10 years and a monetary penalty of up to €100,000.00.

In addition, there are several important regulations of the Data Protection Authority, such as Regulation 26/2004 that governs terms of the lawful processing of personal data for commercial or advertising purposes and for assessment of credit rating, which have to be taken into consideration.

### **§ 14A:18 Definition and significant subdivisions**

Invasion of privacy occurs when an individual handles another individual's personal data without fulfilling the requirements prescribed by the Data Protection Law. Articles 1 and 2 of the Data Protection Law set out all relevant definitions relating to the scope of this law, the classes of data to be protected and the subjects involved in their processing.<sup>1</sup> In particular, data may be classified as personal or sensitive data. Personal data includes any information relating to a person that can be used to identify the person. Sensitive data includes personal data that reveals the racial and ethnic origin, religious and political beliefs, or information about the health or sexual orientation of the person.

The subjects involved in the processing of personal data include the data controller, the data processor, the data subject, and the data recipient. The data controller is the natural person, legal entity, public administration, or any association that decides the objectives and the methods of data processing. The data processor is the natural person, the legal entity, public authority, or administration that processes the data on behalf of the data controller. The data subject is the person to whom the personal data refers. The data recipient is the natural person, the legal entity, the public authority, or administration to whom the personal data are notified or transferred.

The Data Protection Law regulates the methods of collecting, processing, and transferring personal data, as well as the safety measures requested in the management of the data. As for the duties towards the data subject, the Data

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#### **[Section 14A:18]**

<sup>1</sup>Law 2472/1997, Article 1 (scope) and Article 2 (definitions).

Protection Law provides in Article 6 that before handling personal data, the data controller must submit a notice to the data subject disclosing the controller's identity and address/seat, the address of the archive, the purposes for processing the data, the kind of data under processing, the persons or entities that will handle the data, the data recipients, any transfer and purpose of transfer to third countries, and the basic instruments and security measures through which data will be handled. Moreover, with regard to personal data, the prior consent from the data subject is required under Article 5(1) of the Data Protection Law. In an exception, under Article 5(2), data may be processed without such consent, if the data processing is required:

- (a) for the conclusion of a contract;
- (b) by law;
- (c) for the preservation of an important interest of a data subject who is not in a position to grant such consent;
- (d) for the execution of public interest or public work that falls within the powers of the public authority;  
or
- (e) by a general legal interest.

#### **§ 14A:19 Main factors or elements of claim**

According to Article 14 of Data Protection Law, anyone is entitled to request a provisional court relief including the suspension or non-execution of the violation, act, or decision that resulted from automatic processing of the subject's data by a data controller. In such case, processing should be related to an assessment of the subject's personality, occupational performance, financial credit, reliability, and general conduct. In case of a civil claim under Article 23 of the Data Protection Law, the liability of the violator must be proved. Liability arises when the violator should have been aware of the fact that the possibility exists to cause damages to a third party. In this case, court proceedings follow the pattern of the special proceedings of labor disputes.

#### **§ 14A:20 Types of relief available**

There are three broad categories of relief:

- (1) Administrative sanctions under Article 21 are imposed on data controllers and may vary from notices and fines to temporary or permanent license revocation or



destruction of the archive.<sup>1</sup> The severity of the sanctions depends on the severity of the violation. License revocation or destruction of an archive is imposed in cases where the violation is very serious or is repetitive.

- (2) Criminal sanctions under Article 22 provides that violation of any of the obligations regarding data processing constitutes a misdemeanor and is charged with an imprisonment term of up to three years and a fine.<sup>2</sup> If it is proved that the offender aimed at gaining an illegal benefit, then the violation constitutes a felony and may receive more severe sanctions such as imprisonment of up to 10 years. This also the case if the very functioning of democracy or the national security of the country are put in danger under Article 22(2).
- (3) Civil sanctions under Article 23 provides that a claim for damages, including compensation for moral damages, caused by a violation of any of the provisions of the Data Protection Law may also be brought before a Greek civil court.<sup>3</sup>

### § 14A:21 Defenses available

In cases of violation of privacy, the data processor and the data controller may defend themselves and avoid liability by proving that, during the collection, transfer or, generally, processing of the data, they either observed all the requirements set out in the Data Protection Law or that their acts or omissions fell within the exceptions expressly regulated in the Data Protection Law.<sup>1</sup> These exceptions are provided in:

- Article 7(2) introduces an exception to the prohibition of processing sensitive data after a permission granted by

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#### [Section 14A:20]

<sup>1</sup>Law 2472/1997, Article 21 (Administrative sanctions).

<sup>2</sup>Law 2472/1997, Article 22 (Criminal sanctions).

<sup>3</sup>Law 2472/1997, Article 23 (Civil sanctions).

#### [Section 14A:21]

<sup>1</sup>Law 2472/1997, Article 7 on processing of sensitive data, Article 7a on exception from the notification obligation and from the obligation to receive permission, and Article 9 on cross-border transfer of data.

the Data Protection Authority.<sup>2</sup> This exception applies if:

- (a) the data subject granted his/her consent;
  - (b) the processing is required for maintaining an important interest of a data subject who is not in a position to grant such consent;
  - (c) the processing refers to data that have already been made public by the same data subject or are required for the recognition, exercising or defense of a right before a court;
  - (d) the processing concerns health information and is undertaken by a person who is subject to a confidentiality obligation;
  - (e) the processing is carried out by an administrative authority and is required for national security purposes, or under criminal or correctional policy, or for the protection of public health or for the monitoring of the taxation and social security systems;
  - (f) the processing is carried out for scientific or research purposes; or
  - (g) the processing is carried out by a journalist and refers to data of persons in public life in their conduct of public services.
- Article 7(a) regulates exceptions from the notification obligation and from the obligation to receive permission stipulated in Article 7. In particular, this exception applies if:
    - (a) the processing relates exclusively to a labor or service agreement in the public sector and the subject was notified prior to processing;
    - (b) the processing refers to clients or suppliers and the data are not notified to third parties;
    - (c) the processing is undertaken by companies, political parties, and associations; concerns data of their members that have consented to the processing; and the data are not notified to third parties;
    - (d) the processing refers to someone's health is undertaken by doctors, committed to trade secrecy, and the data are not notified to third parties;
    - (e) the processing is undertaken by lawyers, notaries, and bailiffs committed to trade secrecy, and the data are not notified to third parties; and

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<sup>2</sup>Law 2472/1997, Article 7(2) on the processing of sensitive data.

- (f) the processing is undertaken by judicial authorities.
- Article 9 refers to exceptions from the obligation to receive permission from the Data Protection Authority in the case of cross-border transfer of data. In particular, these exceptions apply:
  - (a) to member states of the European Union;
  - (b) to third countries (i.e. countries that are not members of the European Union) following a permission granted by the Data Protection Authority if the Authority deems that the country at issue guarantees an adequate level of protection;
  - (c) to the transmission of personal data to a third country which does not ensure an adequate level of protection provided that one or more of the following conditions are met:
    - (i) The data subject has consented to such transfer, unless such consent has been extracted in a manner contrary to the law or *contra bonos mores*.
    - (ii) The transmission is necessary:
      - (A) in order to protect the vital interests of the data subject, provided that he/she is physically or legally incapable of giving his/her consent, or
      - (B) for the conclusion and performance of a contract between the data subject and the controller or between the controller and a third party in the interests of the data subject, if he/she is incapable of giving his/her consent, or
      - (C) for the implementation of pre-contractual measures taken in response to the data subject's request.
  - (d) When the transmission is necessary in order to address an exceptional need and safeguard a superior public interest, especially for the performance of a cooperation agreement with the public authorities of another country, provided that the controller provides adequate safeguards with respect to the protection of privacy and civil liberties;
  - (e) When the transfer is necessary for the establishment, exercise or defense of a right during a court procedure;

- (f) When the transfer is made from a public registry which by law is intended to provide information to the public and which is accessible by the public or by any person who can demonstrate legitimate interest on the condition that what the law stipulates for access to such registry is in each particular case fully observed;
- (g) When the controller provides adequate safeguards regarding the protection of the data subjects' personal data and the exercise of their rights.

### § 14A:22 Time period for asserting claim

Criminal sanctions may be imposed within three months of the time the offended person became aware of the violation and in no case later than five years from the date the violation occurred.<sup>1</sup>

A claim for discontinuing the offence may be filed within 20 years from the date the violation occurred.<sup>2</sup>

Civil claims for damages and compensation for moral harm have a limitation period of five years from the time the offended person became aware of the violation and in any case no later than 20 years from the year the violation occurred.<sup>3</sup>

## E. RIGHT OF PUBLICITY

### § 14A:23 Main sources of law

There is no a specific Greek law regulating the right of publicity. The main sources of law may be found in various sources. Articles 57 and 59 of the Civil Code, under which an individual whose personality is unlawfully offended may seek the discontinuance of the offence, its future prevention, and his/her compensation due to moral harm. The Cassation Court (the Greek Supreme Court) has held that the image of a person also falls within the concept of "personality" and is

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#### [Section 14A:22]

<sup>1</sup>Law 2472/1997, Article 22 on criminal sanctions and Article 111 of Criminal Code.

<sup>2</sup>Civil Code, Article 249 on time-bar.

<sup>3</sup>Civil Code, Article 249 on time-bar and Articles 914 and 932 on damages and compensation for moral harm.

protected under the above provisions.<sup>1</sup> According to the above decision, a farmer who granted her consent to being photographed in relation to an article about the construction of the new Athens international airport was entitled to receive compensation due to violation of her right to personality because the same photo was used—without her consent—by a third party in relation to an advertisement campaign for wines produced in the same area.

The right of publicity is also governed by the Greek Constitution and particularly Article 14 which regulates the right of press freedom subject, of course, to restrictions regarding the protection of someone else's reputation and such rights as the right of personality.

The right of publicity is also governed by the Code of Journalism Ethics on Radio and Television<sup>2</sup> and particularly in Article 7 that deals with Private Life, which explicitly refers to the control of private life, including the broadcasting of private information or images/pictures. Such broadcasting is allowed only if it is required by public interest that outweighs the right of privacy.

Article 25 of the Copyright Law 2121/1993 governs the right of publicity by governing the use of copyright protected works, including pictures/photos, such that copyrighted works may not be used without the prior consent of the involved subject for purposes of information of the public or for purposes of public interest.

### **§ 14A:24 Protection of right of publicity after death**

According to Article 57 of the Civil Code, the spouse, relatives (ascendants and descendants), or heirs of an individual who has died and whose personality has been unlawfully offended are entitled to seek, on his/her behalf, the discontinuance of any offence related to the right of publicity, its future prevention, and compensation due to moral harm (post mortal protection). Under the Copyright Law,<sup>1</sup> a copyright expires 70 years after the death of the proprietor/creator.

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#### **[Section 14A:23]**

<sup>1</sup>Cassation Court, Decision 1010/2002 (names of the parties are not available).

<sup>2</sup>Ministerial Decree 21/1991 on Code of Journalistic Ethics on Radio and Television.

#### **[Section 14A:24]**

<sup>1</sup>Article 29 par. 1 of Copyright Law 2121/1993.

**§ 14A:25 Main factors or elements of claim**

The claimant must prove that there was no such consent for the publication of his/her image and that the publication does not fall within one of the exceptions established under the Copyright Law or the Code of Journalism Ethics on Radio and Television.<sup>1</sup> A copyright may be limited for private use, for use in public places, for exhibition and reproduction of visual arts, for informative or educational reasons, for reproduction for cinematographic reasons, etc. The defendant must prove the justified reason for the exception, i.e., the restriction of the copyright. When it comes to a violation of the right to someone's name, a claim arises from the unauthorized use of the name. Accordingly, the claimant must prove the unauthorized use and possible moral or economic harm due to such unauthorized use.<sup>2</sup> Furthermore, the claimant must prove that the said use was not justified by any reason and that there exists an adequate connection between the unauthorized use and the damage/harm.

**§ 14A:26 Types of relief available**

In case of violation of the right of publicity, the basic legal remedy is the discontinuance of the violation and its future prevention. A claim for damages may be launched provided that the conditions of tortuous liability exist (i.e., damage, unlawfulness of the act or omission, fault on the part of the offender and an adequate connection between the act/omission and the damage).<sup>1</sup> The claimant must overcome the issue of quantifying damages because there is no any objective method of performing this action. Compensation for moral harm may be also claimed. However, there is not an objective method of calculating damages and, therefore, the claimant often needs to overcome the difficulty of quantifying damages.

**§ 14A:27 Defenses available**

A publisher of a person's image/photograph may prove

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**[Section 14A:25]**

<sup>1</sup>Articles 18–28c of Copyright Law 2121/1993.

<sup>2</sup>Civil Code, Articles 914 and 932 on damages and compensation for moral harm.

**[Section 14A:26]**

<sup>1</sup>Civil Code, Article 914 on compensation.

that the person has granted his/her consent or that the said publication is justified due to public interest, such as the right of information of the public which goes beyond the right of privacy. In order to use “the right of the public to information” as a defense, the publisher must show that the reproduction of a person’s image/photograph was made in events of public importance and that the said use was justified by means of informing the public. The publication of someone’s image/photograph without his/her consent may be also justified under the provisions of Article 376 of the Greek Criminal Code. In particular, Article 367 waives the unjust character of such act if it is conducted in relation to the execution of lawful duties and powers or for the maintenance of a right or for a justified interest such as the need of information of the public. The above standard of proof is required to reinforce the right of the public to information.

### **§ 14A:28 Time period for asserting claim**

The discontinuance of the infringement may be requested within 20 years from the date the infringement occurred.<sup>1</sup> Civil claims for damages and compensation must be asserted within five years from the time the claimant found out about the infringement and the identity of the offender. In no event, however, can such an action be brought 20 years after the time the infringement occurred.<sup>2</sup>

## **II. ADVERTISING LAW**

### **A. SOURCES OF ADVERTISING LAW**

### **§ 14A:29 Basic principles**

The basic principles governing advertising in Greece are based on the Consumer Protection Law<sup>1</sup> and on the Advertising and Communication Code.<sup>2</sup> The principles of the latter are said to be legality, honesty, and the truth of the content

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#### **[Section 14A:28]**

<sup>1</sup>Articles 57 and 249 of Greek Civil Code.

<sup>2</sup>Articles 57, 59, and 937 of Greek Civil Code.

#### **[Section 14A:29]**

<sup>1</sup>Law 2251/1994 on Consumer Protection. See § 14A:43 for discussion of time periods for bringing trademark and copyright infringement claims.

<sup>2</sup>Advertising and Communication Code, drafted in connection with Article 9 of Law 2863/2000 on the Establishment of the National Council

of the advertisement. The provisions of the Code of Journalism Ethics<sup>3</sup> are also applicable to advertisements transmitted on radio and/or television. In particular, advertisements should be ruled by objectivity, honesty, and impartiality of information.<sup>4</sup> Moreover, advertisements have to refrain from misleading the consumers and/or transmitting inaccurate statements and also need to follow the principles of fair competition.<sup>5</sup>

### § 14A:30 Constitutional sources

There is no explicit reference to advertisement law in the Greek Constitution. However, advertising law is relevant to Article 5 and Article 14 of the Constitution. Article 5 provides the right of personal freedom and participation in social, economic, and politic affairs, as well as on the right of protection of human health. Article 14 provides the right of the freedom of the press and the right of the freedom of expression.<sup>1</sup>

### § 14A:31 Codified sources

There is no primary law that governs advertising law. However, advertisements that have a degree of originality are protected as an audiovisual work according to the provisions of the Copyright Law.<sup>1</sup> Advertisements that have acquired a distinctive character may also be protected under Article 13 of the Unfair Competition Law.<sup>2</sup> In particular, if the use of a slogan, trade name, or other distinctive sign

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for Radio and Television and other authorities and bodies in the area of broadcasting services.

<sup>3</sup>Code of Journalistic Ethics in Radio and TV Sector (Ministerial Decision 21/1991).

<sup>4</sup>Article 3 of Code of Journalistic Ethics in Radio and TV Sector (Ministerial Decision 21/1991).

<sup>5</sup>Article 6 of Code of Journalistic Ethics in Radio and TV Sector (Ministerial Decision 21/1991).

#### [Section 14A:30]

<sup>1</sup>Greek Constitution, Article 14 on the freedom of press and the right of the freedom of expression.

#### [Section 14A:31]

<sup>1</sup>Copyright Law 2121/1993, Articles 2 and 9 on the protection of audiovisual works.

<sup>2</sup>Unfair Competition Law 146/1914 on the protection of distinctive signs.



may cause confusion to an advertisement (or to a distinctive sign of a third party), the violator is obliged to refrain from using the infringing slogan, trade name or distinctive sign. No proof of intention of competitiveness is required.

Additionally, Article 1 of the same Unfair Competition Law and the provisions of the Advertising and Communication Code are also applicable to advertising. In particular, Article 1 of the Unfair Competition Law is a general clause that prohibits unfair practices contrary to good faith and established business morals, and with an intent to compete with a business rival. Any party who uses another's advertisement without consent in a way contrary to good faith and established business morals may be asked to abstain from such an act or be sued for damages or both. Proof of intention of competitiveness is required. According to the Advertising and Communication Code, the principles that should govern advertisements are said to be legality, honesty, and the truth of content. Furthermore, advertisements should be ruled by objectivity, honesty, and impartiality of information and should refrain from defamation and exploitation of someone's reputation.

Further, the terms regarding the broadcasting of advertising spots are regulated under Article 5 of Presidential Decree 100/2000, which implemented Directive 97/36/EC on the coordination of television broadcasting activities. The above Presidential Decree set the duration of advertisements broadcasted during films, sport events, religious or artistic TV programs. Advertisements referring to the provision of services through telecommunications must mention in Greek the charge per minute. Furthermore, advertisements should refrain from promoting political/religious/racial/sex discriminations or ways of living which are detrimental for people's health, security, and the minors. Moreover, advertisements regarding alcoholic beverages should avoid reference to minors.

### § 14A:32 Case law sources

The Supreme Special Court ("Anotato Eidiko Dikastirio") held with its decision no. 23/2008 (names of the parties not recorded) that the sending of private sms via mobile phones on the day of the parliament election is not prohibited since it is considered a way of personalized communication. Furthermore, with its decision no. 512/2008, the Council of State (names of the parties not available) held that the

broadcasting of advertisements during separate parts of the evening news broadcast is not prohibited because the broadcasting of evening news can be divided into separate parts, such as weather, stock market, sports, etc., and that the reference to sponsors of the above separate parts during the news broadcast is allowed. The above decision revoked a Ministerial Decision of the Minister of Press and Mass Media, under which a fine was imposed on a TV station for having broadcasting advertisements during the evening news.

## B. FALSE ADVERTISING

### § 14A:33 Main sources of law

False or misleading advertising is regulated under the provisions of Article 3 of the Unfair Competition Law,<sup>1</sup> Article 9 of the Consumer Protection Law,<sup>2</sup> as modified by Article 12 of Law 3587/2007 on Consumer Protection: Amendment of Law 2251/1994 and Article 4 of the Advertising and Communication Code. No proof of actual consumer deception is required since the creation of an impression of a misleadingly favorable offer is sufficient.

According to Article 16 of the Advertising and Communication Code, a civil law company monitors advertisements. In particular, the said civil law company is established under the provisions of Article 9 of Law 2863/2000,<sup>3</sup> consists of two committees and is responsible for monitoring and observing the application of the provisions of the aforementioned Code. These provisions clearly state that advertisements should neither be false nor deceptive nor misleading.<sup>4</sup> The said company is always obliged to review the advertisements submitted by its members before these spots are set out in circulation by electronic media. Moreover, the civil law company may control the content of advertisements after the first broadcast following a relevant request by one of its members. Such request must be submitted in writing (without any other formality) any time after the first broadcast of an advertisement.

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#### [Section 14A:33]

<sup>1</sup>Unfair Competition Law 146/1914.

<sup>2</sup>Consumer Protection Law 2251/1994, Article 9 on Advertising.

<sup>3</sup>Law 2863/2000 on National Broadcasting Board.

<sup>4</sup>Advertising and Communication Code, Articles 1 to 13.

**§ 14A:34 Definition and significant subdivisions**

False or misleading advertising is defined as “*any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, damages or is likely to damage a competitor.*”<sup>1</sup> Certain features will be taken into account when determining whether an advertisement is misleading, including the following:<sup>2</sup>

- the characteristics of goods or services including availability, suitability, quantity, and kind;
- the price or the calculation thereof; and
- the nature, attributes and rights of the advertiser such as the advertiser’s identity and ownership of intellectual property rights.

**§ 14A:35 Main factors or elements of claim**

If the claim involves unfair competition or if there are significant damages on matters related to misleading advertising or when the claim involves a copyright or trademark infringement, the injured party may request protection from the civil courts. In order to successfully prove unfair advertising, the following must be shown:

- proof of existence of one of the above criteria under § 14A:34; and
- proof that the said advertising is able to create a quite favorable offer to consumers; no proof of actual consumer deception is required.

**§ 14A:36 Examples of claims found false or misleading and claims found not false or misleading**

According to recent legislation, the inaccuracy of a statement alone included in an advertisement is insufficient to

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**[Section 14A:34]**

<sup>1</sup>2251/1994 on Consumer Protection, Article 9(2) on false or misleading advertising.

<sup>2</sup>Law 2251/1994 on Consumer Protection, Article 9(2) on false or misleading advertising.

classify the advertisement as misleading.<sup>1</sup> This is because the whole impression of the advertisement, and not each element of it, needs to be taken into consideration. In one example, the court held that an advertisement was not misleading because the advertisement did not create the impression of a more favorable offer to the consumers. However, the Athens Court of Appeal has ruled that an advertisement was misleading on the basis that the essential characteristics of the products were compared in a non-objective way, which aimed at causing confusion to the consumers and distracting clients from a competitor.<sup>2</sup> According to the latter decision, both the claimants and the defendant were active in the field of beauty salon services. The defendant took advantage of the successful advertisement spot of the claimants by broadcasting a similar one without disclosing the fact that there is no connection between the said enterprises. As the defendant distracted clients from the claimants, the said advertisement spot was held as misleading and the defendant was obliged to pay compensations.

Furthermore, with its decision no. 4995/2001,<sup>3</sup> the First Instance Court of Athens held that the advertisement spot used by an athletic center is misleading since it creates the impression that there is a connection between the said center and another which has first broadcasted a similar advertisement and tries to take unfair advantage of the well-known statements included in the above spot. Crucially, the advertisement does so without making any objective comparison between its services and the services provided by the other center. However, the First Instance Court of Thessaloniki, in its decision no. 27407/2007,<sup>4</sup> held that an inaccurate advertisement is not misleading in itself when it does not create confusion to well-informed consumers who belong to a particular consumption group.

### § 14A:37 Types of relief available

The types of relief available include monetary and injunc-

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#### [Section 14A:36]

<sup>1</sup>Athens Court of Appeal 1489/2007.

<sup>2</sup>Athens Court of Appeal 2928/2004.

<sup>3</sup>First Instance Court of Athens 4995/2001 'Silhouette'.

<sup>4</sup>First Instance Court of Thessaloniki 27407/2007 (names of the parties not available).

tive relief. In particular, the claimant may request the removal of the misleading advertisement and the discontinuance of the infringement in the future. A claim for damages is also available as well as criminal sanctions according to Article 14 of the Unfair Competition Law.<sup>1</sup>

There is neither a type of relief most commonly awarded nor a maximum or minimum amount of monetary damages. However, in case of a severe violation, imprisonment may be imposed cumulatively with a monetary penalty. A number of factors are taken into account in order to determine the value of the monetary relief awarded, such as the degree of fault/tort and the financial circumstances of the offender.

### § 14A:38 Defenses available

Aside from a defense that aims at proving the truth or the accurate content of an advertisement, there are no particular defenses available under Greek Law.

### § 14A:39 Evidence required to support advertising claims based on tests

Comparative advertising is described as “*any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor.*”<sup>1</sup> Comparative advertising may be permitted under the conditions listed under Article 9 of the Consumer Protection Law, as recently modified by Law 3587/2007. Hence, these conditions must be proven or disproven, as the case may be, to provide the evidence required to support advertising claims based on tests.

First, the advertisement must objectively compare one or more material and representative features of those goods and services but not discredit the trademarks, trade names, or other distinguishing marks of a competitor.<sup>2</sup>

Second, if the advertisement takes unfair advantage of the reputation of a competitor or of the designation of origin of the competing products or if it produces a product or a service as an imitation of another product or service that bears

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#### [Section 14A:37]

<sup>1</sup>Unfair Competition Law 146/1914, Article 14 (no title available).

#### [Section 14A:39]

<sup>1</sup>Consumer Protection Law 2251/1994, Article 9(2) and (3).

<sup>2</sup>Consumer Protection Law 2251/1994, Article 9(2c).

a registered trademark or a trade name, this may also constitute sufficient evidence for raising a claim.<sup>3</sup>

Finally, advertisements must not create confusion among traders, between the advertiser and a competitor or between the advertiser's trademarks, trade names, other distinguishing marks, goods or services and those of a competitor.<sup>4</sup>

#### **§ 14A:40 Time period for asserting claim**

The time limit for asserting claims under the Unfair Competition Law is six months following the time from which the claimant became aware of the infringement and the liable person and in no case later than three years from the time the infringement occurred.<sup>1</sup> Civil claims for damages and compensation for moral damages may not be brought after five years from the time the offended person became aware of the violation and in any case no later than 20 years from the year the violation occurred.<sup>2</sup>

### **C. THIRD PARTY TRADEMARKS AND COPYRIGHTS IN ADVERTISING**

#### **§ 14A:41 Permissibility of using another party's trademark in advertising without that party's authorization**

Trademarks are protected in the Greek territory according to Article 1 of the Trademark Law but also throughout the European Union according to Directive 89/104/EEC which approximated the laws of the Member States relating to trademarks and Council Regulation 207/2009 which amended Regulation 40/94, as amended by Regulation 422/2004, on the Community trademark and provide the following:

*a trademark may consist of any sign capable of being represented graphically, particularly words, including personal names, designs, letters, numerals, the shape of goods or of their packaging, provided that such signs are capable of distinguish-*

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<sup>3</sup>Consumer Protection Law 2251/1994, Article 9(2g).

<sup>4</sup>Consumer Protection Law 2251/1994, Article 9(2h).

#### **[Section 14A:40]**

<sup>1</sup>Unfair Competition Law 146/1914, Article 19.

<sup>2</sup>Articles 57, 59, and 937 of Greek Civil Code.

*ing the goods or services of one undertaking from those of other undertakings.*<sup>1</sup>

Under the above Directive and the Trademark Law, a registered trademark entitles the proprietor to prevent all third parties from using, without the trademark owner's consent (a) any sign that is identical to the trademark in relation to goods or services that are identical to those for which the trademark has been registered; or (b) a sign which, because of its identity with, or similarity to, the trademark and the goods or services covered by the trademark, would lead to confusion on the part of the public.<sup>2</sup> However, a trademark does not entitle the proprietor to prohibit a third party from using the trademark where it is necessary to indicate the intended purpose of a product or service provided that the trademark is used in line with good business ethics and practices according to Article 6 of EU Regulation and Article 20 of the Trademark Law.<sup>3</sup>

Substantial case law has been produced in relation to car manufacturers. In a case involving the FIAT distribution network,<sup>4</sup> the court ruled that the use of a trademark by a non-authorized FIAT dealer was not allowed because the use of the FIAT trademark was not in line with good business ethics and practices and there was no necessity to indicate any existing distribution relationship. Use of a trademark is not in line with good business ethics and practices when:<sup>5</sup>

- (a) it is done in such a manner that gives the impression that there is a commercial connection between the trademark owner and the third party;
- (b) it affects the value of the trademark by taking unfair advantage of its distinctive character; or
- (c) it entails the discrediting or derogation of the mark.

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**[Section 14A:41]**

<sup>1</sup>Trademark Law 2239/1994, Article 1 on signs as element of a trademark.

<sup>2</sup>Trademark Law 2239/1994, Articles 4 and 18 on rights of the trademark proprietor.

<sup>3</sup>Trademark Law 2239/1994, Article 20 on limitations of the protection.

<sup>4</sup>First Instance Court of Athens 16353/1999.

<sup>5</sup>Trademark Law 2239/1994, Article 20(1) on limitations of the protection.

Moreover, in a case involving FORD cars,<sup>6</sup> the court also protected the advertising function of the trademarks of the authorized dealer and concluded that the use of the FORD mark by another party was unfair. In particular, the defendant, an owner of a car service business and not an authorized distributor who belonged to the FORD network, unlawfully used the well-known FORD trademarks. The use was held as contrary to fair competition and to the business morals, and was done in such a manner that gave the impression that there was a commercial connection between FORD and the defendant.

Article 9 of the Consumer Protection Law 2251/1994 regulates comparative advertisement which is allowed under following circumstances:

- (a) when the advertisement does not discredit or derogate the trademarks, trade names, other distinguishing marks, goods, services, activities, or circumstances of a competitor;<sup>7</sup>
- (b) when the advertisement does not take unfair advantage of the reputation of a trademark, trade name, or other distinguishing marks of a competitor or of the destination of origin of competing products;<sup>8</sup>
- (c) when the advertisement does not present goods or services as imitations of goods or services bearing a protected trademark or trade name;<sup>9</sup> and
- (d) when the advertisement does not create confusion among traders, between the advertiser and a competitor, or between the advertiser's trademarks, trade names, other distinguishing marks, goods, or services and those of a competitor.<sup>10</sup>

Interestingly, some recent case law has confirmed the conditions under which the content of advertisements is regarded as unfair and deceptive.<sup>11</sup> In particular, with its decision no. 1489/2007, the Athens Court of Appeal held that the inaccuracy of a statement in an advertisement is insufficient to classify the advertisement as misleading. This is because the whole impression of the advertisement is taken

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<sup>6</sup>Athens Court of Appeal 1390/2003.

<sup>7</sup>Consumer Protection Law 2251/1994, Article 9(2d).

<sup>8</sup>Consumer Protection Law 2251/1994, Article 9(2f).

<sup>9</sup>Consumer Protection Law 2251/1994, Article 9(2g).

<sup>10</sup>Consumer Protection Law 2251/1994, Article 9(2h).

<sup>11</sup>Athens Court of Appeal 1489/2007 and 2928/2004.



into consideration. Since the above non-accurate advertisement did not create the impression of a quite favorable offer to the consumers, it was not held as misleading and the claim of the claimant (a pharmaceutical company) was rejected. However, in its decision 2928/2004, the Athens Court of Appeal ruled that an advertisement is misleading when the essential characteristics of the products are compared in a non-objective way that aims at causing confusion to the consumers and distracting clients from the competitor. According to the latter decision, the defendant took advantage of the successful advertisement spot of the claimants by broadcasting a similar one, without disclosing the fact that there is no connection between the two enterprises. Thus, this advertisement was held as misleading and the defendant was obliged to compensate the claimants.

According to Article 4 of the Advertising and Communication Code, advertisements should not include statements or graphics that may mislead the consumer in relation to the ownership of trademarks of third parties. According to Article 10 of the Advertising and Communications Code, advertisements should refrain from copying the text, slogans, graphics, and music from other advertisements in a manner that causes confusion to consumers.

Finally, according to Article 20(3) of Trademark Law 2239/1994, a trademark may be used without the authorization of its owner where it is used in relation to goods that have been placed in the community market under that trademark by the owner or with the owner's consent. In that case, the proprietor of a trademark loses its rights in relation to the advertisement of goods under which a trademark has been obtained once those goods are placed in the market by him or with his consent.<sup>12</sup>

**§ 14A:42 Permissibility of using another party's copyrighted work in advertising without that party's authorization**

Article 81 of Law 3057/2002 on the harmonization of certain aspects of copyright and related rights implemented EU Directive 2001/29/EC ("The Copyright Directive"). Accordingly, exceptions or limitations to the reproduction right are allowed in situations where the non-copyright holder's

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<sup>12</sup>First Instance Court of Thessaloniki 8031/2005.

use is not serving a commercial purpose. All other reproductions of work, for an economic or commercial purpose, entitle the copyright holder to receive fair compensation.

**§ 14A:43 Time period for asserting claim of trademark infringement or copyright infringement**

Article 29 of the Copyright Law provides a 70-year protection period to the copyright proprietor, whereas the protection of the trademark proprietor lasts for 10 years.<sup>1</sup> Extension of the trademark protection is, however, possible. According to Article 21(2) of Trademark Law 2239/1994, the protection of the trademark may be extended after the submission of a request before the Trademark Department of the Ministry of Commerce and Development and the payment of the relevant fees. This request may be also submitted within six months after the end of the protection duration. However, a higher amount of fees must be paid under these circumstances.

In the case of copyright infringement, the copyright proprietor may seek the discontinuance of the infringement in the present and future time, as well as damages under Article 65 of the Copyright Law.<sup>2</sup> These claims may be brought to court within five years from the date the plaintiff discovered the infringement or, at the latest, within 20 years from the date the infringement occurred.<sup>3</sup> Criminal sanctions are available where the complaint is filed within three months following the date the plaintiff became aware of the infringement under Article 66 of the Copyright Law.<sup>4</sup>

Several remedies exist in the case of trademark infringement. The most common legal remedy is the discontinuance of the infringement and its future prevention.<sup>5</sup> Damages may also be sought by an action for damages. An appeal against decisions of the First Instance Civil Court may be filed within 30 days following the date of service of

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**[Section 14A:43]**

<sup>1</sup>Trademark Law 2239/1994, Article 21 on duration of the protection.

<sup>2</sup>Trademark Law 2239/1994, Article 18 on rights of the trademark proprietor and Copyright Law 2121/1993, Article 65 on civil sanctions.

<sup>3</sup>Civil Code, Article 249.

<sup>4</sup>Copyright Law 2121/1993, Article 66 on criminal sanctions.

<sup>5</sup>Trademark Law 2239/1994, Article 26 on damage claim and discontinuance claim.

the decision.<sup>6</sup> If the plaintiff resides abroad, the deadline extends to 90 days.<sup>7</sup> Criminal proceedings must be initiated within three months from the date the plaintiff discovered the infringement.<sup>8</sup>

As far as administrative courts are concerned, an appeal against the decisions of the Trademark Administrative Committee may be filed within 60 days from the service of the decision.<sup>9</sup> If the plaintiff resides abroad, the deadline may be extended by 90 days. An appeal before the Administrative Court of Appeal may be filed within 30 days (or 90 days for those residing abroad) from the service of the decision of the First Instance Administrative Court.<sup>10</sup> A petition for the cassation of a judgment before the Supreme Administrative Court may be filed within 30 days (or 90 days for those residing abroad).<sup>11</sup>

### III. ENTERTAINMENT LAW

#### A. SOURCES

#### § 14A:44 Basic principles

Greece does not have a specific code of entertainment law. Rather, various sources govern entertainment law such as the Copyright Law and the Civil Code. Entertainment law can be divided into a number of subcategories including, but not limited to, film, television, music, theatre, and multimedia. Labor Law is also relevant for there are National Collective Labour Agreements for employees in the entertainment field. However, the main source concerning the protection of artistic creators and performers is the Copyright Law (Articles 46 et seq.—see below under § 14A:46), which refers to relative rights, including their exercise through Collective Societies. As far as the theatrical actors are concerned, the law relating to dependent employment contracts is relevant. The first codified source with reference to the theatrical actors was Law 5736/1933, which established the requirements of the lawful practice of their

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<sup>6</sup>Civil Procedure Code, Articles 19, 511, and 518(1) on appeal.

<sup>7</sup>Civil Procedure Code, Articles 19, 511, and 518(1) on appeal.

<sup>8</sup>Trademark Law 2239/1994, Article 28(1) and Criminal Code, Article 117(1).

<sup>9</sup>Trademark Law 2239/1994, Article 13(1).

<sup>10</sup>Administrative Procedure Code 2717/1999, Article 94.

<sup>11</sup>Administrative Procedure Code 2717/1999, Article 104.

occupation. However, there is no relevant legislation regarding television or film actors. These actors are usually considered freelancers. Musicians or singers, working in night clubs/music halls, are governed under the laws relating to dependent employment contracts. Furthermore, there are various Collective Employment Agreement, such as the Collective Employment Agreement for actors dated 30.07.1998, and the Collective Employment Agreement for musicians/singers dated 12.06.1998. Their provisions refer to the minimum duration and salary, to the daily working hours and to the minimum obligations of the contracting parties.

#### § 14A:45 Constitutional sources

Article 16 of the Greek Constitution entitles everyone to the right of freedom of artistic expression, whereas Article 14 grants everyone the right of freedom of expression. In particular, an individual has the right to express his or her own thoughts orally, in writing, and in any other means of communication. The press generally cannot be subjected to censure. However, it is possible to censure the press if authorized by a judicial authority according to limits provided by the law. Article 5 of the Constitution entitles everyone the right to freely cultivate their personality. This freedom can be limited, *inter alia*, where it is “necessary in a democratic society” to ensure “the protection of the reputation or rights of others” or “the protection of general morals.” Articles of the Greek Constitution that protect the freedom of economic activity and cover employment rights must also be considered sources of entertainment law. In particular, Article 22 protects the right to work and promotes the conditions that make this constitutional right effective. Furthermore, Article 23 establishes the obligation of the State to ensure trade union freedom.

#### § 14A:46 Codified sources

The first codified source regarding the protection of the rights of creators and performers was introduced in 1920. This law was abolished and replaced by the Copyright Law,

as recently modified by Law 3057/2002.<sup>1</sup> Greece has implemented many Community Directives as described below, and is a contractual party to various international treaties such as the Berne Convention for the Protection of Literary and Artistic Works.<sup>2</sup>

The main provision concerning the protection of artistic creators and performers remains Article 46 of the Copyright Law, as modified by Law 3057/2002. The Copyright Law implements the provisions of the EU Copyright Directive 2001/29/EC. These provision provide the exclusive rights of production and communication to the public for (a) authors in their works; (b) performers in fixations of their performances; (c) phonogram producers in their phonograms; (d) the producers in their first fixations of films (i.e., with respect to the original and copies of their films); and (e) broadcasting organizations in fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air including cable or satellite transmission.<sup>3</sup>

There are several Collecting Societies authorized to exercise, on behalf of their members, the relevant rights. The main Collecting Societies are the following:

- AEPI—represents composers and lyric-writers;
- DIONYSOS—represents actors;
- ERATO—represents singers; and
- APOLLON—represents musicians.

Article 49 of the Copyright Law implements the provisions of Article 8 of EU Directive 92/100 that relates to rental rights, lending rights, and on certain rights related to copyright. The EU Directive provides the performers with the exclusive right to authorize or prohibit the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation, as well as a single equitable remuneration to them, if a phonogram published for commercial purposes, or a repro-

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**[Section 14A:46]**

<sup>1</sup>Law 3057/2002 on Modification of Law 2725/1999, regulation of issues of the Ministry of Culture and other provisions.

<sup>2</sup>Berne Convention for the Protection of Literary and Artistic Works, dated 09.09.1886, ratified by Greece with law no. 100/1975.

<sup>3</sup>EU Directive 2001/29/EC on the Harmonization of Certain Aspects of Copyrights and Related Rights in the Information Society.

duction of such phonogram, is used for broadcasting by wireless means or for any communication to the public.<sup>4</sup>

Law 1597/1986 regulates the protection and development of the film industry.<sup>5</sup> In particular, this law provides measures for the support of the Greek film industry and refers to the Greek Film Center, the Films' Archive, and Thessaloniki's Film Festival, and to the requirements under which foreign enterprises may produce movies in Greece.

Law 3521/2006 on Ratification of the Convention for the Safeguarding of Intangible Cultural Heritage ratified the relevant Convention (for the Safeguarding of Intangible Cultural Heritage which was signed in Paris on 3 November 1993). This law creates a committee safeguarding the intangible cultural heritage. Moreover, Law 3183/2003 on Ratification of the Convention of the World Intellectual Property Organization on the performance and phonograph recording and Law 3184/2003 on Ratification of the Convention of the World Intellectual Property Organization on copyright ratified the aforementioned Conventions of the World Intellectual Property Organization (i.e., on the performance and phonograph recording and on copyright). These laws refer to the rights of the performers and artists, such as the moral, reproduction, lending, and distribution rights and their duration (i.e., 50 years), regulate the protection of software programs and the protection of phonographic producers and charge WIPO with the supervision of relative administrative issues.

Article 66A of the Copyright Law 2121/1993 provides for effective technological measures designed to prevent unauthorized copying. This means that devices or programs designed to copy, for instance, protected DVDs or CDs are illegal.

Although the EU called for a collective cross-border management of copyright and related rights in the music sector, which would be more effective and less time-consuming, the three Greek Collective Societies<sup>6</sup> that represent the related rights in the music industry are organized

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<sup>4</sup>EU Directive 100/1992 "The Rental Rights Directive" of 19.11.1992.

<sup>5</sup>Law 1597/1986 on "Protection and Development of film art, support of Greek film industry and other provisions."

<sup>6</sup>ERATO, APOLLON, GRAMMO.

separately and operate independently. Law 2328/1995,<sup>7</sup> Legal Status of Private Television – Radio, Regulation of Issues concerning the Broadcasting Market and the provisions thereof, governs the legal status of private television and local radio, regulates the radio and television market, and provides administrative penalties such as the revocation of a license as well as criminal and civil liability for television stations in cases of copyright infringement. The enforcement of the sanctions may be decided by the NCRTV either *proprio mutuo* or following a query addressed by the Minister of Press and Mass Media or after a complaint of anyone having a legal interest. The Minister of Press and Mass Media practices judicial control on TV and radio stations and is entitled to impose fines. In case of violation of the technical standards of private television stations, the said Minister is entitled to impose fines following a hearing of whoever committed a breach. License revocation may be decided in case of severe violations.

Law 2148/1993<sup>8</sup> on the Ratification of the International Convention for the protection of producers of phonograms against unauthorized duplication of their phonograms ratified the International Convention (i.e., International Convention on the protection of producers of phonograms against unauthorized duplication of their phonograms, which took place in Geneva on October 29, 1971). According to this Convention, each member state is obliged to protect the phonographic producers, who are citizens of another member state, whereas the term of protection may vary from one member state to another. Thus, Law 2148/1993 sets the protection frame for phonographic producers in Greece, i.e., a 50-year term of protection as well as the restrictions allowed for educational or scientific reasons etc.

Law 2054/1992 on the Ratification of the International Convention regarding the protection of performers or artists, phonographic producers and television and radio organizations, which took place in Rome on October 26, 1961, ratified the International Convention for the protection of performers, producers of phonographs, and broadcasting

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<sup>7</sup>Law 2328/1995 on Legal Status of Private Television – Radio, Regulation of Issues concerning the Broadcasting Market and other provisions.

<sup>8</sup>Law 2148/1993 on the Ratification of the International Convention regarding the protection of phonographic producers against the non-licensed reproduction of their phonographic recording.

organizations. In particular, according to the Convention, national treatment refers to the treatment accorded by the domestic laws of the contracting state in which protection is claimed (a) to performers who are its nationals for performances taking place on its territory; (b) to producers of phonograms who are its nationals for phonograms first fixed or first published on its territory; (c) to broadcasting organisations which have their headquarters on its territory for broadcasts transmitted from transmitters situated on its territory. Thus, according to Law 2054/1992, Greece shall grant national treatment to performers if any of the following conditions is met:

- (a) the performance takes place in another contracting state;
- (b) the performance is incorporated in a phonogram which is protected under Article 5 of the above Convention;
- (c) the performance, which is not fixed on a phonogram and its broadcast is protected by Article 6 of the above Convention.

Furthermore, national treatment is also granted to producers of phonograms and to broadcasting organisations with similar conditions to those mentioned above. Additionally, Law 2054/1002 provides for exceptions to the protection guaranteed as regards (a) private use; (b) use of short excerpts in connection with the reporting of current events; (c) ephemeral fixation by a broadcasting organisation by means of its own facilities and for its own broadcasts; and (d) use solely for the purposes of teaching or scientific research.

Presidential Decree 100/2000 on the Harmonization of the Greek broadcasting legislation with the provisions of EU Directives 97/36 and 89/552/EOK regarding the provision of services implemented the EU Directive on Television without Frontiers into Greek Law. In particular, Presidential Decree 100/2000 refers to the conditions of broadcasting of advertisements and telesales programs (such as their lawful content, term, and broadcasting frequency), as well as to the sponsoring of television programs and the broadcasting of European TV programs.

#### § 14A:47 Case law sources

During the last decade, Greek courts have entered a great number of decisions related to artists and performers either



under the scope of the Copyright or Employment Law. In particular, the Court of Cassation (the Greek Supreme Court) held that the protection of performers/artists is independent and separate from the protection of creators.<sup>1</sup> In particular, the members of the state orchestra of Thessaloniki are entitled to seek compensation due to unauthorized videotaping of their performance by a TV station (although their employee, i.e., the state orchestra, has concluded a contract with the said TV station), since they have granted their consent only regarding the videotaping of a certain live performance.

In its decision, the Piraeus First Instance Court introduced an exception regarding the obligation of enterprises to pay equitable remuneration for the use of music in their premises.<sup>2</sup> This exception relates to small enterprises such as a delivery restaurant. This exception was based on the fact that a delivery restaurant cannot be considered a public place where many people may be gathered, and therefore there is not a case of public performance that justifies the need of payment of equitable remuneration.

In its decision, the multi-member First Instance Court of Athens accepted that the non re-recording clause, included in several contracts signed between a singer and a record company, is valid even if following the termination of the said contract the singer still has to refrain from recording the songs already recorded for the above record company.<sup>3</sup> The decision was based on the provisions of Unfair Competition Law 146/1914 and in particular on the protection of good faith and the avoidance of acts, contrary to the established business morals.

## B. TYPES

### § 14A:48 Legal matters characterized as entertainment law

Several areas of law may fall within the scope of entertainment law. However, Copyright Law is the most relevant part of entertainment law in Greece. Labour Law is also applicable because it regulates the performer's/artists' employment contracts and regulates the obligations in case of

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#### [Section 14A:47]

<sup>1</sup>Court of Cassation (the Greek Supreme Court) 670/2007.

<sup>2</sup>Piraeus First Instance Court, 1340/2006.

<sup>3</sup>Multi-member First Instance Court of Athens, 9666/1997.

breach of employment contracts. Moreover, the general principles of the Civil Code are applicable to contract disputes arising from the entertainment field. Regarding the circulation of artistic works, the most common types of contracts are sales contracts, work contracts, and license agreements.

#### **IV. ART LAW**

##### **A. SOURCES**

#### **§ 14A:49 Main sources of law relating to sale of artworks**

Apart from the “general rules” applying to the purchase contracts according to the Civil Code, Article 5 of the Copyright Law grants the author of “an original work of art” a resale right to receive a royalty based on the sale price obtained for any resale of the work after the first transfer of the work by the author. The above provision is an implementation of Articles 3 and 4 of Directive 2001/84/EU on the resale right for the benefit of the author of an original work of art. The author may authorize a Collective Society with the exercise and protection of the said right. The aforementioned “general rules” may be found under the 14th chapter of the Greek Civil Code (Articles 513 to 573), which regulates issues regarding purchase agreements, such as the rights and obligations of the seller and buyer, including the rights of replacement, price reduction, rescission, their liability in relation to the execution of their obligations, the payment of price, the granting of guarantee, etc.

#### **§ 14A:50 Sources of law for artists’ rights**

The main source of legal rights for artists in Greece is the Copyright Law that implements Articles 2 to 4 of Directive 2001/29/EU. In particular, the provisions regarding performers and artists are regulated under Section Eight (“Related Rights”).<sup>1</sup> Some of the exclusive rights of the performers/artists include the following: the temporary or permanent reproduction by any means and in any form, in whole or in part, of fixations of a performance; and the right of communication to the public of works and the right of making available to the public by wire or wireless means the fixa-

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[Section 14A:50]

<sup>1</sup>Article 46 until 53 of Copyright Law 2121/1993.

tions of the performance and the distribution right, which shall not be exhausted within the Community in respect of the original or copies of the work, except where the first sale or other transfer of ownership in the Community of that object is made by the rightholder or with his consent. Furthermore, the Copyright Law provides protection for “technological measures,” i.e., any technology device or component which is designed to restrict or prevent certain acts which are not authorized by the rightholder. In addition, artists and performers have moral rights in relation to their works, regulated under Article 50 of the Copyright Law. There are two main moral rights including the right to be named on copies of the work (“the attribution right”) and the right to object to any derogatory treatment of that work (“the integrity right”).

## B. RELATIONSHIPS

### § 14A:51 Relationship between dealer and artist

The right of the author in the work resulting from his or her creative activity is known as the moral right,<sup>1</sup> whereas the property right in the good is known as the patrimonial right. The patrimonial right belongs to whomever rightfully owns the good and the moral right always remains with the author, even after the author has sold the patrimonial right in the good to a dealer or other purchaser.<sup>2</sup> After the death of the author, the moral right is transferred to the author’s heirs. The conclusion of a written contract between an artist and a dealer is required so that the rights of the artist, apart from the moral rights, are transferred to the dealer. The contract must include provisions regarding the price, the number and the description of the transferred artworks.

Article 5 of the Copyright Law implements Directive 2001/84/EC on the resale right for the benefit of the author of an original work of art into Greek Law. Article 5 provides for a resale right, which is defined as an inalienable right and cannot be waived, even in advance, that allows the artist to receive a royalty based on the sale price obtained for any resale of the work following the first transfer of the work by the author. The resale right shall apply to all acts of resale involving sellers, buyers, intermediaries, and art market

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<sup>1</sup>Copyright Law 2121/1993, Article 4 (moral right).

<sup>2</sup>Copyright Law 2121/1993, Article 4 paragraph 3.

professionals in salesrooms, art galleries and, in general, any dealers of works of art. According to Article 5(7), for a period of three years after the resale, the relevant collection society may require from any art market professional to furnish any information that may be necessary in order to secure payment of royalties in respect of the resale. There are no exceptions to the above rule. The Athens Court of Appeal in its decision 7632/2005<sup>3</sup> held that the claimant, a well known painter, was entitled to seek compensation from an art dealer due to an unlawful reproduction of her paintings, which involved a violation of her copyright. In particular, although the painter granted to the art dealer, according to a private agreement, the right to reproduce a certain amount of copies of her artwork, the art dealer reproduced and placed into the market more copies without her consent. The dealer was therefore obliged to compensate the artist for the moral harm.

#### **§ 14A:52 Relationship between purchaser and dealer**

The property of the sold artwork is transferred from the dealer to the purchaser, yet the artist maintains the moral right in the artwork. The conclusion of a written contract between artist and dealer is required. The contract must include provisions regarding the price, the number, and the description of the transferred artworks. The transfer is accomplished with the conclusion of the above contract and the delivery of the transferred piece of art according to the provisions of Article 1034 of Civil Code.<sup>1</sup> As already mentioned above, Article 5 of the Copyright Law establishes that the creators of artworks are entitled to obtain a remuneration on the price of each selling subsequent to the first transfer of the work operated by the creator. This right cannot be transferred or renounced and lasts for the creator's life plus 70 years following his/her death. The remuneration is charged to the seller, who must include it in the sale price, and may be collected by the relevant Collecting Society. Collecting Societies are responsible for the management and protection of the authors' rights and related rights. By virtue of a special contract signed with the beneficiary (i.e., an as-

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<sup>3</sup>Athens Court of Appeal, decision 7632/2005 (names of the parties not available).

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<sup>1</sup>Civil Code, Article 1034 on contractual transfer of movables.

signment contract), the Collecting Societies undertake the management and protection of the beneficiary's property right or part of his property authorities. Such an assignment is in principle voluntary and depends on the will of the beneficiary. However, there are cases for which the law introduces an obligatory collective management or obligatory exercise of rights by a Collecting Society, as in the case of the collection of equitable remuneration deriving from private reproduction. The national Collecting Societies sign mutual agreements with foreign Collecting Societies, by virtue of which the foreign Collecting Societies are given the authority to represent the rights of the Greek rightholders abroad and vice versa. In Greece, there are various Collecting Societies under § 14A:46. For example, the responsible Collecting Society for visual and applied arts is O.S.D.E.E.T.E.

### C. ART AUCTIONS

#### **§ 14A:53 Laws relating to auctions and auction houses**

Art auctions are regulated under the general provisions of the Civil Procedure Code. Chapter Eight of the Civil Procedure Code, as amended by law 3714/2008, sets out the procedure of auctions, such as the time and place of the auction, the required presence of a notary, the adjudication, etc. A basic principle is the freedom of the contractual parties in agreeing to the terms and conditions of the contract. Due to technological developments, the conclusion of online contracts is common. Over the past few years, there has been an increase in online auctions. The companies participating in the online auction safeguard the protection of their clients' personal data protection and the authenticity of the objects. Apart from the absence of "live" participation of the bidders, there are no major differences governing regular and online auctions. Presidential Decree 131/2003 implemented the Electronic Commerce Directive 2000/31.<sup>1</sup> The Electronic Commerce Directive establishes rules on issues such as the transparency and information requirements for online service providers, commercial communications and electronic contracts, and limitations of liability of intermediary service providers. In particular, the proper functioning of the

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<sup>1</sup>OJ L 178/1, 17.07.2000.

Internal Market in electronic commerce is ensured by the Internal Market clause, under which the information society services are, in principle, subject to the law of the member state in which the service provider is established. In addition, the Directive enhances administrative cooperation between the member states and the role of self-regulation.

#### D. "STOLEN" ARTWORKS

##### § 14A:54 Legal issues regarding "stolen" artworks

Presidential Decree 133/1998, as amended by Presidential Decree 67/2003, implemented the provisions of Directive 93/7/EEC on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member, as amended by Directives 96/100 and 2001/38. The provisions included thereunder refer to any cultural object that has been unlawfully removed from Greece and regulate the terms and means for the return of the "stolen" artwork, following a relevant request, made at governmental level.<sup>1</sup> Under the Criminal Code,<sup>2</sup> theft of this kind may lead to an imprisonment term of up to 10 years in the case of removal of goods of artistic, archaeological, or historical importance, which were exposed to public view or in a public building or other public places ("cases of distinguished theft"). The purpose of the Directive is to ensure the return of cultural objects classed as "national treasures possessing artistic, historic or archaeological value" under national legislation or administrative procedures. The Directive applies where such objects have been removed from the territory of a member state unlawfully. Consequently, the objects must be returned, irrespective of whether they have been moved within the Community or first exported to a non-member country and then reimported to another member state. The Directive applies only to cultural objects unlawfully removed from the territory of a member state on or after 1 January 1993. However, member states may broaden the scope to include objects which have been unlawfully removed from their territory before 1 January 1993. Each member state appoints one or more authorities to carry out the tasks provided for in the Directive. In Greece, the responsible authority is the

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##### [Section 14A:54]

<sup>1</sup>Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State.

<sup>2</sup>Article 374 of Greek Criminal Code on cases of distinguished theft.

Museum Department of the Directorate of Prehistoric and Classical Antiquities of the Ministry of Culture. The central authorities of each member state shall cooperate and promote consultation between the other member states' competent national authorities to try to ensure the return of the cultural object. Only the courts of the requested member state have the power to order the object's return to the requesting member state if the possessor or holder should refuse to release it. The burden of proof is governed by the legislation of the requested member state. When the return of a cultural object is ordered, the possessor is entitled to fair compensation where the possessor proves that he exercised all due care when acquiring the object. This compensation is to be paid by the requesting member state, which may, however, claim reimbursement from the persons responsible for the unlawful removal of the object.