

# The Doctrine of Self-regulation in the Contemporary Media Environment: Mapping Some Challenges

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## Introduction

Rapidly developing technical possibilities in the modern society have caused a rare situation where the legal and social regulation of media enterprises lags behind the challenges faced by the media enterprises in everyday situations, raising the question of whether self-regulation may be the answer. The proposition that the internet may “... be the greatest innovation in speech since the invention of the printing press<sup>1</sup>” means that the challenges emerging from the internet possibilities to media enterprises are equally enormous. The international debate about the balance between the right to freedom of expression and the right to privacy<sup>2</sup> so far has not resulted in a consensus on the question of the liability of an internet company for data it has not originally produced – such as anonymous comments on the internet or data processed by search engines. At the start of the new millennium, a tendency appeared that limits the accountability of online media enterprises. Thus, the European E-Commerce Directive is built upon the principle of the internet host’s non-liability<sup>3</sup>. The United States courts apply the internet host immunity provision in an extensive manner<sup>4</sup>. However, recent doctrinal developments in the case law of European regional courts challenge the proposition of host immunity of online media enterprises, while at the same time pointing to the difficulties of normative regulation. This article will identify some of the main reasons supporting the doctrine of self-regulation and will explore the dilemmas it causes for the media and judicial communities, as well as the civil society at large. The article will propose a solution whereby the different interested actors need to co-operate to achieve a binding and reasonable methodology for securing, on the one hand, the economic interests of media enterprises together with the possibility to retain the function of media as a public watch-dog, and on the other hand, balance these interests with the right of the public to receive *bona fide* information based on the respect towards the right to privacy and ability to stay informed. Methodologically, the article will first review some fundamental principles and their interpretation concerning the accountability of contemporary media, moving on to provide examples on the basis of the Estonian advertising environment. Estonia serves as a good example for this academic exercise, particularly since it has earned an excellent international reputation both for its internet and press freedoms<sup>5</sup>.

## Conceptual issues

Although the concept of ‘soft enforcement’ of the countries’ general human rights obligations seeks to consolidate compliance via non-governmental organizations<sup>6</sup>, the actual responsibility over human rights protection remains within the government<sup>7</sup>. The question about horizontal human rights protection has largely remained as a theme of doctrinal constitutional interest<sup>8</sup>. From the perspective of self-regulation by media enterprises, the concept of horizontal protection of various rights may become decisive, since the factor of time prohibits both media enterprises and commercial organisations interested in promoting advertisements, as well as individuals concerned by their right to privacy, from seeking the protection of judicial institutions. Questions need to be decided quickly and, therefore, the availability and applicability of consensual standards becomes ever more significant.

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<sup>1</sup> Raymond Shih Ray Ku, Open Internet Access and Freedom of Speech: A First Amendment Catch 22, *TULANE LAW REVIEW* 87, 88 (2000).

<sup>2</sup> For discussion about the different approaches to liability of internet companies, see: Christopher T. Marsden, Internet co-regulation and constitutionalism: Towards European judicial review, *International Review of Law, Computers and Technology*, volume 6, no 2-3, July – Nov 2012, pp 211 – 228.

<sup>3</sup> 08 June 2000 Directive of the European Parliament and the Council 2000/31/EC

<sup>4</sup> Frydman, B., and Rorive, I, Regulating internet context through intermediaries on Europe and the US, *Zeitschrift für Rechtssoziologie*, Bd. 23/H1, July 2002

<sup>5</sup> The Freedom on the Net 2013 index, published by the Freedom House, ranked Estonia 2nd after Iceland in the global context. The 11th Press Freedom Index ranked Estonia in the 11th place for 2013. The 11th Press Freedom Index is available at: <http://en.rsf.org/press-freedom-index-2013,1054.html>

<sup>6</sup> For discussion see: Elizabeth Mottershaw and Rachel Murray, *National Responses to Human Rights Judgments: The Need for Governmental Co-ordination and Implementation*, *European Human Rights Law Review*, no 2, 2012, 639 – 653, p 652.

<sup>7</sup> See the discussion in the European Court of Human Rights Grand Chamber 12 June 2014 judgment in the case *Fernandez Martinez vs Spain* (application no 56030/07), especially the dissenting opinion of judge Sajó

<sup>8</sup> For discussion see: Sophie van Bijsterveld, *Human Rights and private corporations. A Dutch legal perspective*, *East European Human Rights Review*, vol 17, no 11, 2011, pp 101 – 128.

Another and perhaps even more decisive factor supporting the doctrine of self-regulation is related to the economic interests of media enterprises. At the end of the first decade of this century, a new trend became common in the press, whereby marketing, which had formerly used advertising spaces, started to infiltrate journalistic content. This trend concerns equally all press media forms, being especially vigorous in online press, where it is often very difficult for a consumer to differentiate between commercial and journalistic content<sup>9</sup>. Differences in various channels are more technical than essential. Mixed use of media channels complicates the situation further. Radio can be listened to and TV can be viewed on the internet, while many online channels can be viewed with a regular TV set. This in turn raises a question of whether the rules set for TV advertisements are also valid online and, the other way round, how should online content presented on TV be regulated.

Positioning commercial messages in journalistic content generates several fundamental questions. For the purposes of this article, the following may be identified. Will we manage to protect press freedom when commercial interests dictate the content of information? Can the press in such context retain independence and reliability? How can we regulate the transmission of legally restricted advertising messages through journalistic content? How to ensure advertising revenue if the advertiser is not interested in classical advertising space and wants to position the message in journalistic content?

Against this background it, therefore, appears that in the search for self-regulation principles and the possibility of its widespread acceptance *prima facie*, a variety of factors need to be addressed. The article will now proceed to analyse some of the legal and communication challenges of media self-regulation.

## Legal challenges

The international legal community has recently witnessed several significant judgments from European regional courts – the European Court of Justice and the European Court of Human Rights – identifying some of the challenges faced by the modern media in securing reasonable balance between various factors at stake. Take, for example, the doctrines of the ‘right to be forgotten’ and the question of online media control over anonymous comments.

The Grand Chamber of the Court of Justice of the European Union (the ECJ) delivered a judgment on 13 May 2014 in the case of C-131/12<sup>10</sup>, which is the first case ever decided by an international court recognising ‘the right to be forgotten’. Responding to the request for a preliminary ruling from the *Audiencia Nacional*<sup>11</sup>, the Grand Chamber composed of 13 judges found that under articles 7 and 8 of the Charter of Fundamental Rights of the European Union<sup>12</sup>, the data subject may request from internet search engines that certain information no longer be made available to the general public<sup>13</sup>. By applying the indispensable concept of balancing competing fundamental rights, the Court underlined that the ‘right to be forgotten’ overrides, as a rule,

“...not only the economic interest of the operator of the search engine but also the interest of the general public in having access to that information upon a search relating to the data subject’s name<sup>14</sup>”

The judgment is significant since it not only introduces a new core fundamental right to the expanding list of fundamental rights<sup>15</sup>, but it also aims to establish more clarity in the area which courts and legislators find difficult to regulate – the internet. The ECJ also stated that the ‘right to be forgotten’ is not absolute<sup>16</sup>. From an analytical perspective, the judgment

<sup>9</sup> Wybenga, E. (2013). *The Editorial Age*. AdfoGroep. Amsterdam, the Netherlands.

<sup>10</sup> The European Court of Justice case C-131/12, judgment of 13 May 2014, *Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González*. The case law is available through <http://www.curia.europa.eu>

<sup>11</sup> The National High Court of Spain

<sup>12</sup> Articles 7 and 8 of the EU Charter of Fundamental Rights (2000/C 364/01 - 18.12.2000 Official Journal of the European Communities C 364/1EN) provide: article 7 (Respect for private and family life) – everyone has the right to respect for his or her private and family life, home and communications; article 8 (Protection of personal data) – Everyone has the right to the protection of personal data concerning him or her (para 1); Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law (para 2 1st sentence).

<sup>13</sup> Case C-131/12, resolution para 4

<sup>14</sup> *Ibid.*

<sup>15</sup> Devaluation’ of human rights has caused the international community of scholars and practitioners to look for new ways of measuring human rights performance, such as more reliance on quantitative methods. For discussion see: Malcolm Langford and Sakiko Fukudo-Parr, *The Turn to Metrics*, Nordic Journal of Human Rights Vol 30, No. 3 (2012), pp 222 – 238

<sup>16</sup> The Court held that this right cannot be realised if it appeared, for particular reasons, such as the role played by the data subject in public life, that the interference with his fundamental rights is justified by the preponderant interest of the general public in having, on account of inclusion in the list of results, access to the information in question (para 97).

raises two principal issues. The first concerns the Court's conclusion that an internet search engine has the undeniable responsibility to respect the right to privacy. In the Court's view, the internet search engine cannot escape liability using the argument that it is merely facilitating the available data from other, original and legitimate internet sources. The judgment of the ECJ about the 'right to be forgotten' demonstrates the 'trump' argument of human rights. It can, therefore, be argued that at least in the European legal space the obligation of internet companies to protect the right to privacy has crossed the threshold of predictability. The second main issue is whether the internet communication reality necessitates the introduction and application of legal techniques for the horizontal protection of human rights on the internet. This concept of horizontal protection can be realised via self-regulation.

In a recent judgment *Delfi vs Estonia*<sup>17</sup> concerning the liability of an internet news site for anonymous comments, the European Court of Human Rights found that the ease of information spreading over the internet creates a new social and legal paradigm. Therefore, the internet news site needs to put in place sufficient measures to avoid causing harm to third parties' reputation<sup>18</sup>. The suggestion that an internet news site needs to 'do more' to protect fundamental freedoms directly implies the need for the establishment of a self-regulation mechanism.

These debates are ongoing, since the European Commission is contemplating ways to introduce the right to be forgotten into legislative framework governing the operations of online media enterprises; also, the Grand Chamber of the European Court of Human Rights has accepted the *Delfi vs Estonia* case for review.

### Communication challenges

The fundamental question emerges of whether legal methodology or whether various doctrines formulated by modern communication discourse become indispensable to media enterprises in their daily operations for fully comprehending the challenges posed by the modern media realities (including the commercial aspect). Narratives matter both in communication and law. The debate around law and narrative – both from the methodological and substantive side – has entered the international legal and communication debates in the past decade. But what if the legal narrative explaining the need and principles of self-regulation is preceded in time by the communication narrative that recognises the paramount need for such a paradigm? Traditionally, narrative reasoning is seen as subordinate to logical norm-based reasoning<sup>19</sup>. Linda Edwards introduced the term 'narrative reasoning' by suggesting that there is no conflict with rule-based reasoning<sup>20</sup>. Structural theory of communication has elaborated the concept of 'narrative discourse', which is understood as the manner in which the events, entities, and other elements of a story are presented<sup>21</sup>. While social scientists see narratives as an important sociological tool for understanding social reality, some express concerns about the misuse of narratives<sup>22</sup> in legal reasoning. But what may not be acceptable from the perspective of legal reasoning may well be so from the perspective of advertising reasoning and, thus, serve as the basis for media enterprises in self-regulation. This means that when the legal community is 'pressured' by the communication community to accept the need for the self-regulation of media enterprises, then the relevant stakeholders may also convince the legal community of the necessity to leave certain matters concerning the media to self-regulation.

In this context, the matter of credibility of content produced by the media is perhaps decisive. The shift from advertising spaces to journalistic content raises doubts about the reliability and transparency of the press itself and about the information distributed through the press. In Estonia, the reliability rating of the press is traditionally high. According to the data of the Eurobarometer survey conducted in autumn 2014, 69% of the Estonian population trusts TV and radio. 54% of the population trusts the press in general. The average corresponding results of the European Union are 48% and 41%<sup>23</sup>. However, higher trust also means higher vulnerability if that trust is misused. At the same time, reliability and transparency of information is overestimated at places<sup>24</sup>.

Notwithstanding Estonian press freedom being positioned among the highest in the world, rules do exist for the Estonian media enterprises. Press regulations in Estonia can be divided into two groups: national or legal rules, and rules established

<sup>17</sup> *Delfi v. Estonia*, application no 64569/09, ECtHR judgment of October 10, 2013. The judgments and decisions of the European Court of Human Rights are available through <http://www.echr.coe.int>

<sup>18</sup> *Ibid*, para 87

<sup>19</sup> For discussion see: Christy H. DeSanctis, *Narrative Reasoning and Analogy: The Untold Story*, 9 Leg. Comm. Rhetoric: JALWD 149, 150 (2012)

<sup>20</sup> Linda Edwards, *The Convergence of Analogical and Dialectic Imaginations in Legal Discourse*, 20 Leg. Stud. Forum 7, 30 (1996)<sup>21</sup> C

<sup>21</sup> H. Porter, *The Cambridge Introduction to Narrative*, 2<sup>nd</sup> edition 2008, at 15 – 16

<sup>22</sup> Helena Whalen-Bridge, *The Lost Narrative: The Connection Between Legal Narrative and Legal Ethics*, Journal of the Association of Legal Writing Directors, Volume 7/ 2010, 229 – 246, at 235

<sup>23</sup> TNS opinion&social (autumn 2014) Standard Eurobarometer 82. Media use in the European Union. Available: [http://ec.europa.eu/public\\_opinion/archives/eb/eb82/eb82\\_en.htm](http://ec.europa.eu/public_opinion/archives/eb/eb82/eb82_en.htm)

<sup>24</sup> Etzioni, A. (2010) Is Transparency the Best Disinfectant? Journal of Political Philosophy, 18(4):389-404

and agreed by media organisations themselves or self-regulation rules. Operation of the media is regulated by the following acts: the Media Services Act, the Estonian Public Broadcasting Act, the Advertising Act and, somewhat surprisingly, the Medicinal Products Act. The most important acts for the purposes of this paper are the Advertising Act and the Medicinal Products Act. They define relevant sectorial terms and impose restrictions on advertising. While other acts have also established restrictions and rules, their general impact in the context of this theme is smaller.

From the aspect of self-regulation, the rules established by the Estonian Newspaper Association (EALL) have the greatest extent and impact. EALL is an umbrella organisation of major Estonian print and online publications that joins 34 publications. The central self-regulation document of EALL is the Estonian Press Ethics Code<sup>25</sup>, which is also accepted by several other Estonian media channels. Fulfilment of the ethics code is supervised by the Press Council of EALL, whose members, in addition to the members of EALL, are also seven major TV, online and radio channels. As additional regulation, the ethics code is supplemented by the agreements of good practice, which regulate the correction of errors in web publications, commenting online articles, differentiation of advertisements and journalistic content, referring to articles, copyrights, the main attributes of newspapers and the criteria for membership in the association<sup>26</sup>. Although formally the relationships between the press and advertising have been regulated by the aforementioned legal acts in most critical points, the vagueness of the term of advertising enables to bypass the established rules in several ways. One can argue that if self-regulation were allowed to become the dominant instrument governing media standards, its scope and ways for holding media enterprises accountable for violations would still remain unclear.

### Practical challenges for media enterprises (on the example of Estonia)

In Estonia, the press has two main sources of income: the fees collected from advertising customers and the fees collected from the consumers for the sale of journalistic material. Public press is financed mainly from the state budget. Other models are also used worldwide for financing the press<sup>27</sup>, but due to traditions and habits, the financing model is difficult to change. In Estonia, a consumer can consume most local TV and radio channels free of charge, as well as some newspapers and most online publications. Thus, a major part of the fees collected from consumers is excluded in case of these channels.

Additional options for financing the press have been considered in Estonia. The most common options are establishment of a TV and radio tax, and fees for online publications. A radio tax was established in Estonia before World War II, but this experience is hopelessly obsolete considering today's technology. Establishment of a TV tax has been considered, based on the example of neighbouring Finland, but politicians expect the aggressive opposition of the people. In some cases, the establishment of a fee for online publications has been successful. However, here similar problems would arise, as did in case of The New York Times and other well-known international publications, who lost significant numbers of readers and advertising customers after establishing a fee for their online versions<sup>28</sup>.

Within the global context, several new technical solutions have started to decrease the possibilities of channels to earn profits from the sale of advertising space. Cable and internet channels enable viewing TV programmes without advertisements or skipping the advertisements. Radio enables listening to broadcasts later, without hearing advertisements before and after the broadcast, and advertising breaks during a broadcast can also be skipped.

The attention of Estonian consumers is constantly turning more towards online media forms. While in their peak period newspapers held almost half of the market of media advertisements, in 2014 it was already just a quarter, and the decreasing trend continues. At the same time, advertising turnover of online media has increased 18% and the audience of TV channels is declining as well<sup>29</sup>.

However, even the online environment has certain problems related to the transmission of messages. Major solutions used by online channels, such as banners and pop-up advertisements, are disturbing for the readers and interfere with reading. 84% of the visitors of web pages consider pop-up advertisements disturbing. However, disturbing advertisements

<sup>25</sup> Estonian Union of Journalists (1998), the Code of Ethics of Estonian journalists - *Eesti Ajalehtede Liit (1998) Eesti ajakirjanduseetika koodeks*. - Available online at: <http://eall.ee/eetikakoodeks.html>

<sup>26</sup> Estonian Association of Newspapers – the Agreements on good practices - *Eesti Ajalehtede Liit (2004, 2005, 2008, 2013, 2015) Hea tava lepped*. - available online at: <http://eall.ee/lepped/index.html>

<sup>27</sup> Herzog, C., Karppinen, K. (2014) Policy streams and public service media funding reforms in Germany and Finland, *European Journal of Communication*, 29(4), 416–432

Sein, H (2001) Public broadcasting financing policies and models – Public service broadcasting in Estonia – Avalik-õigusliku ringhäälingu finantseerimise põhimõtted ja -mudelid, *Avalik-õiguslik ringhääling Eestis (2001)* 15-30

<sup>28</sup> Chiou, L., Tucker, C. (2013) Paywalls and the demand for news. *Information Economics and Policy* 25 (2013) 61–69

Cook, J. E., Attari, S. Z. (2012) Paying for What Was Free: Lessons from the New York Times Paywall

<sup>29</sup> Emor (2014). The balance of power becomes more strenuous. The newspapers losing out. - *Jõuvahekorrad aina pingelisemad. Kaotajaks ajalehed*. Available online at: <http://www.emor.ee/jouvahekorrad-aina-pingelisemad-kaotajaks-ajalehed/>

have a major negative impact on the readiness of a reader to return to a visited page in the future<sup>30</sup>. In 2006, the first enthusiasts introduced advanced software for web browsers that deletes all advertising banners and blocks pop-up windows containing advertisements. Today, these advertisement blocking options are offered for all internet browsers, and not only for computers, but also for smartphones and tablets. The most well-known solutions of the kind are probably Adblock and AdblockPlus.

A new phenomenon is interfering with the interests of advertisers, termed ‘banner blindness’ by J. P. Benway and D. M. Lane from Rice University in the US already in 1998. People just did not see online advertisements and specially highlighted links<sup>31</sup>. This phenomenon is a part of the remarkable adaptability of people. We learn fast to do and see what we need and to avoid anything unnecessary, also on web pages. Users adapt quickly to the structure of a web page, which enables them to find the required information and to avoid fixing attention on banners<sup>32</sup>.

The attention of media users has become a valuable resource that is increasingly difficult to obtain and easy to lose. Readers have learned to ignore online advertisements by using various methods, which in turn leads to a situation, where online advertisements are no longer profitable enough for an advertiser<sup>33</sup>. At the same time, consumers are not ready to pay for online press. As the profitability of direct advertisement is decreasing, advertising messages have vigorously started to move into journalistic content<sup>34</sup>. A rather common advertising method from the past is the use of products in movies and on TV<sup>35</sup>. However, the shift of advertising messages into journalistic content is often confusing for the consumers and causes damage to the reliability of the press<sup>36</sup>.

Advertisers try to find new and aggressive methods for making their messages visible. One method for increasing visibility of advertisement is ad placement in locations that break the traditional structure of a web page<sup>38</sup>. In the beginning, banners were located at the top of a web page, then moved into columns on both sides of a news story, and then finally squeezed between sections of the article. After this, the entire framework of a web page was turned into an advertising space, starting actively to offer pop-up windows. These are very difficult to ignore, because, as the name implies, they just pop up on the screen, covering all information actually searched for by the consumer. In order to get rid of them, paying attention is unavoidable. Brands can also make use of the interest of the society and press in specific fields, basing their marketing strategies largely on creating content that raises interest in the press, ranging from product presentations to highlighting the celebrities using the product. Such strategies are used by Apple and Tesla<sup>39</sup>, for example.

One can easily note from this non-exhaustive list of specific challenges that the general doctrine of self-regulation will have an impact on a broad spectrum of issues, which are predominantly economic.

### Specific challenges from restrictions

A specific group of problems includes socially established restrictions and how they are followed in case of hybrid media forms and hybrid content. Depending on the media channel, advertising some products is subjected to certain time limits or completely prohibited in Estonia, but new technological solutions generate confusion for the advertiser, the owner of the media channel, as well as the consumer. Alcohol advertisement on TV is prohibited in the daytime, but allowed during late night movies and TV series. At the same time, internet and cable broadcasting companies offer the possibility of recording broadcasts and movies, to watch them later at a time suitable for the consumer on TV. This creates a situation, where a child, who should not see alcohol advertisements, watches a late night movie in the middle of a day, while the TV channel has quite legally shown alcohol advertisement during an evening movie.

The situation is even more complicated when it comes to online press, where content creation and advertisement positioning takes place in other legal spaces, but such content is still available all over the world. YouTube, which has gained immense popularity over the last ten years, includes a lot of journalistic as well as entertainment content. An advertising customer can purchase advertisements in the presented video material. However, it is also possible to advertise products,

<sup>30</sup> Mccoy, S., Everard, A., Polak, P., Galletta, D. F. (2007) The Effects of Online Advertising

<sup>31</sup> Benway, J. P., Lane, D.M. (1998).Banner Blindness: Web Searchers Often Miss “Obvious” Links

<sup>32</sup> Lapa, C. (2007). Using eye tracking to understand banner blindness and improve website design. Available: <http://hdl.handle.net/1850/4768>

<sup>33</sup> Wybenga, E. (2013). The Editorial Age. AdfoGroep. Amsterdam, The Netherlands

<sup>34</sup> *Supra*

<sup>35</sup> Newell, J., Salmon, C. T., Chang, S. (2006) The Hidden History of Product Placement. Journal of Broadcasting & Electronic Media.

<sup>36</sup> *Supra*, note 33

<sup>37</sup> *Supra*

<sup>38</sup> Hervet, G., Gurrard, K., Tremblay, S., Chtourou, M. S. (2011). Is Banner Blindness Genuine? Eye Tracking Internet Text Advertising

<sup>39</sup> Mangram, M. E. (2012)The globalization of Tesla Motors: a strategic marketing plan analysis, Journal of Strategic Marketing, Vol. 20, No. 4, July 2012, 289–312

whose advertisement is prohibited or restricted by the law. Also, the marketing distributor of a product under advertising prohibition can create their own content in online channels, to which the rules established for advertisements do not apply. The existing rules do not sufficiently define what should be considered advertisement and what should not.

The situation is similar when it comes to the relationship between journalistic content and advertising messages. Advertisements for tobacco products are prohibited in Estonian printed media, but a journalistic experiment that aims to find out which cigarettes taste the best is considered press freedom, as well as any photo material appended to the article. TV advertisements of alcohol are prohibited before 21:00, but reflection about the trademark disputes of alcohol producers is press freedom, together with appended video material.

Since advertising restrictions depending on the subject matter are related to direct economic value for the media enterprises, it is questionable whether self-regulation is sufficient to provide protection for the rights of vulnerable groups. It can be argued that the higher the economic value of an advertising interest, the less effective may be sole reliance on the self-regulatory effect of the media community.

## Where are the limits?

Several press publications have already started to offer articles with commercial content for advertising customers. Such articles are tagged with a reference to commercial background, but in online channels they are located in the general news flow. In TV channels and periodicals, a practice has been adopted already for years, where many broadcasts and articles related to consumption are filled only with the content provided by organisations, who have paid for it. In such case, the presented material is focused on a specific product, introducing its positive features and usage possibilities. In periodicals, a common method appears, whereby a possibility to purchase advertising space is offered to an advertising customer, but they also get a relevant press article. This is neither directly in compliance with valid rules, nor is it directly prohibited. However, for a consumer it is very difficult to differentiate a general interesting topic, which the press could and should reflect, and a commercial message, which clearly promotes the business interests of some company. Nonetheless, it is often possible to find articles in the press that have dubious social value, but clearly stand out for some company's commercial interests.

Let us look at one example. The online site of Estonia's largest daily newspaper Postimees<sup>40</sup>, which is also one of Estonia's biggest online reading news feeds<sup>41</sup>, published an article titled "Newlyweds selected a Volvo truck for their wedding car" on 16 June 2014. The volume of the article including the title was 44 words, four of which were the word 'Volvo'. In addition, there was a photo gallery with nine photos, where only one picture was without the Volvo truck<sup>42</sup>. In July 2014, the same story was printed in the newspaper on page three, which in a journalistic sense is some of the most valuable surface in a newspaper. The title was changed slightly to "Newlyweds choose a big truck for their wedding car". It was edited and the text volume in the newspaper article was 87 words including the title, with the word 'Volvo' occurring three times. In the article content, the selected car brand was in a central position. Also, there was a photo of the truck<sup>43</sup>. Nothing in the format indicated that it would be a commercial text. The online article had mentioned a reporter's name, but in the newspaper story the author was marked as just PM, which is the abbreviation of the name of the newspaper Postimees.

In 2014, as part of an international research project 'Transparency of New Forms of Media Advertising Online', 23 specialists of marketing, advertising and public relations were interviewed in Estonia. The database is currently at the stage of analysis, but it is already possible to draw preliminary conclusions. The interviews revealed several important findings about trends in marketing techniques. Most of the interviewees were convinced that various content marketing techniques would find increasingly more usage. At the same time, many of them also believe that advertising banners are a technique that is fading out for various reasons. At the same time, several interviewed marketing specialists said that, in their opinion, banners and pop-up windows are disturbing and useless. They would not use them in their marketing activities and would rather pay attention to other marketing methods. This, in turn, means a decrease of classical advertisement sales for the press and additional pressure for positioning commercial messages in journalistic content.

Thus, we should not assume that the technical solutions that allow avoiding advertisements or people's tendency to ignore advertisements will lead to the end of advertising messages in the press. Messages with a commercial purpose will still be distributed, only their form will change. Considering the rapidly changing advertising environment, self-regulation may be the only effective tool for catching up with the ever changing nature of modern media and advertising.

<sup>40</sup> Available in the Estonian language – the number of copies of Estonian newspapers - *Eesti Ajalehtede Liit (2014) EALL liikmeslehtede ja Ajakirjade Liidu väljaannete keskmised tiraazid 2014* – available online at: <http://www.eall.ee/tiraazhid/2014.html>

<sup>41</sup> The results of the statistics of visits to internet news portals - *TNS Emor (2014) TNSMatrix - interneti lehekülgede külastusstatistika mõõtmissüsteem* – available online at: <http://tnsmatrix.emor.ee/>

<sup>42</sup> The featured article about the newlyweds using a Volvo car - *Simikalda M. (2014) Noorpaar valis pulmaautoks Volvo reka, Postimees Online* - available online at: <http://tallinncity.postimees.ee/2858721/noorpaar-valis-pulmaautoks-volvo-reka>

<sup>43</sup> The featured articles about the newlyweds using the Volvo car - *Postimees (2014) Noorpaar valis pulmasõidukiks suure veoauto, Postimees*

## Conclusions

The goal of this article was primarily to demonstrate that the doctrine of self-regulation of media enterprises for balancing individual freedoms – which democratic societies extend to individuals – against the freedom of expression is facing a variety of legal and communication challenges. After the proposition of self-regulation was introduced by various stakeholders on the conceptual level, little has been accomplished for moving from a general consensus to practical, useable and foreseeable standards. Various powerful courts have predominantly pointed to the limitations of traditional legal instruments for regulating media and advertising in the contemporary internet-dominated society, but have not offered ‘workable solutions’, thereby implying that the media itself needs to formulate applicable standards. Modern communication theory does not exclude the possibility of self-regulation, but mainly focuses on the question of whether self-regulation is part of the internet narrative. Media enterprises are faced with challenges to secure their economic sustainability and are applying innovative and sometimes questionable strategies. Perhaps the situation where courts seem to uphold the legal narrative of the impossibility of legal regulation of contemporary media and advertising is suitable for the media enterprises. Having eliminated the legal pressures, these enterprises themselves can direct the opinions of social groups, thus avoiding accountability for the content of advertising and create vagueness in protecting fundamental rights. Perhaps the time has arrived where the legal community, led by international courts, needs to revise the suggestion that self-regulation is an answer.