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Introduction

In spring 2012, the Hungarian Academy of Sciences decided to establish the Media Studies Research Group for the management of various social scientific research activities related to the media. Activities related to media law are of paramount importance among these, not least because of the rapid and major changes taking place in the field of media regulations, the many open questions that arise both on the national and the European level and the disputes related to the media regulations. The Academy hopes that this initiative will enable the research team to conduct studies that are significant on a European scale, as well as to participate in international exchanges related to the subject.

In 2013 the research group launched a research programme entitled ‘The fundamentals of European thought on media law, with special respect to certain issues related to the freedom of speech’, which is scheduled to run until the end of 2015. The programme includes the publication of several independent papers and volumes of studies, as well as the organisation of conferences. It consists of several research projects covering several distinct legal fields. We hope that this diverse approach will allow both the researchers and their readers to define the fundamentals of European thought on media law, to identify the possible models for the resolution of the various questions that arise, to understand the ‘common minimum’ of European regulations that is present in all countries and to establish whether ‘best practices’ exist in these areas and, if so, what they are. Besides identifying the various European approaches, it is at least as important to examine the legal system of the United States and, possibly, some other legal systems that are relevant from the European viewpoint (eg Canada, Australia, New Zealand, etc), and to study the interactions between them.

The Academy invited distinguished scholars from many countries working in the field of media and free speech law to take part in the research programme and send manuscripts for the planned publication of a collection of essays. The participation of diverse authors from various countries and backgrounds greatly contributed to the value of the research. The compiled papers are published in this book as a first step to promote the research on an international level.

The book is made up of seven structural units, which encompass a significant part of the current issues of the freedom of speech and media law. The first unit (Fundamental issues of media regulation) deals with the basic theoretical issues of media regulation. The theoretical / philosophical grounds of the freedom of speech and the freedom of the

press in Europe mainly originated from the legal system of the United States and the jurisprudence of the US Supreme Court; therefore, the summary papers of an American (Russell L Weaver) and a European (Balázs Fekete) author are interesting contributions to the discussion of this topic, analysing their subject from different perspectives on the two sides of the Atlantic Ocean.

The second unit (Regulation of the new media) discusses the issues that arise from new media services, including the questions related to the digitalisation of traditional services (Katrin Nyman-Metcalf's paper) and the internet (the joint paper by Rolf H Weber and Ulrike I Heinrich on the regulatory structure of the new services). The article by Vincenzo Zeno-Zencovich discusses anonymity rights on the internet, a topic that goes beyond the enforcement of the rules ensuring the rights of 'traditional' journalists, and raises the difficult question of just who qualifies as a journalist or, rather, just who is entitled to special protection in the field of the media and on what grounds. Balázs Bartóki-Gönczy's paper examines the current challenges of net neutrality in the US and within the EU law.

The third unit (Special issues in media regulation) consists of papers examining issues of media regulation that have been with us for a long time but are especially acute today. Among these is Professor Peter Leyland's article about the aftermath of the British *News of the World* scandal and, in relation to that, the evolution of British press regulation. In the summer of 2011 the affair had suddenly highlighted the desirable limitations of the operation of the press as well as the general issues of regulation. Lorna Woods wrote an article on the relationship between the regulation of public service media and the law of the European Union, a problematic relationship, full of uncertainties, that is far from settled yet. The paper by Petra Láncoš examines the scope of the jurisdiction of the European Union in issues of media freedom, not independently from the international echoes of Hungarian media regulations. A question that must be examined and answered in detail prior to dwelling on jurisdictional issues is what the common European values are that can orient decision makers, are there any such and, if so, whether they can serve as the basis of the further expansion and strengthening of EU law.

The book's fourth unit (Defamation issues) deals with the evergreen topic of the law of libel. John Campbell's paper provides an interesting and detailed overview of almost all common law legal systems, with special emphasis on the analysis of the last fifteen years' British developments in this area. As is well known, the law of libel is undergoing an exciting transformation in common law countries, which may have important lessons for the whole of Europe as well as the United States. Ursula Cheer's article reviews these developments in the light of the New Zealand legal system. Anne Cheung discusses an interesting aspect of the relationship between the new media and the traditional law of libel, namely the problem of the liability of internet hosting providers with regard to the anonymously published comments of others. After providing a comprehensive European overview, my paper aims to analyse Hungarian regulations and jurisprudence that have taken a direction that may be interesting for the legal systems of other countries, too, and the libel cases decided by ECtHR of Hungarian concern that are relevant at the European level, too.

The papers in the fifth unit of the book (The protection of privacy) analyse the issues of the protection of privacy that are closely related to certain aspects of the law of libel. Val Corbett's article presents the current problem of publicity rights, while Ashley Packard examines the uncertainties of the protection of personal data from both a European and a US perspective.

The issue of hate speech is one that cannot be omitted from a volume depicting the various areas of the freedom of speech. Four papers provide a treatment of this topic in the sixth structural unit of the book (Hate speech and terrorism). The article of Robert A Kahn discusses the relationship between and possible restriction of symbols and hate speech on the basis of the analysis of the jurisprudence of both the United States and ECtHR. Jeroen Temperman describes the international regulations on the restriction of incitement to hatred, with special respect to hate speech related to religious convictions. Professor Clive Walker presents a particular and relatively new area of hate speech (or, at least, one that has unfortunately gained new impetus in the twenty-first century), namely the rather complex relationship between speech supporting terrorism and the democratic freedom of speech. Bernát Török provides a critical analysis of the vast Strasbourg practice and attempts to identify, from the layers of the various decisions, the often not easily perceptible theoretical foundations and considerations upon which future decisions are based.

The seventh and last unit of the book (Commercial communications and political advertising) discusses commercial communications from two entirely different aspects: Irini Katsirea and Thomas Gibbons analyse the adoption and practical application in the United Kingdom and Germany of the rules on a special instance of commercial communication, product placement as introduced to all of Europe by the AVMS Directive, while Tom Lewis presents the practice of ECtHR on political advertisements, one that is not entirely free from contradictions.

The book is thus not only thick in size, but it presents a wide variety of issues as well. The objective of the editor was to ensure that this collection of papers contributes to the debates conducted in Europe, America, and other continents too, that are common to us. The papers provide snapshots of various problems that may, due to the continuous formation of the regulations and practice, fade somewhat in a couple of years; however, in my opinion their important theoretical foundations and in-depth analyses will ensure that they remain important sources for a long time. The arguments over freedom of speech and media regulation will probably not be settled for a long time yet. Some of them, in fact, cannot even be settled, while there are others where closure once and for all would cause us significant loss. It is with respect to all of this that I wish readers traversing the pages of the book a good journey, as well as a lot of exciting and interesting debates about the issues raised—it was just such debates to which the authors wished to contribute.

Budapest
6 April 2014

ANDRÁS KOLTAY
editor

1.
Fundamental issues of media regulation

RUSSELL L WEAVER

The press and freedom of expression

Johannes Gutenberg's invention of the printing press in the fifteenth century revolutionized communication.¹ Prior to that time, most books were handwritten, a process that was extremely slow and time consuming,² and only a small number of people (usually monks) could devote the time needed to create books.³ As a result, it could take years to create a single book, and many decades to create a relatively modest number of books,⁴ most of which were religious rather than political in nature.⁵ Although universities started producing written works in the thirteenth century, the writers of these university-created books were generally scribes rather than creators of original content.⁶

Although Gutenberg's movable type printing system was relatively straight-forward,⁷ it was revolutionary because it allowed printers to mass produce written works.⁸ The printer would arrange the movable type in boxes to compose a page of text. Once the page was prepared, the printer would apply ink to the printing press and slowly crank the press down onto the paper in order to make an impression on a piece of paper.

¹ I Fang, *A History of Mass Communication: Six Information Revolutions* (Focal Press 1997) 40; CT Meadow, *Making Connections: Communication Through the Ages* (Scarecrow Press 2002) 64–65; D Crowley and P Heyer, *Communication in History: Technology, Culture, Society* (5th edn, Pearson 2007) 82; RL Weaver and DE Lively, *Understanding the First Amendment* (4th edn, LexisNexis 2013).

² R Lasso, 'From the Paper Chase to the Digital Chase: Technology and the Challenge of Teaching 21st Century Law Students' (2002) 43 *Santa Clara Law Review* 1, 4 n 2; PK Yu, 'Of Monks, Medieval Scribes and Middlemen' (2006) *Michigan State Law Review* 1, 7.

³ K Lula, 'Neither Here Nor There But Fair: Finding an International Copyright Legal System Between East and West, Past and Present' 8 (2006) *Asian-Pacific Law & Policy Journal* 96, 101; JH Perlman and LT Greenberg, 'The Internet Reformation: Gutenberg and Martin Luther on Wall Street' (2000) 4 *Wall Street Lawyer* 9.

⁴ See Yu (n 2) 7 ('When Bishop Leofric took over the Exeter Cathedral in 1050, he found only five books in its library').

⁵ *ibid.*

⁶ *ibid.* 10.

⁷ Gutenberg forged lead pieces representing every letter of the alphabet, both lower- and upper-case. He kept this type in cases that separated the lower-case letters from the upper-case letters. See Fang (n 1) 40; see also P Linzer, 'From the Gutenberg Bible to Net Neutrality: How Technology Makes Law and Why English Majors Need to Understand It' (2008) 39 *McGeorge Law Review* 1, 4–5.

⁸ Fang (n 1) 40.

By repeating this process, the printer could create multiple copies of a single page. To create a book, the printer would repeat this process for each subsequent page, and then assemble the completed pages and bind them into books.

The Gutenberg press had a profound effect on society because it expanded communications possibilities beyond the monks, governmental officials and universities that had previously created written works.⁹ As a result, the printing press quickly spread from Germany to other cities and countries,¹⁰ and printed works assumed an increasingly important role in the communications process.¹¹ By 1499, the quantity of books rose dramatically to some 15 million books representing approximately thirty thousand book titles, and some 2,500 European cities had printing presses.¹²

Gutenberg's invention revolutionized society, leading to the development of a new type of intellectual, and a shift from entirely religious books to texts addressing a variety of subjects, including texts on the 'new science and philosophy'.¹³ Over time, the printing press altered the 'entire fabric of society', and had the effect of 'encourag[ing] literacy' and 'broaden[ing] knowledge',¹⁴ and had a direct impact on the 'world of ideas by making knowledge widely available and creating a space in which new forms of expression could flourish'.¹⁵ The printing press impacted society by contributing to the Renaissance, the Scientific Revolution, and the Protestant Reformation.¹⁶ The Roman Catholic Church, which had dominated medieval society,¹⁷ was directly challenged by ideas disseminated through the medium of the press,¹⁸ as Martin Luther's handwritten theses were translated into German, reproduced, and widely circulated.¹⁹

The press as an institution

Over time, the printing press led to the creation of 'the press' as an institution in its own right,²⁰ and one that had a significant impact on political thought and the broader social fabric. For example, the printing press played a role in helping to bring about the

⁹ RJ Zecchino, 'Could the Framers Ever Have Imagined? A Discussion on the First Amendment and the Internet' (1999) *Detroit College of Law at Michigan State University Law Review* 981, 983.

¹⁰ See Yu (n 2) 11.

¹¹ *ibid* 12.

¹² JK Grant, 'Shattering and Moving Beyond the Gutenberg Paradigm: The Dawn of the Electronic Will' (2008) 42 *University of Michigan Journal of Law Reform* 105, 111–12.

¹³ Crowley and Heyer (n 1) 83.

¹⁴ Fang (n 1) 46.

¹⁵ Crowley and Heyer (n 1) 82.

¹⁶ Lasso (n 2) 4 n 2; G Paul and J Baron, 'Information Inflation: Can the Legal System Adapt?' (2007) 13 *Richmond Journal of Law & Technology* 1, 8.

¹⁷ Crowley and Heyer (n 1) 82.

¹⁸ HJ Graff, 'Early Modern Languages' in Crowley and Heyer (n 1) 106.

¹⁹ *ibid* 105.

²⁰ JB Thompson, 'The Trade in News' in Crowley and Heyer (n 1) 114.