

## Media Law International launches fifth annual edition



## The guide features rankings, market intelligence and legal articles by some of the world's leading media lawyers

Media Law International (MLI) has launched its fifth edition, which features rankings, editorial cover and global sector analysis. The edition also features articles written by some of the world's leading media law practitioners.

Launched on 14 April, the annual guide includes rankings of media law firms in 56 jurisdictions. The publication also contains market trends and developments and law firm descriptions of that include case and client information.

MLI's exclusive focus on media law allows for rigorous legal market structure review and

industry-specific regional examination.

Commenting on the latest edition, Managing editor Zineb Serroukh-Ouarda said: "Media Law International is proud to publish its fifth edition, which demonstrates our continued commitment to the media industry and its representative law firms. Our annual analysis ensures rankings and legal market overviews are kept up to date.

"The guide highlights legal and business trends written by leading lawyers. We single out practitioners, with expertise in some of the most complex areas of law, who provide specialist content for industry." →

## Malaysia approves law on "fake news" that includes jail

Malaysia has approved a law on fake news that includes a jail term of up to six years for publishing or circulating misleading information.

Prime Minister Najib Razak's government passed the Anti-Fake News 2018 Bill on 02 April, which also includes a fine of up to MYR 500,000 (approx. EUR 100,000) for breaches.

The law aims to protect the public from the spread of "fake news", an expression frequently used by US President Donald Trump, and applies to digital publications and social media. The government said cases of breach would be handled through an independent court process.

Critics say the new law threatens free speech while the US has highlighted concern that the bill passed 'rapidly through Parliament without meaningful public consultation and debate', a State Department spokesperson said in a statement.

"Fake news has become a global phenomenon, but Malaysia is at the tip of the spear in trying to fight it with an anti-fake news law," Fadhullah Suhaimi Abdul Malek, an official from the Malaysian Communications and Multimedia Commission, told The New York Times.

He continued: "When the American president made 'fake news' into a buzzword, the world woke up."

Malaysia is one of the first countries in the world to introduce legislation that addresses fake news. The government said the bill would not impinge freedom of speech, which is provided for under the constitution. ■

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## 21st Century Fox offers to sell Sky News to Disney in a takeover bid ahead of regulatory clearance

Rupert Murdoch's 21st Century Fox has offered to sell Sky News to Disney as part of efforts to ease regulatory concern over plurality, following its proposed acquisition of parent company Sky Plc.

21st Century Fox owns 39 per cent of Sky and seeks to acquire the remaining 61 per cent stake. The Competition and Markets Authority (CMA), however, has raised concerns over media independence.

In a statement, Disney said: 'If the secretary of state for digital, culture, media and sport agrees, and Fox acquires Sky, Disney would buy Sky News and agree to sustain the operating capital of Sky News and maintain

its editorial independence.' Disney added: 'The divestment of Sky News to Disney is separate from, and not conditional on, Disney's acquisition of Fox.'

Mr Murdoch controls News Corporation, which publishes leading UK newspaper titles including the Sun, the Times and the Sunday Times. Murdoch media outlets are consumed by almost a third of the UK's population across segments, including television, radio and online, according to the BBC.

Regulators are concerned the £11.7 billion proposed acquisition of Sky would give the Murdoch family too much influence and are yet to issue a final verdict on the deal. ■

## Media Law International launches fifth edition

← MLI is used by media corporations, law firms and academic institutes. The publication is dedicated to a market that grapples with legal complexities, technological advance, convergence and consolidation.

MLI published its first edition in 2014, featuring 43 jurisdictions. In 2015 the publication increased presentation to 48 markets and now features 56 jurisdictions. The guide is recognised worldwide for its

exclusive focus on media law and quality content coverage of legal media markets.

Commenting on the annual guide, leading law firm Lausen, Germany, said: "Media Law International is a quality publication. It is clear that great care is taken in assessing the strength of every firm's media practice. It is a valuable resource."

Minter Ellison, Australia, noted: "From our point of view your research in the market has

## Switzerland votes to keep public broadcast service

The Swiss public has voted against a proposal to abolish mandatory fees for state television and radio after a referendum was held on 04 March.

More than 70 per cent of nationals voted to keep the annual license fee which funds 75 per cent of media services by public broadcaster SRG SSR.

The initiative known locally as "No Billag" – a reference to the agency Billag that collects the license fee – has sparked debate over the media's role in promoting national unity in a country with four official languages.

Every household in Switzerland pays a CHF 451 (approx. EUR 376) annual charge to fund broadcast services. The government had opposed the proposal on grounds that it threatens media diversity.

Communications Minister Doris Leuthard said she was pleased voters support public services. At a news conference, she commented: "Radio and television in Switzerland should also in the future contribute to education, cultural development, forming opinions as well as entertainment."

Ms Leuthard added: "I am pleased that media diversity has been maintained."

Commentators in the Swiss press say the 71.6 per cent vote shows strong support for local media services but believe Switzerland's public media must downsize. Zurich-based newspaper *Neue Zürcher Zeitung* argued that the "social foundation" for the broadcast license fee is "crumbling". ■

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been very solid and the rankings mirror the players in the market in an appropriate way. Your website is structured very clearly."

Linklaters also commented: "This is the best review of media law firms for the prospective client. In contrast to similar resources, its reviews do not merely parrot the happy-face PR from the firms' web page. Every client choosing between firms should read MLI's guide." ■

## Spain: Media Trends in Times of Digital Advance By Rafael López-del-Rincón, Auren

# Media and technology overview of Spain's changing landscape

Rafael Lopez-del-Rincon



## Rafael López-del-Rincón, Auren, highlights room for all forms of media consumption

The continuous technological evolution has changed the way media content is consumed in Spain and this very change has been the main characteristic of industry progress this year.

Now, the predominant way of consuming content is contextual, in contrast with the former consumption habit that, in the past, included viewership in cinema theatres or in front of the television set with the whole family.

This is an obvious consequence of the massive use of the new digital devices, such as smartphones (52 per cent), tablets (47 per cent), computers (39 per cent) and Smart TVs (27 per cent) that enable media consumption in Spain.

Many of these devices are used for individual consumption purposes, instead of collective ones. Numerous households in Spain are now multi-device, owning several digital devices. In addition, consumption in Spain of non-linear

media content (64 per cent) has clearly overcome the linear services (36 per cent).

However, we have witnessed the birth of "hybrid models", as in the case when the first episode of the third season of David Lynch's *Twin Peaks* was released in prime-time on a linear national television network.

Meanwhile, the second season was offered on VoD to asubscription customers only.

Media consumption is mainly motivated by "recommendations and referrals from friends and family", surpassing the effectivity of "Recommendation algorithms" from famous media platforms such as Netflix or HBO.

Much like customers around the world, Spanish consumers want content they consume to be offered in a very simple way. To Spanish customers, searching for media content has become a taboo!

Furthermore, their consumption decisions are characterised, if not informed, by the immediacy of available services. People will only spend a maximum of 60 seconds searching for media content on the Netflix platform.

As for YouTube, consumers make their decision either to continue watching a video, or to stop, within the first 10 seconds of a video.

Looking exclusively at media works (feature films) consumed in cinema theatres, the figures we have in Spain show that the cinema sector is still active, since 30 per cent of Spanish viewers go to a cinema theatre at least once a month.

The favourite genres in Spain are as follows: first, Science Fiction (19 per cent); second, Action (16 per cent); third, Thriller (16 per cent), leaving the genre of Romantic films with a surprising share of only 7 per cent, and Art and Independent movies with a 6 per cent.

Here, the most influential recommendations are derived from positive film reviews (58 per cent), followed by "recommendations and referrals from friends and family" (50 per cent).

We conclude with the realisation that we are still in the middle of a drastic changing movement in the way media content is consumed in Spain.

The trends show that the new ways of consumption, the use of new digital devices and the new actors involved have taken advantage in the Spanish media market which continues to show progressive advance while maintaining the appeal of traditional consumption.

This means cinema theatres in Spain are expected to continue attracting viewers, despite the array of digital choices.

That said, it seems the media market is making enough for mixed consumption habits in Spain as nationals love movies, TV series and all kinds of media contents! ■

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# “Don’t Quote ME” - Fall of the Precedent System



Robert A. Darwell, Sheppard Mullin Richter & Hampton, highlights the latest challenges affecting the entertainment industry in the US

The entertainment industry is facing important changes following the unending accounts of sexual harassment and gender pay parity that have currently and continuously been headlining news stories.

The changing atmosphere has inevitably led to a discussion among studios, talent and their legal representatives of its legal implications to better prepare for circumstances once blindly accepted as Hollywood truisms.

## “Don’t Quote ME” - The Fall of the precedent System

One Hollywood business practice bracing for change is the precedent system: the practice of paying talent according to their previous salary—“quotes”—and verifying them with previous employers.

Some believe that this system is in large part responsible for the gender pay gap in the industry because actresses are limited by quotes lower than their male counterparts.

In June 2017, Forbes magazine found that the top 10 male stars were paid nearly three times the combined earnings of the top 10 female stars.

But with the recent enactment of California Labor Code 432.3 (effective as of January 1, 2018), producers are now prohibited from asking salary history information from talent, unless voluntarily disclosed.

Regardless of how Hollywood adopts to this new law, it frustrates some aspects of the precedent system. For one, previous employers are now prohibited from confirming or denying quotes. Secondly, producers can no longer justify compensation solely based on previous quotes.

This statute has been cited by hopefuls to resolve the gender pay parity in Hollywood. Cynics see the statute as an opportunity for producers to offer scale during negotiations and increase only if the talent chooses to disclose his or her previous quote.

Realists expect the code to merely create one additional formality in the dealmaking process, where agencies obtain waivers from talent to allow salaries to be disclosed.

There’s talk that some agencies are refusing to represent clients who do not sign a waiver; for other agencies, waivers are suggested.

## Workplace Sexual Harassment

One of the more pressing topics at top of mind is combating sexual harassment in Hollywood.

Spurred by an array of sexual harassment scandals and the #MeToo movement, many employers have been re-examining and revising their harassment policies to set up procedures to properly investigate and redress misconduct.

Prominent entertainment executives have also funded a new Commission on Sexual Harassment and Advancing Equality in the Workplace, to be chaired by Anita Hill to seek a comprehensive strategy to “address the complex and inter-related causes of the problems of parity and power” in the entertainment industry through guidelines, education, training, reporting and enforcement.

There is no doubt that female stars with their influence and courage are altering Hollywood’s attitude on what is acceptable in the workplace.

## Morals Clause

Befitting the discussion of Hollywood sexual harassment is the growing significance, if not necessity, of a strong morals clause in artist contracts.

Hollywood’s traditional approach has been to include an overly narrow morals clause (such as conditioning the clause to an actual indictment →

# “Don’t Quote ME” - Fall of the Precedent System



or conviction of a crime or moral turpitude) or overlook sexual abuse as a possible liability to production.

In this current landscape, the safer approach for studios is to include a moralsclause into talent deals, giving it the right to terminate the contract if the talent engages in conduct resulting in adverse publicity, public disrepute, scandal, etc.

Third parties who have a stake in production such as investors, distributors and advertisers may also benefit from having a clause that allows termination if key talent has engaged in culpable conduct.

Talent representatives are pushing, without much success, for a moralsclause covering studio executives, several of whom have also been outed as perpetrators.

While the approaches can vary, a moralsclause has undeniably become a critical aspect of entertainment contracts and should be addressed in every deal.

As an alternative to the often heavily negotiated and charged nature of a morals clause, producers instead incorporate a Code of Conduct into their talent agreements.

Such codes typically prohibit discrimination, harassment, and other conduct that makes the workplace “unsafe”.

Talent representatives are hard-pressed to object to such terms even when a violation of them can result in a material breach leading to termination.



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