

Chapter 21A

Latvia

Valters Gencs of Law firm Gencs Valters*

I. Media Law

A. Sources

- § 1:1 Basic principles
- § 1:2 Constitutional sources
- § 1:3 Codified sources
- § 1:4 Case law sources

B. Regulatory Framework

- § 1:5 For publishing industry
- § 1:6 For broadcasting industry
- § 1:7 For online services
- § 1:8 Regulators and their core competences
- § 1:9 Public sector in the media industry
- § 1:10 Split of legislative/regulatory authority between the federal government and individual states

C. Defamation

- § 1:11 Main sources of law
- § 1:12 Definition and significant subdivisions
- § 1:13 Main factors or elements of claim
- § 1:14 Types of relief available
- § 1:15 Defenses available
- § 1:16 Time period for asserting claim

D. Invasion of Privacy

- § 1:17 Main sources of law
- § 1:18 Definition and significant subdivisions
- § 1:19 Main factors or elements of claim
- § 1:20 Types of relief available
- § 1:21 Defenses available
- § 1:22 Time period for asserting claim

E. Right of Publicity

- § 1:23 Main sources of law
- § 1:24 Protection of right of publicity after death
- § 1:25 Main factors or elements of claim
- § 1:26 Types of relief available
- § 1:27 Defenses available
- § 1:28 Time period for asserting claim

II. Advertising Law

A. Sources

- § 1:29 Basic principles
- § 1:30 Constitutional sources
- § 1:31 Codified sources
- § 1:32 Case law sources

B. False Advertising

- § 1:33 Main sources of law
- § 1:34 Definition and significant subdivisions
- § 1:35 Main factors or elements of claim

* [Kr. Valdemara 21, 3rd floor]
[+371 67240090]
[<http://www.gencs.eu/>]

- § 1:36 Examples of claims found false or misleading and claims found not false or misleading
- § 1:37 Types of relief available
- § 1:38 Defenses available
- § 1:39 Evidence required to support advertising claims based on tests
- § 1:40 Time period for asserting claim
- C. Third Party Trademarks and Copyrights in Advertising**
 - § 1:41 Permissibility of using another party's trademark in advertising without that party's authorization
 - § 1:42 Permissibility of using another party's copyrighted work in advertising without that party's authorization
 - § 1:43 Time period for asserting claim of trademark infringement or copyright infringement
- III. Entertainment Law**
 - A. Sources**
 - § 1:44 Basic principles
 - § 1:45 Constitutional sources
 - § 1:46 Codified sources
 - § 1:47 Case law sources
 - B. Types**
 - § 1:48 Legal matters characterized as entertainment law
- IV. Art Law**
 - A. Sources**
 - § 1:49 Main sources of law relating to sale of artworks
 - § 1:50 Sources of law for artists' rights
 - B. Relationships**
 - § 1:51 Relationship between dealer and artist
 - § 1:52 Relationship between purchaser and dealer
 - C. Art Auctions**
 - § 1:53 Laws relating to auctions and auction houses
 - D. "Stolen" Artworks**
 - § 1:54 Legal issues regarding "stolen" artworks

I. Media Law
A. Sources

§ 1:1 Basic principles

At the core of Latvian Media Law is the prohibition of government censorship.¹ Additionally, Media Law seeks to prohibit monopolies in the press and to protect basic human rights, including the right to freely receive, keep, and distribute information; and to express a person's views.²

§ 1:2 Constitutional sources

The Constitution of the Republic of Latvia, called *Satversme*, prohibits censorship and protects some human rights, such as the freedom of expression and rights to honor and dignity.³ These rights are not without limitations and may be subject to restrictions to protect the rights of other people, the democratic structure of the state, and public safety, welfare and morals.⁴ Accordingly, specific restrictions have been implemented in the Law on the Press.⁵ For instance, the press may neither publish information that injures a person's reputation or fame nor defame a person.⁶

Similarly, the constitution grants to everyone the right to own property and thus to obtain property and operate as a media publisher.⁷ But the Television and Radio Law⁸ and the Law on the Press⁹ prohibits the monopolization of mass media. The Television and Radio Law prescribes that there can be two types of broadcasters - public and commercial. The public broadcasters are founded by investing the State property and they act as national non-profit companies.¹⁰ The owner of the commercial broadcasters may be an individual, legal entity, or an association of such individuals or entities.¹¹ From Article 8(1), which states that 'the monopolizing of an electronic public media is prohibited in the interest of political or public

¹ Article 100 of the Constitution of Latvia; Article 1 of the Law on Press and Other Mass Information Means

² Article 1 of the Law on Press and Other Mass Information Means

³ Article 100 of the Constitution of Latvia

⁴ Article 116 of the Constitution of Latvia

⁵ Article 1 of the Law on Press and Other Mass Information Means

⁶ Article 7 of the Law on Press and Other Mass Information Means.

⁷ Article 105 of the Constitution of Latvia

⁸ Article 8 of the Television and Radio law

⁹ Article 1 of the Law on Press and Other Mass Information Means.

¹⁰ Article 5 of the Television and Radio law

¹¹ Article 6 of the Television and Radio law

organizations, companies, individuals or associations of individuals or entities,” one can infer that the prohibition does not apply to the public broadcasters.

A party is considered as monopolizing electronic public media when:

1. An individual who is the sole founder of a broadcasting organization or whose investment in a broadcasting organization ensures control of it, or the spouse of such a person owns more than 25 per cent of shares (capital share) in other broadcasting organizations.¹²

2. A broadcasting organization, except for public broadcasting organizations, produces more than three programs.¹³

§ 1:3 Codified sources

The main codified source regulating media in Latvia is the Law on the Press, which provides a general framework for all media and regulates journalists’ activities.¹⁴ However, the Television and Radio Law regulates radio and television broadcasting. The latter establishes the principles that electronic broadcasters must observe when planning their program (the programming must be multilateral, display the public opinion and attitude, and be objective and neutral). It lists requirements about the language, commercials, and other issues, but all the other media have freedom to publish any kind of information so long as it is not a State or commercial secret, does not infringe upon somebody’s honor and dignity, and does not otherwise violate the law.¹⁵

§ 1:4 Case law sources

The courts of Latvia have passed several judgments regarding media, especially evaluating probable infringement of honor and dignity and appraising the press’s right to interfere in a private life.

For instance, on February 13, 2002, the Supreme Court of Latvia held that the European Convention for the Fundamental Rights and Freedoms will govern the evaluation of possible infringements of a person’s honor and dignity in Latvia.¹⁶ Moreover, the Court established the

¹² Article 8(5) of the Television and Radio law

¹³ Article 8(4) of the Television and Radio law

¹⁴ The Law on Press and Other Mass Information Means

¹⁵ Article 7 of the Law on Press and Other Mass Information Means; Article 3 and Chapter 3 of the Television and Radio Law

¹⁶ Judgment of the Supreme court of Latvia, case No.SKC-102, February 13, 2002

difference between “news” and “opinion.” “News” can be true or false and it can be subject to verification of truth. The Court states that term “news” is identical to term “information.”¹⁷ The distinction between “news” and “opinion” is significant when a media publisher does not have evidence that the published information is true, so it has to revoke it immediately.¹⁸ It is not possible to verify if an “opinion” is true. Nonetheless there must be a basis for giving incisive and negative judgment about a person. Therefore the court has to evaluate if there have been any facts that could be a basis for such judgment. The more incisive the judgment, the more potent the basis will have to be.¹⁹ If published information infringes a person’s honor and dignity and is an “opinion,” the plaintiff cannot require admission that the information is false.

Similarly, in the judgment of May 8, 2002, the Supreme Court of Latvia held that, in order to provide equitable remuneration, it is important to evaluate the principle of proportionality if there is an infringement of persons’ honor and dignity.²⁰ The principle of proportionality means that the profit for society has to be greater than the loss of the individual whose rights are infringed.

B. Regulatory Framework

§ 1:5 For publishing industry

The main legal act for the publishing industry is the Law on the Press. This law provides general provisions about the legal status and operation of mass information means, provisions regarding the establishment of mass media organizations and the termination of their operations, organizing the operation of mass media, and the legal status of journalists, their rights and obligations.²¹

§ 1:6 For broadcasting industry

The main legal act for the broadcasting industry is the Television and Radio Law. The law provides general provisions about types of broadcasting organizations, provisions about broadcasting permits and the registration of broadcasting organizations, production and

¹⁷ Judgment of the Supreme court of Latvia, case No.SKC-219, May 28, 2008

¹⁸ Article 21 of the Law on Press and Other Mass Information Means; Article 36 of the Television and Radio Law

¹⁹ Judicial practice in cases about civil protection of humans honor and dignity 2003/2004

²⁰ Judgment of the Supreme court of Latvia, case No.SKC-261, May 8, 2002

²¹ The Law on Press and Other Mass Information Means

broadcasting of broadcasts and programs, the rights of broadcasting organizations to information and their liability, the National Radio and Television Council and others.²²

§ 1:7 For online services

Latvia has not passed specific law regarding online media industry, but this industry is subject to the Law on the Press. Currently, the online, or virtual, environment maintains the same legal status as the real-life, physical environment. For instance, an online infringement of another person's honor and dignity or menacing of another person is subject to the Criminal Law just as it is in the "physical world." When there is such offense, the victims must inform the police just as they normally would with a more traditional violation. However, the Parliament is currently drafting the new Electronic Media Law. In the draft law, online services are defined as "media." Consequently, the editor of the particular online media will be liable within the same scope as other electronic media and will have the same advantages as other media.²³

§1:8 Regulators and their core competencies

There are no specific agencies in Latvia that regulate publishing or online services, but the Electronic Communications Office, the Competition Council, and the National Radio and Television Council regulate the broadcasting industry. The National Radio and Television Council derives its regulatory powers from the Television and Radio Law and is an independent authority that consists of nine members who are elected by the Parliament of Latvia.²⁴ The Council regulates all television and radio electronic communications, ensuring equal and balanced development of the industry, and the Council protects mass media from monopolization. The Council also monitors media content and supervises the licensing process.²⁵ The National Radio and Television Council shall announce a tender for free frequencies (channels) in accordance with the national concept of electronic mass media development.²⁶ A license grants the holder the right to produce and distribute a program at a specified broadcasting time and in a specified territory, and the National Radio and Television Council grants licenses in accordance with the technical plan for radio and television

²² The Television and Radio Law

²³ Article 4(2) of the draft law Electronic Media Law, to the 1st reading

²⁴ Articles 41 and 42 of the Television and Radio Law

²⁵ Article 46 (6) of the Television and Radio Law

²⁶ Article 11 of the Television and Radio Law

broadcasting. Broadcasting organizations that have been granted broadcasting rights and that wish to use their program distribution facilities shall obtain a use of a granted radio frequency permit (license) in accordance with the procedures specified in the Electronic Communications Law.²⁷

§1:9 Public sector in the media industry

Latvia operates state-owned television and radio stations - “Latvijas Televīzija” (public television) and “Latvijas Radio” (public radio). The Council oversees their operations, and these stations are to provide independent, educational, and informative program that satisfies necessities of society. The equity capital of these stations consists of the State investment property. The revenue is made of national budget funds, funds gained from unaffiliated entrepreneurial activity, grants, endowments and sponsorship.²⁸

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

Latvia is a unitary state, such that there is no federal government. All legislative decisions are passed by the Parliament of Latvia, called Saeima.

C. Defamation

§ 1:11 Main sources of law

Defamation is governed by both the criminal law²⁹ and the civil law.³⁰ The criminal law and the civil law may be applied separately or together with respect to any given instance of defamation.

Under the Criminal Law, a person convicted of defamation may be imprisoned for up to one year, penalized with a fine up to 30 minimal wages; or be punished with forced labor.³¹

A plaintiff may bring a civil claim for defamation under the Civil Law and the Law on the Press.³² The plaintiff may seek a recall of the published information and require an apology.³³

²⁷ Article 10 of the Television and Radio Law

²⁸ Articles 57(3) and 62 of the Television and Radio Law

²⁹ The Criminal Law

³⁰ The Civil Law

³¹ Article 158 of the Criminal Law

³² Civil Law; The Law of the Press

Under the Civil Law, any person that has been defamed in mass media may demand material compensation.³⁴ A material compensation is a reimbursement that can be assessed in currency and compensates a moral harm.

§ 1:12 Definition and significant subdivisions

Defamation is information that infringes the honor and dignity of a person or published information that slanders the person. Under the Criminal Law, there is no legal difference between written defamation and defamatory statements spoken in public. They both are included in one article that prescribes the same punishment. Additionally, fines may increase when the defamatory statement is published through mass media.³⁵

§ 1:13 Main factors or elements of claim

Under the Civil Procedure Law, the plaintiff must prove that published information has infringed his or her honor or dignity, but the threshold for infringement is much higher for persons who are publicly known or famous.³⁶ This distinction exists because the loss for such infringement (a moral harm) cannot be clearly assessed. For publicly known persons, the loss is higher because many more people know them and will pay attention to this information, and the person has a particular reputation in public that can be undermined after such publication.

A plaintiff must prove that published information is false and that its content has infringed his honor and dignity.³⁷ At the same time, the court will evaluate the degree of harm and damages, the amount of people who read or heard the publication, the publisher's attitude to publication, and other relevant factors.³⁸

§ 1:14 Types of relief available

In accordance with the Latvian legislation, a plaintiff can bring a claim requesting recall of published information, an apology, or material compensation in cases of a probable

³³ Article 21 of the Law on Press and Other Mass Information Means

³⁴ Article 2352.¹ of the Civil Law

³⁵ Articles 156, 157, 158 of the Criminal Law

³⁶ Article 10 of the Civil Procedure Law

³⁷ Article 93 of the Civil Procedure Law

³⁸ Article 2352.¹ of the Civil Law

defamation. If the published information is false but does not infringe the plaintiff's reputation or esteem, the plaintiff may not seek an apology.³⁹

§1:15 Defenses available

Truth is a complete affirmative defense.⁴⁰ A defendant may also argue that the information is a personal opinion, protected under the constitution's freedom of speech mandate. As explained above in §1:4, the courts distinguish personal opinion and actionable defamation depending on the basis of the given information.⁴¹ Such a defense is typically used when political commentators have expressed a merciless critique that could infringe a public person's reputation but published information is supposed as an opinion that does not have the basis mentioned in the §1:4.⁴²

§ 1:16 Time period for asserting claim

The Law on the Press allows the defamed party to request a recall of false information or request apology through notification of the accused party within six months from the day of publication. The notification must precisely indicate false information or information that infringes a person's honor and dignity, as well as the place and date of the publication.⁴³ The accused party must examine the defamed person's application within seven days from receipt. If the accused party does not comply with the notification, defamed party is entitled to bring a claim before the court within 10 years of the date of publication.⁴⁴

D. Invasion of Privacy

§ 1:17 Main sources of law

The Constitution of Latvia grants to everyone the right to the inviolability of their private life, home and correspondence, and this is one of the cornerstones of Latvia's legal system.⁴⁵ Latvia has also ratified the European Convention for the Fundamental Rights and Freedoms⁴⁶

³⁹ Article 2352.¹ of the Civil Law

⁴⁰ Judicial practice in cases about civil protection of humans honor and dignity 2003/2004

⁴¹ Judicial practice in cases about civil protection of humans honor and dignity 2003/2004

⁴² Judicial practice in cases about civil protection of humans honor and dignity 2003/2004

⁴³ Article 21 of the Law of the Press

⁴⁴ Article 1895 of the Civil Law

⁴⁵ Article 96 of the Constitution of Latvia

⁴⁶ Article 8 of the European Convention for the Fundamental Rights and Freedoms

and agreed to observe the internationally binding agreement that prohibits improper governmental intervention in private life.

§ 1:18 Definition and significant subdivisions

There is no specific statutory definition of “invasion of privacy,” but courts have determined that a person’s privacy has been invaded when there is an illegitimate intervention in a person’s private life by government or private persons. Particularly in regard to photographing people, courts in Latvia will evaluate the right to privacy as in the European Court of Human rights. That is, if the picture is taken in public place, it is not an invasion of private life as it would be when picture is taken by getting into person’s home. Latvian courts have ruled in only a few cases regarding the photographing of individuals.⁴⁷ The courts of Latvia have not evaluated whether the unauthorized use of a person’s photograph is in and of itself actionable, as plaintiffs bringing claims in cases of unauthorized use of their photograph have relied on the occurrence of an invasion of honor and dignity. Therefore the only viable scenario for bringing a claim related to the unauthorized use of a person’s photograph appears to be when invasion of honor and dignity has occurred. Latvian courts have only considered one case regarding the publication of a photograph where a person’s private life was depicted.⁴⁸ But it is still not clear whether a person has effective protection of the right to private life in cases when the person’s honor and dignity has not been violated. Nonetheless, the Constitutional Court of Latvia has interpreted the content of human rights set forth in the Constitution as close as possible to the interpretation of international human rights.⁴⁹

§ 1:19 Main factors or elements of claim

To succeed in a claim, the plaintiff must prove that an improper intervention in private life has occurred.⁵⁰ The plaintiff must prove damages that were caused by an intervention in private life.⁵¹

⁴⁷ Decision of City of Rīga Central District Court, cases no. C27250800, no.C27250900, no. C27250700 on April 18, 2001; Judgment of Senate of the Supreme Court of Latvia, case no. SKC-22, January 14, 2004; Judgment of City of Rīga Zemgale Urban District Court, case no. C31106502, April 28, 2003; Judgment of the Civil Matters Panel of the Supreme Court of Latvia, case no. PAC-244, April 9, 2003.

⁴⁸ Judgment of the Rīga Regional Court, case no. C27052906, December 11, 2007.

⁴⁹ Judgment of Constitutional court, case no. 2002-08-01, September 23, 2002.

⁵⁰ Article 1635 of the Civil Law

⁵¹ Article 1787 of the Civil Law

The courts in Latvia accept claims about invasion of persons' honor and dignity when the information is published in press, broadcasted by radio or television, or announced by other means to non-defined circles. The courts do not adjudicate claims about recall of information that is information found in civil or criminal judgments, decisions made by **investigating institutions** or other official documents.⁵²

The claim may be brought by any natural or legal person whose civil rights, or interests protected by law are infringed or disputed.⁵³ A privy may also bring a claim if the information is about a deceased member of his or her family or other relative.⁵⁴

§ 1:20 Types of relief available

A plaintiff may seek material as well as non-material relief.⁵⁵ When a wrongful act has occurred as an offense against an individual's life, health, morality, sexual inviolability, freedom, honor, or dignity, it is presumed as a moral detriment. If it is another wrongful act, the plaintiff must prove the moral detriment. A moral detriment is physical or mental distress caused by the invasion of non-material rights or non-material benefits as a result of a wrongful act.⁵⁶ A material relief can be measured in fiscal currency, but a non-material relief cannot be so measured. Non-material relief can be any action that can establish peace between both parties. The plaintiff may also seek recall and apologies in certain circumstances. The plaintiff does not have to prove that the information was defamatory, but the defendant must prove that the information is true.⁵⁷

§ 1:21 Defenses available

A defendant may argue that the information is important to society.⁵⁸ In this case, the courts must weigh the individual's right to privacy against the constitutionally protected freedom of speech.⁵⁹

⁵² Judicial practice in cases about civil protection of humans honor and dignity 2003/2004

⁵³ Article 1 of the Civil Procedural Law

⁵⁴ Judicial practice in cases about civil protection of humans honor and dignity 2003/2004

⁵⁵ Article 2352¹ of the Civil Law

⁵⁶ Article 1635 of the Civil Law

⁵⁷ Article 2352¹ of the Civil Law

⁵⁸ Judicial practice in cases about civil protection of humans honor and dignity 2003/2004

⁵⁹ Judicial practice in cases about civil protection of humans honor and dignity 2003/2004

§ 1:22 Time period for asserting claim

A plaintiff may bring a claim before the court within 10 years after the breach of person's rights.⁶⁰ The period starts after the person has discovered the invasion of his or her privacy.⁶¹

E. Right of Publicity

§ 1:23 Main sources of law

The Constitution of Latvia⁶² and the European Convention for the Fundamental Rights and Freedoms⁶³ both grant the right of publicity.

The Advertising Law prohibits violating a person's right of publicity in advertising without his or her permission.⁶⁴ Consent is not required, however, if the action is related to the activities of society, a person's position of authority, law enforcement activities, or a picture taken in a public place.⁶⁵ Photos may not be reproduced or sold if it would harm another's honor, dignity, or business reputation. This right is not stated in a particular law but the person can refer to the right to personal life secured in Constitution.

§ 1:24 Protection of right of publicity after death

The Second Part of the Civil Law regulates the law of inheritance.⁶⁶ It is not possible to inherit any rights that are linked to the individual's personality, but an heir may inherit the property right (e.g., copyright) to creations created by the testator.⁶⁷

§ 1:25 Main factors or elements of claim

The plaintiff must prove that there is no proper authorization for the publication of the person's image in a photograph, that the publication does not fall within one of the exceptions (offense against individuals' life, health, morality, sexual inviolability, freedom, honor or dignity)⁶⁸ established according to the Civil Law, and that the plaintiff has sustained damages.⁶⁹

⁶⁰ Article 1895 of the Civil Law

⁶¹ Article 1896 of the Civil Law

⁶² Article 96 of the Constitution of Latvia

⁶³ Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms

⁶⁴ Article 4 of the Advertising Law

⁶⁵ Article 95(2) of the Criminal Procedure Law

⁶⁶ The Second Part of the Civil Law

⁶⁷ Article 16(1) of the Copyright Law

⁶⁸ Article 1635 of the Civil Law

⁶⁹ Article 1635 of the Civil Law

To bring a claim, the unauthorized publication of a photograph does not have to necessarily be used in an advertisement. The burden then shifts to the media defendant to prove that authorization existed.⁷⁰ In a criminal offense, moral damage is presumed.⁷¹

§ 1:26 Types of relief available

A successful claim for invasion of one's right of publicity will usually permit recovery of monetary damages, which may also compensate emotional distress caused by the publication.⁷² Previously, courts limited the awarded relief to compensate for monetary damages, but recent case law extends it also to compensation for moral damages.⁷³ Plaintiffs may also seek non-monetary relief, such as an apology.

§ 1:27 Defenses available

The publisher may prove that the plaintiff consented to the publication or that the publication fell under one of the established exceptions. The publisher is not liable if the publication contains information obtained from official documents or statements of political or civic organizations, reports of official information agencies, or publications of officials.⁷⁴

§ 1:28 Time period for asserting claim

Under the Civil Law, the plaintiff has 10 years from the unauthorized publication to bring a claim.⁷⁵

II. Advertising Law

A. Sources of Advertising Law

§ 1:29 Basic principles

The core principles of Advertising Law in Latvia are to provide regulations relating to the production and dissemination of advertising; the determination of the rights, obligations, and

⁷⁰ Article 2352¹ of the Civil Law

⁷¹ Article 350 of the Criminal Procedure Law

⁷² Article 1635 of the Civil Law

⁷³ Judicial practice in cases about civil protection of humans honor and dignity 2003/2004, Zemgale Suburb court's case CA 223/03-13, 2002, Kraslava district court's case C1803701, 2002

⁷⁴ Article 29 of the Law of the Press

⁷⁵ Article 1895 of the Civil Law

liabilities of persons involved in the production and dissemination of advertising; the protection of the interests of persons and the general public in the field of advertising; and the promotion of fair competition.⁷⁶

§ 1:30 Constitutional sources

The Constitution of Latvia provides that everyone has the right to freedom of expression, which includes the right to freely receive, keep, and distribute information, and to express his or her views.⁷⁷ Still, advertisers might violate other constitutional rights if they infringe a person's honor and dignity.⁷⁸ Pursuant to General Comment 16 of the United Nations Office of the High Commissioner for Human Rights Duties, a State has a duty to protect person's right to private life and from any violation of it— whether the violation was performed by state actors or non-state actors; and whether the violation was performed by natural persons or legal entities.⁷⁹

§ 1:31 Codified sources

The main legal acts in the field of Advertising Law are the Advertising Law, Competition Law, and Unfair Commercial Practice Prohibition Law.

The Advertising Law contains regulations on advertising content, including restrictions and general requirements. It states that an advertisement must be legitimate, fair and objective, and that it cannot undermine public confidence in advertisements in general. Advertisements may only contain statements or visual images that are in compliance with ethics, humanities, moral, virtues and propriety norms. It is impermissible to advertise propaganda of violence and war, to promulgate any discrimination, to influence individuals' fear, and to slander somebody.⁸⁰ The Competition Law and Unfair Commercial Practice Prohibition Law regulate advertising by prohibiting the breach of competition policies.⁸¹

The breach of competition policies concerning advertising occurs when the following conditions for comparative advertisement have been contravened:

⁷⁶ Article 2 of the Advertising Law

⁷⁷ Article 100 of the Constitution of Latvia

⁷⁸ Article 96 of the Constitution of Latvia

⁷⁹ United Nations Human Rights Committee, General Comment No.16- The right to respect of privacy, family, home and correspondence, and protection of honor and reputation

⁸⁰ Articles 3-7 of the Advertising Law

⁸¹ Articles 6(1)2, 7(1)1, 8(1)7, 9(5) of the Competition Law; Articles 9(1)2, 11-5, 11-21, 13-5 of the Unfair Commercial Practice Prohibition Law

- it shall not be misleading in accordance with Section 8 of this Law or other regulatory enactments;
 - it compares goods or services that are intended for one and the same needs or for one and the same purposes;
 - it objectively compares one or more material, related, verifiable and characteristic features of the relevant good or service, which may also include price;
 - it does not create confusion for market participants in relation to the advertiser and a competitor, or in relation to the advertiser and the trademark, name (firm name) or other distinguishing marks, goods or services of a competitor;
 - it does not bring into disrepute the trademarks, trade names, other distinguishing marks, goods, services or operations of a competitor and does not defame them;
- it does not unfairly use the name (firm name), trade mark, trade name or other distinguishing marks of a competitor or the reputation of the designation of origin of a competing good;
- it does not display goods or services as an imitation or copy of such good or services as there is a protected trade mark for or a trade name; and
 - in advertising goods with a designation of origin, the comparative advertising pertains to goods with the same designation of origin.⁸²

§ 1:32 Case law sources

Although regulations dealing with advertising issues were passed several years ago, there have not been any judicial decisions regarding these regulations.

B. False Advertising

§ 1:33 Main sources of law

The main sources for false advertising claims are the Advertising Law and the Unfair Commercial Practice Prohibition Law. The Advertising Law prohibits misleading advertisements and contains general requirements for advertising (such as discrimination prohibition, etc.) that shall not be breached.⁸³ The Unfair Commercial Practice Prohibition Law

⁸² Article 9 of the Advertising Law

⁸³ The Advertising Law

contains definitions regarding improper conduct and provisions about (i) Commercial Practices Non-Complying with Professional Diligence, (ii) Negative Influence on a Consumer’s Economic Activity, (iii) Misleading Commercial Practices, and (iv) Aggressive Commercial Practices and Monitoring.⁸⁴

§ 1:34 Definition and significant subdivisions

The Advertising Law and the Unfair Commercial Practice Prohibition Law both contain definitions for misleading advertising. The Advertising Law defines misleading advertising as advertising that in any manner, including its presentation, is directly or indirectly misleading or may be misleading and, due to its misleading character, affects the economic behavior of a person or is harmful to a competitor.⁸⁵ The definition of “misleading advertising” in the Unfair Commercial Practice Law results from the definition of “misleading actions.” The law states that commercial practices shall be regarded as misleading if, taking into account all the circumstances, the consumer, under the influence thereof, makes or may make a decision regarding the entering into of a contract, which he or she would not have made otherwise. Commercial practices shall be regarded as misleading when the performer of commercial practices unfairly utilizes the promotional measures of the trade of goods or services, including comparative advertising that causes confusion regarding the trademark of goods or services, the trade name, the company name of the manufacturer of goods or the provider of the service, or other distinguishing marks.⁸⁶

The Advertising Law definition states that advertising is misleading when it injures a consumer or competitor while Unfair Commercial Practice Prohibition Law mentions only consumers.

§ 1:35 Main factors or elements of claim

In a false advertising claim, a plaintiff must prove that the advertising is directly or indirectly misleading for an average consumer and that the information is material (*e.g.*, misleading price, misleading information regarding goods or services content, or other

⁸⁴ The Unfair Commercial Practice Prohibition law

⁸⁵ Article 8 of the Advertising Law

⁸⁶ Article 9 of the Unfair Commercial Practice Prohibition law

substantial details).⁸⁷ The claim must be brought against an “advertiser,” a person who is the owner of advertised products or services, and it must be based on facts that confirm the misleading nature of the advertising at its very core—facts that fulfill the definition for misleading advertising. A false advertising claim may be brought by a “concerned person,” a person whose rights or legal interests are or can be infringed by the breach or involved person.⁸⁸

Moreover, if a plaintiff requests responsible authorities (*e.g.*, Consumer Rights Protection Centre, the Competition Council, the Radio and Television Council, the Health Inspectorate, or the Food and Veterinary Service) to evaluate the advertisement and the authorities refuse to find the advertisement misleading, the plaintiff may initiate administrative proceeding to prove that the advertisement is misleading. These proceedings must be brought against the proper authorities in an administrative court, and the plaintiff will seek to annul the authority’s prior decision and request that the authority pass a new decision that is favorable for a plaintiff.⁸⁹

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

There are no publicly available cases in this area of the law.

§ 1:37 Types of relief available

If an advertisement has been found false, a plaintiff may obtain several types of relief.⁹⁰ Usually a plaintiff seeks an injunction to prohibit publication of misleading advertisement and a withdrawal of the purchase or service agreement if the plaintiff has been misled by the advertisement and signed an agreement with the defendant.⁹¹ A plaintiff may also seek remunerations for damages that have occurred due to misleading advertising and compensation for moral harm caused by false advertising.⁹²

Concerning use of terms “misleading advertising” and “false advertising,” there are no differences between these concepts under Latvian law. They are identical and used interchangeably.

⁸⁷ Article 8(3) of the Advertising Law

⁸⁸ Article 23(1) of the Competition Law

⁸⁹ Article 17¹ of the Advertisement Law

⁹⁰ Article 15(4) of the Advertisement Law

⁹¹ Summary 2008 of Consumer Rights Protection Centre

http://www.ptac.gov.lv/upload/atskaites/publiskais_parskats_2008_2_.pdf

⁹² General provisions of the Civil Law apply. Articles 1770-1792 of the Civil Law

§ 1:38 Defenses available

Defendants will generally argue that they have not advertised in a misleading manner. A defendant may prove that, to an average consumer, the advertisement at issue is clear and understandable and has not violated any norms of Advertising law.⁹³

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

Courts will consider the opinions of experts, sociological polls, and opinions of scientists when evaluating testing claims, but there are no specific evidentiary requirements in such cases.

§ 1:40 Time period for asserting claim

A false advertising claim may be brought within 10 years after the publication of the false advertising.⁹⁴ However, if the false advertising claim has been brought through the administrative process, the time limit to appeal the decision of the responsible authority before the court is one month after the unfavorable decision was handed down.⁹⁵

C. Third Party Trademarks and Copyrights in Advertising

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

The Law on Trademarks and References to Geographical Origin and the Advertising Law regulate the rights of trademark owners and the use of trademarks in advertising. In compliance with the Advertising Law⁹⁶ it is impermissible to use another party's trademark in advertising except in comparative advertising campaigns. A comparative advertisement is permissible when it fulfills the following requirements: it is not misleading, it compares goods or services that are provided for the same needs and same purposes, it objectively compares one or several materials, related, verifiable and intrinsic features of respective goods and services, it does not cause uncertainty to market participants about the advertiser, competitor, or advertiser, or competitors' trademarks, name or other distinguishing marks, goods or services, it does not slander a

⁹³ Article 9 of the Advertising Law

⁹⁴ Article 1895 of the Civil Law

⁹⁵ Article 79 of the Administrative Procedure Law

⁹⁶ Article 4 of the Advertising Law

competitor, it does not use a competitor's reputation, and it is related to goods with the same geographical indication when advertising goods with geographical indication.⁹⁷ When a comparative advertisement breaches these requirements it constitutes a trademark infringement.

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

The Law on Copyright⁹⁸ and Advertising Law⁹⁹ provide exclusive rights to authors of copyrighted works. Therefore, advertisers are not permitted to use another party's copyrighted work in advertising without that party's authorization.

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

The Civil Law¹⁰⁰ gives a plaintiff a 10-year period of limitation applicable to claims for damage caused by trademark or copyright infringement, and the time period is measured from the date the infringement actually occurred.

III. Entertainment Law

A. Sources

§ 1:44 Basic principles

Entertainment Law in Latvia is not clearly defined, and there is no special "Entertainment Law" statute in Latvia. Rather, legal issues concerned with entertainment are regulated by the Public Entertainment and Festivity Safety Law,¹⁰¹ the Law on Copyright,¹⁰² the Law on Advertising,¹⁰³ the Law on Sport,¹⁰⁴ and the Law on Gambling.¹⁰⁵

The Law on Sport contains the following principles relating to the entertainment field:

⁹⁷ Article 9(3) of the Advertising Law

⁹⁸ Article 15 of the Law on Copyright

⁹⁹ Article 4 of the Advertising Law

¹⁰⁰ Article 1895 of the Civil Law

¹⁰¹ Public Entertainment and Festivity Safety Law

¹⁰² The Law on Copyright

¹⁰³ The Advertisement Law

¹⁰⁴ The Law on Sport

¹⁰⁵ The Law on Gambling

- the principle of equality mandates that every person has the same right to do sports;
- principle of fair game states that, in field of sports education, organizing, and administration work, one must maintain consider Olympic ideals and principles of ethics; and
- the principle of safety means that sport events must occur in safe areas and that they are organized by qualified sports workers.¹⁰⁶

Another basic principle is that entertainment activities may be limited due to safety, morality, welfare, health, and other legitimate reasons.¹⁰⁷

§ 1:45 Constitutional sources

The Constitution of Latvia grants the right to private life¹⁰⁸ and the right of speech.¹⁰⁹ These rights are not expounded in detail in the Constitution due to its laconic style and there have been no substantial case law developments. These rights are not absolute and may be limited for reasons of safety, morality, welfare, health and other legitimate reasons.¹¹⁰

§ 1:46 Codified sources

The main related sources for Entertainment Law are the Public Entertainment and Festivity Safety Law, the Law on Copyright, the Law on Advertising, the Law on Sport, and the Law on Gambling.

The Public Entertainment and Festivity Safety Law provides a procedure for receiving permission to arrange an event, the rights, duties and liability of organizers, and other issues to ensure public order and safety.¹¹¹

The Law on Sport defines who can be an organizer of a sports event, the procedure for organizing those events, and the order that must be kept during the events.¹¹²

¹⁰⁶ Article 3 of the Law on Sport

¹⁰⁷ Article 7(3) of the Entertainment and Festivity Safety Law

¹⁰⁸ Article 96 of the Constitution of Latvia

¹⁰⁹ Article 100 of the Constitution of Latvia

¹¹⁰ Article 116 of the Constitution of Republic of Latvia

¹¹¹ Public Entertainment and Festivity Safety Law

¹¹² The Law on Sport

The Law on Gambling grants protection for players' rights and the public interest. It provides an organizing procedure for gambling and raffles, regulates the activities of the organizers, states the rights, duties and liability of related persons, lists the places available for gambling, and regulates the registration, certification, and labeling of slot machines.¹¹³

General codified sources, such as the Civil Law, the Labor Law, and the Criminal Law, are also relevant. The Civil Law relates to the entertainment field by regulating contractual relations between organizers, artists, and service providers.¹¹⁴ Relations between different parties in entertainment field can be based on contract of employment, and the Labor Law governs such relations.¹¹⁵ The Criminal Law is relevant when some breach has occurred, such as Criminal Offenses against General Safety and Public Order: Civil Disorder, Violation of Organizational and Procedural Requirements for Public Events, Causing Danger to Public Safety, Order and the Health of Individuals While Performing Religious Activities, Destruction of and Damage to Cultural Monuments.¹¹⁶

§1:47 Case law sources

There are no substantial case law sources in the field of entertainment in Latvia.

B. Types

§ 1:48 Legal matters characterized as entertainment law

Generally, Entertainment Law may be characterized as including legal matters surrounding music, dancing, theatre, cinema, television, *etc.*

In public entertainment events, legal disputes may arise from breaches of safety requirements or violations of others' property rights. The public safety and order might be infringed.

In the context of radio, cinema and television, legal disputes may arise from breaches of requirements for released information, morality, and requirements for content of programs.

IV. Art Law

¹¹³ The Law on Gambling

¹¹⁴ Obligations Law; Part 4 of the Civil Law

¹¹⁵ Part C of the Labour Law

¹¹⁶ Chapter 10 of the Criminal Law

A. Sources

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

The main sources of law regulating the sale of artworks are the Law on Copyright¹¹⁷ and the Civil Law.¹¹⁸ The author has exclusive rights to authorize or prohibit the reproduction or the dissemination or public display of the work in any form or manner.¹¹⁹ The author also has control over the leasing, lending, and other transfers of ownership of the work—as well as importation and exportation.¹²⁰

§ 1:50 Sources of law for artists' rights

The Law on Copyright, the Civil Law, and the Constitution of Latvia regulate the artists' rights.¹²¹ According to the Law on Copyright an author has the moral right to the authorship, a decision whether and when the work will be disclosed, the revocation of a work, name, inviolability of a work and legal action,¹²² and economic right to publish the work, distribute the work, broadcast the work, retransmit the work, translate a work and other.¹²³ According to the constitution of Latvia, an artist has the right of property¹²⁴ and the right to freely choose his or her employment and workplace¹²⁵.

B. Relationships

§ 1:51 Relationship between dealer and artist

The relationship between a dealer and an artist is generally regulated by Latvian contractual laws.¹²⁶ If an artist gives his or her artwork to an exhibition, the relationship is regulated by the law of commercial relationships. Specifically, an artist's income from an exhibition is considered a commercial activity in NACE classifications. Economic activity is any activity for consideration, which is not payment for employment by an employer or other consideration to an employee, from which mandatory State social security payments and

¹¹⁷ Article 15 of the Law on Copyright

¹¹⁸ Chapter 13 Claims Arising from Alienation Contracts, Sub-chapter 1 Purchase Contracts

¹¹⁹ Article 14 of the Law on Copyright

¹²⁰ Article 15 of the Law on Copyright

¹²¹ Article 113 of the Constitution of Latvia

¹²² Article 14 of the Law on Copyright

¹²³ Article 15 of the Law on Copyright

¹²⁴ Article 105 of the Constitution of Latvia

¹²⁵ Article 106 of the Constitution of Latvia

¹²⁶ Obligations Law; Part 4 of the Civil Law

personal income tax is calculated.¹²⁷ Therefore, when an author gives his or her artwork to an exhibition and gets regular income from it, he or she must register as a self-employed person.

§ 1:52 Relationship between purchaser and dealer

The relationship between a dealer and a purchaser may be structured in two different ways. First, a dealer may be the artist of the work, allowing the artist to receive the full price of an artwork.¹²⁸ If a dealer is merely the owner, the artist may get a certain percentage from the price while the rest of the profit goes to the dealer.¹²⁹

C. Art Auctions

§ 1:53 Laws relating to auctions and auction houses

Latvia's Civil Law¹³⁰ governs art auctions. Purchase and sale by auction means that the items is offered for sale to several persons through an intermediary—normally the auction manager, and the contract is considered concluded with the buyer that offers the highest price for the items sold.¹³¹ The auction can be voluntary or forced. A voluntary auction will be made according to the purchaser's will—by judicial process or privately. A private auction can be organized by attraction of law firms, advocates, or other physical persons, and the mutual rights and duties of the contracting parties shall be determined according to the provisions agreed upon between them and, in large part, by such provisions as have been proposed by the seller. Action by judicial process shall be determined according to Civil Procedure Law.¹³² There are special laws regarding auctions of State property: rules for state and local government land auction procedure, rules for state and local residential facilities privatization auction organization, rules on public interest in mineral deposits and their use, national importance of minerals use arrangements and use of subsoil licenses or licenses issued tender or auction procedures, orders regarding the participation of animals in animal competitions, markets, auctions, exhibitions and other events.

¹²⁷ Article 1(6) of the Law on Value Added Tax

¹²⁸ Article 17 of the Law on Copyright

¹²⁹ Article 27 of the Law on Copyright and Related Rights

¹³⁰ Articles 2073-2090 of the Civil Law

¹³¹ Article 2073 of the Civil Law

¹³² Articles 2074, 2075 and 2076 of the Civil Law

Fixation of copyright and neighboring rights objects, their publication, communicating them to the public, their reproduction or distribution in any form without the consent from the rightholder is a violation of copyright and neighboring rights.¹³³ Consequently auctioneers need the consent from the rightholder. However, there is no need for an auctioneer to have a special certification in order to conduct a voluntary auction.

D. “Stolen” Art Works

§ 1:54 Legal issues regarding “stolen” artworks

Crimes against artworks are regulated by the general provisions of the Criminal Law. For infringement of copyright and neighboring rights, liability is created for infringement of the rights of the author to use of the work or intentional infringement of neighboring rights,¹³⁴ and Unlawful Acts with Objects of Copyright and Neighboring Rights liability is created for the acquisition for sale, storage, or concealment of objects of copyright and neighboring rights repeatedly during a period of one year, if they are published, reproduced or otherwise used, infringing copyright or neighboring rights.¹³⁵ Auction houses often run a check in Interpol when receiving an artwork to determine whether the artwork has been denounced as a “stolen” artwork. A *bona fide* purchaser of a stolen artwork must return the artwork to the person from whom the artwork was stolen or to that person’s heirs.¹³⁶ To be sure, the person that returns a stolen artwork has a claim against the person who sold it to them.¹³⁷

Latvia has also passed the Law on Protection of the Cultural Heritage.¹³⁸ The law provides for Prohibition to Destroy, Move or Modify Cultural Monuments,¹³⁹ Ownership Rights and Utilization of Cultural Monuments,¹⁴⁰ Supervision and Control of Compliance with Legislative Enactments Regarding Cultural Monuments and Liability for Violation of Legislative Enactments on Cultural Monuments¹⁴¹ and others.

¹³³ Article 68 of the Copyright Law

¹³⁴ Article 148 of the Criminal Law

¹³⁵ Article 149 of the Criminal Law

¹³⁶ Article 1598 of the Civil Law

¹³⁷ Article 1600 of the Civil Law

¹³⁸ Law on Protection of Cultural Monuments

¹³⁹ Article 3 of the Law on Protection of Cultural Monuments

¹⁴⁰ Chapter 2 of the Law on Protection of Cultural Monuments

¹⁴¹ Chapter 5 of the Law on Protection of Cultural Monuments