

Federal Act dated 12th June 1981 on the Press and other Publication Media (Media Act)

ARTICLE I
Section One

Definitions

§ 1. (1) In terms of the subject Federal Act, any terms as listed hereunder, shall mean:

1. „media“: any means for publication of information or representations of thoughts by means of word, writing, sound or image, to a major audience by means of mass production or mass publication;

2. „periodical media product“: a periodical media product or a periodical electronic media;

3. „media product“: any carrier of information or of representation of thoughts intended for mass distribution and produced in quantities for mass circulation;

4. „print media“: a media product disseminating information or representations exclusively in writing or still images;

5. „periodical media product or print media“: a media product or print media published under the same name in consecutive issues at least four times per calendar year, at equal or uneven intervals and whose issues are connected with each other by their contents, although each one of the issues represents a fully separate unit;

5.a. „periodical electronic media“: a media which is electronically

a) broadcast (broadcast programme) or

b) to be downloaded (website) or

c) disseminated in comparable makeup at least four times each year (recurrent electronic media)

6. „media undertaking“: an undertaking engaging in or causing a third party to be engaged in the compilation of the contents of the media and

a) its production and distribution or

b) its broadcast or availability for download.

7. „media service“: an undertaking procuring features in words, writing, sound or image for media undertakings on a recurrent basis;

8. „media owner“: who

a) engages in the operation of a media undertaking or a media service or

b) otherwise engages in or causes third parties to engage in the creation of contents of a media and its production and dissemination, or

c) otherwise in case of an electronic media engages in or causes third parties to engage in the creation of its contents and its production and dissemination, or

d) otherwise engages in the creation of the contents of a media for the purpose of its subsequent broadcast, its availability for download or its dissemination;

9. „editor“: who decides on the basic line represented in the periodically published media;

10. „producer“: who engages in the mass production of media products;

11. „copy editor“: who is engaged as a journalist in contributing to editing the contents of a media in a media undertaking or a media service or who is engaging in such journalistic activity as a free professional on a permanent basis and not just as a financially insignificant side job;

12. „Media contents offence“: an act committed by the contents of a media which is subject to punishment by the courts, such contents consisting in an information or representation directed to a large number of persons.

(2) Media products also comprise the publications of the media services reproduced in pieces of media. Apart from that, any publications of media services are considered to be media, regardless in which technical form they are supplied.

Section Two:

Protection of journalists in exercise of their profession: editorial agreements

Protection of convinced personal opinion

§ 2. (1) Each copy editor has the right to refuse contributing to the creation of contents of feature articles or representations that are in contradiction to what he is convinced of regarding fundamental issues or that are in contradiction to the principles of the journalistic profession, unless what he is convinced of is in contradiction to the basic line of the media product published in terms of § 25. The technical editing of feature articles or of representations of others and the editing of news must not be refused.

(2) A justified refusal must not result in a disadvantage to the copy editor.

Protection of signed articles

§ 3. If an article or a representation is modified as to the meaning of the contents, the publication accompanied by the name of the copy editor is subject to his consent. Quoting the name of the author is equivalent to quoting a pseudonym or code generally known to be used by him.

No automatic right to publication

§ 4. The aforementioned provisions do not grant any right to the copy editor to insist on the publication of an article written by him or of a representation in which he contributed to the creation of its contents.

Editorial agreements

§ 5. (1) Media undertakings and media services may enter into editorial agreements governing the co-operation in journalistic matters.

(2) An editorial agreement is entered into between the media owner and an editorial committee to be elected by the editors' assembly in accordance with the principle of proportional representation. To become effective, the agreement must be approved by a two thirds' majority of the editors' assembly. All the editors working under an employment contract shall be members of the editors' assembly.

(3) The stipulations of an editorial agreement must not affect the rights of the works council.

(4) Corporate representative bodies of employees and employers engaged in media activities and having the power to enter into collective labour agreements may stipulate general principles for editorial agreements.

Defamation, libel, slander, insult and ridicule

§ 6. (1) If an offence is committed in a media, such as defamation, libel, slander, insult or ridicule, the person affected is entitled to claim from the media owner indemnity for the injury suffered. The amount of the indemnity depends on the scope and the effects of the publication, in particular on the type and circulation of the media; the preservation of the economic basis of the media owner is to be respected. The indemnity must not exceed 20,000 euros, in case of a defamation or particularly serious effects of libel or slander the maximum is 50,000 euros.

(2) No claims under para 1 may be raised

1. in cases of a true report on a hearing
in a public session of the National Council, the Federal Council, the Federal Assembly, a Laender Parliament or any committee of the above general bodies of representation,

2. in cases of libel or slander

a) if the published statement is true or
b) if the public had a predominant interest in the publication and, also in application of the journalistic diligence required, there was sufficient reason to take the statement for true,

3. if it is a live broadcast and employees or agents of the broadcaster were not guilty of neglecting the journalistic diligence required,

3a. if it concerns the availability for download of a website, provided that the media owner or one of his employees or agents has not failed to use due care, or

4. if it is a case of a true quotation of the statement of a third party and the public had a predominant interest in obtaining knowledge of the statement quoted.

(3) If the publication is related to the strictly private sphere, a claim under para 1 is excluded only for reasons of para 2 subpara 1, para 2 subpara 2a or para 2 subpara 3 or para 2 subpara 3a, however in cases of para 2 subpara 2a only in such cases, if the facts made public are directly related with public life.

Violation of the strictly personal sphere

§ 7. (1) If a media discusses or presents the strictly personal sphere of a person in a manner suited to compromise such person in public, the person affected is entitled to claim indemnity from the media owner for the insult suffered. The indemnity must not exceed 20,000 euros; in addition § 6 para 1 second sentence shall be applied.

(2) No claims under para 1 may be raised

1. in cases of a true report on a hearing
in a public session of the National Council, the Federal Council, the Federal Assembly, a Laender Parliament or any committee of the above general bodies of representation,
2. if the publication is true and directly related to public life,
3. if in the circumstances there was reason to assume that the person concerned agreed with the publication,
4. if it was a live broadcast and employees or agents of the broadcaster were not guilty of neglecting the journalistic diligence required, or
5. if it concerns the availability for download of a website, provided that the media owner or one of his employees or agents has not failed to use due care.

Protection against publication of the identity in special cases

§ 7a. (1) If media publish the name, the picture or other data which may result in making public to a not directly informed larger group of persons the identity of a person which

1. has become victim of an offence punishable by the courts or
2. is a suspect of having committed an offence punishable by the courts or has been convicted of having committed such offence, and if because of such publication interests of this person warranting protection are violated, without being outweighed by an interest on the part of the public in the publication of such information on account of the position of the mentioned person in public life, any other connection with public life or for other reasons, the person affected may claim from the media owner indemnity for the injury suffered. The indemnity must not exceed 20,000 euros, in addition § 6 second sentence shall be applied.

(2) Interests warranting protection on the part of the person affected are deemed to have been violated if the publication

1. in cases of para 1 subpara 1 is likely to result in an intrusion into the strictly personal sphere of or in compromising the victim,
2. in cases of para 1 subpara 2 refers to a minor or only to a misdemeanour or may unreasonably impair the prospects in life of the person concerned.

(3) No claims under para 1 may be raised

1. in cases of a true report on a hearing
in a public session of the National Council, the Federal Council, the Federal Assembly, a Laender Parliament or any committee of the above general bodies of representation,
2. if the publication of the information on the person had to be made upon official instructions, in particular for purposes of criminal justice or the security police,
3. the person affected had agreed to the publication or he himself passed the respective information to the media,

4. if it was a live broadcast and employees or agents of the broadcaster were not guilty of neglecting the journalistic diligence required, or

5. if it concerns the availability for download of a website, provided that the media owner or one of his employees or agents has not failed to use due care.

Protection of the presumption of innocence

§ 7b. (1) If in any media a person suspected of having committed an offence punishable by the courts but not yet finally convicted, is presented as having already been found guilty or as author of such punishable offence and not only as suspect, the person affected is entitled to claim indemnity from the media owner for the injury suffered. The indemnity must not exceed 20,000 euros, in addition § 6 second sentence shall be applied.

(2) No claims under para 1 may be raised

1. in cases of a true report on a hearing

in a public session of the National Council, the Federal Council, the Federal Assembly, a Laender Parliament or any committee of the above general bodies of representation,

2. if it concerns a true report on a penal sentence in first instance and includes the mention that the sentence is not final,

3. if the person affected has admitted and not withdrawn a statement made in public or to media representatives, of having committed the offence,

4. if it was a live broadcast and employees or agents of the broadcaster were not guilty of neglecting the journalistic diligence required,

4a. if it concerns the availability for download of a website, provided that the media owner or one of his employees or agents has not failed to use due care, or

5. if it is a case of a true quotation of the statement of a third party and the public had a predominant interest in obtaining knowledge of the statement quoted.

Protection against unauthorized publication

§ 7c. (1) If a media publishes any information on the contents of pictures or written transcripts from monitored telecommunication or from an optical or acoustic surveillance of persons by means of technical devices, and no use has been made of such documentation in the public court hearing, any person concerned whose interest warranting protection has been violated, shall be entitled to claim indemnity from the media owner for the damage suffered. The indemnity must not exceed 50,000 euros, or 100,000 euros if the publication is likely to destroy the position in society of the person concerned; apart from that § 6 second clause is applicable.

(2) No claim under para 1 is possible in the cases stated in § 7a para 3.

Joint provisions

§ 8. (1) A person affected can file his claim for an indemnity under §§ 6, 7, 7a, 7b or 7c in the course of the penal procedure in which the media owner is involved as defendant or under § 41 para 6, until the end of the court hearing. If no penal procedure is initiated, the claim can be submitted in a separate filing.

(2) In deciding on an indemnity claim under §§ 6, 7, 7a, 7b or 7c, the court is not bound by the legal opinion of the person affected. If due to a publication a person affected is entitled to claim indemnity under more than one provision, only one amount of indemnity shall be determined which must not exceed the maximum of the highest indemnity claim applicable; simultaneous claims shall be taken into account for the determination.

(3) Evidence for applicability of reasons for exclusion under § 6 para 2, § 7 para 2; § 7a para 3 and § 7b para 2 must be submitted by the media owner. Such evidence shall be taken only if the media owner invokes such a reason for exclusion.

Separate indemnity proceeding

§ 8a. (1) For the proceeding on a separate filing, the provisions for a penal procedure instituted on basis of a private prosecution shall apply, unless the subject Federal Act provides differently.

(2) A separate filing must be submitted with the penal court having jurisdiction in accordance with §§ 40, 41 para 2 within six months after the first distribution, broadcast and download of the publication causing the claim started, otherwise the claim will be forfeited. Applicant may request exclusion of public audience if facts of the strictly personal sphere will be discussed.

(3) In the proceeding on a separate filing the provisions of the Code of Civil Procedure (§§ 63 through 73 Code of Civil Procedures) on legal aid shall be applied accordingly with the proviso that the parties are entitled to appeal to the higher instance against decisions in matters of legal aid.

(4) The sentence awarding an indemnity shall provide for a payment term of fourteen days. Both the reasons as well as the amount of the sentence may be appealed. The award constitutes a title for execution in terms of § 1 of the Enforcement Code.

(5) In the proceeding on an separate filing for indemnity under §§ 6, 7, 7a, 7b or 7c, the court shall, upon request of the person affected, issue instructions for publication of a brief notice on the proceeding instituted if there is reason to assume that the claim is founded; in addition § 37 shall be applied accordingly.

(6) Upon request of the person affected, the judgement on a separate filing awarding an indemnity under §§ 6, 7, 7b or 7c shall impose the publication of the judgement; § 34 shall be applied accordingly.

Counter-Statement

§ 9. (1) Each natural or legal person (authority) not only generally affected by facts published in a periodical media product is entitled to request publication of a counter-statement in such media free of charge, unless such counter-statement is not true or its publication is excluded for other reasons.

(2) Statements of facts qualified for a counter-statement must be based on facts which can be verified whether they are true and complete and the respective essential statement is not just a personal opinion, an assessment or a warning against future conduct of another person.

(3) A counter-statement shall state in a concise manner that and to what extent the information is incorrect or incomplete and the respective reason. The counter-statement may be worded independently. It must either state the correct facts as opposed to the way they were published or add an essential item to the facts published or otherwise refer directly to the facts as published and state what was published in a wrong or misleading way. Its length must not disproportionately exceed the original publication. It must be published in the same language as the publication it refers to.

Subsequent information on the outcome of a criminal proceeding

§ 10. (1) If a periodical media product reported that a person has been suspected of having committed an offence punishable by the courts or that criminal proceedings have been instituted against such person, and the prosecution has withdrawn the proceeding or the proceeding has been terminated by a decision not pronouncing any sentence, such person is entitled to publication of such outcome in the respective media free of charge.

(2) The contents of such subsequent publication must be restricted to what is required for the respective legal protection and be in the language of the published item it refers to.

(3) The truth of a subsequent publication shall be evidenced by presenting a copy of the decision terminating the proceeding or by a special official certificate. Issue of such an official certificate requested is, in the case of withdrawal of the charge, within the responsibility of the prosecution attorney, in all other cases within the responsibility of the court.

Exceptions from the obligation to publish

§ 11. (1) There is no obligation to publish a counter-statement or subsequent information

1. if the counter-statement or subsequent information refers to a true report on a hearing in a public session of the National Council, the Federal Council, the Federal Assembly, a Laender Parliament or any committee of the above general bodies of representation;

2. if the counter-statement concerns a duly identified advertisement for business purposes;

3. if the counter-statement or subsequent information concerns the publication of a fact which the media were obliged to publish under the law;

4. if all or part of the contents of the requested counter-statement is not true;

5. if the facts reported are immaterial for the person concerned;

6. if the publication to which the counter-statement refers contains also the statement of the person affected and such contents are equivalent to a publication of a counter-statement;

7. if the person concerned has been offered adequate opportunity to comment in the same or a different equivalent release and has not made use of it;

8. if before receipt of the counter-statement an equivalent editorial correction or supplement has been published;

9. if, upon request of any party whatsoever, the obligation for publication of an equivalent release of a counter-statement with essentially the same contents and in conformity with the law has been obtained, even if it has been published with a delay; or

10. if the counter-statement has not been received by the media owner or the editor's office within two months after expiry of the day when the facts had been published or available for download, or the subsequent information has not been received within two months after expiry of the day on which the person concerned has obtained knowledge of the withdrawal of the charge or the termination of the proceeding. If a periodical media shows the date when issued, the request is considered to have been made in due time if it is received within two months after such date of issue.

(2) The publication of the counter-statement may be refused if its publication would constitute an offence punishable by the courts or an intrusion into somebody's strictly personal sphere.

Request for publication

§ 12. (1) The request for publication shall be addressed in writing to the media owner or to the editor's office of the media undertaking. If a still or moving picture is requested to be published in a counter-statement, the request may be accompanied by a copy suitable for such purpose.

(2) The request for publication may also be complied with by publishing in the respective media an equivalent editorial correction, amendment or information at the latest by the date stated in § 13. The media owner or the editing department shall inform the person affected in writing correspondingly.

Date and form of the release

§ 13. (1) The counter-statement or subsequent information shall be published,

1. if the periodical media is published, broadcast, or distributed on a daily basis or at least five days per week or constantly available for download (website), at the latest by the fifth working day,

2. if the periodical media product is published, broadcast or distributed on a monthly basis or at intervals longer than that and the counter-statement is received at least fourteen days before the issue, the broadcast or the distribution, in the next issue or broadcast,

3. in all other cases at the latest in the second issue or broadcast after the date it has been received. The counter-statement or subsequent information shall be published at a later date if only in this way the express request, made by the person concerned, for publication in the same supplement, series of articles or broadcasts, can be complied with.

(2) The release is to be marked "Counter-Statement" or "Subsequent Information". It shall contain the name of the person affected and a reference to the issue or broadcast it concerns.

(3) The counter-statement or the subsequent information shall be published in a manner that its release has the same news value as the original release. If the periodical media product consists of more than one issue or if it is broadcast by more than one station, the counter-statement or subsequent information shall be released in such issues or stations which had published the original release.

(3a) In case of publication on a web site the counter-statement or subsequent notice shall remain available for download for one month. In case the notice on the facts continues to be available for download, the counter-statement or subsequent notice shall be kept available for download for the same period of time as the notice on the facts and up-to a point in time one month after deletion of the notice on the facts.

(4) In the case of publication in a periodical print media an equivalent news value is given if the counter-statement or subsequent information is printed in the same section in the same type as the original release. In the case of a release on the front page of a periodical print product or on the intro page of a website, it is sufficient to refer on the front page or on the home page to the page inside containing the counter-statement or to quote a link leading to the counter-statement. The reference must clearly identify the object of the counter-statement and the circumstance that it is a counter-statement, and contain the name of the person concerned if it had been mentioned in the original release. If the release was part of a heading, an equivalent news value is given also if the heading of the counter-statement or the reference occupy the same amount of space as the original heading concerned. For release of replies to information given in headings or on front pages of periodical print products or on intro pages of websites, instead of the word "counter-statement" (Entgegnung) may also be used the words "representation to the contrary" (Gegendarstellung) or, in connection with the name of the person concerned, the expression ".....replied".

(5) For publication in a broadcast or other technically equivalent media, the text shall be read by a speaker. If a station has broadcast a release repeatedly, it is sufficient to broadcast the counter-statement or subsequent information one single time at a time when it has the maximum news value.

(6) A counter-statement shall be released in the form of a still or moving picture if the original information also had been released in images and the legal protection to be achieved by the counter-statement can only be achieved in this manner of publication.

(7) The publication shall be without restrictions or omissions. Any addition shall be clearly offset.

(8) The media owner or the editing department shall without delay inform the person concerned about the date, issue or programme of the publication of the counter-statement or subsequent information, or if the publication is refused.

Court procedure

§ 14. (1) If the counter-statement or subsequent information is not published duly or not at all, the person concerned may within a

six weeks' period file a request in court against the media owner as opponent, for an order of the court to publish the counter-statement or the subsequent information. Such term begins with the date on which the person affected has received the written information of the refusal to publish or on which the counter-statement or subsequent information has not been duly published or should have been published at the latest.

(2) A request under para 1 is to be filed with the court indicated in §§ 40, 41 para 2. A single judge shall hear and decide in first instance.

(3) In the proceeding on a request under para 1, the applicant has the rights of the plaintiff in a private prosecution, the opponent those of the defendant. § 455 para 2 of the Code of Criminal Procedure shall be applied. In addition, for the proceeding on a request under para 1, unless not provided otherwise below, the provisions of the Code of Criminal Procedure 1975 for a proceeding in a private prosecution case shall apply accordingly, with the proviso that a delegation is admissible only in the continued proceeding (§ 16).

(4) The court shall without delay serve the request on the opponent, requesting him to notify the court in writing within five working days of any objections and evidence, otherwise the request shall be granted. Any objections shall be served to applicant for a counter-statement and submission of any evidence within a five days' term.

§ 15. (1) Failing any objections within the term prescribed by law, the single judge shall decide by order without hearing within five working days after expiry of the term. The request shall be granted unless it is obviously not justified. An appeal to the next instance is possible against the decision of the single judge. The appeal has no suspending effect.

(2) If the opponent without his or his representative's fault was prevented by unavoidable circumstances to submit objections in due time, reinstatement in the previous situation is to be granted upon his request; § 364 Code of Criminal Procedure is to be applied accordingly with the proviso that application for reinstatement is to be filed within five working days from receipt of the decision according to para 1 and that on such reinstatement the same court shall decide.

(3) In case of any objections the court shall decide on the application within fourteen days of receipt of the counter-statement or after expiry of the term set therefor, by judgement after a public oral hearing. Plaintiff may in any case request exclusion of public audience if facts of the strictly personal sphere will be discussed.

(4) It is the opponent's responsibility to submit evidence that there was no duty for publication. In case the opponent brought forward an objection to the effect that the contents of the counter-statement are not true, such objection does not prevent a decision on partial or complete publication of the counter-statement, if the evidence offered cannot be taken within the term set for the decision or not at all or is not sufficient proof that part or all of the counter-statement is untrue.

(5) The decision can be appealed against only to the extent it does not concern the decision on the objection of the counter-

statement being untrue. To the extent that the decision was for publication of the counter-statement or subsequent information, the appeal has no suspending effect.

Subsequent continuation of the proceeding

§ 16. (1) Inasmuch as the court, in its decision according to § 15 para 3, also decided on the objection that the counter-statement was not true, the proceeding shall be continued on request of applicant or opponent. The application shall be filed within six weeks from the date the judgement became legally effective. The continuation of the proceeding shall be restricted to the objection of the untrue counter-statement, as well as the decision reserved and the fine; new evidence may be submitted with regard to the items mentioned. After a public oral hearing a judgement shall be rendered on the application filed.

(2) If the continuation of a proceeding results in the fact that the request for publication would have been to be rejected in part or in full, the former decision is to be declared repealed and the applicant, if he has published the counter-statement, upon request to be authorized to publish within an adequate term those parts of the judgement corresponding to § 13 in a form whose publication is required for the information of the public. The decision shall state which of its parts must be published. For this purpose, the court may, for better comprehension of the substance of the decision and limiting the volume of the publication, substitute the wording of parts of the sentence by a concise presentation.

(3) In case of a decision according to para 2, applicant shall be imposed a payment of an adequate amount including the cost of the publication of this judgement as well as of the release published on basis of the former decision and the reimbursement of the cost of the proceeding to the opponent. Upon request a decision is to be rendered on the amount of these costs to be paid within a term of fourteen days. In exceptional cases the court may reduce the fee due for the publication in its discretion and fix a longer payment term, however not exceeding one year. The decision constitutes a title for execution in terms of §1 of the Enforcement Code.

Publication ordered by the court

§ 17. (1) The court shall order publication of a counter-statement or a subsequent information if it has wrongly not been duly published or not at all. If particular parts of the counter-statement or the subsequent information do not comply with the requirement by law, the court shall decide which parts of the counter-statement or of the subsequent information are to be published. If parts of the counter-statement or the subsequent information do not comply with the requirement by law, however if they can be improved by modifying their wording or their contents, the court shall direct applicant in the hearing to improve the counter-statement or subsequent information and subsequently decide that it be published in such improved form. If no decision for publication has been rendered, the respective application shall be rejected.

(2) If a decision has been rendered for publication in improved form and there are doubts as to the wording of the release, the court shall, upon request, make the wording available to the opponent in writing.

(3) The publication ordered by the court shall be made by applying § 13 correspondingly.

(4) If on the basis of a decision in first instance a counter-statement or a subsequent information has been published and an appeal lodged against such decision is granted in full or in part, the opponent shall, upon request, be authorized to publish within an adequate term those parts of the decision on the appeal corresponding to § 13 in a form whose publication is required for the information of the public. The decision shall state which of its parts must be published. For this purpose, the court may, for better comprehension of the substance of the decision and limiting the volume of the publication, substitute the wording of parts of the sentence by a concise presentation.

(5) In addition, the court of appeal shall sentence applicant to pay the cost for such publication of the counter-statement or subsequent information obtained in an unjustified way and of the publication of the decision on the appeal. Upon request a decision is to be rendered on the amount of these costs to be paid within a term of fourteen days. In exceptional cases the court may reduce the amount due for the publication at its discretion and fix a longer payment term, however not exceeding one year. The decision constitutes a title for execution in terms of §1 of the Enforcement Code.

Imposition of a fine

§ 18. (1) Upon applicant's request, a fine is to be imposed on the opponent if the counter-statement wrongly has not or not duly or not in due time been published, unless neither the media owner nor such agent in charge of publishing it is at fault. Proof of this fact is the responsibility of the opponent.

(2) The decision on the request for publication of the counter-statement shall also contain the ruling on the fine. If however an objection has been raised under § 15 para 4 second clause, to the effect that the contents of the counter-statement were untrue, the decision on the fine requested is to be reserved to the decision in the possible continuation of the proceeding, unless the request was to be rejected for other reasons. The court shall decide on the fine for delayed publication by applying § 14 para 4 accordingly. An appeal to the next instance is possible against the decision to impose a fine.

(3) The amount of the fine depends on the severity of the fault, the scope and the effect of the publication of the facts as well as the volume of the circulation; the preservation of the economic basis of the media owner is to be taken into account. In cases of delayed publication and whenever the fine is the result of a decision in a proceeding under § 15 para 1, the fine must not exceed 1000 euros, otherwise 5000 euros.

(4) For payment of the fine a term of fourteen days shall be determined. The award constitutes a title for execution in terms of § 1 of the Enforcement Code.

Cost of the proceeding

§ 19. (1) The cost of the proceeding shall be borne by the opponent if applicant's request for publication has been fully granted.

(2) The court shall decide at reasonable discretion who shall reimburse to what extent the cost of the proceeding, if

1. the decision is for publication of the counter-statement or the subsequent information after corrections;

2. the decision is for only a part of the counter-statement or the subsequent information;

3. the request for publication is rejected because the counter-statement or subsequent information or an equivalent editorial correction, amendment or information (§ 12 para 3) have been duly published, applicant however had not been informed about it before filing the application.

(3) In all other cases the cost of the proceeding shall be borne by the applicant.

(4) The aforestated provisions shall be applied accordingly in the procedure for subsequent imposition of a fine.

(5) Before the termination of the hearing the parties shall, upon request of the judge, submit invoices. The amount of cost reimbursement claims may be discussed at this point.

(6) The decision shall state which party has to reimburse to what extent any costs to the other party. The decision rendered may reserve the determination of the actual amounts to the written ruling. § 54 of the Code of Civil Procedure is applicable accordingly.

(7) Subparas 5 and 6 shall be applied accordingly in the appeals proceeding.

Enforcement of the publication

§ 20. (1) If the decision imposed the publication of a counter-statement or a subsequent information and such court order was not complied with in time or not duly, the court shall, upon request of applicant, after having heard the opponent, decide on imposing on opponent the payment of a fine to applicant. A fine of up to 1000 euros is payable for each issue published or for each daily broadcast or for each day on which the website was available for download from the date stated in § 13 para 1 (§ 17 para 3), in which a publication of the counter-statement or subsequent notice was due to have been effected. The amount of the fine is subject to § 18 para 3 first clause.

(2) The request must be filed within six weeks. Such term begins in the case of a publication not effected in due time on the last day on which the order of publication was to have been complied with, in the case of a publication not duly effected on the day of the publication, also in such cases when at this point the term allowed for publication had not yet expired. The request to impose a fine because the publication has not been duly effected shall be rejected to the extent it concerns faults which could have already been claimed by an earlier request filed by applicant.

(3) As soon as the counter-statement or subsequent information has been duly published, the court may, upon request of the opponent, in cases meriting consideration, waive a fine imposed or not yet paid. When this is the case, the cost of the enforcement proceeding shall nevertheless be imposed on the opponent.

(4) A complaint against court decisions regarding fines imposed or waived may be lodged with the higher instant court. If a fine has been imposed because the publication has not been duly effected and in case an appeal has been filed against the decision on the fine, no further fines shall be imposed for the duration of the appeals proceeding, if the publication in dispute has been effected in a way coming close to a publication effected correctly.

Restriction of the application to particular websites

§ 21. The §§ 9 through 20 shall apply only to websites containing information beyond the presentation of the personal sphere of life or the presentation of the media owner, suitable to influence public opinion.

Illicit coverage by TV and radio, movie shots and picture taking

§ 22. TV and radio recordings and broadcasts as well as movie shots and taking pictures during hearings in court and independent administrative panels of appeal are not allowed.

Illicit influence on a criminal proceeding

§ 23. The court shall impose a fine of up to 180 daily rates on anyone who comments in the media the presumed result of a criminal proceeding or the weight of a piece of evidence in a way which may influence the result of the criminal proceeding, either during the criminal proceeding in court after a charge raised against a defendant has become final, or during a proceeding before a judge in a court of first instance sitting alone or in a district court proceeding after the public hearing has been scheduled, before the judgement of first instance is pronounced.

Section Four Imprint, disclosure and identification

Imprint

§ 24. (1) Each media product shall indicate the name or the company of the media owner and of the producer as well as the business place of the publishing house and of the producer.

(2) Each periodical media product shall further indicate the address of the media owner and of the editors' department of the media undertaking as well as the name and address of the publisher. In case a media product contains a table of contents, such table shall also indicate where the imprint can be found.

(3) Each periodic electronic media must indicate the name or the company as well as the address of media owner and publisher.

(4) The media owner is liable for the publication of the notice. If the media owner is only a provider of services in terms of § 3 subpara 2 ECG (Electronic Commerce Act), Federal Law Gazette I Nr. 152/2001, the information on the imprint can be made available together with the information pursuant to § 5 Electronic Commerce Act.

(5) The information on the publisher pursuant to § 1172 f ABGB (General Civil Code of Austria) may be added to the imprint.

Disclosure

§ 25. (1) The media owner of each periodical media product shall publish each year the information stated in paras 2 through 4. In the case of periodical media products such publication shall be made adjacent to the imprint in the first issue, and each subsequent year within the month of January, unless there is no January issue, in which case it shall be published in the first issue of the respective calendar year. For broadcast programmes all above information shall either be permanently available on an easily retrievable teletext page or be published in the Official Gazette of "Wiener Zeitung" within one month after the broadcast starts and within the first month of each calendar year. In the case of periodically published electronic media the information shall either state under which web address the information will be permanently easily and directly retrievable, or such information shall always be added in the respective media. If the media owner is a provider of services in terms of § 3 para 2 Electronic Commerce Act, Federal Law Gazette I Nr. 152/2001, the information for disclosure can be made available together with the information pursuant § 5 Electronic Commerce Act.

(2) The data to be indicated are the name or company name, including the object of the company, residence, place of business or branch office, type and amount of the equity share holding of the media owners and, in the case of a company or an association, the executive officer(s), the members of the management board and of the supervisory council as well as such shareholders whose share or nominal capital exceeds 25 percent. If a company is a shareholder, also the shareholders of such company shall be indicated in accordance with the provisions of the first clause. In case an indirect share exceeds 50 percent, also such indirect shareholder shall be named in accordance with the aforestated provisions.

(3) If a person to be disclosed under the aforementioned provisions is also owner of another media undertaking or media service or a shareholder in such companies of the type and to the extent as stated in para 2, the name, object and place of business of such company shall also be stated.

(4) A declaration on the basic line represented by the periodical print product or any other periodical media shall also be published. In terms of § 2, any modifications of and additions to the basic line shall not become effective before being published.

(5) To a website containing no information exceeding the presentation of the personal lifestyle or the presentation of the media owner, being suitable to influence public opinion, para 2 shall apply with the proviso that only the name or the company,

possibly the object of the business, as well as the residence or the registered address of the media owner are to be indicated. Paras 3 and 4 shall not apply to such a website.

Identification of releases published against payment

§ 26. Announcements, recommendations as well as other features and reports for whose publication a payment is received must be identified in periodically published media as "advertisement", "paid insertion" or "advertising", unless design or arrangement exclude any doubts that the publication has been made in return for payment.

Administrative offence

§ 27. (1) Any person who

1. does not or not in due time comply with a duty to publish an imprint or data requested in § 25 paras 2 and 3 or publishes wrong or incomplete data or violates his duty to give information;

2. is the media owner or agent responsible for the publication of announcements, recommendations, other articles and reports violating the provisions of § 26,

commits an administrative offence and is liable to a fine of up to 2180 euros imposed by the district administration authority or the federal police authority whenever having jurisdiction.

(2) Regional jurisdiction in cases of violation of § 24 depends on the place of production, otherwise the domicile of the media company, and if the media product is not distributed by a media company, the domicile of the publishing house.

Section Five

Provisions of penal law

Responsibility under media law

§ 28. Responsibility under penal law for media contents offences is governed by the general penal laws, unless provided differently hereinafter.

Application of journalistic diligence

§ 29. (1) The media owner or a copy editor is not punishable for a media contents offence for which the proof of truth is admissible, not only if the truth of the statement has been proved but also in such cases if the public had a predominant interest in the publication and, also in application of the journalistic diligence required, there was sufficient reason to take the statement for true. A media contents offence concerning the strictly personal sphere of life exempts the media owner or a copy editor from punishment only in such cases when the statement is true and directly connected with public life.

(2) Such evidence shall be taken only if the media owner (publisher) so invokes. In cases of para 1 clause 1, the court shall

admit the proof of truth offered by defendant also in such cases when it considers the duty of journalistic diligence as having been complied with.

(3) If defendant is acquitted only on basis of the conditions under para 1, the court shall decide, in corresponding application of § 34 for publication of the fact that no attempt has been made to prove the truth or such proof has failed, that defendant shall assume the cost of the penal proceeding including the cost of the respective publication.

(4) §§ 111 para 3 and 112 of the Criminal Code shall not be applied.

Reporting on Parliament

§ 30. True reports on debates in public sessions of the National Council, the Federal Council, the Federal Assembly, a Laender Parliament or a committee of any of these general representative bodies are free from any consequences.

Protection of editorial confidentiality

§ 31. (1) Media owners, editors, copy editors and employees of a media undertaking or media service as witnesses in a proceeding before court or an administrative authority have the right to refuse answering questions concerning the person of an author, sender or source of articles and documentation or any information obtained for their profession.

(2) The right as stated in para 1 must not be by-passed by requesting the person enjoying this right to surrender documents, printed matter, image, sound or data carriers, illustrations or other representations of such contents or confiscating them.

(3) The extent to which tapping of telecommunications of subscribers who are media undertakings or optical and acoustical observation of persons with technical devices on premises of a media undertaking are admissible, is governed by the Code of Criminal Procedure.

Statute of limitations

§ 32. The term for lapse of time due to the statute of limitations for a media contents offence starts on the date when domestic distribution started; § 58 para 1 of the Criminal Code shall not apply. The statutory period of limitation is one year; if the offence is subject to a sentence of imprisonment exceeding three years, such period shall be governed by § 57 para 3 of the Criminal Code.

Withdrawal from circulation

§ 33. (1) A sentence for a media contents offence shall, on request of the prosecution, include the withdrawal of the media products intended for circulation or the deletion of the parts of the website constituting the penal act (withdrawal). The same shall

apply in the case of acquittals under § 29 para 3, notwithstanding § 446 Code of Criminal Procedure.

(2) Upon request of the prosecution or the party authorized for prosecution, withdrawal shall be decided in a separate proceeding if in a media the contents of an offence had been established and the prosecution of a particular person is not possible, has not been requested or is not being maintained or a judgement is not possible for reasons excluding punishment. In case defendant would not be punishable after having submitted proof of truth, such proof may, in accordance with § 29, also be submitted by the media owner as party (§ 41 para 6).

(2a) Withdrawal shall not be admissible if a statement of a third party in terms of § 6 para 2 subpara 4 has been reproduced.

(3) The right of a person authorized for private prosecution to request withdrawal in a separate proceeding expires after six weeks to be counted from the day when he obtained knowledge of the offence and of the fact that it is not possible to prosecute or convict a particular person.

(4) Instead of a withdrawal a media owner may request and be ordered to see to it within an adequate term to be imposed on him - by removing or deleting parts or in any other suitable manner - that the parts causing the offence will have disappeared in the case of further distribution of the media products.

(5) If the judgement in a separate proceeding calls for withdrawal, the media owner shall bear the cost of the proceeding.

Publication of the sentence

§ 34. (1) The sentence for a media contents offence shall, upon request of the public prosecution, call for the publication of such parts of the sentence which are required for informing the public on the offence and its punishment. The decision shall indicate which parts of the sentence are to be published. For this purpose the court may, to the extent this appears recommendable for easier understanding of the contents and to reduce the volume of the publication, replace the wording of parts of the decision by a concise presentation.

(2) In case of a defamation, an offence against the honour or if a punishable action concerns circumstances or facts of private or family life, publication of the sentence may be decided only with the consent of the injured party, even if no authorization was necessary to prosecute the offence or if such authorization has already been given.

(3) Upon request of the public prosecution or the person authorized to prosecute, publication shall be decided in a separate proceeding if in a media the contents of an offence have been established and the prosecution of a particular person is not possible, has not been requested or is not being maintained or a judgement is not possible for reasons excluding a punishment. § 33 para 2 last clause and para 3 shall be applied.

(3a) Publication of the sentence is not admissible if a statement of a third party in terms of § 6 para 2 subpara 4 has been reproduced.

(4) If the media contents offence has been committed in a periodical media product, the sentence shall be published in such media by applying § 13 accordingly, and the term for the publication

begins as soon as the sentence is final and served. § 20 shall apply accordingly to the enforcement.

(5) Publication in another periodical media product shall be decided if the periodical media product containing the media offence does no more exist or if the offence has been committed in a non-periodic media product or in a foreign media product. The cost of the publication of such a sentence are part of the cost of the penal proceeding. § 46 shall govern the enforcement.

(6) If the judgement in a separate proceeding calls for publication of the sentence, the media owner (publisher) shall bear the cost of the proceeding.

Liability

§ 35. (1) The sentence for a media contents offence shall impose the joint liability of the media owner of a periodical media product with the person sentenced to the payment of the fine and the cost of the proceeding, including the cost of the publication of the sentence.

(2) If after the pronouncement of a sentence expressing such liability, or of a sentence in a separate indemnity proceeding there will be a change in the person of the media owner, the new media owner shall be jointly liable with the former one.

(3) A substitute imprisonment sentence (§ 19 para 3 Criminal Code) shall only be enforced if the fine imposed on the media owner cannot be enforced.

(4) No liability under § 1 is given if a statement of a third party in terms of § 6 para 2 subpara 4 has been reproduced.

Confiscation

§ 36. (1) The court may order the confiscation of the stock of a media product ready for distribution or the deletion of the parts of the website constituting the penal act (confiscation) if the negative consequences of the confiscation will not unreasonably outweigh the interest of protection of the right which is the reason of the confiscation. The confiscation is in any case inadmissible if the interest of protection of the respective right can also be satisfied by publication of an information on the criminal procedure instituted.

(2) A confiscation requires that a criminal proceeding or a separate proceeding is being conducted because of a media contents offence or is being conducted simultaneously, and that the prosecution or applicant expressly requested the confiscation in the separate proceeding.

(3) The decision ordering the confiscation shall state which passage or presentation of the media product and which suspected offence has been the reason for ordering the confiscation. § 33 para 4 shall be applicable accordingly.

(4) A decision on a confiscation may be appealed with the next higher instance of the courts. The appeal has no suspending effect.

(5) A repeated confiscation of the same media product for a different publication upon request of the same authorized person is not admissible.

Enforcement of the withdrawal and confiscation of websites

§ 36. (1) In case a sentence imposing deletion of the parts of the website constituting the penal act (confiscation) or the deletion of the parts of the website constituting the penal act is ordered (confiscation), the media owner shall be ordered to comply with the order of the court within an adequate term to be set for such compliance on his part. The media owner shall without delay the prosecutor or the applicant that the parts of the website constituting the penal act have been deleted.

(2) If such court order is not being complied with in due time or not being complied with adequately, a fine shall be imposed on the media owner to be paid to the prosecutor or to the applicant upon the prosecutor's or applicant's motion in the independent proceeding, after the media owner has been heard. A fine of up-to 2000 euros shall be due for each day on which the parts of the website constituting the penal act continue to be available for download after expiry of the term set by the court. The amount of the fine shall be determined in accordance with the weight of the penal or independent proceeding, the significance of the publication constituting the penal act and the personal and financial circumstances of the media owner. § 20 paras 2 through 4 shall apply accordingly.

Publication of information on the proceeding

§ 37. (1) Upon request of the prosecution or of the applicant in a separate proceeding, the court shall order the publication of a short information on the proceeding instituted, if there is reason to assume that in a media the contents of an offence have been established. The publication may also contain a representation on the merits of the case, to the extent necessary to inform the public accordingly.

(2) An order under para 1 is inadmissible if confiscation is ordered.

(3) §§ 34 and 36 para 4 shall apply accordingly.

Ban on distribution and publication

§ 38. (1) For the time of the confiscation, any further distribution of the media products in a version making the offence perceivable, as well as re-publication of the passage or representation which is reason for the suspected offence, are prohibited.

(2) Anyone who distributes media products in violation of para 1 or publishes the contents which caused the confiscation is subject to being fined by the court up to 90 daily rates.

Compensation for unjustified confiscation

§ 38a. (1) If the court revokes the confiscation without imposing a sentence or imposes a judgment for withdrawal in an independent proceeding, the media owner is entitled to claim damages from the private prosecutor or the applicant for the prejudice suffered due to the confiscation and the ban of distribution. If the termination

of the proceeding is based on a settlement by agreement, the private prosecutor or applicant is only liable to the extent this has been mutually agreed upon.

(2) Damages under para 1 shall be claimed within six weeks after the penal proceeding or the independent proceeding has been terminated with legal effect. Within two weeks the court shall serve the application to the private prosecutor or the applicant for counter-statement. The court shall determine by order at its own discretion the amount of the damages (§ 273 Civil Procedure Code) and determine a period of 14 days for compliance. An appeal to the next instance is possible against such decision within 14 days. The appeal has suspensive effect. The order on the award of damages is a title of enforcement in terms of § 1 EO (Enforcement Code).

Indemnity for cost of publication

§ 39. (1) If a notice under § 8a para 5 or under § 37 has been published and the proceeding is terminated without imposing a sentence, if a decision for confiscation or publication of the decision in the independent proceeding is rendered or if applicant is awarded damages, the media owner may apply to be authorized to publish a short respective message in a form complying with § 13. Such application shall be filed within six weeks after termination of the proceeding with legal effect. The media owner is entitled to claim from the private prosecutor or from the applicant compensation of the cost of such publication as well as of the cost of the publication of the message under § 8a para 5 or under § 37. The claim for compensation of cost for a publication under § 8a para 5 or under § 37 shall be filed within six weeks after termination of the proceeding with legal effect, for a publication, the claim for publication under clause 1 within six weeks after publication of the notice on the outcome of the proceeding. In any other case § 38a para 2 shall apply. If the termination of the proceeding is based on a mutual agreement, the private prosecutor or the applicant shall bear the cost of publication only to the extent this has been mutually agreed upon.

(2) If a notice under § 8a para 5 or under § 37 has been published and a decision for withdrawal or publication or the decision is rendered, and a direct broadcast in terms of § 6 para 2 subpara 3 has been effected or availability has been given on a website in terms of § 6 para 2 subpara 3a, the media owner may file to be authorized to publish a brief notice to this effect in a form corresponding to § 13. Such application shall be filed within six weeks after termination of the proceeding with legal effect. The media owner is entitled to claim against the author of the media contents offence compensation of the cost of such publication, the publication of the notice under § 8a para 5 or under § 37, as well as of the publication of the decision. Such compensation shall be claimed under civil law proceeding.

(3) For messages on the outcome of the proceeding § 34 para 5 shall apply accordingly.

Territorial jurisdiction

§ 40. (1) For penal proceedings for a media contents offence, for independent proceedings (§§ 8a, 33 para. 2, 34 para. 3) as well as for proceedings on a counter-statement or a subsequent message (§§ 14 ff), territorial jurisdiction shall rest with the court of the district of the residence, the stay or the registered address of the media owner. If the imprint does not correctly disclose these data, territorial jurisdiction also rests with the court of the district containing the place indicated in the imprint.

(2) If the places indicated in para 1 are located abroad or if they cannot be retrieved, the relevant place shall be such place out of which the media has first been distributed, broadcast or made available for download for the domestic market, if also such place is missing, then it shall be any place at which it was possible to distribute, receive or download the media on the domestic market.

(3) If it is a case of a movie picture presented at a number of places, territorial jurisdiction shall rest with any court in the district where the movie has been presented.

Supplementary procedural provisions

§ 41. (1) For the penal proceeding regarding a media contents offence and separate proceedings (§§ 8a, 33 para. 2, 34 para. 3) the provisions of the Code of Criminal Procedure 1975 apply, unless provided otherwise hereinafter.

(2) For any proceedings as named in para 1, jurisdiction shall be with the regional court in charge of penal proceedings.

(3) In the proceedings named in para 1, a single judge will sit in the court of first instance, if according to the kind and extent of the punishment applicable a district court would have jurisdiction. It shall also have jurisdiction instead of a jury trial or a trial of professional and lay judges for trial and decision in a separate proceeding.

(4) § 455 para 2 of the Code of Criminal Procedure shall be applicable in every proceeding before a single judge of the court of first instance.

(5) There is no pre-trial investigation in the proceeding on basis of a private penal action and in the independent proceeding (§§ 8a, 33 para. 2, 34 para. 3). Decisions otherwise to be taken by the panel of judges under §§ 485 and 486 Code of Criminal Procedure shall be taken by the single judge. The public prosecutor or the applicant may appeal a decision for dismissal of the proceeding with the next instance court. However, in cases of § 485 para 1 subparas 4 through 6 Penal Proceedings Code any decision shall be rendered after a public oral hearing. In a proceeding on basis of a private penal action and in an independent proceeding, the court may waive the hearing in such cases, where the private prosecutor or the applicant expressly waive it.

(6) In the proceedings according to para 1 the media owner shall be summoned to be present in the public hearing. He shall have all rights of a defendant; in particular he has the right to bring forward all evidence in his defence as a defendant and to appeal the sentence on the merits of the case. In case he does not appear in court, the proceeding and the rendering of the decision will not be

suspended; also, he cannot appeal a decision rendered in his absence.

(7) The decisions on the withdrawal, the publication of the decision and the liability constitute parts of the sentence and can be contested by an appeal in favour or in detriment of the person sentenced or the media owner.

Authorization to prosecute

§ 42. If a punishable offence touches the honour of a periodically published media product, and no particular person can be identified as being addressed or affected, the publisher is authorized to institute criminal proceedings.

Section Six Library copies

Obligation to offer and deliver copies of print media products

§ 43. (1) A number of copies, to be determined by administrative regulation, of each print media product published or issued on the domestic market, shall, by the media owner

1. be delivered at his expense to the Austrian National Library and the university, study or Laender libraries as determined by administrative regulation and

2. be offered and, if so requested within a one months' period, delivered at his expense to the library of Parliament and the administrative library of the Federal Chancellery.

(2) The obligation to offer and deliver under para 1 shall be the responsibility of the producer of a print media product if it is published and issued abroad, however produced in this country.

(3) In the case of periodically published print media products, the duty to offer is complied with if a permanent subscription is offered on occasion of the first issue.

(4) In determining the libraries and the number of copies, the tasks of filing and of information and the interests of science, research, education and teaching as well as the federal structure of the Republic of Austria shall be taken into account. By these criteria, the delivery of certain types of print media products of the kind described in § 50 para 4 may be requested by the Austrian National Library because of its information content reaching beyond the immediate daily need, and print media products from certain sectors or of a certain type may be exempted from having to be delivered if not needed in fulfilment of tasks. The number of copies of periodical print media products must not exceed twelve, of other media not more than seven.

Obligation to offer and deliver copies of other media products

§ 43a. (1) Also other media products, with the exception of sound carriers and carriers of moving pictures (movies or cinematographic products) are subject to the obligation to offer and deliver copies according to § 43. Media products which, as electronic data carriers

through technical processing of printed products contain also representations in word, sound or moving pictures besides written data or still images, are subject to media owner's (publisher's) duty to offer and deliver copies.

(2) The Federal Chancellor may, in co-ordination with the Federal Minister for Education, Science and Culture, determine by regulation in detail the categories of media products subject to the obligation to offer and deliver copies.

(3) If a media product, due to its character, is not yet covered by the regulation in terms of the preceding paragraph, the Federal Chancellor, after having heard the Federal Minister for Education, Science and Culture, shall determine upon request of the party possibly obligated or the possible authorized recipient, whether there is an obligation to deliver or offer copies as per para 1, as the media product may technically be considered, from its presentation and from the way it is being used, as a follow-up product of a print media product.

(4) § 43 para 4 is applicable, however delivery of not more than five copies may be requested.

Delivery and reimbursement

§ 44. (1) The media owner shall comply with the duty to deliver according to § 43 para 1 subpara 1 and § 43a within one month after the start of the circulation, in cases of § 43 para 2 within one month after production. The same is applicable to the duty to deliver according to § 43 para 1 subpara 2 and § 43a; copies requested by libraries shall be delivered within a further month from receipt of the request.

(2) In cases of § 43 para 2, the delivery or forwarding of copies of the kind as supplied by the manufacturer is sufficient. The same applies to media products according to § 43a.

(3) If print media products with a retail price exceeding 145 euros are not returned within six weeks, the authorized recipient shall reimburse 50 percent of the retail price. For media products consisting of two or more separately sold parts, the reimbursement shall be effected for each one of these parts having a retail price exceeding the aforementioned limit.

(4) If print media products with a retail price exceeding 72 euros are not returned within six weeks, the authorized recipient shall reimburse 50 percent of the retail price. For media products consisting of two or more separately sold parts, the reimbursement shall be effected for each one of these parts with a retail price exceeding the aforementioned limit. If other media products with a retail price not exceeding 72 euros are not returned, the authorized recipient shall reimburse to the party obligated against proof of payment any expense such party incurred for license fees paid to third parties.

Enforcement

§ 45. (1) If library copies are not being delivered or offered in due time or if the request to forward the copies offered is not complied with in due time, the authorized recipients may request the issue of a ruling by the authorities indicated in para 2, to the

effect that those obligated under § 43 or § 43a are ordered to deliver accordingly.

(2) Anyone who does not comply with the duty to deliver or offer under § 43 or § 43a, commits an administrative offence punishable with a fine of up to 2180 euros by the district administration authority having jurisdiction for the place of publication or of production, or by a Federal police authority in case it has local jurisdiction.

Section seven Publication of instructions and decisions

Obligation to publish

§ 46. (1) Periodic media products publishing advertisements are obligated to publish

1. public appeals and instructions of Federal and Laender authorities in cases of crises and emergencies within the framework of their technical possibilities and without delay

2. court judgement decisions imposing their publication in the respective media product, up to the date stated in § 13 para 1, in the complete edition, against payment of the usual advertisement rate.

(2) Only such court decisions referring to a broadcast in a programme of the respective station shall be published over the radio. To the extent that provisions of the Federal law, being the basis for a decision to request publication, do not provide otherwise, the publication shall be read in a broadcast within eight days after forwarding the text to the media undertaking. § 5 of the Federal Act, Federal Law Gazette No. 397/1974 remains unaffected.

(3) The publication of court decisions shall be effected without any additions or omissions. Any addition shall be clearly offset. § 26 does not apply to such publications. The media owner shall submit to the court deciding in first instance proof of having effected the publication within eight days from the day until which it had to be published under para 1 or 2.

(4) Any media owner who does not comply with such obligation to publish, commits an administrative offence and shall be punished with a fine of up to 2180 euros by the district administration authority having jurisdiction for the place of the registered office of the media undertaking or of the publishing house, or by a Federal police authority in case it has local jurisdiction.

Section Eight Regulations governing distribution

Distribution of periodical media products

§ 47. (1) Notwithstanding any restrictions resulting from other regulations of the law, periodical media products may be distributed both at permanent premises as well as by street sale, but not by door-to-door selling.

(2) Periodical media products must not be sold by persons under eighteen years of age in the street and in other public places, nor

may they be distributed free of charge by persons under fourteen years of age. The aforementioned restrictions do not apply to the sale of school magazines by persons over fourteen years of age.

(3) Each copy of a periodical media product offered for sale in public places must clearly show its price.

Posting print media products

§ 48. It is not necessary to seek approval of the authorities for posting a print media product or exhibiting or offering it for give-away in public places. The district administration authority, however, or the Federal police authority in its local area of jurisdiction, may, in the interest of public order, restrict such posting to certain places.

Administrative offence

§ 49. Anyone who violates the provisions of §§ 47 and 48, commits an administrative offence and shall be punished with a fine of up to 2180 euros by the district administration authority, or by a Federal police authority in case it has local jurisdiction.

Section Nine Scope of application

§ 50. §§ 1, 23, 28 through 42, 43 para 4, 47 para 1 and 2, 48 and 49 and in a case of para 4 of the subject provision also § 25 para 5, however not any other provisions of the subject Federal Act, are also applicable to

1. the media of foreign media undertakings, unless such media are completely or almost exclusively distributed in this country;

2. media products published by a foreign state and such media products edited or published by a diplomatic mission accredited or co-accredited in Austria, a consular representation established in Austria or a supra- or international institution of which Austria is a member maintaining official relations with it; the same shall apply to periodical electronic media published by the above named sources as well as for websites of such sources or facilities.

3. media products edited or published by the National Council, the Federal Council, the Federal Assembly, or a Laender Parliament or an authority, in performing tasks of the sovereign administration or jurisdiction, or distributed and made available for download in the case of periodical electronic media or websites, and identifiable as official, and as parts of media products identifiable as official, in case the aforesated prerequisites are applicable only to such parts;

4. school magazines as well as media used in public and private, social, cultural, scientific or religious life, in clubs, in business, within the scope of activities of an authority or a representation of professional interests or another comparable activity.

§ 51. In addition to § 50 subpara 1, the §§ 6 through 21, 23 as well as 28 through 42 shall apply to notices or presentations in a media with its registered address abroad (foreign media),

1. in case the media has been distributed, received or made available for download on the domestic market,
2. to the extent the party injured or affected was Austrian citizen at the time of distribution or had his residence or stayed within the country or other important Austrian interests have been violated and
3. to the extent such notice or presentation violated one of the following rights:
 - a. honour and economic reputation,
 - b. private and confidential sphere,
 - c. sexual integrity and self-determination,
 - d. security of the State, or
 - e. public peace.

ARTICLE II.

Right of the media to be heard for their opinion

The corporate bodies of media employees and employers authorized to enter into collective labour agreements shall be given an adequate term to comment on drafts of bills and regulations concerning the media scene.

ARTICLE III

Amendment of the Broadcasting Act

(1) (Note: Amendment of Federal Act, Federal Law Gazette No. 80/1975.)

(2) §§ 17 through 19 of the Federal Act dated 10th July 1974, Federal Law Gazette No. 394, on the Duties and the Establishment of the Austrian Broadcasting Corporation shall not be affected by §§ 2 through 5 of the subject Federal Act.

ARTICLE IV

Amendment of the Data Protection Act

(Note: Modification of the Data Protection Act, Federal Law Gazette No. 565/1978.)

ARTICLE V

Date of Legal Effectiveness

(1) This federal law shall become effective on 1st January 1982.

(2) After expiry of 31st December 1981 shall become ineffective, except for the restriction resulting from Article VI:

1. the Act concerning a number of amendments to the General Penal Law, Imperial Law Gazette No. 8/1863, to the extent it is still effective;
2. the Federal Act dated 7th April 1922, Federal Law Gazette No. 218, on the press;

3. the Amendment to the Criminal Code 1929, Federal Law Gazette No. 440, to the extent it is still effective.

(3) A regulation on basis of § 43 can already be issued as of the day following the official announcement of the subject Federal Act. It may not be made effective before the date stated in para 1.

ARTICLE VI Transitional Provisions

(1) Editors' agreements existing at the time when the subject Federal Act becomes effective shall not become ineffective for not having been entered into in the manner described in § 5 of the subject Federal Act.

(2) The provisions of the Federal Act dated 7th April 1922, Federal Law Gazette No. 218, on the Press as well of the Federal Act dated 10th July 1974, Federal Law Gazette No. 397, on the Duties and the Establishment of the Austrian Broadcasting Corporation, regarding replies, each as amended, shall apply also after the subject Federal Act has become effective, if the request for publication of the counter-statement has been filed before that date.

(3) If under §§ 27, 45 and 46 of the subject Federal Act an administrative authority has jurisdiction for prosecution of an offence until then punishable by the courts and if upon becoming legally effective the decision of first instance has not yet been rendered, the proceeding shall be transferred to the district administration authority having jurisdiction, or to a Federal police authority if it has local jurisdiction. The period between the date when the penal complaint was lodged until the date when the proceeding was transferred to the administration authority shall not be counted for the statutory period of limitation (§31 para 2 Administrative Penal Act 1950).

(4) §§ 23, 33 through 35 and 38 of the subject Federal Act shall also be applied to offences committed before the subject Federal Act has become effective, unless the provisions in force at the time of the offence were as a whole more favourable for the offender or if at the time of entering into force the decision in first instance has already been rendered.

(5) In the cases of paras 3 and 4 the procedure after repeal of the decision of first instance after an appeal or a reopening of the case shall be such as if the decision had never been rendered.

(6) To publications in media issued before expiry of 31st December 1981, §§ 29 para 2 and 30 of the Federal Act dated 7th April 1922, Federal Law Gazette No. 218, on the Press, as amended, continue to apply, in case the publication constitutes the contents of defamation, libel and slander and ridicule.

(7) §§ 29 through 32, 36, 37 and 39 through 41 of the subject Federal Act apply also to proceedings already pending at the time of its becoming effective with the proviso that the modification of jurisdiction of the courts due to the subject Federal Act shall have no influence on criminal proceedings already pending.

(8) Criminal proceedings pending under § 19 para 2 or § 22 (with regard to a violation of § 20) of the Federal Act dated 7th April 1922, Federal law Gazette No. 218, on the Press, shall be dismissed without regard to the situation of the proceeding, as soon as the subject Federal Act becomes effective.

Article VIa
Final provisions to amendments

(1) Art. I §§ 43a, 44 and 45 as well as Art. VII as amended by Federal Act, Federal Law Gazette I No. 75/2000 become effective as of 1st September 2000.

(2) Art. I § 27 para 1, § 44 paras 3 and 4, § 45 para 2, § 46 para 4, § 49 as amended by Federal Act, Federal Law Gazette I No. 136/2001 become effective as of 1st January 2002.

Article VIa
Final provisions to amendments

(1)

(2)

(3) The §§ 1, 5, 6, 7, 7a, 7b, 7c, 8, 8a, 11, 12, 13, 14, 18, 20, 21, 24, 25, 27, 29, 31, 33, 34, 35, 36, 36a, 37, 38a, 39, 40, 41, 43, 44, 46, 50 and 51 of Art. I, Art. VIa, VIb and Art VII as amended by Federal Act, Federal Law Gazette I Nr. xxx/2005 shall become legally effective as of 1st July 2005.

Art VIb
Transitional provisions to amendments

(1) The §§ 6, 7, 7a, 7b, 7c, 8a, 13, 18, 20, 33, 34, 36, 36a, 37, 38a, 39, 40, 41 and 51 as amended by Federal Act, Federal Law Gazette I Nr. xxx/2005 shall apply only to notices or presentations distributed after the Federal Act, Federal Law Gazette I Nr. xxx/2005 has become legally effective.

Article VII
Execution

In charge of execution of the subject Federal Act shall be:

1. with regard to Art. I § 1 para 1 subpara 12, §§ 6 through 23, §§ 28 through 42 and § 46 paras 1 through 3 and § 51 as well as of Art VI paras 2 through 8 and Art. VIb the Federal Minister of Justice;

2. with regard to Art I §§ 2 through 5 and Art. VI para 1 the Federal Minister of Justice and the Federal Minister for Economy and Labour;

3. with regard to Art. I §§ 27, 45, 46 para 4 and 49 the Federal Minister of the Interior;

4. with regard to Art. I § 43a the Federal Chancellor in co-ordination with the Federal Minister for Education, Science and Culture;

5. with regard to Art. I §§ 47 und 48 the Federal Minister of the Interior and the Federal Chancellor;

6. with regard to Art. I § 50 the Federal Chancellor and the Federal Minister of justice;

7. with regard to Art. II the respective Federal Minister having jurisdiction and

8. otherwise, the Federal Chancellor.