It should be common knowledge that there is no such thing as “Media Law”. Media law is in fact a concept encompassing several distinct areas of law, each having its own characteristics. This is not only a theoretical exercise, but also a very important practical aspect of legal services in this field. To provide comprehensive legal services related to ‘media law’ requires expertise in many areas of law.

Media Law in Poland

This includes expertise in both public and private and in addition experience and knowledge of their interaction. In Poland we traditionally understand media law as comprising at least the following branches: law on radio and television (broadcasting law); press law covering the traditional paper publications but also new online sources and part of internet law, especially concerning liability for third party content. It is however impossible to leave aside parts of civil law, for example concerning defamation, privacy and comparable legal institutions important in day to day operations of many media businesses, intellectual property law, especially copyright because what it protects is standard media fare. Telecommunications law is crucial for many content and service providers. General tort and contract law are of course essential as well. All these elements are, from the perspective of the Polish legal tradition, quite distinct. Some are typical private law, often based on some general principles; others are pure public/administrative law with special public bodies created to supervise its enforcement. There are therefore myriad legal issues...
involved and the fact that Poland as a EU Member State is constantly confronted with developments of European law and the need for its proper implementation only adds another level of sophistication. It is fascinating but hard for beginners. Knowledge, experience and scope of expertise - these are the three prerequisites of good legal advice and support in this field.

**Television and Broadcasting**

Broadcasting of television and radio programs is regulated by the Broadcasting Act (literally: Radio and Television Act). There exists a special body called the National Broadcasting Council. Among its numerous competences the Council is inter alia responsible for controlling broadcasters and granting broadcasting licenses. Currently a lot of interest has been generated by the implementation of the Audiovisual Media Services Directive that has been carried out in several stages and still not in all aspects to a fully satisfactory result (in 2012 the European Commission has initiated proceedings against Poland for failure to implement the directive on time). The most controversial issue in Poland has been the scope of the new regulation of media services and the question whether, and if yes to what extent, it applies to internet websites such as blogs and other user-generated content. The National Broadcasting Council has deemed it necessary to publish a statement disproving these allegations. The purpose of the amendment has been to regulate the so-called non-linear services, i.e. mostly services on demand with the view that regulation should be technologically neutral and therefore should also apply to internet transmissions. However, although the definition of the audiovisual media service should make it clear that only services provided commercially are included, the definition of a media service provided in article 4 (1) of the Broadcasting Act is broader and has given rise to some controversies. One should nevertheless assume that reasonable interpretation will put these controversies to rest.

Another hot topic involving the Broadcasting Council - the scope of the must-carry and must-offer obligations - has been also caused by the difficulty of adapting the existing legislation to the requirements and challenges of the internet. Until 10 August 2011 Poland’s must-carry provisions applied only to cable operators, but after statutory amendment this obligation has been extended to all operators “retransmitting a programme service, with the exception of an entity that retransmits a programme service by digital terrestrial diffusion in multiplex.” (article 43 (1) of the Broadcasting Act). Moreover, according to article 43 (2) of the Broadcasting Act broadcasting organisations, whose programs are covered by the must-carry obligation may not refuse an operator that retransmits the programme service in the telecommunications network the consent for the retransmission of this programme service, and may not make such consent conditional upon payment of any remuneration, including in particular any fee for granting a licence for the use of the broadcast. The must-offer obligation has been introduced not only vis-à-vis the operators of cable and satellite platforms but applies to all who retransmit programs in “telecommunicat-
It is argued the internet is a “telecommunications network” itself in the meaning of the above mentioned definition. The National Broadcasting Council has taken the position that the must-offer obligation also covers broadcasting on the “open” internet. Furthermore, the National Broadcasting Council explained article 43 of the Broadcasting Act does not authorise broadcasters to demand (or make access to the program conditional upon) limiting the territorial reception of the program. Such approach would have far-reaching consequences because license contracts concluded by broadcasters exclude internet uses, especially in unprotected, universally accessible systems in order to avoid undermining the territoriality of the licensing schemes. There are, however, reasons to believe the interpretation of the law may alleviate these concerns.

Implementing the Audiovisual Media Services Directive has given rise to another set of issues for broadcasters, this time associated with product placement. Poland has decided not to waive the requirements resulting from article 11 (3) d.) of the Audiovisual Media Services Directive to clearly inform viewers of the existence of product placement and in particular to identify programs containing it even when the program in question has neither been produced nor commissioned by the media service provider or a company affiliated with the media service provider. This may be of course considered a legitimate choice made by the legislator, but it nevertheless complicates life for broadcasters who may not always be certain whether a program they have not produced or otherwise influenced its contents contains product placement at all.

If social and business media are to be believed the near future may belong to on-demand services and all the major players seem to seriously consider these options and improving their market offer. Although so far Poland has not been a great market for paid content available on demand, some claim this may be partly due to consumer preferences that may still evolve. As argument in favour of this claim it has been put forward that Poland has a very high percentage of population paying for access to television programs (through cable operators and satellite platforms). It is therefore not entirely unthinkable that this willingness to pay may be steered in another direction.

Press Law
Press law in Poland has its source in a relatively old legal act, the Press Law of 1984. Having in mind rather dramatic changes that have since that time taken place in Poland it would be easy to argue this is a regulation from another era. In truth, despite many shortcomings of the current law, it would be a serious exaggeration. The scope of press law, especially when it covers obligations and liability for media content, is much wider than traditionally understood printed media. It includes for example certain television and radio programs. The condition is that press must be a periodic publication. Because of various legal consequences (both beneficial and onerous) it has been strongly debated whether internet publications could be regarded as “press” for the purpose of applying Press law. The bone of
contention has been the periodical character - whereas it is easy to establish in the case of journals and magazines, internet publications undergo constant changes and are not periodical in the strict sense of the world. The prevailing view holds nevertheless (correctly) that internet publications may be press, at least if they are subject to significant overhaul in specific periods of time (e.g. daily). The fact that there are other, additional alterations, does not mean that a publication falls outside the definition of ‘press’. The Supreme Court joined this opinion in 2007 and has kept its course steady, so far. One of the results is that internet press may be subject to registration if it meets the definition of a “journal” or “periodical”.

Press often clashes with other participants of social and cultural life. Freedom of expression is not absolute in that it does not allow infringing another person’s legally protected interests such as reputation or privacy. Polish law deals with these extremely complicated problems in a two-pronged way. One path leads through civil law and the protection of the so-called personal interests (personality rights). If such interests (reputation and privacy among them) are infringed by the press, not only the author of the publication, but also the editor and publisher may be liable. It should be stressed that Polish courts have a lot of experience in these kinds of disputes. There are few (if at all) legal issues litigated with equal zeal in Poland and the body of court decisions has grown to a very respectable size.

Press Law offers another, independent way. Before June 2012 it provided for two instruments available to those who felt negatively affected by a press publication: a response and a correction, the difference being response was a statement on the merits answering unjustified critique and correction a statement rectifying false or imprecise information, without adding comments or evaluations. Since June 2012 only correction has remained. It has been explicitly stated in the amended legislation that electronic publications must also publish such corrections, if they meet the required statutory criteria.

Internet Liability
Since internet is becoming even more important every day a lot of media activity has shifted online. Apart from online equivalents of well-known media, technology has also generated new forms of expression, created by users themselves and often highly interactive. Such forms of expression have incalculable advantages but they are not risk-free and one of the major issues not only in Poland, but elsewhere in Europe, is the aggravated risk of infringements of legally protected rights such as infringements of intellectual property rights or defamation. Poland has implemented the safe harbours required by the e-Commerce Directive, but unfortunately many issues remain unclear, starting with the grounds of secondary liability of service providers. If safe harbor provisions exclude liability under certain conditions there should be something to exclude but theory and practice of secondary liability still seem not to have adequately evolved in Poland. It is probably worth noting that the Polish law has failed to implement two crucial features of the relevant EU regulations in this area. To
begin with, liability of host providers requires actual knowledge also with regard to claims for damages whereas directive 2000/31/EC only requires awareness of facts or circumstances from which the illegal activity or information is apparent. What is perhaps even more important, article 8 (3) of the Copyright Directive (2001/29/EC) and 11 3rd sentence of the Enforcement Directive (2004/48/EC) have not been implemented, either. It is therefore impossible to apply for an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right, when these intermediaries are themselves not liable for infringements.

**Intellectual Property and Unfair Competition**
The landscape of media law would not be complete without two branches of law that are of course undoubtedly deserving of their own detailed presentation: intellectual property law and unfair competition. The latter is of particular importance in Poland for advertising. Regulation of unfair or misleading advertising is part of unfair competition law and the unfair commercial practices in business-to-consumer relations (implementing Directive 2005/29/EC) have been regulated in a way modeled after unfair competition law. Usually in Poland there are two sources of disputes concerning advertising. One is the initiative of competitors who go to court to block advertising they consider unfair and detrimental to their interests, the other actions undertaken by the Office for the Protection of Competition and Consumers.

**Conclusion**
As in most jurisdictions, in Poland the scope of legal issues related to the media and therefore gathered under the roof of ‘media law’ is quite extensive. Our law office has had the opportunity (in fact many opportunities) to be involved in each of the above-mentioned aspects and in some more this short summary cannot include. One thing is certain - new issues and developments will continue to absorb the attention of the media and the lawyers who have chosen this area of practice.

**BIOGRAPHIES**
**Elżbieta Traple** is an attorney at law and partner at Traple Konarski Podrecki & Wspólnicy. Professor of Civil Law at the Jagiellonian University in Kraków. Specialises in civil law, intellectual property law and media law. Author of numerous publications in these fields.

**Tomasz Targosz** is an attorney at law and partner at Traple Konarski Podrecki & Wspólnicy. Assistant professor at the Chair of Intellectual Property Law at the Faculty of Law and Administration of the Jagiellonian University. Specialises in civil and business law, copyright law and new technologies law. Author of numerous publications in these fields. Speaker at conferences and training sessions in Poland and abroad.