MEMORANDUM

on

The Draft Law of the Republic of Armenia On Mass Media

by

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I. Introduction

This Memorandum analyses a copy of the government of Armenia's draft Law of the Republic of Armenia on Mass Media (draft Law) for compliance with international standards regarding the right to free expression. The comments are based on an official English translation of the draft Law.

ARTICLE 19 is of the view that the draft Law contains a number of positive elements, such as the protection afforded to confidential sources and the decision not to introduce a registration regime. Nonetheless, the most recent version of the draft Law has a number of shortcomings, including an overbroad definition of "mass media", a confusing system for awarding the right of refutation and the right of reply, and a discretionary and potentially chaotic accreditation regime. These problems and others are discussed in more detail below, following an overview of Armenia's international and constitutional obligations regarding freedom of expression.

II. International Standards

II.1 The Guarantee of Freedom of Expression

Armenia is a party to the *International Covenant on Civil and Political Rights* (ICCPR)[1] and became a Member State of the Council of Europe in 2001. Armenia ratified the *European Convention on Human Rights* (ECHR)[2] in 2002. Article 19 of the ICCPR and Article 10 of the ECHR protect freedom of expression in similar terms. Article 10(1) of the ECHR states:

> Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring licensing of broadcasting, television or cinema enterprises.

Freedom of expression is a key human right, in particular because of its fundamental role in underpinning democracy. For example, the European Court of Human Rights has repeatedly stated:

> Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man … it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'.[3]

II.2 Freedom of Expression and the Media

The guarantee of freedom of expression applies with particular force to the media, including the broadcast media and public service broadcasters. The European Court of Human Rights has consistently emphasised "the pre-eminent role of the press in a State governed by the rule of law."[4] It has further stated:

> Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.[5]

The Inter-American Court of Human Rights has stated: "It is the mass media that make the exercise of freedom of expression a reality."[6] The media as a whole merit special protection under freedom of expression in part because of their role in making public,

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[1] Adopted and opened for signature, ratification and accession by UN General Assembly Resolution 2200A (XXI), 16 December 1966, entered into force 3 January 1976.
[2] E.T.S. No. 5, adopted 4 November 1950, entered into force 3 September 1953.
[3] *Handyside v. United Kingdom*, 7 December 1976, Application No.5493/72, 1 EHRR 737, para. 49. Statements of this nature abound in the jurisprudence of courts and other judicial bodies around the world.
[4] *Thorgeirson v. Iceland*, 25 June 1992, Application No.13778/88, 14 EHRR 843, para. 63.
[5] *Castells v. Spain*, 24 April 1992, Application No. 11798/85, 14 EHRR 445, para. 43.
[6] *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory

> …information and ideas on matters of public interest. Not only does [the press] have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of 'public watchdog'.[7]

The European Court has furthermore stated that it is incumbent on the media to impart information and ideas in all areas of public interest:

> Whilst the press must not overstep the bounds set [for the protection of the interests set forth in Article 10(2)] … it is nevertheless incumbent upon it to impart information and ideas of public interest. Not only does it have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would by unable to play its vital role of "public watchdog.[8]

The Court has also held that Article 10 applies not only to the content of expression, but also to the means of transmission or reception.[9]

II.3 Independence of Media Bodies

In order to protect the right to freedom of expression, it is imperative that the media is permitted to operate independently from government control, so as to protect the free flow of ideas. This ensures the media's role as public watchdog and that the public has access to a wide range of opinions, especially on matters of public interest.

Under international law, it is well established that bodies with regulatory or administrative powers over both public service and private broadcasters should be independent and free from political interference. For example, in a preambular paragraph, the European Convention on Transfrontier Television states that Member States "[reaffirm] their commitment to the principles of the free flow of information and ideas and the independence of broadcasters".[10] The Committee of Ministers of the Council of Europe also considers the independence of regulatory authorities as fundamentally important. It has adopted a recommendation specifically on this, The Independence and Functions of Regulatory Authorities for the Broadcasting Sector,[11] which states in a preambular paragraph:

> [T]o guarantee the existence of a wide range of independent and autonomous media in the broadcasting sector…specially appointed independent regulatory authorities for the broadcasting sector, with expert knowledge in the area, have an important role to play within the framework of the law.

Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para. 34.

[7] *Castells, n*ote 5, para. 63.

[8] *Ibid.*, para. 43. See also *The Observer and Guardian v. UK*, 26 November 1991, Application No. 13585/88, 14 EHRR 153, para. 59; and *The Sunday Times v. UK (II)*, 26 November 1991, Application No. 6538/74, 14 EHRR 229*,* para. 65.

[9] *Autronic AG v. Switzerland,* 22 May 1990, Application No. 12726/87, 12 EHRR 485, para. 47.

[10] E.T.S. 132, in force 1 May 1993, as amended by the Protocol Amending the European Convention on Transfrontier Television, E.T.S. 171, in force 1 October 2000, Preamble.

[11] Recommendation R (2000) 23, adopted on 20 December 2000.

The Recommendation goes on to note that Member States should set up independent regulatory authorities. Its guidelines provide that Member States should devise a legislative framework to ensure the unimpeded functioning of regulatory authorities, which clearly affirms and protects their independence.[12] The Recommendation further provides that this framework should guarantee that members of regulatory bodies are appointed in a democratic and transparent manner.[13]

The Committee of Ministers of the Council of Europe's Recommendation on the Guarantee of the Independence of Public Service Broadcasting[14] provides additional guidance on this issue. This Recommendation provides that members of the supervisory bodies of publicly funded broadcasters should be appointed in an open and pluralistic manner[15] and that the rules governing the supervisory bodies should be defined so as to ensure they are not at risk of political or other interference.[16]

II.4 Restrictions on Freedom of Expression

The right to freedom of expression and information is not absolute; international law does permit limited restrictions on the right in order to protect various private and public interests. For example, Article 10(2) of the ECHR states:

> The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority or impartiality of the judiciary.

Restrictions must meet a strict three-part test.[17] International jurisprudence makes it clear that this test presents a high standard that any interference must overcome in the strictest sense. The European Court of Human Rights has stated:

> Freedom of expression, as enshrined in Article 10, is subject to a number of exceptions that, however, must be narrowly interpreted and the necessity for any restrictions must be convincingly established.[18]

First, the interference must be provided for by law. The European Court of Human Rights has stated that this requirement will be fulfilled only where the law is accessible and "formulated with sufficient precision to enable the citizen to regulate his conduct."[19] Second, the interference must pursue a legitimate aim. These are the aims listed in Article

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[12] *Ibid.*, Guideline I.
[13] *Ibid.*, Guideline II.
[14] Recommendation No. R (96) 10, adopted 11 September 1996.
[15] *Ibid.*, Guideline III.
[16] *Ibid.*, Guideline II.
[17] See, *Mukong v. Cameroon*, views adopted by the UN Human Rights Committee on 21 July 1994, Communication No. 458/1991, para. 9.7.
[18] See, for example, *Thorgeirson*, note 4, para. 63.
[19] *The Sunday Times v. United Kingdom*, 26 April 1979, Application No.13166/87, 2 EHRR 245, para. 49.

19(3) of the ICCPR and Article 10(2) of the ECHR. Third, the restriction must be necessary to secure one of those aims. The word "necessary" means that there must be a "pressing social need" for the restriction. The reasons given by the State to justify the restriction must be "relevant and sufficient" and the restriction must be "proportionate to the aim pursued."[20]

III. The Armenian Constitution

Freedom of opinion and expression is protected, subject to certain restrictions, by Article 24 of the Constitution of the Republic of Armenia, which states:

> Everyone is entitled to assert his or her opinion. No one shall be forced to retract or change his or her opinion.
>
> Everyone is entitled to freedom of speech, including the freedom to seek, receive and disseminate information and ideas through any medium of information, regardless of state borders.

Article 44 of the Constitution allows for the imposition of restrictions on both the freedom of expression and of opinion:

> The fundamental human and civil rights and freedoms established under Articles 23, 24, 25, 26,27 of the Constitution may only be restricted by law, if necessary for the protection of state and public security, public order, public health and morality, and the rights, freedoms, honor and reputation of others.

The language is similar to that employed in Article 10(2) of the ECHR, except that international law does not recognize the possibility of any restrictions being imposed on the freedom of opinion, as is apparently contemplated by the Armenian Constitution.

Two additional provisions in the Constitution impose potential restrictions on the exercise of the right to freedom of expression. The first sentence of Article 20 states:

> The gathering, maintenance, use and dissemination of illegally obtained information about a person's private and family life are prohibited.

The last half of Article 39 restricts the media's rights in the following terms:

> The presence of the news media and representatives of the public at a judicial hearing may be prohibited by law wholly or in part, for the purpose of safeguarding public morality, the social order, national security, the safety of the parties, and the interests of justice.

Articles 20 and 39 are inconsistent with international standards. There is no "necessity" requirement in Article 39, and yet there is no reason why this form of access to information – a right recognized as included within the ambit of freedom of expression – should be subject to a less stringent level of protection than other forms of expression. Furthermore, the privacy protection offered by Article 20 limits the exercise of the right

[20] *Lingens v. Austria*, 8 July 1986, Application No.9815/82, 8 EHRR 407, paras. 39-40.

to seek and disseminate information instead of declaring a right to privacy. This provision may be compared with Article 8 of the ECHR, which incorporates the three-part test:

> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Recommendations:
- The Constitution should not permit restrictions to freedom of opinion.
- Article 39 should be amended to include a necessity test.
- Article 20 should be amended to bring it into line with international standards.

IV. Analysis of the Law on Mass Media

IV.1 Basic Concepts and Definitions

Article 3 contains the definitions of terms employed in the draft Law. The definition of "mass media", "mass media resource", and "journalist" are highly problematic, and the problems are exacerbated by the inter-relatedness of these concepts.

First, "mass media" is defined as:

> ...the disseminating through media resources to the unlimited number of persons any urgent information on daily, weekly, monthly or annual basis concerning social events, as well as facts, events, circumstances, ideas, forecasts that have public importance and interest. Particularly, this shall include the commentaries, clarifications, opinions and conclusions on the information concerning the countries, organizations, government bodies, officials, any other persons of public interest, as well as the activities of such persons.

This definition is so broad that it will capture actors that employ "media resources" to communicate but which cannot be considered to be "media" in the traditional sense. For example, organizations like the Council of Europe, the Organization for Security and Co-Operation in Europe and many local and international nongovernmental organizations issue press releases, disseminate publications and use the Internet to relay information about their activities and events that would qualify as having "public importance and interest." Even individuals with personal web sites, or who engage in letter writing campaigns, will be caught by this definition. It is unreasonable to impose the obligations contained in the draft Law for the media on such a wide range of activities.

We recommend that any attempt to define mass media be based on circulation volume and the frequency and regularity of publication, and include clear exceptions for non-mass media activities such as those described above. The draft Law *does* require the distribution of a minimum of 100 copies as an element of the definition of printed mass

media resource, but this only addresses one medium and 100 copies is far too few to justify the imposition of the potentially onerous legal obligations contained in the draft Law. In the case of *Laptsevich v. Belarus*,[21] the UN Human Rights Committee held that a requirement to register to distribute 200 pamphlets was a breach fo the right to free expression. For similar reasons, we are of the view that the draft Law should only apply to media publishing monthly or more frequently.

Second, the definition of "mass media resource" includes print publications, radio and television broadcasts, and the Internet. It is well established that different regulatory approaches are required for different media in accordance with the guarantee of freedom of expression. As the European Commission of Human Rights has stated:

> Article 10 of the [European Convention on Human Rights] clearly distinguishes between the degree of control that the State may legitimately exert over broadcasting, television or cinema enterprises, precisely by regulating access to these commercial activities by licensing procedures in which a wider margin of discretion is left to the States, and control over forms of exercise of freedom of expression, including the press and other printed media, which are subject only to the limitations laid down in para.2 of Article 10.[22]

The Internet cannot be regulated in the same way as print or broadcast media. The Internet is clearly very different than either the print or broadcast media and any regulatory mechanism needs to take this into account. For this reason, ARTICLE 19 is of the view that the Internet should not be subject to specific statutory regulation, at least at the level of contents. The desirability of avoiding statutory content regulation on the Internet has achieved some recognition at the international level. For example, the Committee of Ministers of the Council of Europe adopted a Declaration in May 2003 which lays down a number of basic principles to promote the use of the Internet as a means of expression, including that States should encourage self-regulation of the Internet in relation to content.[23] The Declaration also states:

> The provision of services via the Internet should not be made subject to specific authorisation schemes on the sole grounds of the means of transmission used.[24]

The print and broadcast media also cannot be regulated in an identical manner as important considerations that apply to one do not apply to the other. For instance, in most, if not all, established democracies, the impetus to regulate broadcasting stems from the finite nature of the frequency spectrum, thus necessitating a competitive licensing process, whereas resource limitations of this sort do not apply to the print media.

Third, the definition of a jounalist includes: "an individual (natural person) who is a representative of a person conducting mass media activity and who is seeking, receiving, collecting, developing, preparing and issuing information on the basis of labor contract or another type of contract signed between them." Since the definition of "mass media" is so

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[21] 20 March 2000, Communication No. 780/1997.
[22] *Gaweda v. Poland*, Commission Report of 4 December 1998, Application No.26229/95, para.49.
[23] *Declaration on freedom of communication on the Internet*, adopted 28 May 2003, Principle 2.
[24] *Ibid.*, Principle 5.

broad, this definition will capture persons employed by non-media organizations. It would also capture non-journalists, such as lawyers, who represent mass media outlets. On the other hand, the definition excludes free-lance journalists that do not have an ongoing contract with any one media organization.

Recommendations:

- Any attempt to define the mass media should be based on circulation volume and the frequency and regularity of publication, with clear exceptions.
- The draft Law should not seek to treat all media in the same fashion. The Internet, in particular, should not be included in the definition of mass media and consideration should be given to providing for separate regimes for broadcasters and the print media.
- The definition of "mass media resources" should be amended to require a significantly higher circulation volume and a frequency of publication of at least once a month.
- The definition of "journalist" should either be removed from the draft Law or amended to cover only true journalists and to include free-lance journalists.

IV.2 Restrictions on Mass Media Activity

Three separate provisions in the draft Law set out the circumstances in which restrictions may legitimately be imposed on the dissemination of information by the mass media. Article 4(2) provides that no one may compel or prevent the dissemination of information by the mass media "except in cases specified by law." Article 4(5) states:

> The freedom of dissemination of media resource may be restricted in a procedure stipulated by law: during the war situation, in the event of immediate danger threatening the constitutional order or in a state of emergency.

Article 8(4), states that:

> It shall be prohibited to disseminate such information that will damage state and public security in a democratic society, protecting public order, public health and ethics, rights and freedoms of others, their dignity and reputation, the reputation and impartiality of justice.

Article 8, which addresses the "abuse of the freedom of speech", states at paragraph (2) that it is prohibited to publish secrets, as prescribed by law, "or information containing propaganda and advocacy of criminally punishable actions."

<u>Analysis</u>

None of these provisions satisfies international or constitutional standards regarding restrictions on freedom of expression. Presumably, Article 4(2) is to be read in conjunction with the other two provisions. If not, the implication would be that any restriction is permissible so long as it is specified in legislation. This outcome is clearly inconistent with the constitutional requirement that restrictions satisfy a legitimate aim and be "necessary in a democratic society". The other two provisions also fail to include a necessity test.

Furthermore, there is no obvious rationale for having restrictions spread across different provisions. Article 4(5), which is aimed at protecting national security interests, and Article 8(4) should be consolidated in order to simplify the law.

Regarding the publication of secrets, the validity of Article 8(2) depends on the legal definition of secret. Since it constitutes a restriction on freedom of expression, any such definition must be very narrowly circumscribed and related to an interest worthy of protection, such as national security or the investigation of crime. The potentially negative impact of this restriction is mitigated by Articles 10(2) and (3), which provide that there will be no liability if the impugned information was legally obtained or not obviously secret in nature, or if the dissemination of the information was in the public interest. Nonetheless, it is not clear why the media are singled out for special responsibility for the dissemination of State secrets, over and beyond any general rules on this that may apply to everyone.

Regarding the prohibition against "propaganda", ARTICLE 19 is of the view that this term is unacceptably vague and open to abuse, for example to prohibit discussion about political opposition movements.

Recommendations:

- Any restriction imposed on the mass media's right to gather and disseminate information must be prescribed by law, satisfy a legitimate aim and be necessary in a democratic society.
- Articles 4(2) and (5), and 8(4) should be consolidated into one single provision that is consistent with Article 10(2) of the ECHR.
- The media should not be singled out for liability for the disclosure of State secrets.
- The definition of what constitutes a "secret" for the purposes of the draft Law should be circumscribed as narrowly as possible so as not to infringe the requirements of the three-part test for restrictions on freedom of expression.
- Article 8(2) should be amended to remove the term "propaganda".

IV.3 Right of Refutation and Reply

Article 9 of the draft Law sets out the procedure for granting a right of refutation and a right of reply. The right of refutation will arise where disseminated information has "damaged the honor, dignity and reputation of a person" (Article 9(1)). To exercise the right, the individual concerned must submit his or her demand to the responsible media within three months from the date of the offending publication. The person conducting the media activity then has one week to notify the complainant of the date and/or time that the refutation will be disseminated (Article 9(2)).

Articles 9(3) and (6) set out certain formal requirements for the refutation, namely that it be published under the heading "Refutation" with "no reductions or additions made to its placement or layout criteria." The refutation must be published within one week of the demand being received or at the earliest possible opportunity. While not explicit, this

requirement presumably applies to broadcasts as well. In addition, the refutation may not exceed the length of the original information.

Article 9(5) grants individuals the right to demand the publication of a reply at the same time as a demand for refutation is made. Unlike the right of refutation, however, the reply is not subject to any length limitations and there is no requirement that it address only the information that was originally published. Nonetheless, the content of a reply cannot contain criticism of the media in which it appears.

A demand for refutation or reply may be denied by the media in certain circumstances, enumerated in Articles 9(7) and (8), including if the reply violates Article 8 of the draft Law, regarding abuse of freedom of expression, or if either the demand for refutation or reply are anonymous.

Analysis

This section of the draft Law contains a number of problems from a freedom of expression perspective and, additionally, is quite confusing due to inclusion of both the right of refutation and the right of reply within the same provision.

The right to demand the correction of facts which have been proven to be erroneous from the media does not necessarily constitute a restriction on the media's free expression. The draft Law, however, goes well beyond this, allowing for a right of refutation for the dissemination of information that "damages the honor, dignity and reputation" of an individual. This could include both correct facts, as well as expressions of opinion. ARTICLE 19 is of the view that both should be absolutely protected against any form of sanction. In any case, stringent limits, consistent with those set out below regarding the right of reply, should apply to any right of refutation which goes beyond correcting erroneous facts.

The right of reply, as set out in Article 9(5), constitutes a highly disputed area of media law. In the United States, it is seen as unconstitutional on the grounds that it represents an interference with editorial independence.[25] In Europe, in contrast, the right of reply is the subject of a resolution of the Committee of Ministers of the Council of Europe.[26] In many Western European democracies, the right of reply is provided for by law and these laws are effective to a varying extent. Advocates of media freedom, including ARTICLE 19, generally suggest that a right of reply should be voluntary rather than prescribed by law. In any case, certain conditions should apply:

- the reply should only be in response to incorrect facts, not to comment on opinions that the reader or viewer doesn't like;
- it should receive similar prominence to the original article or broadcast;
- it should be proportionate in length to the original article or broadcast;

[25] *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974).

[26] Resolution (74) 26 on the right of reply, adopted on 2 July 1974. The Committee of Ministers is presently revising this document, although the most recent draft contains essentially the same principles. See also the Advisory Opinion of the Inter American Court of Human Rights, *Enforceability of the Right to Reply or Correction*, 7 HRLJ 238 (1986).

- it should not be taken as an opportunity to introduce new issues or comment on other correct facts.

The right of reply, as set out in Article 9 of the draft Law, is not limited to the correction of erroneous facts, but clearly covers expresions of opinion as well. Furthermore, there are no limitations imposed on length or subject matter.

Recommendation:

- Consideration should be given to removing both the right of refutation and right of reply from the draft Law.
- If thse rights are retained, they should be brought into line with the following:
  - any right of refutation and/or reply should apply only to incorrect facts, not to opinions or unrelated issues;
  - any reply should be required to be proportionate in length to the original article or broadcast and should be restricted in scope to addressing the mistakes in the original; and
  - consideration should be given to addressing the right of reply and the right of refutation in two separate provisions.

IV.4 Accreditation

Article 6 of the draft Law sets out the details of the accreditation system applicable to journalists. Under this regime, State bodies, bodies of local governments and other organizations[27] are each responsible for creating and implementing an accreditation procedure. According to Article 6(2), each separate procedure must include the general requirements for obtaining accreditation, the "rules on organizing the work of accredited journalists", the reasons for denying accreditation and the "requirements implied by a body or organization activity peculiarities."[28]

Applications for accreditation must either be granted or be refused within a month of receipt by the body or organization (Article 6(3)). Accredidation may be withdrawn by a body or organization, in conformity with the established procedure and with "proper justification" (Article 6(5)). Finally, the provision prohibits discrimination by State and local government bodies and organizations among accredited journalists, and grants accredited journalists certain rights of access.

As discussed above in Section II.3 , it is well established that bodies with regulatory or administrative powers over the media should be independent of government. This applies equally to accreditation as to other matters.[29] State organs and local administrative bodies are not independent and therefore should not exercise undue control over accreditation.

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[27] The exact scope of Article 6 is not obvious, perhaps due to translation. It clearly applies to State and local government bodies, but what exactly is meant by "organizations" is not specified.

[28] The meaning of this last requirement is also vague, probably due to translation, but presumably it means any special requirements arising from the nature of the body's activities.

[29] See, for example, the UN Human Rights Committee case holding that Canadian accreditation procedures to Parliament breached the guarantee of freedom of expression. *Gauthier v. Canada*, 7 April 1999, Communication No. 633/1995.

Furthermore, the criteria for obtaining accreditation should be specified in the law instead of being left to the discretion of each agency, with the possible result of a chaotic regime under which a journalist has to satisfy the unique and varied requirements of potentially dozens of different bodies. Such a situation will clearly hamper the free flow of information. The rules of accreditation should also be specified in the law, along with the circumstances under which accreditation can be withdrawn, and again should not be left to the discretion of individual bodies. Finally, any refusal of an accreditation application, or any decision to rescind accreditation, should be subject to appeal.

Recommendations:

- Article 6 should be amended to provide for an independent body to accredit journalists.
- The law should clearly state the criteria for accreditation, which should be of a purely technical nature, together with the rules of accreditation and the circumstances under which accreditation may be withdrawn.
- Decisions regarding the awarding or rescinding of accreditation should be subject to appeal.

IV.5 Miscellaneous Issues

Transparency

Article 13 of the draft Law[30] requires the operators of mass media enterprises to publish their companies' financial records every year, specifying the gross revenue and sources of income. This provision appears only to apply to print publications since it states that the publication must appear in "the periodical issue of media resource (if it is published)" and is silent regarding other media.

ARTICLE 19 is of the view that this is an onerous administrative obligation that may actually impede the development of a viable media industry in Armenia. Privately operated media companies should not be targetted with an obligation to disclose financial records unless all privately held companies and all goverment bodies are also subject to full disclosure requirements. This issue is better addressed in access to information legislation, rather than within the context of a media law.

Recommendation:

- This provision should be removed from the draft Law and the issue of disclosure of financial information should be addressed in access to information legislation that treats all privately held companies equally.

Reasonable Publication

Article 8(1) imposes a duty on media operators to either "check in all possible ways the accuracy of information" or to reveal the source of the information. Failure to satisfy this obligation constitutes an abuse of freedom of expression and will subject the media

[30] The translated version of the draft Law contains two Article 14's therefore we are assuming that the first Article 14 is actually Article 13.

operator to liability. The scope of this obligation is not well defined, although it seems excessively broad and impossible to satisfy given the requirement that accuracy must be verified in "all possible ways." Liability will be inevitable if accuracy is contested since it will undoubtedly always be possible to identify a further method that might have been used to ensure the accuracy of published information. In any case, it is clear that a legal obligation of this sort, which is actually a form of false news provision, represents a breach of the right to freedom of expression, which also covers false statements. Furthermore, the second part of this provision undermines the well-established right of journalists to protect their confidential sources of information.

Article 10(2), item (4), states that media operators will not be liable for violations of the law as long as "disseminated information was verified by taking all possible measures." We are of the view that this does not offer adequate protection or an adequate defence since it rests on the same standard of "taking all possible measures." Accuracy in reporting is an ethical issue for the media, best addressed by a voluntary Code of Conduct rather than imposed through legislation. At the very minimum, the defence provided for in Article 10(2) should be based on a standard of reasonableness, not all possible measures.

Recommendations:

- Article 8(1) should be removed from the draft Law.
- Article 10(2) item (4) should also be removed from the draft Law or, at least be amended by replacing the word "possible" with "reasonable".