

Mongolia: Draft Law on Freedom of Media

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In 1998, Mongolia adopted the Law on Media Freedom,¹ a four-article law which sets out some very basic and general protections for media freedom, such as that parliament shall not adopt any law restricting media freedom, and prohibiting prior censorship and the ownership by “State institutions” of mass media. While the intention behind this Law was certainly positive, it is too brief and general to provide real protection to the media. As such, there have been attempts over the years to introduce a more detailed replacement for this Law but, so far, none has been successful.

In 2024, the government of Mongolia put together a working group under the auspices of the Ministry of Justice to prepare a new draft Law on Freedom of the Media (draft Media Law). An initial draft was made public in October 2024 and work has continued on this draft. As part of this process, the Mongolian authorities reached out to UNESCO for assistance in ensuring that the new law is fully compliant with international standards relating to freedom of expression and, in turn, UNESCO has partnered with the Centre for Law and Democracy (CLD) to provide technical support to Mongolia in developing the draft Media Law.

As part of this process, CLD has prepared this Note² setting out its assessment of the draft Media Law in light of international guarantees of the right to freedom of expression and better national practice in this area. Our comments are based on the idea that this law should set out overriding standards for media regulation, while leaving more specific details to other laws. This Note is based on an English translation of the draft Media Law dated 23 January

¹ Adopted 8 August 1998. Available in Mongolian at <https://www.icnl.org/resources/library/media-freedom-law>, on file in English with CLD.

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2025. CLD notes that laws of this nature are very text sensitive and that we are not responsible for any errors based on the translation we are working from.

It is clear from the text of the draft Media Law that the intention is to protect media freedom. Indeed, most of its provisions establish protections for media freedom, although a few impose limitations. As such, most of our comments in the first part of this Note, focusing on the existing draft, are about how to strengthen the protections. The second part of this Note then focuses on matters which are missing from the draft Media Law.

We noted that a law such as the draft Media Law will have important implications for human rights, specifically freedom of expression and media freedom. As such, it is essential that it be the subject of broad public consultation before it is adopted.

Comments on the Current Text of the draft Media Law

As a general point, it is fair to understand the draft Media Law as a quasi-constitutional law. This is because it seeks to elaborate on the content of Article 16.16 of the Constitution of Mongolia which states, in part:

The citizens of Mongolia shall be guaranteed to exercise the following rights and freedoms:

16. Freedom of thought, opinion and expression, speech, press, and peaceful assembly.

This role is established already by Article 1.1 of the draft Media Law, which sets as its purpose “to guarantee the freedom of expression and the media as stipulated in the Constitution of Mongolia”. It is also implicit in some of the provisions in the draft Media Law, such as Article 6.1, which states:

It is prohibited to adopt laws or administrative acts that restrict the freedom of individuals to express their opinions, speak, publish, or freedom of media outlets.

An ordinary law cannot set rules for other laws, as this provision does. Only a quasi-constitutional law could do that.

It would be helpful if the Media Law could refer to itself as a quasi-constitutional law and even note that, in case of a conflict between it and another law, it should normally prevail, based on its quasi-constitutional status. Of course this should only be done to the extent that the legal framework of Mongolia permits such a reference.

Scope

Article 3 of the draft Media Law defines its scope. Article 3.1 indicates that the law regulates “relations related to the independent and transparent publication of information through media outlets in the interest of public rights and interests based on journalistic activities”. Article 3.2 adds to this works published in the media by individuals “engaged in independent journalistic activities”. Article 3.3 then indicates that relations with public media, as defined in Article 9.2 (although that article does not really define public media, the definition of which is mainly found in Article 6.8), are governed by the Law on Public Radio and Television.

A “media outlet” is defined in Article 4.1.2 as “newspapers, journals, radio, television, or editorial websites used by media organizations engaged in journalistic activities for the purpose of delivering and disseminating information to the public or specific groups”. And “journalistic activities” is defined in Article 4.1.1 as “professional activities aimed at publishing, broadcasting, or distributing through media outlets based on the activities of searching, investigating, obtaining, collecting, processing, verifying, and creating content for the purpose of providing information to the public”.

There are a few problems with all of this. First, by incorporating a large number of qualifiers – “independent”, “transparent”, “interest of public rights and interests” – Article 3.1 actually substantially narrows the scope of the law. According to this approach, a media which was not deemed to be transparent or disseminating public interest content would not be covered by the law. That is not the right approach. Of course the law should support media to be transparent and to report in the public interest, but it should not limit its entire application to such media. The other problem with this is that these terms are undefined, resulting in the scope of the law also being unclear. The same problem also applies to the word “independent” as a qualifier of journalistic activities in Article 3.2.

A different concern applies to Article 3.3. It is of course fine for the Law on Public Radio and Television to regulate public media but that is not a reason for this law not also to apply to such media, with all of the higher-level protections and principles which it establishes. Indeed, it is crucially important for public media to benefit from the protection of the Media Law, even while the details regarding their operation are set out in the Law on Public Radio and Television.

As for the definitions of “media outlet” and “journalistic activities”, it may be noted, first, that these are circular with the first relying on the second as part of its substantive definition and the second relying on the first. It is also problematical to include a list of the ways media

outlets may be structured – namely “newspapers, journals, radio, television, or editorial websites” – since media may take other forms, for example as a page on Facebook or a YouTube channel. Instead, this definition should focus on the core role of media, namely to disseminate editorially approved information on a regular basis to the public or a section of the public. In addition, consideration should be given to screening in as media outlets, perhaps on a voluntary basis, individual actors – such as bloggers or social media influencers – who are prepared and able to respect professional media standards.

It is not entirely clear that a definition of “journalistic activities” is actually needed once a “media outlet” and a “journalist” are defined. If this term is defined, it should be simplified to cover all of the activities undertaken by a journalist as part of the preparation of content for dissemination via a media outlet. It may be noted that the current definition is repetitive – for example referring to “publishing, broadcasting, or distributing through media outlets”, “for the purpose of providing information to the public” – includes unnecessary elements, such as “professional”, since some media also rely on volunteer workers, and is unduly complicated, referring to a long list possible preparatory activities which a journalist might undertake, instead of just covering any preparatory action.

Recommendations

- The qualifiers should be removed from Articles 3.1 and 3.2 so that the law simply covers the dissemination of information through media outlets and the work (or journalistic activities) of journalists.
- Article 3.3 should be removed so that the law also covers public media.
- The definition of a media outlet should refer to the core role of the media in society and not the particulars of how information is disseminated or the form the media take.
- Consideration should be given to allowing for non-editorial actors – such as bloggers or social media influencers – to be included in the scope of a media outlet under the conditions set out above.
- Consideration should be given as to whether a definition of “journalistic activities” is actually needed and, if it is, it should focus simply on any act undertaken by a journalist in preparing content for dissemination through a media outlet.

Definitions

Overall, the definitions are reasonably strong. However, it is not clear why definitions of both a “media outlet” (Article 4.1.3) and a “media organisation” (Article 4.1.2) are needed and there does not seem to be any consistency in how references are made to these two different terms throughout the draft Media Law. We understand that “media organisation” refers to the legal entity which owns a “media outlet”, while the latter refers to the entity which disseminates media content. But Article 9 sets out the various types of media organisations and indicates that they shall be for-profit or non-profit. If these conditions were attached instead to media outlets, there would be little need to define a media organisation. Most of the references in the draft Media Law are to “media organisation” rather than “media outlet”, but this often seems inappropriate. For example, Article 5.2 refers to the dissemination of factual content by a media organisation, but it is the media outlet which disseminates content. Similarly, Article 8 refers to the editorial independence of media organisations, whereas surely this belongs to media outlets. For its part, Article 6 flipflops between referring to a “media organisation” and a “media outlet”.

Article 4.1.4 defines a journalist as someone who carries out journalistic activities either as a full-time or part-time member of a media organisation’s “editorial team” or as a freelance journalist. It is not correct to limit journalists to members of the editorial team, since most journalists do not form part of this team (and this is also clear from the definition of “editorial office of a media organisation” in Article 4.1.5). And it might be simpler just to define a journalist as someone who, on a regular basis, contributes to the production of content for purposes of dissemination through a media outlet. This would automatically cover full-time, part-time and freelance journalists, while also excluding occasional contributors to a media outlet, which is appropriate.

Article 4.1.6 defines a “joint media organisation”, which we understand to mean a community media outlet. It sets out various characteristics of such a media outlet, such as that it is non-profit, operates with limited scope and prepares content “based on citizen participation”. A slightly different version of these characteristics is then set out in Article 10. It is poor drafting practice to repeat definitions in this way, especially when different language is used (even if the differences are small). As such, it would be preferable, in the definitions, simply to refer to Article 10 (i.e. to indicate that a community media outlet is one which has the characteristics set out in Article 10). Further comments on the characteristics of community media outlets are provided below.

Article 4.1.7 defines a source to include both facts and individuals which form the basis of media reporting. Article 13 then creates a right to protect the confidentiality of information

sources. It does not make any sense to protect the source of mere facts. The whole purpose of source protection is to enable individuals to come forward and share information with journalists, knowing that they can do so confidentially. At the same time, this protection should extend to information from which an individual source may be identified (such as a journalist's notes or phone conversations). Article 4.1.8 then "defines" the right of media organisations and journalists to keep the identity of their sources confidential. Strictly speaking, this is not a definition but a substantive provision establishing rights. And it is unnecessary since the right to protect sources is set out in Article 13.

Articles 4.1.9 and 4.1.10 define, respectively, "misinformation" and "disinformation". There are references to these articles in Article 8.5, which provides that if a media disseminates either of these sorts of information, anyone whose rights have been violated may file a complaint with the editorial office or the self-regulatory body.

There are minor problems with both definitions. The definition of "misinformation" includes a requirement that there was no intent to harm an individual or legal entity, as well as that there was no knowledge that the information was inaccurate or the information "could not have been known to be incorrect". The common definition of misinformation is simply that the individual who disseminated it was not aware that it was inaccurate. It does not include a lack of intent to cause harm or the condition that the information could not have been known to be incorrect. Indeed, in the vast majority of cases, those spreading misinformation could easily verify that the information is inaccurate but they do not bother to do so. But what they disseminate is still misinformation.

The definition of "disinformation" includes not only deliberately spreading information that is false or "baseless" but also an intention to harm a person, legal entity or country. The common definition of disinformation is limited to information which is known to be factually false (whereas "baseless" normally includes non-factual claims which do not have a solid basis), and does not include the additional requirement of an intention to harm.

The postscript to Article 6 defines the term "content control" for purposes of that article. Since that term is only used in Article 6, this definition should be moved to the definitions section, in Article 4. At least in the English translation, it is not entirely clear that this refers to the idea of controlling content before it is disseminated, but we assume that that is the intention.

Recommendations

- Consideration should be given to eliminating the definition of a “media organisation” and instead just referring consistently throughout the law to a “media outlet”, which should be defined as a legal entity of either a for-profit or non-profit nature (as per Article 9). If the two definitions are retained, there should be a clear and consistent logic behind which one is used each time in the law.
- The definition of a “journalist” should be simplified, as recommended above, and the condition that they be a member of the editorial team should be removed.
- The definition of a “joint media organisation” (community media outlet) should simply refer to Article 10 rather than provide a duplicative definition.
- Article 4.1.7, on sources, should be limited to individual sources and Article 4.1.8, setting out the substantive right to protect sources, should be removed (since it is already covered in Article 13).
- The definitions of “misinformation” and “disinformation” should be simplified and the extraneous elements noted above, which are not normally associated with these notions, should be removed.
- The postscript to Article 6, defining “content control”, should be moved to Article 4 and it should, to the extent that this is not already entirely clear in the Mongolian version, be clarified that it applies to controls which are imposed before information has been disseminated (prior censorship).

Restrictions or Principles for Journalism

Article 5 is titled “Principles to be adhered in journalistic activities” but it actually represents restrictions on journalists and media outlets. Article 5.1 sets out five “principles”, namely:

- 5.1.1 To provide balanced information independently and impartially;
- 5.1.2 To uphold human dignity and justice;
- 5.1.3 To prioritize national security, human rights, and the public interest;
- 5.1.4 To base reporting on facts;
- 5.1.5 To show respect for legally protected confidentiality.

There are several problems with these requirements. First, it is not clear what the law means when it says that these principles “shall be adhered to”, which sounds as though they are binding, although the rules do not appear to set out any penalty for breach of these provisions. Second, to the extent that these standards are legitimate at all, they should be part

of a system of professional regulation (whether self- or co-regulatory) and not be rendered binding by law, with the exception of the last one. It may be noted that the last one is simply not necessary since everyone, including media actors, already has to respect the law. Third, most of these are not legitimate even as professional regulatory standards. Independence, referenced in Article 5.1.1, is something to be protected, not to be imposed (i.e. States should protect media independence, not impose obligations on them to be independent). It is not the role of the media to “uphold human dignity and justice” (Article 5.1.2). The media is supposed to report the news to the public. Similarly, it is not the role of the media to “prioritize national security, human rights, and the public interest” (Article 5.1.3). While good media will make editorial decisions that promote the dissemination of information of public interest, it is not the role of a system of professional regulation to require them to do this. The only one that does have some legitimacy as a professional standard is Article 5.1.4, about basing reporting on facts, but even this is put awkwardly. The proper standard here is for journalists and media outlets to strive for accuracy in their reporting.

If anything along the lines of Article 5.1 is to be retained, it should be cast as a set of issues which should be addressed by a system of professional regulation (and of course substantially amended, given the comments just above). In other words, it should list issues which systems of professional regulation are expected to cover. This is covered in more detail below.

Article 5.2 again provides that the media shall report accurately and also that it shall be responsible for the information it disseminates, subject to Article 5.3. That article provides that the media shall not be responsible for directly disseminating third party content (rather, the third party shall be responsible for it). Once again, the first part of Article 5.2, relating to accuracy, should be cast differently (strive for accuracy) and should be linked to a system of professional regulation rather than set as a direct obligation for the media.

Recommendations

- The whole of Article 5.1 should be removed. If any part of it is to be retained, it should be integrated into the rules relating to systems of professional regulation (on which, see below).
- The first part of Article 5.2, covering accurate reporting, should be removed.

Protections for Media Freedom

A number of articles in the draft Media Law set out protections for media freedom, including Articles 6, 7, 8 and 13. Article 6 provides a list of 11 different types of obligations essentially for State actors. These are all welcome although they could, at the same time, be further elaborated upon or clarified.

Article 6.1 prohibits the adoption of laws which restrict individual freedom of expression or media freedom. While the sentiment behind this is positive, in fact it is not very helpful. That is, first, because all States adopt laws which restrict these rights and, indeed, that is necessary in a democracy. These include defamation, privacy and hate speech laws, protecting individuals, but also laws on public order, the administration of justice and national security, which protect society as a whole.

It would be preferable here, instead, to elaborate a clear test for any restriction on freedom of expression. Article 19(3) of the Constitution of Mongolia stipulates that, in exercising rights and freedoms, “a person shall not breach national security, the rights and freedoms of others, or violate public order”. This is not very clear. The test for restrictions on freedom of expression under international law, specifically in Article 19(3) of the *International Covenant on Civil and Political Rights* (ICCPR),³ is much clearer, allowing for restrictions only where they meet the following three-part test:

1. They are provided by law.
2. They serve to protect one of a limited list of interests, namely the rights or reputations of others, national security, public order, public health or public morals.
3. They are necessary to protect that interest.

Instead of prohibiting all restrictions on freedom of expression, Article 6.1 should require restrictions to meet the test set out in Article 19(3) of the ICCPR. It could, in addition, elaborate a bit more on the different parts of the test, for example indicating that laws must be clear and precise to meet the first part of the test and setting out different elements of necessity, or the third part of the test.

Article 6.4 prohibits State actors from demanding that media outlets transmit information for free, “except in cases of disaster or emergencies”. While it may not seem unreasonable to require media outlets to transmit official messages during emergencies, in fact it is unnecessary and hence does not align with international guarantees of freedom of expression. Most media outlets, and certainly public service media, will already transmit

³ Adopted 16 December 1966, entered into force 23 March 1976, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

official messages, as long as they deem them to be relevant, during emergencies. So it is not necessary to require them to do so. And granting State actors the power to require media to carry messages can easily be abused.

Article 6.5 requires State actors to enter into contracts with media when they want to use that media to advertise their activities. Article 6.6 then requires this to be reported transparently and publicly, while Article 6.7 calls on the government to “approve and implement the budget allocation and spending procedures” relating to such advertising. These rules are all positive but more could be said about State advertising. A key risk here is that State actors will advertise in media outlets which are “friendly” towards them (i.e. do not engage in criticism of them) instead of those media outlets which are best able to reach the audiences they wish to reach with their advertising. To prevent this, it would be useful to impose a requirement that advertising be allocated based on objective advertising criteria (i.e. reaching the intended audience at a cost-effective price), rather than the editorial stance of the media outlet concerned.

Articles 6.8 to 6.10 are about public media outlets. They provide for one national public media, which operates under the President of Mongolia, which is not allowed to engage in commercial activities and which is responsible for “disseminating and promoting official information about Mongolia internationally”, while prohibiting other State actors from operating media outlets other than this one. This is generally positive, although it is not clear how this relates to the wider idea of public service media, including as recognised in Article 9. Overall, it would be preferable for this law to address the wider issue of public service media in far more detail. This is addressed below.

Article 6.11 prohibits State actors and officials from hindering media actors, from suspending or terminating them, otherwise than as specified by law, or from requiring them to disclose their sources. As a first point, this would likely fit better either as part of Article 6.2, which already covers the idea of hindering or pressuring a media outlet, or at least next to it. Second, the rules on protection of sources are set out in Article 13, so it is not clear what the reference to sources adds here.

As for suspending and terminating media outlets, Article 7.2 is similar to Article 6.11, indicating that the rules on establishing and registering media outlets shall be “regulated by the relevant laws”. Article 7.1, setting out the right to establish media outlets, also refers to procedures for this being set out in other laws. This is not very helpful. It would be preferable if this law could set out key standards regarding the regulation of the media, such as that there shall be no licensing for print or digital media (other than for telecommunications

service providers), that any registration system for these media shall not allow for discretion to refuse registration and so on.

Article 8.1 refers to the idea of journalists and media organisations carrying out their work independently and this is repeated in Article 8.3. Once again, it should be clear that the thrust here is that their independence shall be protected and not that they are under an obligation to work independently. Article 8.2 imposes an obligation on media organisations to have an “editorial office” which is responsible for “defining, creating, and verifying the content and policy of the information disseminated to the public”. As noted above, Article 4.1.2 already defines media organisations as entities which carry out their work via an editorial office. It is not necessary to go beyond this definition to impose a specific obligation on media organisations to have an editorial office.

Article 8.4 includes yet another reference to accuracy, placing responsibility for accuracy on the editorial office. This is once more inappropriate, although, as noted above, it would be legitimate to call for systems of professional regulation to include rules on accuracy among the professional standards they apply. Article 8.5, in contrast, provides for complaints to be lodged with either the editorial office or the relevant self-regulatory body where a media disseminates misinformation or disinformation. This is not inappropriate. However, the reference to self-regulation should be left to the part of the law which addresses that issue.

Article 8.6 calls on the founders or shareholders of a media organisation to enter into an agreement, presumably with the editorial office, which guarantees the latter’s independence and defines the rights and responsibilities of each party. This is not inappropriate. However, experience in other countries has shown that it is virtually impossible to guarantee fully the independence of the editorial office from the owner(s). And this idea also raises potential freedom of expression issues, since it limits the freedom of expression of the owner.

Article 13.1 establishes the right of media organisations and journalists to protect the confidentiality of their sources. This should be extended to cover any information from which a confidential source may be identified, including where that information is obtained via surveillance. It is not entirely clear, at least in the English translation, that this applies only in the context of a source who has requested confidentiality. Article 13.2 is framed oddly, at least in English, stating that where the information cannot be obtained elsewhere and it is deemed justified to prevent a crime which could cause serious harm to life or health, a journalist or media organisation shall decide whether to disclose the source. Since source protection is a right of media outlets and journalists, they always have the choice to disclose their sources, and so Article 13.2 does not really make sense. In many countries, courts may

order source disclosure where the information cannot be obtained elsewhere and it is necessary to prosecute a serious crime. Article 13.3 starts out prohibiting anyone from obstructing the work of a journalist and then goes on to prohibit anyone from demanding that journalists disclose their sources. The first part should be dropped since this is already covered in Article 6 and is not relevant here. And the second part should be limited to cases where sources have requested confidentiality.

Recommendations

- Article 6.1 should be amended to require any restrictions on freedom of expression to comply with the three-part test for such restrictions in Article 19(3) of the ICCPR.
- The exception to Article 6.4 for disasters and emergencies should be removed.
- Consideration should be given to requiring State actors, in addition to the rules in Articles 6.5-6.7, to base their choices on where to advertise on objective advertising criteria (i.e. reaching the intended audience at a cost-effective price).
- The relationship of Articles 6.8-6.10 to the idea of public broadcasting as recognised in Article 9 should be clarified.
- The references to other laws in Articles 6.11 and 7 should be tempered by adding a more detailed set of standards to this law setting out key governing principles for media regulation (addressed below).
- The references to “independence” in Articles 8.1 and 8.3 should be clarified to make it clear that they refer to the protection of the independence of the media and not an obligation of the media to act independently.
- Article 8.2, calling on media outlets to have editorial offices, should be removed given that this idea is already incorporated into the definition of a media outlet.
- Article 8.4, on the responsibility of the editorial office for accuracy, should be removed.
- The part of Article 8.5 referring to complaints to the self-regulatory body should be removed.
- It should be clear, in Article 13.1, that the right to protect source confidentiality only applies where the source has requested this and also that this right applies to all information from which a source may be identified, including the use of surveillance to collect such information.
- Consideration should be given to replacing Article 13.2 with a provision which empowers courts to order source disclosure where the information cannot be obtained elsewhere and it is necessary to prosecute a serious crime.
- The first part of Article 13.3 should be dropped and the second part should be limited to cases where sources have requested confidentiality.

Media Rules and Obligations

Articles 9 to 12 set out a number of rules and obligations for media organisations. Article 9.1 classifies media organisations into for-profit and non-profit entities and then into public, commercial and collective (or community) entities. It would be preferable to use the term “public service” for public media. Article 9.2 requires public and community media to be non-profit legal entities and Article 9.3 requires commercial media to be for-profit and registered as companies. This is fairly uncontroversial.

Article 10 addresses the category of community media (“joint media organisation”). It sets out various conditions for these media including that they operate “within a specific territory and in a limited manner”, that they be “established and owned by citizens united by culture, customs, interests, values, and characteristics”, that they be “free from political and economic interests”, that they operate independently and “within a limited scope”, that they disseminate “news and information”, and that they “base their activities on the participation of the citizens” mentioned in the previous article (i.e. who are “united by culture” and so on). Article 4.1.6 adds to these that they be non-profit, and this is also repeated in Article 9.2.

Many of these characteristics are commonly found in definitions of community media, although some should be adjusted. The references to operating in a “specific territory”, “limited manner” and with a “limited scope” should be reconsidered. Better practice is to recognise two types of communities: those which are geographic in nature (i.e. people living in the same area), and those which are united by their interests, such as an interest in food or a certain type of music. It is also better practice to allow these media to distribute their content wherever their community may be. For geographic communities, it is not illegitimate to focus on smaller areas, so that members of the community can be said to have real ties to each other. But this is not true of communities of interest. And, given the possibility of dissemination via the Internet, it is perfectly realistic not to limit generally the distribution area of community media.

The requirement that community media be established and owned by individuals who are “united by culture, customs, interests, values, and characteristics” is excessive. As noted

above, it is enough to qualify as a geographic community or a community of interest. While these communities will share some of the values listed here, they may not share all of them. Thus, a geographic community may bring together different cultures and certainly values, while the main unifying characteristic of a community of interest is that interest, and members may well have different cultures, values and even (other) interests.

It is not necessarily illegitimate to require community media to be “free from political and economic interests”, but this could also be misunderstood, for example to suggest that they should not focus on these issues in their reporting. It should be clarified that this relates to their management and operations and not content.

It is also important to include a focus on the need for community media to service the information and voice needs of the communities they serve. Presently the focus is more on participation of their communities but the idea of serving their information and voice needs is just as important.

In terms of community engagement, the reference to this – namely “base their activities on the participation of the citizens mentioned in Article 10.1” – is rather general. Also, it can be challenging in practice, especially for young community media outlets, to foster genuine community participation. One option here would be to require these media to host at least one meeting annually with their communities to solicit their views and inputs.

Apart from the requirement of being non-profit, the draft Media Law presently says nothing about funding for community media. Ideally, Mongolia should provide public funding support to community media via a channel which is independent of government. At a minimum, community media should be able to access funding from international donors (as long as it comes without politically-driven restrictions) and earn commercial revenues, such as from advertising.

Otherwise, the law should also protect the right of community media outlets to take different media forms – such as online, print and broadcast – to disseminate via all available means of communication and, where formal requirements are placed on the media form they take – such as licensing for broadcasters – to benefit from a light, low-cost means of complying with those formal requirements.

Article 12.1 provides that the regulation of excessive concentration of ownership of the media shall be regulated by the Law on Competition and the Law on Broadcasting. It is appropriate for the details of such regulation to be set out in those other laws, but it would be helpful for the Media Law to set out some governing principles for this. These might include, for

example, that there shall be specific provisions relating to concentration of media ownership (i.e. instead of media simply being covered by general rules on concentration of ownership) and that these shall strike an appropriate balance between promoting diversity and imposing unduly constraining restrictions on media owners.

Article 12.2 requires media organisations and their owners not to take any actions which “undermine media freedom, violate editorial independence, or restrict competition in the media industry”. The first two of these are already addressed by Article 8.6, on which we comment above. As for the last one, this will be guided by the laws governing concentration of media ownership, which are already binding on media organisations and owners, so there is no need to repeat those obligations here.

Recommendations

- Consideration should be given to using the term “public service” instead of “public” in Article 9.
- The requirement that community media be established and owned by individuals who are “united by culture, customs, interests, values, and characteristics” should be replaced by an approach which simply recognises both geographic communities and communities of interest.
- The limitations on the scope of operation of community media outlets should be reconsidered in favour of an approach which allows them to reach their communities, wherever they may be located.
- It should be clarified that the reference to community media being “free from political and economic interests” refers to their management and operations and not the content they disseminate.
- The law should also include a focus on the need for community media to service the information and voice needs of the communities they serve.
- Consideration should be given to replacing the requirement for community media to “base their activities on the participation of the citizens mentioned in Article 10.1” with one which requires them to host at least one meeting annually with the community to solicit their views and inputs.
- The law should protect the right of community media to access funding from international donors and earn commercial revenues, and consideration should be given to establishing an independent public funding mechanism for community media.
- The law should protect the right of community media outlets to take different media forms, to disseminate their content via all available means of communication and, where formal

requirements are placed on the media form which they take, to benefit from a light, low-cost means of complying with those formal requirements.

- Consideration should be given to including in the law some governing principles for the regulation of concentration of media ownership, as suggested above.
- Consideration should be given to adding into Article 12.1 some governing principles for the regulation of concentration of media ownership.
- Article 12.2 should be removed.

Self- or Professional Regulation

Article 14 of the draft Media Law addresses self-regulation, with Article 14.1 indicating that the media sector “will have its own regulatory body”, which shall independently determine its structure and activities. Articles 14.2-14.5 set out rules for this system, namely that it will adopt professional standards for the media, that it will accept and review complaints regarding violations of those standards and issue public decisions relating to complaints, and that, in addressing complaints, it will not limit the right to file complaints with the editorial office or courts.

It is very positive that the draft Media Law supports the idea of a self-regulatory body for the media, something which has proven to be an important part of the overall approach to promoting media independence and professionalism around the world. However, it is not very clear how this system is actually intended to work. By indicating that the media “will” have its own regulatory body, the law suggests such a body must exist. But it fails to create such a body or to task a specific actor or set of actors with creating one. As such, it is not clear how the body will, mandatorily, be created. It happens that there is an independent Media Council of Mongolia,⁴ but there is no guarantee that this will continue to exist and not all media outlets, as defined by the draft Media Law, belong to it.

We recommend that the law take another approach, based on setting out a list of core characteristics for recognition as a proper self-regulatory body. Then, for media outlets which belong to that the self-regulatory body, the law should provide that complaints relating to matters which are covered by the professional standards it establishes, or its code of conduct, must first be addressed by the self-regulatory body before a case involving them be brought to court (so the opposite of what is presently provided for in Article 14.5). This latter part is

⁴ See <https://www.mediacouncil.mn/p/19>.

the approach taken, for example, in Indonesia, where it has proven to be extremely successful in terms both of providing redress for media unprofessionalism and of protecting media independence.

The essence of such an approach would be for the law to indicate that where a self-regulatory body having certain characteristics exists, professional complaints relating to members regarding matters covered by the standards adopted by the body must first be heard by that body before any court case may proceed, while professional complaints regarding non-members would go directly to the courts. Under this approach, media outlet members of self-regulatory systems are protected against direct court cases until after the self-regulatory body has addressed the matter. This will provide a strong impetus for media outlets either to join the existing Media Council of Mongolia or potentially to set up another self-regulatory system.

Some of the necessary characteristics would include the following:

1. That the body is independent of the government and commercial interests.
2. That the body has adopted a set of professional standards (code of conduct) which at least addresses a list of issues which would be set out in the law. This list should cover commonly accepted professional standards for the media, such as relating to privacy, accuracy, respect for grief, protection of children, non-promotion of intolerance or discrimination and so on. The list should not set out detailed rules governing these issues, leaving that to the self-regulatory body to do in its code of conduct. The aim here is just to ensure that self-regulatory codes cover the necessary issues.
3. That the body has in place a professional system for deciding on complaints, based on the code of conduct, and that it is capable of deciding such complaints in a fair, transparent and reasonably prompt manner (including the publication of decisions).
4. That the system of complaints includes an appropriate set of remedial measures – normally including such things as a warning, requirement to disseminate a correction or right of reply, or requirement to disseminate its decisions – and the power to exclude any media outlet which fails to respect its decisions (at which point, that media outlet would become subject to review by the courts instead of the self-regulatory body).

We note that these characteristics already cover the matters listed in Articles 14.2-14.4 and, indeed, go beyond that. This approach, however, runs counter to Article 14.5, with respect to court appeals but not complaints to the editorial office, which are always an option for those who are not satisfied with the performance of a media outlet.

Recommendations

- We recommend that the approach taken in Article 14 be replaced by the approach recommended above.
- If the recommendation above is not adopted, consideration should be given to how to ensure that a self-regulatory system is indeed created and maintained for Mongolia.

Comments on What is Missing from the draft Media Law

The comments above include a number of references to the idea of adding additional principles and standards into the draft Media Law, such as a set of rules on the permissible scope of restrictions on freedom of expression. In a few cases, these references also indicated that the matter would be elaborated on more below. In this section of the Note, we elaborate on missing elements which were already referred to above, as well as a few other missing elements.

Media Regulation

The idea of adding in more detailed standards on media regulation was referenced in the recommendations following the section of this report on Protections for Media Freedom. In this sub-section, we address issues relating to independent regulation, media diversity as a core goal of regulation, and then regulation of journalists, the print media, broadcasters and digital media. The issue of public service media is addressed below.

It is well established under international law that bodies which exercise regulatory powers over the media – whether this be over licensing, accreditation, allocation of subsidies or any other issue – should be independent in the sense of being protected against interference of a political or commercial nature. Indeed, this is a fundamental principle of media regulation. At the same time, the question of how to protect independence in practice is a difficult one, and one which depends on the local political and institutional context. We recommend that, at a minimum, the law set out a clear standard on the need for regulatory bodies for the media to be independent. Ideally, it would also set out more specific standards on how to achieve independence, adapted to the context in Mongolia.

A second key international standard for media regulation is that such regulation should include as a key objective the promotion of media diversity. The law should incorporate a

principle setting this out for media regulation in Mongolia. As with independence, it could also go into more detail on this and set out some of the key ways this should be done, such as through the licensing system for broadcasters.

In terms of journalists, it would be useful for the law to establish a general right of everyone to practise journalism. As part of this, it should prohibit any licensing or even registration system for journalists. It would also be useful for the law to recognise the right of journalists to organise themselves into associations and unions of their choice. It should also protect the right of journalists to publish anonymously, while making it clear that in such cases the media outlet would be responsible for the content it disseminated. Finally, the law should place a positive obligation on the Mongolian State to provide appropriate protection for any journalists who were at risk of being attacked, physically or online, for exercising their profession (i.e. for exercising their right to freedom of expression).

For the print media, the law should rule out any system of licensing, which would include so-called registration systems which envisaged registration being refused apart from on purely technical grounds (such as that a newspaper with that name was already registered). Systems of professional self-regulation are appropriate for these media, but that issue is addressed above.

Unlike for the print media, systems of licensing are still considered appropriate for broadcasters although even these are gradually being phased out for those broadcasters which do not rely on the airwaves for distribution. But it would be useful for the Media Law to establish certain conditions for broadcasting licensing systems, such as that they operate in a fair and transparent manner, and rely on procedures and criteria which are published in advance and which include the promotion of diversity among broadcasters. As noted above, the licensing procedures should provide for a special, light licensing system for community broadcasters.

As with the print media, there should be no licensing of online or digital media, given that the online space does not suffer from space constraints in the same way as applies in the context of the airwaves.

Recommendations

- The law should include standards on the independence of bodies which regulate the media, at least setting this out as a requirement and ideally setting out some core practical means to achieve it.
- The law should also include standards on diversity as a core goal of media regulation, at least setting this out as a requirement but ideally also setting out some more specific standards in this area.
- The law should set out various rights of journalists, as described above, as well as an obligation on the Mongolian State to provide appropriate protection to journalists who are at risk.
- The law should rule out any system of licensing for print and digital media.
- The law should impose the conditions mentioned above on the licensing system for broadcasters.

Public Service Media

The idea of adding in more detailed standards on public service media was referenced in the section of this report on Protections for Media Freedom. International standards set out three key principles governing the legal framework for public service media. First, the independence of these media should be robustly protected against especially political but also commercial interference. This should include their being overseen by an independent governing board and benefitting from editorial independence (including such that the board does not interfere in day-to-day programming decisions).

Second, they should have a clear mandate to serve the public. This should include requiring them to provide programming which supplements that being provided by commercial broadcasters, as well as to serve the whole population of the country. As part of this, there should be clear systems of accountability to the public which do not undermine their independence. This should at least include a requirement to report annually to the public, through the parliament, with such reporting covering both their programming activities and their finances.

Third, they should benefit from sufficient public funding to enable them to discharge their public service mandate properly. This does not mean that they cannot also raise commercial revenues, for example through advertising, but this should not be so dominant within their overall funding that it causes them to lose their public service character and to resemble commercial broadcasters (i.e. it should not prompt them to make programming decisions based on their ability to attract advertising as opposed to fulfilling their public service mandate).

Recommendation

- The law should set out a framework of principles governing the regulation of public service media, including the three key principles elaborated upon above.

Other Issues

It is important for at least certain public authorities, such as parliament, the courts and the police, to have special accreditation systems in place for journalists, so as to ensure that journalists can access limited space venues or areas from which the public is normally excluded (such as crime scenes or protests which are being cleared). These systems should be fair and grant accreditation on the basis of the ability of the media to disseminate information effectively about the issue in question to the public, and not on the basis of how favourable the media outlet is to the public authority in question. The draft Media Law does not say anything about this. This law should not actually establish accreditation systems, since this is something for the relevant public authorities to do. But it should call for the putting in place of accreditation systems and establish certain overriding principles for how they should work.

According to international standards, it is up to State actors to keep their secrets safe. It is legitimate to penalise officials for leaking such secrets, subject to having protections for whistleblowers, but it is not legitimate to penalise other actors, including media outlets and journalists, for disclosing State secrets, as long as they did not act in breach of the law to obtain those secrets. In other words, if an official leaks a secret to a journalist, that journalist should be free to publish the secret without fear of retaliation. The operation of this standard can be seen in the Snowden case, where Snowden himself was charged with espionage but newspapers such as the Washington Post freely published the information he had leaked to them, without any legal consequences. This approach is not followed in Mongolian law. To address this, the law should establish this as an overriding principle and then other laws can be brought into line with this standard in due course.

Recommendations

- The law should place an obligation on relevant public authorities to put in place accreditation systems and set out key overriding principles for how they should work.

- The law should establish the principle that only officials may be held liable for disclosing State secrets.