COMMENTARY FROM THE MEDIA POLICY INSTITUTE

to the draft law of the Kyrgyz Republic "On Mass Media", published on the website of the Jogorku Kenesh of the Kyrgyz Republic.

The draft law of the Kyrgyz Republic sent by the Cabinet of Ministers of the Kyrgyz Republic has been published on the website of the Jogorku Kenesh of the Kyrgyz Republic.[1] The date of registration of the draft law is given on December 15, 2023. The draft law is annexed with Legal review, Regulatory Impact Analysis (hereinafter RIA) and the special opinions of individual members of the working group engaged in the development of RIA to this document. The submission of the draft law of the Kyrgyz Republic to the Jogorku Kenesh implies the beginning of the consideration procedure by the specialized committee, obtaining appropriate expertise of the departments of the Jogorku Kenesh KR and promotion of the draft law for the first reading.

However, the Media Policy Institute emphasizes that the draft law "On Mass Media", having been drafted without the opinions of members of the working group from the media sector, that was formed by the Order of the President of the Kyrgyz Republic S.N. Zhaparov on December 7, 2022 under No. 230, carries serious risks for freedom of speech in the Kyrgyz Republic.

The Draft Law contravenes the Constitution of the Kyrgyz Republic and the norms of the International Covenant on Civil and Political Rights (ICCPR). The draft law does not take into account the viewpoints of the authorized state bodies - the Ministry of Culture, Information, Sports and Youth Policy of the Kyrgyz Republic, the Ministry of Justice of the Kyrgyz Republic. The regulatory impact analysis was developed with the worst violations of the methodology approved by the Cabinet of Ministers of the Kyrgyz Republic[2], which had resulted in the incorrect conclusions and findings in the RIA. In general, the RIA does not reflect the essence of current problems in the mass media and journalism in the Kyrgyz Republic.

The draft law published on the website of the Jogorku Kenesh of the Kyrgyz Republic had not incorporated numerous proposals and comments on the draft law contained in such documents as:

[1] http://kenesh.kg/ru/draftlaw/645473/show
[2] https://www.media.kg/wp-content/uploads/2023/10/kommentarii-imp-dlya-ks-po-arv.pdf

1) Review of the draft law of the Kyrgyz Republic "On Mass Media" made by the OSCE and ODIHR;

2) Analysis of the draft law of the Kyrgyz Republic "On Mass Media" made by the European Commission for Democracy through Law (Venice Commission);

3) Report by the UN Special Rapporteurs on the Draft Law of the KR «On Mass Media»;

4) Numerous proposals and comments to the draft law "On Mass Media" made by Kyrgyz media and media organizations.

Moreover, the draft law published on the website of the Jogorku Kenesh of the Kyrgyz Republic differs from the text of the draft law provided by the Presidential Administration of the Kyrgyz Republic in May 2023. In the registered version of the draft, the authors had established additional norms that excessively and unreasonably restrict the activities of journalists.

Thus, according to article 30, subparagraphs 2, 7, of the draft law, the right to visit State bodies, local authorities, organizations, enterprises and institutions or their press services is now granted on the basis of accreditation. It is only with the consent of officials or citizens that recordings, including audio, video, film and photographic recordings, are could be made, except in cases provided for by the law.

These and other similar norms, if adopted, will lead to a significant violation of citizens' right to freedom of speech and access to information. In particular, with regard to this norm, it is worth noting that, in accordance with paragraph 44 of the General Comment No. 34 of the UN Human Rights Committee, restrictions on accreditation are permissible only in cases where it is necessary to grant journalists privileged access to certain places or events. These kind of restrictions must not be discriminatory and be applied in accordance with Article 19 of the ICCPR and other provisions of the Covenant, on the basis of objective criteria and considering the fact that a wide range of persons perform journalistic functions. Accordingly, not only accredited journalists but also non-accredited ones have the right to attend events organized by the State bodies.

The rule to make recordings, including audio, video, film and photographic recordings with the consent of officials or citizens, except as provided by law, is aimed at restricting investigative journalism. Even in the Law of the Russian Federation "On Mass Media", which the text of the draft law was originally copied from, Article 50 provides that the dissemination of messages and materials prepared with the use of hidden audio and video recording, filming and photography is allowed:

1) if it does not violate the constitutional rights and freedoms of man and citizen;

2) if it is necessary to protect public interests and measures have been taken against the possible identification of unauthorized persons;

3) if the demonstration of the recording is made by a court decision.

In total, the Office of the President of the Kyrgyz Republic presented five versions of the draft law and none of them had single article-by-article discussion. But the initiators did not take into account the suggestions and comments provided by representatives of the working group from the media community. Only minimal technical or editorial changes were taken into account. And numerous comments of the media sector regarding the norms that create unjustified excessive risks for the activities of independent media editorial offices were left unconsidered by the representatives of the KR Administration.

If the draft law is adopted, State bodies have full freedom to refuse State registration of undesirable mass media and to terminate their activities without serious legal grounds. *Although, in accordance with the requirements of part 1 of Article 63 of the Constitution of the Kyrgyz Republic, it is prohibited to adopt laws restricting freedom of speech, the press and the media.* Despite this, the draft law has broad and vague provisions on the possibility of unwarranted interference with the media, disproportionate restrictions on the rights of access to information by the media, journalists and citizens' rights.

The lack of reasoned justifications on the necessity and expediency of mandatory registration of websites as mass media, the unwillingness of the Office of the President of the Kyrgyz Republic to discuss the proposal of the working group on the need to introduce only voluntary registration as mass media, ignoring numerous proposals and comments on the draft law from both the local and international expert community, although the documents adopted by regional human rights mechanisms provide Kyrgyzstan with important comparative sources of the content and application of the right to freedom of expression just prove that the true purpose of the draft law is to deprive citizens of access to independent media engaged in exposing offenses and raising civic awareness on socially significant issues.

1. Forcing mandatory registration of websites as media as an infringement on media freedom

Regarding this issue, the authorized state body represented by the Ministry of Culture, Information, Sports and Youth Policy of the Kyrgyz Republic (Ministry of Culture) in its letter dated from 04.11.2022 (Ref. No. 12-2/1347), sent to the Office of the President of the Kyrgyz Republic, notes that "*the inclusion in Article 2 of the concept of online publication (website)" as Mass Media is way too controversial all over the world, since this rule may arise accusations against the state in violating constitutional freedom of speech. Therefore, making changes to the law in this part requires great care, which implies broad discussions in civil society and the expert community".* But there was no civil discussion, the activity of the working group was disrupted.

The Ministry of Culture warned in its letter that "*an attempt to regulate Internet resources through their state registration as mass media may lead to the transfer of Internet resources, their users and all interested persons from the kg zone to another zone "ru, kz, com, etc.", which do not fall under the jurisdiction of the Kyrgyz Republic*." These circumstances are not mentioned in the legal review and possible risks have not been analyzed by the authors of the draft law.

The Ministry of Culture also notes that *"it is difficult to establish criteria by which the Internet can be regulated, since it does not have the limitations inherent in traditional media – it is not limited by the scope of physical distribution, as in print media, nor limited by the technical framework and signal strength, as in broadcast media."* Indeed, the draft law lacks any distinction in the regulation of traditional mass media and Internet resources, which once again confirms the ignorance of the authors of the draft law about the very nature of online publications, web sites, etc.

In our opinion, to ignore the concerns of the Ministry of Culture without any justification, is an abuse of law and may entail negative consequences, since the Ministry is an authorized state body implementing information policy.

According to paragraph 2 of article 3 of the draft law, the mass media *is* defined as *a periodical, news agency, TV channel, radio channel, TV program, radio program, video program, newsreel program, other form of periodic dissemination of mass information under a permanent name (title), including websites on the telecommunications Internet*. The initiators of the draft law did not figure out what features the media has.

Therefore, this definition of media suggests that even websites that are not classified as media will have to register as media. This rule will also apply to the websites of commercial organizations, for example, the websites of construction companies - Ikhlas (www.ihlas.kg https://ihlas.kg/) or ("Elizabeth" www.elizaveta.kg). As well as viral popular sites like Lalafo (www.lalafo.kg), "Mashina KG" (www.mashina.kg) and many others that inform and provide various services for citizens and legal entities. All of these websites will have to register as media organizations, but they may be refused in registration and automatically denied promotion of their services via the internet.

Nowadays, the use of websites and/or pages on various social networks by private companies is a marketing move to promote their services and products, but the idea of equating their websites with the media defies logic, since such websites do not pursue the goal of exercising public control by keeping the public informed about current events in the country and covering issues of public interest. Therefore, there is no reason for registering them with the Ministry of Justice of the Kyrgyz Republic or the Ministry of Digital Development of the Kyrgyz Republic.

The introduction of registration of almost all websites will lead to the unreasonable increase in the number of staff of registration bodies, which will affect the expenditures of the republican budget. The legal review to the draft law does not provide any analysis: How much will government staffing increase? How many websites are to be registered and are there adequate facilities to do so? But the most important thing is the absence of the amount of annual expenditures from the national budget for the implementation of the norm on mandatory registration of all websites with the above-mentioned state bodies. In its turn, the Ministry of Culture and Information is misleading in the submitted RIA, indicating that “the costs of state bodies for the introduction of state regulation of the media are not expected, since a new state body is not being created, and the activities of the Ministry of Culture, Information, Sports and Youth Policy of the Kyrgyz Republic are financed from the state budget within the framework of their authority.”

In accordance with the requirements of Article 20 of the Law of the Kyrgyz Republic "On Regulatory Legal Acts of the Kyrgyz Republic", draft laws on ensuring constitutional rights, freedoms and obligations of citizens; legal status of mass media; state budget; introduction of new types of state regulation of entrepreneurial activity are subject to legal, human rights, gender, environmental, anti-corruption and other scientific expertise (depending on the legal relations the draft normative legal act is aimed at regulating). However, the initiators did not provide exhaustive arguments for the reasonableness, timeliness and effectiveness of the proposed legislation.

The authors of the draft law did not provide specific mechanisms for the registration of all websites, given that websites on the Internet do not have any boundaries. Any website can be created anywhere in the world and be accessible in the territory of the Kyrgyz Republic. Therefore, given the cross-border nature of websites, it is not at all clear how Kyrgyz law will regulate the creation and operation of websites that have a domain name of another country. There is also a misunderstanding about social media users, since account owners use their accounts as homepages, which are essentially websites. This fails to see the logic of introducing a mandatory registration procedure for all websites. Unfortunately, the authors of the draft law did not take any attempt to study the technical capabilities of local providers and, in general, the regulation of domain name or zone blocking issues by the Ministry of Digital Development of the Kyrgyz Republic. In the legal analysis, the authors of the draft law do not even address the circumstances mentioned. It is obvious that the authors of the draft law are not aware of the essence of the Internet environment.

This version of the draft law also retains the term originally introduced - "*network media*" (paragraph 14 of Article 3). It is proposed to understand it as an *electronic publication intended for dissemination of mass information in electronic digital form through publicly accessible telecommunication networks, having a permanent title, current issue and updated at least once a semester*. Any information posted on the site, such as a work, book, or textbook, can also fall under this definition. In this case, the author of the draft law did not indicate what

is the difference between online media and other electronic publications, which by their very nature are not such.

Blindly accepting the Russian concept of "*online publication*", the author of the draft law did not even understand or ignored that the second part of the norm provides: *"... registered as a mass media in accordance with this Law",* which does not apply to all sites, but only to a certain part of them that voluntarily wished to use the rights of the media and bear relevant responsibilities. In particular, Russian legislation on mass media (2011) provides for a voluntary registration procedure. By voluntarily registering as a mass media organization, an organization forms its editorial board, has the rights and obligations stipulated by the legislation on mass media, receives simplified access to information stipulated by the legislation on mass media, etc. In other words, the legislator should provide incentive mechanisms and privileges (source protection, expedited access to information, greater protection for media organizations in defamation suits, etc.) that would motivate website owners to voluntarily register as media companies. For example, Azattyk Media in its editorial policy https://rus.azattyk.org/p/4375.html indicates that the editorial board, withstanding to pressure or attempts to exert influence, strives to achieve the highest standards of objective journalism and coverage of facts, observing the principles of accuracy, impartiality, respect for the audience and avoidance of propaganda. This demonstration of a legal approach speaks to the editorial staff's commitment to professional and ethical standards.

According to Nominet registry data as of 2020, there are 11,536 domain names registered in the.kg zone. Certainly, this figure includes websites of government agencies, state companies and their subordinate institutions, commercial and non-profit organizations, social draft laws (official, political, educational, entertainment, cultural, advertising, online stores and announcements, author blogs (having a separate website, a separate page or accounts in social networks) and many others. If we follow the logic of the initiator, then based on the proposed definition in the draft law, all these sites must be registered as media.

But it is still unclear what specific responsibility awaits the owners of websites and domain names for the lack of registration as a media organization, since the draft law specifies a blank rule for these cases, expressed in a general form, referring to other normative legal acts without specifying a specific rule of law.

As noted by the Ministry of Justice of the Kyrgyz Republic, in its Conclusion to this draft law, the term *"legislation"* is generalized, has a vague character, providing the possibility of a broad interpretation. According to paragraph 78 of the Regulation on Legislative Equipment approved by the Resolution of the Jogorku Kenesh from June 26, 2015 under No.5389-V, blanket references to legislation in general are not allowed (for example, «regulated in accordance with the legislation»). In its Conclusion, the Ministry of Justice proposed to specify the branch of legislation. However, this important point was not taken into account by the authors of the draft law.

At the same time, according to the proposed norms in the draft law, "*online publications*" could face difficulties during future registration. According to article 17 of the draft, the initiator instructs all media organizations, including websites, to provide the following information during registration along with traditional forms of media: the *form of periodic distribution of mass media, the intended territory of distribution of products, the frequency of release; the maximum volume*.

Some of the listed requirements are not even technically feasible due to their nature. For example, how to calculate the periodicity or circulation of the site? Or what should the volume of a media outlet, i.e., an "online publication," look like, and in what units should it be measured? Who determines the maximum volume and by what parameters is the calculation performed? And the alleged territoriality of product distribution in relation to the cross-border Internet, represents an insufficient understanding of the Internet properties by the initiators of the draft law. The absence of reasoned justifications for the necessity and expediency of mandatory registration of websites as mass media, as well as the unwillingness of the Office of the KR President to discuss the working group's proposal to introduce only voluntary registration as mass media, once again confirms that the true purpose of the draft law is to deprive citizens of access to independent Internet publications engaged in exposing offenses and raising civic awareness of socially important issues.

The right to freedom of thought and opinion, the right to freedom of expression, freedom of speech and the press is guaranteed by article 32 of the Constitution of the Kyrgyz Republic. At the same time, it is established that *"no one can be forced to express opinion or renounce it."* In addition, the Kyrgyz Republic establishes a ban on censorship in the media and prohibits *"the adoption of laws restricting freedom of speech, the press and the media"* (Article 63).

The Constitution of the Kyrgyz Republic establishes a ban on the restriction of human rights and freedoms, that is, the right to freedom of speech and expression must be exercised without prior permission and approval. However, the proposed amendment by the initiators of the draft law on mandatory registration of websites means restriction of freedom of speech on the part of the authorities, namely, only those who have registered a website can express their opinion. If the Ministry of Justice revokes the registration of the website as a mass media organization, it will no longer be possible to exercise one's constitutional right to freedom of expression through the website. At a time when more and more of our citizens get information from social networks rather than online publications, such a proposal seems more than outdated (and, accordingly, does not meet the goals and objectives of this draft law, which is designed to rid the current legislation of archaisms).

It is unacceptable to burden websites with compulsory registration, not only because the Constitution requires, but in general, according to common sense and the trends of the time. The practice of regulating online relations shows that the law also applies to materials posted on the Internet in part of the protection of honor and dignity, private life, combating extremism,

ensuring public order, and, accordingly, liability applies to all persons regardless of who they are journalists, editors, media or ordinary citizens.

The necessary regulatory framework for building interaction between all participants in information relations in the country has already been formed. Therefore, equating websites with the media is another attempt by the state to establish random control over freedom of information and gain leverage. Given that the creation and maintenance of websites is not prohibited by law, the need to register as media should be entirely voluntary. This is when the owner of the website, taking into account the purpose of the site, its future goals, tasks, the composition of the team will decide independently on the need to register as a media. The owner's decision to voluntarily register would then be encouraged by legislation providing for special privileges (protection of sources of information or protection from defamation suits) for media offices that perform information dissemination functions and serve the public interest.

In accordance with paragraph 43 of General Comment No. 34 of the UN Human Rights Committee (HRC), *any restrictions on the operation of websites, blogs and any other similar systems for the dissemination of electronic and other information based on Internet technologies, including systems that ensure the operation of such means of communication, such as access systems to Internet networks or search engines are acceptable to the extent that they are compatible with article 19, paragraph 3, of the International Covenant on Civil and Political Rights* (ICCPR). This paragraph of Article 19 indicates that restrictions on the right to freedom of expression shall be permitted only if justified: (*a) by respect for the rights or reputations of others; (b) for the protection of national security, public order, public health or morals.* The same goals of restricting human rights are provided for in article 23 of the Constitution of the Kyrgyz Republic.

The HRC's General Comment No. 34 states that *permissible restrictions should be based primarily on the content of specific materials; general prohibitions on the operation of certain sites and systems are incompatible with Article 19(3) of the ICCPR.* In other words, international norms prescribe restrictions on the content of specific materials, such as the prohibition of the spread of violent extremism or terrorism. General prohibitions, including the obligation to register a website in accordance with international standards, are unacceptable.

Accordingly, the requirement of mandatory registration of websites is a gross violation of the norms of the Constitution of the Kyrgyz Republic and the ICCPR. It should be possible for the Internet publications themselves to decide on State registration as a media.

2. Levers of pressure that present an opportunity for unjustified termination and suspension of media activities.

Article 21 of the draft law provides that the Ministry of Justice or the Ministry of Digital Development of the Kyrgyz Republic shall declare the media registration certificate invalid. For example, according to this article, a media registration certificate may be invalidated if the registration certificate is obtained "*fraudulently*". What could this mean? In this case, it is unclear what meaning the authors of the draft law put into the phrase *"fraudulently"?* Formally speaking, the Ministry of Justice will be able to classify fraud even if the media, at the time of registration, identified Kyrgyzstan as the place of dissemination of information, although in reality the material may be available anywhere in the world. The question arises as to why the Ministry of Justice would invalidate a media outlet's registration unilaterally? In the event that media registration is declared null and void, actions affecting the rights and legitimate interests of the founder, editorial staff, journalists and other employees are taken. Therefore, the invalidation of media registration should be considered and solved only by the courts.

According to article 21, paragraph 4, of the draft law, the certificate of media registration may also be invalidated if the media is re-registered (although the draft law provides for only actions: registration and re-registration of media outlets). The lack of clear conditions and reasons for re-registration potentially leads to violation of media rights. For example, intruders can open so-called «mirror» media or raiders can carry out an imaginary re-registration with change of the founder of media and its head.

Under article 23 of the Kyrgyz Constitution, a*ny restriction of rights and freedoms must be prescribed by law, pursue a legitimate aim and be proportionate to the violations.* However, article 29 of the draft law gives the State unlimited and arbitrary freedom to decide to suspend or terminate media activities for violating any provision of the law. Formally, even the smallest infringement, such as the absence of provisions in the Charter of the editorial board of the media, which must be included in this draft law, may be grounds for sending a warning and subsequent initiation of a lawsuit to terminate media activities. For example, the lack of authority of the editorial staff or the procedure for appointing (electing) an editor, editorial board and (or) other editorial board may be considered as grounds for discontinuing the work of the media.

In return, the draft law does not contain any additional criteria that may help in determining the appropriateness of the sanctions applied.

In today’s dynamic information society, suspending the «activity» of media is essentially tantamount to terminating the work of media organization. That said, from a supervisory perspective, a suspension is meaningless. If some illegal material has already been distributed, further suspension of the publication or TV and Radio Channel will not have any sense. The logic is only in banning the distribution of a particular issue of the media, however, such a measure is not equivalent to a complete suspension of the process of the entire media organization. Article 21 of the Draft Law (Termination and Suspension of Media Activities) addresses the grounds for termination of "media activities" by court decision. We think it is not entirely logical when the actions of "cease and desist" are applied to "media activities".

The media cannot have legal capacity, as per the definition of Article 2 of the draft, the mass media include such objects as print and online publications, various television and radio programmes and channels, etc. who cannot act on their own.

The media in this case is considered as a "form of periodic distribution". Otherwise speaking, the media is a tool through which ready to use materials and messages with a certain information are made available to the public. Accordingly, a newspaper, a TV and radio channel or a TV and radio program and other mass media, acting as an object of legal relations, cannot carry out "activities" independently. Individual and collective entities have the right to participate in the process of establishing, producing, registering and disseminating the mass media.

Consequently, media production is one of the activities of a legal entity, which may have other activities in its charter. Therefore, when the author speaks of "liquidation of mass media", there is a substitution of the term subject of law (a legal entity having activities aimed at the production of mass media) for the object (mass media). In reality, it is a question of liquidating the activities of a legal entity (the founder of a mass media outlet). In Article 28(3) of the draft, it is important to pay attention to the grounds for compulsory liquidation (termination) and suspension of "media activities" through the courts. The statement of this provision is difficult to perception. The idea is that if a media organization has repeatedly (more than twice) violated the requirements of the law in the course of its activities over the year, and the Ministry of Justice or the Ministry of Digital Development or the Prosecutor General's Office has sent written warnings to the founder and/or the editorial board (editor-in-chief), so in this case the above-mentioned state bodies may apply to the court to terminate the activities of the media organization. That’s the first reason. The second reason is *"failure to comply with the court's act on the suspension of the activities of the media."*

In the first reason, the author invoked violations of the law without specifying a specific rule. Accordingly, the media can be warned even for professional activities under the pretext of *"encroaching on the honor and dignity"* of an official, since the work of journalists is not just to cover events in the country, but to raise pressing, acute and often unpleasant issues for those in power. In recent years, investigative journalism in Kyrgyzstan has released many headline and high-profile investigations into abuse of power and corruption at various levels of the government. This kind of investigative journalism in the media is usually disliked by senior politicians and officials. Therefore, the proposed provision of the draft law will be positively assessed by this limited circle of persons, while hindering freedom of speech and professional activity of journalists in search of public interest.

A similar rule is indicated in paragraph 6 of part 1 of Article 5 of the draft law, which proposes to prohibit the use of mass media to interfere in the personal life of citizens, encroachment on their honor and dignity, and business reputation.

Here the special attention needs to be drawn to the decision of the Plenum of the Supreme Court of the Kyrgyz Republic (SC KR) On the judicial practice of resolving disputes on the protection of honour, dignity and business reputation under No.4 dated as February 13, 2015, since the cases on the protection of honour, the merits or business reputation of public figures have their own characteristics. Public figures are persons who *hold public positions and/or use public resources, as well as all those who play a significant role in public life (in politics, economics, art, social sphere, sports or any other industry).* In accordance with Articles 3 and 4 of the Declaration on Freedom of Political Discussion in the Media, adopted on February 12, 2004 at the 872nd meeting of the Committee of Ministers of the Council of Europe, *political figures seeking to gain public opinion thereby agree to become the object of public political discussion and criticism in the media. Government officials may be criticized in the media regarding the way they perform their duties, as this is necessary to ensure the transparent and responsible exercise of their powers. Public figures are open to publicizing their words and deeds. In other words, if information concerning the private life of a public person is of public interest and behavior in his personal life may affect his work and functional responsibilities, journalists should have the right to disseminate information about private life.*

A new term has appeared in the regulation of media activities - "*prior notice"*, which can come from the Ministry of Justice, the Ministry of Digital Development of the Kyrgyz Republic and the Prosecutor General's Office. This is an innovation in the draft law, which is not explained anywhere - neither in the conceptual apparatus, nor in the article itself, where it is mentioned. The author does not specify in the draft what status it will have, what form it will take and how it will be served, given that the author of the draft law has already identified three State bodies, which are at the same time entrusted with supervisory and monitoring functions of forced termination of media activities. Indeed, it is important for the organization of the media to know who will eventually present this document, whether there is a division of powers between these agencies and how much time is devoted to eliminating the violation?

The initiator of the draft did not prescribe an algorithm for the actions of responsible media persons upon receipt of such a "*prior notice*" and did not provide for the procedure for appealing a *"notice in writing*". The question is why the author had given duplicate functions to the Ministry of Justice and Prosecutor's Office? Given the lack of information on this issue, we have turned to the Ministry of Justice of the Kyrgyz Republic, as laid down in its Regulations. Such a function of the termination and suspension of media activities, as well as the decision to issue a written *"warning"* is not provided. Consequently, the Ministry of Justice is not endowed with such powers.

Obviously, the proposed rule (Article 28, Part 3) is likely to be used to filter undesirable media quickly, since it is enough to send two warnings to the editorial board and the above-mentioned authorized bodies are already entitled to file a suit for liquidation. The court in this case, will not look into the content and validity of the warning, as the draft law does not direct

the court to analyze this part. Accordingly, in order to terminate the activity, it will be enough for the court to establish the fact of sending two notices to the media.

One more regulator - the authorized state body for information policy represented by the Ministry of Culture, Information, Sports and Youth Policy of the Kyrgyz Republic, which already has a list of functions affecting the activities of the media, including the implementation of legislation. It carries out monitoring and analysis of the situation in the field of mass media, controlling in the sphere of the permit system, maintaining the state register of operating mass media and electronic communications, as well as carrying out the procedure of issuing a permit to place a TV and radio channel in analog broadcasting and (or) digital broadcasting package and maintaining the register of these permits.

Thus, there are already four state bodies that can interfere in the activities of the media at any time, restricting their rights or stopping their activities altogether. Such a position is unacceptable, as it narrows the freedom of speech and mass information and jeopardizes the existence of independent media.

In its Conclusion on the draft law, the Ministry of Justice of the Kyrgyz Republic dated drom 9.11.2022 (Ref. № 05-1/11685), referring to paragraph 1 of the Regulations on the Ministry of Justice of the Kyrgyz Republic, approved by the Resolution of the Government of the Kyrgyz Republic dated as 05.03.2021, № 78 indicates that control over the activities of the media is not within the competence of the Ministry of Justice. In accordance with this, the MoJ proposed in the draft law to eliminate the authority of the Ministry of Justice to terminate media activities. However, this recommendation was ignored by the authors of the draft law.

The second reason for the termination of the activities of a media organization is *"failure to comply with the court's act on the suspension of the activities of the media"* (part 3, Article 28). This provision is also inadmissible because the draft law contains vague language and grounds for suspending the activities of the media. All media activities cannot be suspended simply for publishing any information. It may be proportionate to suspend the dissemination of this specific information, but not all media activities. The same Article 28 only in Part 4 also provides grounds for the court to suspend the media (1) on the necessity of securing a claim under Article 28(1) and (2) on the violation of the Constitution. These reasons are nothing but another mechanism invented by the authorities to exercise censorship and pressure on the activities of the mass media.

The first reason allows, under the pretext that the media allegedly abused freedom of speech, to apply a *measure to secure the claim*, in the form of suspension of media activities in general, without notifying the parties to the case. The action of the norm violates the rights and legitimate interests of journalists, the editorial board and the founder. Since the enforcement measure is considered within one day and without notice to the parties, the media will only be able to learn about the suspension of their activities after receiving the court act on taking measures to secure the action. In order to remove the enforcement measure, the

media organization must apply only to a higher court. The mechanism for taking measures to ensure the suspension of media activities should not be contained in the rules of substantive law - that is, in the law on the media. This measure must be considered, in each case, by a court within the framework of the civil procedure law, subject to the requirements of reasonableness and proportionality. The existence of this rule in the law will indicate that in every dispute over the termination of media activities, a measure should be taken to ensure that the action is suspended until the end of the trial. Of course, the existence of this rule will allow for the unimpeded closure of the media in one day.

The institution of securing a claim is a set of measures established by civil procedural legislation, which may be applied by the court at the request of the persons involved in the case, if there is a presumption that the execution of the judgment rendered in the case will subsequently become difficult or impossible. As such measures, the court may: seize property or money exclusively within the amount of the claim and court costs, prohibit or oblige to perform certain actions, suspend the realization of property, etc. The law is clear that measures to secure a claim must be proportionate to the claims in the lawsuit.

At the same time, within the framework of civil proceedings, the mass media, as a rule, are defendants in lawsuits for the protection of honor, dignity and business reputation. The mechanism for restoring the violated right in the framework of these claims is the publication of a retraction, information declared by a court to be null and void and defaming good name and compensation of moral harm.

In view of the fact that lawsuits for the protection of honor, dignity and business reputation always challenge individual information from a particular publication, all this raises serious concerns, since the initiator, by laying down the mechanism of suspension, actually terminates the activities of the entire editorial office for an indefinite period. And all this happens even before the court considers the claim on the merits and establishes the presence or absence of guilt of the editorial board, as well as determines the final amount of compensation for moral harm, taking into account the principles of reasonableness and fairness. Accordingly, such a mechanism appears to be an excessive, unfair, disproportionate restriction, which is a violation of human rights.

The draft law provides for the possibility of suspending the activities of the media not only for violations of the law on the media, but also of the provisions of the Constitution and legislation of the Kyrgyz Republic as a whole. Given that the author of the draft does not invoke the provisions of a specific law, the possibility of suspending media activities may arise even in the event of a violation of labor law.

3. Unjustified interference in the administration of the media.

The draft law provides for interference in the administration of the media. It provides for the conclusion of a contract between the owners (co-founders) of the mass media; between

the owner (founder) and the editorial staff (editor), and between the editorial staff and the publisher (art. 26 of the draft).

At the same time, it is prescribed what should be contained in these contracts. For example, it is proposed that the contract between the owner (founder) and the editorial office (editor) should specify the procedure for the allocation and use of funds for the maintenance of the editorial office, the distribution of profits, the formation of funds and reimbursement of losses, and the founder's obligations to ensure proper production and social and living conditions for the editorial office staff. The author does not take into account that the editorial office can independently profit and vice versa, allocate money to the owner. The owner may not be the head of the media. In this case, the owner cannot allocate funds for the maintenance of the editorial office, in other words, the owner may not be obliged to maintain the editorial office in certain legal cases. This depends on the organizational and legal form of the founder of the media. Compensation for losses is regulated by civil, civil procedure and other legislation. We consider it inappropriate to specify the procedure for compensation of losses in the contract.

4. A distorted view of the concept of accreditation of journalists.

According to Article 31 of the draft law, "the *editorial board of a mass media registered in accordance with the procedure established by this Law has the right to apply to a state body, a local government* body *for accreditation of its journalists with them".* The stylistic construction of this proposal is broken, but in the sense it is as follows: for example, the Jogorku Kenesh will accredit only those journalists who work in the registered media. And independent journalists are deprived of this right altogether, and, accordingly, they are denied access to the information of this body. As a result, the Article covers only accredited journalists who are entitled to attend the events of the body that accredited them. Any other state body has the right to refuse to allow a media company to attend its event if it has not accredited its journalist in advance, and even if it is a one-off visit.

This article imposes restrictions on access to information, since in case of cancellation of registration of media by the court or authorized bodies, ministries of justice or digital development, the previously accredited journalist of the editorial board will no longer have access to attend events or receive information, for example in the Jogorku Kenesh of the Kyrgyz Republic, doesn't matter if he/she violated or not any legislation.

According to paragraph 44 of UNHRC General Comment No. 34, restrictions on accreditation are only permissible in cases where it is necessary to grant journalists privileged access to certain places or events. These kind of restrictions must not be discriminatory and be applied in accordance with Article 19 of the ICCPR and other provisions of the Covenant, on the basis of objective criteria and considering the fact that a wide range of persons perform journalistic functions. The institution of accreditation should not be perceived as authorization to work or admission to events by public bodies, as this is not in line with international

standards on freedom of expression. Therefore, the right of access to events of state bodies extends not only to accredited journalists, but also to those who do not have such status.

5. Restrictions on the rights of journalists in the exercise of their professional activities

As of today, according to the current KR Law on Mass Media, mass media are exempted from any liability if the information is a verbatim reproduction of public speeches. As you can see, the current law does not limit the information on subjects, that is " verbatim reproduction" can be any person speaking publicly. However, the draft law in this part establishes specific subjects for which the media will not be held responsible for public speech. In other words, there is a significant narrowing of the range of subjects. They will include: deputies of the Jogorku Kenesh of the Kyrgyz Republic and local keneshes, delegates of congresses, officials of state bodies, local self-government bodies, political parties, non-profit organizations and legal entities. It turns out that only the verbatim reproduction of these persons exempts the media from responsibility.

But there's more to it. Article 51 of the draft now specified where public statements could be made. These include: meetings of committees, temporary commissions, deputy factions, plenary sessions of the Jogorku Kenesh and local keneshes, speeches by delegates of congresses, conferences, plenums of political parties, non-profit organizations, as well as official speeches, including press conferences. This norm sounds archaic, as it does not take into account regular speeches of the head of state, MPs and high officials through social media pages.

Now, the media are not exempt from liability if they reproduce verbatim statements of the President or parliamentarians published by them on their own social media pages. Consequently, by listing specific subjects and specifying the places of their speeches, the initiator deliberately and unreasonably narrowed the rights of mass media and journalists.

Thus, the dissemination of public speeches by public officials or other public persons, such as religious figures, may entail the responsibility of journalists and editorial staff, despite the fact that the information was of public interest. This circumstance was also pointed out by the authorized state body, the Ministry of Culture of the Kyrgyz Republic, in its letter dated as 04.11.2022 (Ref. No 12-2/1347) addressed to the Office of the President of the Kyrgyz Republic, where it pointed out the unconstitutionality of this norm and asked to keep the wording of this article in the current version. This remark of the authorized state body has not been taken into account.

The current Law of the Kyrgyz Republic "On Mass Media" stipulates that the mass media is exempt from liability for dissemination of inaccurate information if this information was contained in the speeches of citizens in live broadcasts without prior recording. However, the content of Article 51 of the draft law has been significantly amended to restrict rights. It

states that the media will be exempted from responsibility for the dissemination of information: if it is contained in copyrighted works broadcast without prior recording, or in texts not subject to editing under this law. Thus, according to the draft law, the media is exempted only for reproducing an author's work or text.

At the same time, it is unclear what the author means in the draft law by the concept of “author's work”. The draft law does not specify which texts should not be edited. There is no any kind of explanation in the explanatory note. And how does the media have to comply with the law in doing so? The concept of "author's work" can have different meanings, which boil down to the fact that it is the result of creative activity. These can be know-how, inventions for which there is a set https://economy-ru.info/info/71811of exclusive rights, literary works, works of art and much more. In general, it seems pointless to propose an exemption from responsibility for reproduction of the work, because the distribution of media and journalists should only be encouraged. Accordingly, the proposed norm does not make sense and have logic. What a journalist and the media really cannot be responsible for is the live performance of citizens. A journalist cannot be aware of what the invited person will say on the air. In this regard, the current law provides a rule exempting from liability for this case. Replacing this important norm with a ridiculous one copied word for word from the Russian law on exemption from liability for reproduction of a work is not only unjustified, but also harmful. This narrowing of the boundaries on the conditions for exempting the media and journalists from liability is in no way justified either in the justification note or in the concept of the draft law.

Article 63, paragraph 1 of the Constitution of the Kyrgyz Republic prohibits the adoption of laws restricting freedom of speech, press and mass media. Accordingly, the wording of the article proposed in the draft contradicts the Constitution of the Kyrgyz Republic.

In the Conclusion to the draft law, the Ministry of Justice of the Kyrgyz Republic dated as 9.11.2022 (Ref. No. 05-1/11685) indicates that the draft law proposes to regulate the issues arising in connection with the professional activities of a journalist. But at the same time, the state body draws attention to the fact that the law of the Kyrgyz Republic "On Protection of the Professional Activity of Journalists" already regulates such relations arising in connection with the professional activity of journalists, defines their rights and obligations, provides legal and social guarantees, and establishes measures of responsibility for violation of the legislation on the protection of the professional activity of journalists. This law, as well as the draft law on the media, defines the term "journalist". But these concepts differ. In this regard, in order to avoid duplication of regulatory requirements, the authors of the draft law were recommended to delete from the draft the rules governing the rights and obligations of journalists. However, this recommendation was again ignored by the authors of the draft law.

Concerning the right to visit state bodies, local self-government bodies, organizations, enterprises and institutions or their press services on the basis of accreditation. And only with

the consent of officials or citizens to make recordings, including with the use of audio and video equipment, film and photography, except in cases provided for by law noted in the introduction of this Commentary.

6. Foreign participation

Article 10, paragraph 4, part 2, of the draft law provides that a citizen of a foreign State or a stateless person may not be the founder (owner) of a mass media outlet. In turn, the Ministry of Justice of the Kyrgyz Republic, in its Conclusion to the draft law dated as 11/19/2022 (Ref. No.05-1/11685) on this issue, indicated that according to part 2 of Article 6 of the Constitution of the Kyrgyz Republic, constitutional laws, laws and other normative legal acts are adopted on the basis of the Constitution.

In accordance with Article 52 of the Constitution of the Kyrgyz Republic, foreign citizens and stateless persons in the Kyrgyz Republic have rights and obligations on an equal footing with citizens of the Kyrgyz Republic, except in cases established by laws or international treaties to which the Kyrgyz Republic is a party that have entered into force in accordance with the procedure established by law. At the same time, the Ministry of Justice draws attention to the fact that Article 63 of the Constitution prohibits the adoption of laws restricting freedom of speech, the press and the mass media. In this regard, the Ministry believes that the proposed norm does not comply with the requirements of Article 63 of the Constitution of the Kyrgyz Republic. The Conclusion further states that, according to Article 19 of the Universal Declaration of Human Rights, everyone has the right to freedom of opinion and expression, this right includes freedom to freely adhere to their beliefs and freedom to seek, receive and disseminate information and ideas by any means and *regardless of State borders.* In this connection, the Ministry draws attention to the need to eliminate in the draft Law the restrictions on the impossibility of being a founder of a foreign national or legal entity.

Despite this, all the provisions in the draft that restrict the right of foreign citizens to establish mass media in the territory of the Kyrgyz Republic remained unchanged. The authors of the draft law simply ignored the comments of the authorized state body providing the functions of development and implementation of state policy in the field of normative legal regulation.

Article 49 of the draft law provides that representative offices of foreign mass media in the Kyrgyz Republic shall be established with the permission of the authorized State body on mass media affairs. However, it is not clear from the draft law in which cases the Ministry of Culture may grant permission and in which cases it may refuse to grant such permission.

Further, part 3 of this article of the draft law proposes that accreditation of correspondents of foreign mass media in the Kyrgyz Republic shall be carried out by the authorized state body on mass media affairs in accordance with the requirements of this Law.

However, the draft law does not specify the requirements for foreign journalists and the mechanism for obtaining accreditation.

7. Unsubstantiated reference norms

Throughout the text of the draft law on the media, many reference norms are applied without reference to specific legislation. As an example, we can cite the norm of Article 1 of the draft law, where reference norms are mentioned four times, without specifying the legislation. This article provides for the exercise of the right of free expression of one's opinion "in *any way not prohibited by the Constitution of the Kyrgyz Republic and the legislation of the Kyrgyz Republic;*

2) free search, selection, receipt and dissemination of information in any way not prohibited by the legislation of the Kyrgyz Republic;

2. In the Kyrgyz Republic, the right of everyone to freedom of expression, freedom of speech and press, receipt and dissemination of information shall be realized in oral, written, printed and other forms not prohibited by the legislation of the Kyrgyz Republic.

3. In the Kyrgyz Republic, the search, receipt, production and dissemination of mass media, the establishment of printed and other mass media, possession, use and disposal of them, manufacture, acquisition, storage and operation of technical devices and equipment, raw materials and materials intended for the production and distribution of mass media products are not subject to restrictions, except in cases provided for by the legislation of the Kyrgyz Republic."

A similar picture is observed in Article 53 of the draft law on liability for abuse of freedom of speech and the press.

"1. Abuse of the freedom of speech and of the press in violation of the requirements of this Law shall entail liability in accordance with the legislation of the Kyrgyz Republic.

2. Abuse of the rights of a journalist in violation of the requirements of this Law or failure to comply with the duties of a journalist shall incur liability in accordance with the legislation of the Kyrgyz Republic."

The article specifies the responsibility, but it remains unclear what one exactly? The above-mentioned, as an example, norms of articles and many others throughout the text of the draft, where references to legislation are applied, are considered not finalized, as they do not disclose specific laws. In accordance with the requirements of article 24, paragraph 2, of the Law of the Kyrgyz Republic «On normative legal acts», if for the application of a normative legal act it is necessary to make amendments and additions to other normative legal acts, Draft normative legal acts with these amendments and additions shall be attached to the proposed draft normative legal act.

The members of the working group repeatedly appealed to the authors of the draft law on the need to bring it in accordance with the requirements of the law of the Kyrgyz Republic «On normative legal acts». It was proposed to simultaneously develop a package of drafts of other regulatory legal acts arising from the draft law on the media. But all requests went unanswered. Thus, the initiators of the draft law grossly violated the norm of the above-mentioned law.

In its Conclusion to the draft law, the Ministry of Justice of the Kyrgyz Republic dated as 11/19/2022 (Ref. No. 05-1/11685) notes that the concept of "*legislation*" is a generalized concept and is vague, presenting the possibility of a broad interpretation. Also, the Ministry of Justice of the Kyrgyz Republic indicated that according to the Instruction on Legislative Technique approved by the Resolution of the Jogorku Kenesh of the Kyrgyz Republic dated as 26.06.2015 No. 5389-V, blanket references to legislation in general (e.g., regulated in accordance with the legislation) are not allowed. Therefore, it is recommended to analyze the normative legal acts referred to in the draft law and indicate their branch or scope of regulation.

In addition, the Ministry's Conclusion says that it is necessary to disclose the wording *"abuse"*, since such formulations create legal uncertainty and difficulties in law enforcement practice. The Conclusion also draws attention to Article 53 of the Constitution of the Kyrgyz Republic, which states that *"everyone has the right to carry out any actions and activities other than those prohibited by the Constitution and laws."* Accordingly, liability should be provided for violation of specific requirements provided by normative legal acts. Therefore, all norms with a broad reference to the legislation are subject to review.

However, for unknown reasons, the recommendations of the Ministry of Justice for the draft law "On the Mass Media" have been ignored.

The submitted version of the draft law "On the mass media" contradicts the norms of the Constitution of the Kyrgyz Republic and the norms of international law, disproportionately restricts human rights and freedoms, unlawfully narrows the limits of freedom of speech, the press and the expression of the opinion of journalists and the activities of the media, is saturated with duplicative and reference norms. Provisions that could not be sufficiently defined should be removed from the draft law and replaced by correct definitions. Definitions of the conceptual apparatus should be reviewed, taking into account the peculiarities of electronic means of expression based on Internet technologies, and compared with the terminology of the draft Digital Code of the KR. Review the rules of the draft law from the point of logical connection and reflection.

As noted above, the draft law is accompanied only by legal review and an analysis of the regulatory impact. For comparison, we offer you to consider the draft law of Kazakhstan "On Mass Media".[3] The dossier on the draft Law of the Republic of Kazakhstan "On Mass

[3] https://online.zakon.kz/Document/?doc_id=35440863&pos=6;-105#pos=6;-105

Media" consists of 23 documents, including, for example: the National Association of the Food Industry of Kazakhstan; the National Association of Information Technologies of Kazakhstan; the RSE at the Institute of Legislation and Legal Information; the Scientific Research Institute of State and Law named after Gayrat Sapargaliev "Conclusion of the scientific anti-corruption expertise of the draft"; the National Chamber of Entrepreneurs of the Republic of Kazakhstan "Atameken". Minutes of discussions on various platforms are also attached. Such a broad discussion of the draft law leads to finding mutually acceptable solutions to emerging issues. The draft law of the Republic of Kazakhstan "On Mass Media", for example, provides for voluntary registration of an online publication.[4]

In the light of the analysis provided and international practice, the draft law contravenes the provisions of the Constitution of the Kyrgyz Republic and the international treaties to which the Kyrgyz Republic is a party. Any restrictions on access to Internet content should be based on clear and predictable legal norms. The scope of any restrictions should be clearly regulated.

The initiators of the draft law should withdraw the draft law, independently develop the Concept, excluding the registration of websites from the content, revise and finalize the draft taking into account Kyrgyzstan's obligations to respect human rights and freedoms, freedom of speech, press and independence of the media, and adapt all comments and suggestions received from the state authorized bodies and participants in the media sector.

We ask the relevant committee of the Jogorku Kenesh of the Kyrgyz Republic, as well as the Jogorku Kenesh of the Kyrgyz Republic, to reject the submitted draft law.

[4] https://online.zakon.kz/Document/?doc_id=36692497&pos=293;-20#pos=293;-20